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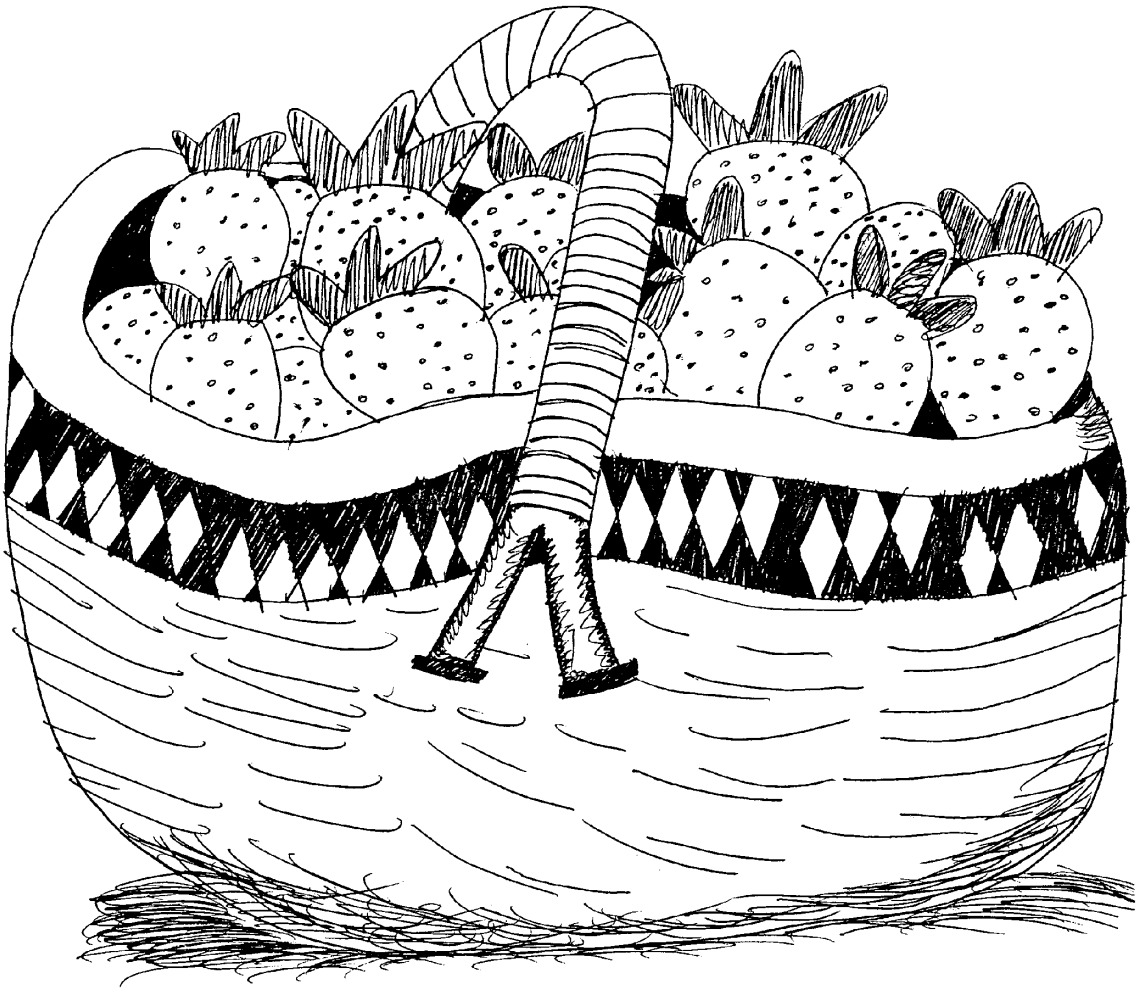

This month's front cover artwork:

Artist: *Holli Moore*
10th grade
Rockwall High School

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

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

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

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PROPOSED RULES

WITHDRAWN RULES

ADOPTED RULES

Open Meetings

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

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

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

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

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

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

PROPOSED RULES

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

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

TITLE 1. ADMINISTRATION

PART 10. DEPARTMENT OF INFORMATION RESOURCES

CHAPTER 201. PLANNING AND MANAGEMENT OF INFORMATION RESOURCES TECHNOLOGIES

1 TAC §201.1

The Department of Information Resources (department) proposes an amendment to §201.1, concerning definitions applicable to department rules. The purpose of the amendment is to add new definitions relating to geographic information systems, to update the legal citations to the Professional Services Procurement Act and the Major Consulting Services Act in paragraph (17) and to the Texas Education Code in paragraph (26) and to amend the definition of geographic information system in proposed paragraph (7). New definitions are proposed for Albers equal area conic projection, datum, geospatial data(set), geospatial dataset enhancement, geospatial dataset maintenance, geospatial metadata, geoTIFF, GIS map project, JPEG, Lambert conformal conic projection, map projection, survey product, TIFF and world file.

Mr. Eddie Esquivel, Director of the Enterprise Operations Division, has determined that for each year of the first five years the amended rule will be in effect, there will be no fiscal implications for state government as a result of enforcing or administering the proposed amendment to §201.1. There will be no foreseeable fiscal implications for local government as a result of enforcing or administering the proposed amendment.

Mr. Esquivel has determined that for each year of the first five years the amended rule will be in effect, the benefit to the public will be increased rule clarity as a result of the definitions of certain terms used in the department's rules. There will be no effect on small businesses, and that there is no additional anticipated economic cost to persons who are required to comply with the amended rule.

Comments on the proposed amendment to §201.1 may be submitted to Renee Mauzy, General Counsel, Department of Information Resources, via mail to P.O. Box 13564, Austin, Texas 78711, or electronically to renee.mauzy@dir.state.tx.us no later than 5:00 p.m., within 30 days after publication.

The amendment is proposed under Texas Government Code §2054.052(a), which authorizes the department to adopt rules as necessary to carry out its responsibility under the Information Resources Management Act.

Texas Government Code chapter 2054 is affected by the proposed amendment.

§201.1. Definitions.

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

(1) Albers equal area conic projection--A map projection developed by Albers in 1805 and commonly used in mapping of the United States by the U.S. Geological Survey. While some distortion is inherent in all map projections, a characteristic of the albers equal area conic projection is that scale distortion is minimized.

(2) [~~(1)~~] Application--A separately identifiable and interrelated set of information resources technologies that allows a state agency to manipulate information resources to support specifically defined objectives.

(3) [~~(2)~~] Board--The governing board of the Department of Information Resources.

(4) [~~(3)~~] Data processing--Information technology equipment and related services designed for the automated storage, manipulation, and retrieval of data by electronic or mechanical means, or both. The term includes:

(A) central processing units, front-end processing units, miniprocessors, microprocessors, and related peripheral equipment such as data storage devices, document scanners, data entry equipment, terminal controllers, data terminal equipment, computer-based word processing systems other than memory typewriters, and equipment and systems for computer networks;

(B) all related services, including feasibility studies, systems design, software development, and time-sharing services, whether provided by state employees or by others; and

(C) the programs and routines used to employ and control the capabilities of data processing hardware, including operating systems, compilers, assemblers, utilities, library routines, maintenance routines, applications, and computer networking programs.

(5) Datum--A smooth mathematical surface that closely defines the mean sea-level surface of the earth throughout a certain geographic region of interest (such as North America). Accurate ground positional measurements must be made with reference to a specific datum appropriate to the region.

(6) [~~(4)~~] Department--The Department of Information Resources.

(7) [~~(5)~~] Geographic information system (GIS)--A system of computer hardware, software and procedures used to store, analyze and display geospatial data and related tabular data in a geographic context to solve complex planning and management problems in a wide variety of applications. [~~A computer hardware and software system designed to collect, manage, manipulate, analyze, and display spatially referenced data; includes attribute data (usually in an associated data base), as well as graphic data which may be in vector (line) or raster (image) form; may include cartographic and geographic data such as earth science, natural resource, engineering, demographic, or socioeconomic data; and will include for purposes of these rules all types of automated mapping, facilities management, and mapping applications from a computer-aided design system.~~]

(8) Geospatial data(set)--Data which describes some aspect of the earth's surface (or near-surface regions), or which can be identified with a specific location on or near the earth's surface. A geospatial dataset employs a defined, earth-based coordinate system which allows its use in a geographic information system.

(9) Geospatial dataset enhancement--Substantial alteration of a geospatial dataset which increases its usefulness through the addition of attribute (tabular) data fields, improvements in spatial accuracy, or extension of geographic coverage.

(10) Geospatial dataset maintenance--Addition to, or alteration of, a geospatial dataset as part of a routine business process.

(11) Geospatial metadata--A description of the characteristics of a geospatial dataset, recorded in a standard format. Characteristics include data content, quality, purpose, condition, format, spatial coordinate system, availability, etc. The Federal Geographic Data Committee has defined a formal content standard for digital geospatial metadata for use by federal agencies.

(12) GeoTIFF--A TIFF-based image format for geo-referenced raster imagery.

(13) GIS map product--A geographic representation, in paper or electronic format, displaying features from one or more digital geospatial datasets. Small scale images that are clearly intended only for graphic illustration within a larger publication are not considered to be GIS map products.

(14) JPEG--A standardized image compression mechanism. JPEG stands for Joint Photographic Experts Group, the original name of the committee that wrote the standard.

(15) [~~(6)~~] Imaging systems--Information resources technologies with video, scanning, and computer graphics capabilities (including raster formats) which are used to capture, process, create, output, store, and/or archive images, excluding process-control systems for medical diagnostic applications.

(16) [~~(7)~~] Information resources--The procedures, equipment, and software that are designed, built, operated, and maintained to collect, record, process, store, retrieve, display, and transmit information, and associated personnel including consultants and contractors.

(17) [~~(8)~~] Information resources services--Services provided under contract to a state agency by an individual or firm, or by a consultant or professional engineer under Texas Government Code, Chapter 2254, the Professional Services Procurement Act, and Texas Government Code, Chapter 2254, Consulting Services, [~~Civil Statutes Articles 664-4 and 6252-11c,~~] which includes [~~include~~]: studying agency's existing information resources; advising on necessary changes or additions to the information resources environment; performing information resources feasibility studies; information resources training; or recommending, managing, converting, designing, procuring, developing, documenting, programming, testing, implementing, or installing new information resources, including systems development methodologies and disaster recovery capabilities.

(18) [~~(9)~~] Information resources technologies--Data processing and telecommunications hardware, software, services, supplies, personnel, facility resources, maintenance, and training.

(19) [~~(10)~~] Interagency application--An information resources project implemented or used by multiple agencies.

(20) Lambert conformal conic projection-A map projection developed by Lambert in 1772 and commonly used in mapping of the United States by the U.S. Geological Survey. While some distortion is inherent in all map projections, a characteristic of the lambert conformal conic projection is that shape distortion is minimized.

(21) Map projection-A systematic representation of all or part of a surface of a round body, especially Earth, on a plane.

(22) [~~(11)~~] Project--A program to provide information resources technologies support to functions within or among elements of a state agency, which should be characterized by well-defined parameters, specific objectives, common benefits, planned activities, a scheduled completion date, and an established budget with a specified source of funding.

(23) Raster--A data structure for representing spatial data. The raster data structure divides a region of space into a regular, two-dimensional grid. Each cell in the grid has an associated data value. A common use of the raster data structure is to represent imagery in a digital format. In this case, the data value for each cell represents the color exhibited by that part of the image.

(24) [~~(12)~~] Risk--The possibility of an act or event occurring that would have an adverse effect on the state, an organization or an information system. Risk involves both the probability of failure and the possible consequences of a failure.

(25) [~~(13)~~] Risk analysis--Risk analysis is the evaluation of planned project events and deliverables in regards to various factors to consider the possibility or probability of failure and the consequences of such a failure. Risk analysis will yield an identification of the areas of greater and lower risk.

(26) [~~(14)~~] State agency--A department, commission, board, office, council, or other agency in the executive or judicial branch of government that is created by the constitution or a statute of this state, including a university system or institution of higher education as defined by the Texas Education Code, §61.003.

(27) [~~(15)~~] Statewide application--An information resources project implemented or used throughout state government.

(28) Survey product--A map, report, letter or other document produced by a registered professional land surveyor while engaged in the practice of land surveying.

(29) [~~(16)~~] Telecommunications--Any transmission, emission, or reception of signs, signals, writings, images, and sounds of intelligence of any nature by wire, radio, optical, or other electromagnetic systems and includes all facilities and equipment performing those functions that are owned, leased, or used by state agencies and branches of state government.

(30) [~~(17)~~] Telecommunications services--Intercity communications facilities or services. "Telecommunications services" does not include single agency point-to-point radio systems or facilities or services of criminal justice information systems.

(31) TIFF--Tagged Image File Format. A public domain raster image file format.

(32) [~~(18)~~] Wide area network--A network that interconnects geographical boundaries (such as buildings, campuses, cities, regions, and/or states) which has a total distance (first node to last node) of two or more miles and might be connected using common carrier services.

(33) World file--A file that accompanies a specific raster image file and that contains georeferencing information that can be used by certain GIS software to correctly display the raster image in an earth-based coordinate system.

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 June 5, 2001.

TRD-200103121
Renee Mauzy
General Counsel
Department of Information Resources
Earliest possible date of adoption: July 22, 2001
For further information, please call: (512) 475-2153

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PART 15. TEXAS HEALTH AND HUMAN SERVICES COMMISSION

CHAPTER 355. MEDICAID REIMBURSEMENT RATES

SUBCHAPTER C. REIMBURSEMENT METHODOLOGY FOR NURSING FACILITIES

1 TAC §355.307

The Texas Health and Human Services Commission (HHSC) proposes an amendment to §355.307, concerning reimbursement setting methodology, in its Medicaid Reimbursement Rates chapter. The purpose of the amendment is to create a special reimbursement class for nursing facilities that specialize in caring for high need children. To qualify as a pediatric care facility, the nursing facility must have an average daily census of 80% or more children. Payment rates for facilities in this pediatric care facility special reimbursement class will be determined on a facility-specific basis and will not be based on the Texas Index for Level of Effort (TILE) payment rates. This special reimbursement class will recognize the increased costs that exist in nursing facilities that predominately serve children.

Don Green, chief financial officer, has determined that for the first five-year period the sections are in effect there will be fiscal implications for state government as a result of enforcing or administering the sections. The effect on state government for the first five-year period the sections will be in effect is an estimated additional cost of $199,092 in fiscal year FY 2002; $206,140 in FY 2003; $206,140 in FY 2004; $206,140 in FY 2005; and $206,140 in FY 2006. There will be no fiscal implications for local government as a result of enforcing or administering the sections.

Commissioner Don Gilbert has determined that for each year of the first five years the sections are in effect the public benefit anticipated as a result of enforcing the sections will be that nursing facilities which predominantly serve children will receive payment rates that reflect the spending necessary to care for high need children. There will be no adverse economic effect on small or micro businesses, because the proposal creates a new reimbursement class for nursing facilities that serve predominantly high need children. No changes in practice are required of any business.

Questions about the content of this proposal may be directed to Carolyn Pratt (512) 438-4057 in DHS's Rate Analysis Department. Written comments on the proposal may be submitted to Supervisor, Rules and Handbooks Unit-146, Texas Department of Human Services E-205, P.O. Box 149030, Austin, Texas 78714-9030, within 30 days of publication in the *Texas Register*.

The proposal is available for public review at local offices of DHS. For further information, contact Carolyn Pratt in DHS's Rate Analysis Department at (512) 438-4057.

Under §2007.003 of the Texas Government Code, HHSC has determined that Chapter 2007 of the Government Code does not apply to these rules. Accordingly, the department is not required to complete a takings impact assessment regarding these rules.

The amendment is proposed under the Government Code, §531.033, which authorizes the commissioner of the Health and Human Services Commission to adopt the rules necessary to carry out the commission's duties, and §531.021(b), which establishes the commission as the agency responsible for adopting reasonable rules governing the determination of fees, charges, and rates for medical assistance payments under Chapter 32, Human Resources Code.

The amendment implements the Government Code, §§531.033 and 531.021(b).

§355.307. Reimbursement Setting Methodology.

(a)-(b) (No change.)

(c) Special [~~Experimental~~] reimbursement class. DHS may define special reimbursement classes including experimental reimbursement classes of service to be used in research and demonstration projects on new reimbursement methods and reimbursement classes of service to address the cost differences of a select group of recipients. [~~Demonstration or pilot projects based on experimental reimbursement~~] Special classes may be implemented on a statewide basis or may be limited to a specific region of the state or to a selected group of providers.

(1) Pediatric Care Facility. The purpose of this special class is to recognize, through the adoption of a facility-specific payment rate, the cost differences that exist in a nursing facility that serves predominantly children.

(2) Definitions.

(A) Pediatric care facility - To qualify as a pediatric care facility, a facility must have had an average daily census of 80% of more children for the six month period prior to its entry into the pediatric care facility class. The census must be based on the entire licensed facility and not a distinct part. In addition, to remain a pediatric care facility, the facility must maintain an average daily census of 80% or more children.

(B) Children - For the purposes of this pediatric care facility class, children are defined as being at or below 22 years of age.

(3) Payment rate determination. Payment rates will be determined in the following manner:

(A) Cost reports and payment rate determination for pediatric care facilities are governed by the requirements specified in Subchapter A of this chapter (relating to Cost Determination Process).

(B) Payment rates for this class of service will be determined on a facility-specific basis. The total allowable costs from the most recent cost report deemed acceptable are adjusted for inflation from the cost report period to the rate period. The adjusted cost is divided by the greater of total patient days of service reported on the cost report or the days of service at 85 percent of contracted capacity. The resulting cost per day is multiplied by a factor of 1.03 to determine the final facility-specific rate. If no acceptable cost report is available, the provider will be required to submit a cost report covering the time period specified by DHS.

(C) The facility-specific payment rate from paragraph (3)(B) of this subsection will be paid for all Medicaid eligible residents of a qualifying facility regardless of the TILE level of the resident.

(D) Residents of the pediatric care facility will not be eligible to receive the ventilator-dependent or the children with tracheostomies supplemental reimbursements.

(E) Facilities in the pediatric care facility class are not eligible to participate in §355.308 (relating to Enhanced Direct Care Staff Rate).

(d)-(e) (No change.)

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

Filed with the Office of the Secretary of State, on June 6, 2001.

TRD-200103185
Marina Henderson
Executive Deputy Commissioner
Texas Health and Human Services Commission
Earliest possible date of adoption: July 22, 2001
For further information, please call: (512) 438-3734

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CHAPTER 355. MEDICAID REIMBURSEMENT RATES

The Texas Health and Human Services Commission (HHSC) proposes amendments to §355.503, concerning reimbursement methodology for the community-based alternatives waiver program--a 1915(c) Medicaid home and community-based waiver for aged and disabled adults who meet criteria for alternatives to nursing facility care; §355.505, reimbursement methodology for the community living assistance and support services waiver program--a 1915(c) Medicaid home and community-based waiver for persons with related conditions; and §355.9022, reimbursement methodology for community-based services provided to people who are deaf-blind with multiple disabilities, in its Medicaid Reimbursement Rates chapter. For the Community-Based Alternatives (CBA), Community Living Assistance and Support Services (CLASS), and Deaf-Blind Multiple Disabilities (DB-MD) programs, the purpose of the amendments is to more closely match payment rates to the cost of the services delivered. The payment rate for Registered Nurses (RNs) and Licensed Vocational Nurses (LVNs) will be separated into two distinct rates to more closely match the cost of the type of nursing service delivered to the payment rate. These two rates eliminate the current method of blending RN and LVN average costs into a single rate. For the CLASS and CBA programs, the amendment deletes a separate rate for the annual reassessment of clients that is conducted by an RN. Currently the reassessment fee is determined by estimating the average amount of nursing time required to complete a reassessment. The amendment would eliminate the separate rate for reassessment fees and require providers to bill the RN payment rate for reassessment services, based on the actual time spent by the RN.

Don Green, Chief Financial Officer, has determined that for the first five-year period the sections are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the sections, because any change in RN or LVN payment rates as compared to the currently used combined nursing payment rate would be the result of recalculating the rate components based on actual provider cost.

Commissioner Don Gilbert has determined that for each year of the first five years the sections are in effect the public benefit anticipated as a result of enforcing the sections will be that the cost of services delivered will be more closely matched to the corresponding payment rate. There is no anticipated economic cost to persons who are required to comply with the proposed sections. For the CBA and CLASS programs, the proposal will require the provider to bill for RN time performing assessments at the RN payment rate and eliminates the modeled reassessment fee. For the CBA, CLASS, and DB-MD programs, contracted providers will be required to separately track and bill nursing services delivered by RNs and LVNs.

Questions about the content of this proposal may be directed to Carolyn Pratt (512) 438-4057 in DHS's Rate Analysis Department. Written comments on the proposal may be submitted to Supervisor, Rules and Handbooks Unit-145, Texas Department of Human Services E-205, P.O. Box 149030, Austin, Texas 78714-9030, within 30 days of publication in the *Texas Register*.

Under §2007.003 of the Texas Government Code, HHSC has determined that Chapter 2007 of the Government Code does not apply to these rules. Accordingly, the department is not required to complete a takings impact assessment regarding these rules.

SUBCHAPTER E. COMMUNITY CARE FOR AGED AND DISABLED

1 TAC §355.503, §355.505

The amendments are proposed under the Government Code, §531.033, which authorizes the commissioner of the Health and Human Services Commission to adopt the rules necessary to carry out the commission's duties, and §531.021(b), which establishes the commission as the agency responsible for adopting reasonable rules governing the determination of fees, charges, and rates for medical assistance payments under Chapter 32, Human Resources Code.

The amendments implement the Government Code, §531.033 and §531.021(b).

§355.503. Reimbursement Methodology for the Community-based Alternatives Waiver Program--a 1915(c) Medicaid Home and Community-based Waiver for Aged and Disabled Adults Who Meet Criteria for Alternatives to Nursing Facility Care.

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

(d) Waiver reimbursement determination. Recommended reimbursements are determined in the following manner.

(1) Unit of service reimbursement. Reimbursement for personal assistance services, nursing services provided by an RN, nursing services provided by and LVN, physical therapy, occupational therapy, speech pathology, and in-home respite care services will be determined on a fee-for-service basis in the following manner.

(A) (No change.)

(B) Total allowable costs are reduced by the amount of the pre-enrollment expense fee and[~~,~~] requisition fee[~~, and reassessment fee~~] revenues accrued for the reporting period.

(C)-(G) (No change.)

(2)-(4) (No change.)

[~~(5) Reassessment fees. Reassessment fees are reimbursements paid to CBA home and community support services contracted providers for performing annual reassessments. Reimbursements are determined using a method based on modeled projected expenses which are developed by using data from surveys; cost report data from similar programs; consultation with other service providers and/or professionals experienced in delivering contracted services; and/or other sources.~~]

(5) [~~(6)~~] Pre-enrollment expense fee. Reimbursement for pre-enrollment assessment is determined using a method based on modeled projected expenses which are developed by using data from surveys; cost report data from other similar programs, consultation with other service providers and/or professionals experienced in delivering contracted services; and other sources.

(6) [~~(7)~~] Exceptions to the reimbursement determination methodology. DHS may adjust reimbursement if new legislation, regulations, or economic factors affect costs, according to §355.109 of this title (relating to Adjusting Reimbursement When New Legislation, Regulations, or Economic Factors Affect Costs).

(e)-(h) (No change.)

§355.505. Reimbursement Methodology for the Community Living Assistance and Support Services Waiver Program--a 1915(c) Medicaid Home and Community-based Waiver for Persons with Related Conditions.

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

(d) Waiver reimbursement determination methodology.

(1) Unit of service reimbursement or reimbursement ceiling by unit of service. Reimbursement or reimbursement ceilings for related-conditions waiver services, habilitation, nursing services provided by an RN, nursing services provided by an LVN, physical therapy, occupational therapy, speech pathology, and psychological and respite care services will be determined on a fee-for-service basis. These services are provided under the §1915(c) of the Social Security Act Medicaid waiver for persons with related conditions.

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

(4) Reimbursement determination. Recommended unit of service reimbursements are determined in the following manner.

(A) Unit of service reimbursement for habilitation, nursing services provided by an RN, nursing services provided by an LVN, physical therapy, occupational therapy, speech pathology, and psychological services are determined in the following manner:

(i) (No change.)

(ii) Total allowable costs are reduced by the amount of the administrative expense fee, and requisition fee[~~, and reassessment fee~~] revenues accrued for the reporting period.

(iii)-(v) (No change.)

(vi) For nursing services provided by and RN, nursing services provided by and LVN, physical therapy, occupational therapy, speech pathology, and psychological services:

(I)-(II) (No change.)

(vii) (No change.)

(B)-(D) (No change.)

(e)-(f) (No change.)

[~~(g) Reassessment fees. Reassessment fees are reimbursements paid to CLASS direct service agency contracted providers for performing annual reassessments. Reimbursements are determined using a method based on modeled projected expenses which are developed by using data from surveys; cost report data from similar programs, consultation with other service providers and/or professionals experienced in delivering contracted services; and/or other sources.~~]

(g) [~~(h)~~] Allowable and unallowable costs.

(1) Providers must follow the guidelines in determining whether a cost is allowable or unallowable as specified in §355.102 and §355.103 of this title (relating to General Principles of Allowable and Unallowable Costs, and Specifications for Allowable and Unallowable Costs) as well as the following provisions.

(2) Participant room and board expenses are not allowable, except for those related to respite care.

(3) The cost of adaptive aids and home modifications is not allowable. Allowable labor costs associated with acquiring adaptive aids and home modifications should be reported in the cost report. Any item purchased for participants in this program and reimbursed through a voucher payment system is unallowable. Refer to §355.103(b)(17)(K) of this title (relating to Specifications for Allowable and Unallowable Costs).

(h) [~~(i)~~] Authority to determine reimbursement. The authority to determine reimbursement is specified in §355.101 of this title (relating to Introduction).

(i) [~~(j)~~] Reporting revenue. Revenues must be reported on the cost report in accordance with §355.104 of this title (relating to Revenues).

(j) [~~(k)~~] Reviews and field audits of cost reports. DHS staff perform desk reviews or field audits on all contracted providers. The

frequency and nature of the field audit are determined by DHS to ensure the fiscal integrity of the program. Desk reviews and field audits will be conducted in accordance with §355.106 of this title (relating to Basic Objectives and Criteria for Audit and Desk Review of Cost Reports), and providers will be notified of the results of a desk review or a field audit in accordance with §355.107 of this title (relating to Notification of Exclusions and Adjustments). Providers may request an informal review and, if necessary, an administrative hearing to dispute an action taken by DHS under §355.110 of this title (relating to Informal Reviews and Formal Appeals).

(k) [~~(l)~~] Reporting requirements. The program director's full salary is to be reported on the line item of the cost report designated for the director.

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 June 11, 2001.

TRD-200103275
Marina Henderson
Executive Deputy Commissioner
Texas Health and Human Services Commission
Earliest possible date of adoption: July 22, 2001
For further information, please call: (512) 438-3734

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SUBCHAPTER M. MISCELLANEOUS MEDICAID PROGRAMS
DIVISION 2. MEDICAID WAIVER PROGRAM FOR PEOPLE WITH DEAF-BLINDNESS AND MULTIPLE DISABILITIES

1 TAC §355.9022

The amendment is proposed under the Government Code, §531.033, which authorizes the commissioner of the Health and Human Services Commission to adopt the rules necessary to carry out the commission's duties, and §531.021(b), which establishes the commission as the agency responsible for adopting reasonable rules governing the determination of fees, charges, and rates for medical assistance payments under Chapter 32, Human Resources Code.

The amendment implements the Government Code, §531.033 and §531.021(b).

§355.9022. Reimbursement Methodology for Community-based Services Provided to People Who Are Deaf-Blind with Multiple Disabilities.

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

(d) Waiver rate determination methodology. Recommended reimbursements for waiver services will be determined on a fee-for-service basis in the following manner for each of the services provided:

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

(5) For physical therapy, occupational therapy, speech/hearing/language, case management, [~~skilled~~] nursing services provided by an RN, nursing services provided by an LVN, and behavior communication specialist services, an allowable cost per unit of service is calculated for each contracted provider for each service. The allowable costs per unit of service for each contracted provider are arrayed. The units of service for each contracted provider in the array are summed until the median unit of service is reached. The corresponding expense to the median unit of service is determined and is multiplied by 1.044. The allowable costs per unit of service may be combined into an array with the allowable costs per unit of service of similar services provided by other programs in determining the median cost per unit of service.

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

(e)-(h) (No change.)

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

Filed with the Office of the Secretary of State, on June 11, 2001.

TRD-200103274
Marina Henderson
Executive Deputy Commissioner
Texas Health and Human Services Commission
Earliest possible date of adoption: July 22, 2001
For further information, please call: (512) 438-3734

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SUBCHAPTER J. PURCHASED HEALTH SERVICES
DIVISION 28. PHARMACY SERVICES: REIMBURSEMENT

The Health and Human Services Commission (HHSC) proposes the repeal of current §355.8541 and new §355.8541 concerning reimbursement of product cost in the Vendor Drug Program (VDP). Currently, the rule describes the industry sources used to estimate the cost of product acquisition for providers of Medicaid outpatient pharmacy services, and how these sources are used to arrive at the HHSC's best estimate of the provider's acquisition costs. The current rule specifies mark-ups and discounts from published pricing data that result from the methodology that is used to price products.

The proposed new section will eliminate the specific percentages. Additional market resources that may be used when determining prices for outpatient drugs will be added.

Don Green, Chief Financial Officer, has determined that for each year of the first five years the section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Steve Lorenzen, Director of Medicaid Rate Setting, has determined that for each year of the first five years the section is in effect, the public benefit anticipated as a result of enforcing the section will be to allow the HHSC to use percentages that more accurately reflect current market practices in determining product cost reimbursement for the VDP, to allow more timely response to market fluctuations in the product cost area, and to use all appropriate market sources in determining these costs in the future. Use of these resources will allow more accurate estimates of the actual cost of the products dispensed in the VDP and better meet the requirements contained in federal regulations (42 CFR, §447.331), concerning estimating drug product acquisition costs. There will be no costs to small business or micro-businesses to comply with this section as proposed. These businesses will not be required to alter their business practices in

order to comply with the rules as proposed. There are no costs to persons who are required to comply with the section. There will be no impact on local employment.

A public hearing will be held at 9:00 a.m., Central Standard Time, on Thursday, July 12, 2001, in the Public Hearing Room, Building 3, first floor of the Riata Crossing Facility, 12555 Riata Vista Circle, Austin, Texas 78727-6404, to accept comments on the proposal.

Comments on the proposal may be submitted to Jeff Phelps, Program Administrator, Medicaid Reimbursement Division, Texas Health and Human Services Commission, P.O. Box 13247, Austin Texas 78711-3247 or at (512) 424-6657, within 30 days of publication of this proposal in the *Texas Register*. To comply with federal regulations, a copy of the proposal is being sent to each Texas Department of Human Services (DHS) Office, where it will be available for public review upon request.

1 TAC §355.8541

(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 Health and Human Services Commission in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The repeal is proposed under the Human Resources Code, §32.021 and the Texas Government Code, §531.021, which provide the Health and Human Services Commission with the authority to adopt rules to administer the State's medical assistance program.

The repeal affects the Human Resources Code, Chapter 32, and the Texas Government Code, Chapter 531.

§355.8541. Legend and Nonlegend Medications.

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 June 6, 2001.

TRD-200103156
Marina Henderson
Executive Deputy Commissioner
Texas Health and Human Services Commission
Earliest possible date of adoption: July 22, 2001
For further information, please call: (512) 458-7236

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1 TAC §355.8541

The new section is proposed under the Human Resources Code, §32.021 and the Texas Government Code, §531.021, which provide the Health and Human Services Commission with the authority to adopt rules to administer the State's medical assistance program.

The new section affects the Human Resources Code, Chapter 32, and the Texas Government Code, Chapter 531.

§355.8541. Legend and Nonlegend Medications.

For all medication, legend and non-legend, covered by the Vendor Drug Program and appearing in the Texas Drug Code Index (TDCI) and updates, the following requirements must be met.

(1) Reimbursement. A pharmaceutical provider is reimbursed based on the lesser of:

(A) the HHSC's best estimate of acquisition cost (EAC) plus the HHSC's currently established dispensing fee per prescription; or

(B) the usual and customary price charged the general public.

(2) Estimated acquisition cost (EAC).

(A) EAC is defined as:

(i) wholesale estimated acquisition cost (WEAC);

(ii) direct estimated acquisition cost (DEAC), according to the pharmacist's usual purchasing source and the pharmacist's usual purchasing quantity; or

(iii) maximum allowable cost (MAC) for multi-source drugs.

(B) EAC is verifiable by invoice audit conducted by the HHSC to include necessary supporting documentation that will verify the final cost to the provider.

(C) All drug purchases through a central purchasing agreement or from a central purchasing entity must be billed to the HHSC as warehouse purchases.

(D) The WEAC is established by the HHSC using market sources which include, but are not limited to:

(i) the current Redbook;

(ii) Redbook Update;

(iii) First Databank;

(iv) First Alert; or

(v) reported manufacturer pricing.

(E) The WEAC may not exceed wholesaler cost, as supplied by the drug manufacturers plus an amount representing wholesaler operating costs under current market conditions. Market conditions will be examined at least every two years. Market conditions will be determined from information supplied to the department by reliable sources which include, but are not limited to the manufacturer, the wholesaler, and contracted providers. Exceptions to general pricing determinations may be made on certain drugs and/or drug categories based on information from these same market sources.

(F) The DEAC is established by the HHSC using direct price information supplied by drug manufacturers. Providers are reimbursed only at the DEAC on all drug products that are available from select manufacturers/distributors who actively seek and encourage direct purchasing. The TDCI is used as the reference from drugs included in the scope of benefits and for allowable package sizes. No acquisition cost is billed to the HHSC for samples dispensed.

(3) Nonlegend drugs.

(A) Reimbursement for nonlegend drugs is based on the lesser of:

(i) the usual and customary price charged to the general public; or

(ii) EAC, plus 50% of the EAC.

(B) No dispensing fee is added to the price of nonlegend drugs, and 50% of the EAC may not exceed the assigned dispensing fee.

(4) Public Hearing. Notice of a public hearing to receive comments on proposed changes to general pricing determinations derived under these rules shall be published in the *Texas Register*.

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 June 6, 2001.

TRD-200103157
Marina Henderson
Executive Deputy Commissioner
Texas Health and Human Services Commission
Earliest possible date of adoption: July 22, 2001
For further information, please call: (512) 458-7236

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TITLE 4. AGRICULTURE

PART 1. TEXAS DEPARTMENT OF AGRICULTURE

CHAPTER 24. TEXAS AGRICULTURAL FINANCE AUTHORITY: FARM AND RANCH FINANCE PROGRAM

4 TAC §§24.3, 24.9, 24.10, 24.12, 24.15

The Board of Directors of the Texas Agricultural Finance Authority (TAFA) of the Texas Department of Agriculture (the department) proposes amendments to §§24.3, 24.9, 24.10, 24.12 and 24.15, concerning the Farm and Ranch Finance Program. The amendments are proposed in order to make the sections consistent with changes made to the Texas Agriculture Code, Chapters 58 and 59 by the enactment of Senate Bill 716 (SB 716), 77th Legislature (2001). SB 716 provides authority for TAFA to provide loan guarantees to lenders for the purchase of farm and ranch real estate. The amendments to §24.3, concerning Definitions, add the definitions of "Commissioner" and "Guarantee Amount". The amendment to §24.9, concerning Filing Requirements and Consideration of Application, amends subsection (d) to provide for review and approval of applications by the commissioner if the lender had been approved through TAFA's Preferred Lender Program. The amendment to §24.10, concerning Contents of the Application, amends paragraph (a)(3) to eliminate the resume requirement and provide that the applicant must provide information regarding agricultural experience and deletes subsection (f), regarding the requirement for an earnest money contract. The amendment to §24.12, concerning General Terms and Conditions of Authority's Financial Committment, amends subsection (c) to change the ratio of pledged collateral required and provides for TAFA to provide a lender a guarantee on the lender committement in an amount not to exceed 15% of the lender's total committment. The amendment to §24.15, concerning Default Proceedings amends subsections (g) to change the ratio for sharing of net proceeds by the lender and TAFA after a default occurs.

Mr. Robert Kennedy, deputy assistant commissioner for agricultural finance, has determined that for the first-five year period the amended sections are in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering the amended sections. It is anticipated that the revenue generated by the program from application fees and interest income will be adequate to cover cost of administration of amendments to the program.

Mr. Kennedy also has determined that for each year of the first five years the amended sections are in effect, the public benefit anticipated as a result of enforcing the amended sections will be the potential to generate greater number of approved commitments for agricultural entities under the Farm and Ranch Finance Program. There will be no effect on microbusinesses or small businesses. There will be no anticipated economic cost to persons who are required to comply with the sections as amended.

Comments on the proposal may be submitted to Mr. Robert Kennedy, Deputy Assistant Commissioner for Finance, Texas Department of Agriculture, P. O. Box 12847, Austin, Texas 78711. Comments must be received no later than 30 days from the date of publication of this proposal in the *Texas Register*.

The amendments are proposed under the Texas Agriculture Code, §58.022 and §59.022, which provide the TAFA board with the authority to adopt rules and procedures for administration of the programs of TAFA, including the Farm and Ranch Finance Program.

The code affected by the proposal is the Texas Agriculture Code, Chapters 58 and 59.

§24.3. Definitions.

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

(1) - (5) (No Change.)

(6) Commissioner-The Commissioner of the Texas Department of Agriculture.

(7) [~~(6)~~] Department--The Texas Department of Agriculture.

(8) [~~(7)~~] Financial statements--Financial statements submitted by the applicant, which shall include a balance sheet, income statement, cash flow statement and owners equity reconciliation, if applicable.

(9) [~~(8)~~] Fund--The Farm and Ranch Finance Program Fund.

(10) Guarantee Amount--With respect to a loan made by a lender, a sum measured in terms of United States dollars tha the Authority agrees to pay in the case of default by the borrower, not to exceed the percentage and amount as stated in the guaranty agreement.

(11) [~~(9)~~] Interest rate--The interest rate on a loan as determined and approved by the Authority and the lender on a case- by-case basis.

(12) [~~(10)~~] Lender--A lender shall be a state or nationally chartered commercial lending institution, savings and loan association, credit union, any member of the Farm Credit System in the state, or any institution that the Authority determines is an experienced and sophisticated lender.

(13) [~~(11)~~] Loan--A loan approved by the Authority in accordance with the requirements and criteria set forth in the Act and in this chapter.

(14) [~~(12)~~] Program--The Farm and Ranch Finance Program.

(15) [~~(13)~~] Staff--The staff of the Department performing work for the Authority.

(16) [~~(14)~~] State--The State of Texas.

§24.9. Filing Requirements and Consideration of Application.

(a) - (c) (No Change.)

(d) Board or commissioner review. Staff will submit a credit memorandum to the Authority which shall include a recommendation for approval or denial for each application received by the program. The Authority will approve or deny each application by a majority vote of a quorum of members. The Authority may conditionally approve the application by imposing additional requirements. Should an application be received from a lender approved through the Preferred Lender Program, the Authority hereby delegates the approval or denial of any application received to the commissioner with such approvals or denials being presented to the Authority for affirmation at the next regularly scheduled meeting.

(e) - (h) (No Change.)

§24.10. Contents of the Application.

(a) Required information.

(1) - (2) (No Change.)

(3) the applicant's [~~resume which~~] identifies the agricultural experience [~~of the applicant~~];

(4) - (8) (No Change.)

(b) - (e) (No Change.)

[~~(f) Earnest money contract. The seller of the farm or ranch land to be acquired and the applicant must enter into a binding earnest money contract. The earnest money contract must contain all terms and conditions agreed to by the parties thereto.~~]

§24.12. General Terms and Conditions of the Authority's Financial Committment.

(a) - (b) (No Change.)

(c) The Authority and the lender will share the pledged collateral in a ratio of 50% [~~44%~~] to the Authority and 50% [~~56%~~] to the lender and the Authority will provide a lender a guarantee on the lender commitment in a percentage not to exceed 15% of the lender's total commitment.

(d) - (k) (No Change.)

§24.15. Default Proceedings.

(a) - (f) (No Change.)

(g) Net proceeds from the foreclosure sale or the ultimate final sale of the property by the lender, whichever is greater, and any net proceeds resulting from the collection under a deficiency judgment, shall be shared by the lender and the Authority in the ratio of 50% [~~56%~~] to the lender, and 50% [~~44%~~] to the Authority. Net proceeds shall mean that amount received from the foreclosure sale less expenses attributable to the foreclosure. All expenses must be approved by the lender and the Authority.

(h) Upon receipt of any net proceeds which the lender and the Authority mutually agree are the final net proceeds to be realized, the lender shall prepare a final accounting as to the loan so that the transaction may be closed out on the records of the lender and the Authority. Such final accounting shall be filed with and approved by the Authority. Should the final accounting not represent a complete repayment to the lender, the lender may file a demand to the Authority for the payment of the guarantee in the amount and percentage stated in the guarantee 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 June 11, 2001.

TRD-200103276
Dolores Alvarado Hibbs
Deputy General Counsel
Texas Department of Agriculture
Earliest possible date of adoption: July 22, 2001
For further information, please call: (512) 463-4075

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CHAPTER 30. TEXAS AGRICULTURAL FINANCE AUTHORITY: YOUNG FARMER LOAN GUARANTEE PROGRAM

SUBCHAPTER A. GENERAL PROCEDURES

4 TAC §30.6

The Board of Directors of the Texas Agricultural Finance Authority (TAFA) of the Texas Department of Agriculture (the department) proposes an amendment to §30.6, concerning the Young Farmer Loan Guarantee Program. The amendment is proposed in order to make the sections consistent with the adoption by TAFA of the Preferred Lender Program Rules. The amendment to §30.6, concerning Board or Commissioner Review, is amended to provide for review and approval of applications by the commissioner if the lender has been approved through TAFA's Preferred Lender Program.

Mr. Robert Kennedy, deputy assistant commissioner for agricultural finance, has determined that for the first-five year period the amended section is in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering the amended section.

Mr. Kennedy also has determined that for each year of the first five years the amended section is in effect, the public benefit anticipated as a result of enforcing the amended section will be a more efficient manner of processing applications by preferred lenders under the Young Farmer Loan Guarantee Program. There will be no effect on microbusinesses or small businesses. There will be no anticipated economic cost to persons who are required to comply with the section as amended.

Comments on the proposal may be submitted to Mr. Robert Kennedy, Deputy Assistant Commissioner for Finance, Texas Department of Agriculture, P.O. Box 12847, Austin, Texas 78711. Comments must be received no later than 30 days from the date of publication of this proposal in the *Texas Register*.

The amendment is proposed under the Texas Agriculture Code, §58.022 which provides the TAFA board with the authority to adopt rules and procedures for administration of the programs of TAFA, including the Young Farmer Loan Guarantee Program.

The code affected by the proposal is the Texas Agriculture Code, Chapter 58.

§30.6. Filing Requirements and Consideration of Applications.

(a) - (c) (No Change.)

(d) Board or commissioner review. The staff shall submit a credit memorandum to the board or the commissioner, which shall include a recommendation for approval or denial for each qualified application received by the program. The board, or the commissioner upon delegation of authority by the board, will approve or deny the qualified application. The determination for the application will be based upon the information presented in accordance with the Act and this chapter, the credit memorandum, and the factors set forth in §58.054 of the Act,

as implemented by this chapter. The board or the commissioner may impose additional terms and conditions as part of its approval. For applications presented to the Program by approved preferred lenders, the board hereby delegates the approval or denial authority to the commissioner with applications considered being presented to the board for confirmation at the next regularly scheduled meeting.

(e) - (h) (No change.)

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

Filed with the Office of the Secretary of State, on June 11, 2001.

TRD-200103277
Dolores Alvarado Hibbs
Deputy General Counsel
Texas Department of Agriculture
Earliest possible date of adoption: July 22, 2001
For further information, please call: (512) 463-4075

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TITLE 13. CULTURAL RESOURCES

PART 2. TEXAS HISTORICAL COMMISSION

CHAPTER 17. STATE ARCHITECTURAL PROGRAMS

13 TAC §17.1, §17.3

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

The Texas Historical Commission (THC) proposes the repeal of §§17.1 and 17.3 of Chapter 17 (Title 13, Part II of the Texas Administrative Code) concerning the Preservation Trust Fund Grants and the Texas Preservation Trust Fund. New §§17.1 and 17.3 of Chapter 17, concerning the Preservation Trust Fund Grants and the Texas Preservation Trust Fund, which would replace the repealed sections, are contemporaneously proposed in this issue of the *Texas Register*.

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

Mr. Oaks has also determined that for each year of the first five year period the rule amendments are in effect the public benefit anticipated as a result of the repeal and replacement of the existing rules will be an increase in the number, and scale of potentially important archeological projects that can apply for grants under the Texas Preservation Trust Fund. Additionally, Mr. Oaks as determined that there will be no effect on small businesses.

Comments on the proposal may be submitted to F. Lawerence Oaks, Executive Director, Texas Historical Commission, P. O. Box 12276, Austin, Texas 78711. Comments will be accepted for 30 days after publication in the *Texas Register*.

Repeal of these sections is proposed under §442.005(q), Title 13 Part II of the Texas Government Code, which provides the Texas Historical Commission with the authority to promulgate rules and conditions to reasonably effect the purposes of this chapter.

The repeal of these sections is also proposed under §442.005(q), Title 13 Part II of the Texas Government Code, which provides the Texas Historical Commission with the authority to promulgate rules to reasonably effect the purposes of this chapter. No other statues, articles, or codes are affected by these replacements.

These repeals implement §§442.015 and 442.0155 of the Texas Government Code.

§17.1 Preservation Trust Fund Grants.

§17.3 Texas Preservation Trust Fund

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 June 4, 2001.

TRD-200103092
F. Lawerence Oaks
Executive Director
Texas Historical Commission
Earliest possible date of adoption: July 22, 2001
For further information, please call: (512) 463-5711

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TITLE 19. EDUCATION

PART 2. TEXAS EDUCATION AGENCY

CHAPTER 61. SCHOOL DISTRICTS

SUBCHAPTER FF. COMMISSIONER'S RULES CONCERNING HIGH SCHOOL DIPLOMAS FOR CERTAIN VETERANS

19 TAC §61.1061

The Texas Education Agency (TEA) proposes new §61.1061, concerning high school diplomas for certain veterans. The new section implements the requirements that the commissioner by rule adopt a form for a diploma application to be used by a veteran or a person acting on behalf of a deceased veteran and specify acceptable evidence of eligibility for a diploma, as authorized by Texas Education Code (TEC), §28.0251, as added by Senate Bill 387, 77th Texas Legislature, 2001. The section includes the application form prescribed by the commissioner.

The proposed new section provides for a school district to issue a high school diploma to a person who: (1) is an honorably discharged member of the armed forces of the United States; (2) was scheduled to graduate from high school after 1940 and before 1951; and (3) left high school before graduation to serve in World War II. A school district may issue a diploma to an eligible veteran notwithstanding the fact that the person holds a high school equivalency certificate or is deceased. The proposed section includes the application form, describes the acceptable evidence of eligibility as a completed application and a copy of discharge notification, and establishes the process for submission of the acceptable evidence.

Robert Muller, associate commissioner for continuing education and school improvement, has determined that for the first five-

year period the section is in effect there will be slight fiscal implications for state government as a result of enforcing or administering the new section. Costs associated with developing and disseminating the application form are minimal and will be absorbed by the TEA. There may be a slight fiscal impact on local government. Administrative costs associated with accepting and reviewing applications and issuing the high school diplomas will be absorbed by local school districts at an estimated cost of no more than $5 per diploma.

Mr. Muller and Criss Cloudt, associate commissioner for accountability reporting and research, have determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be acknowledgment of the service of veterans who left high school before graduation to serve in World War II. There will not be an effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the proposed new section.

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

The new section is proposed under the Texas Education Code (TEC), §28.0251(c), as added by Senate Bill 387, 77th Texas Legislature, 2001, which authorizes the commissioner of education to by rule adopt a form for a diploma application to be used by a veteran or a person acting on behalf of a deceased veteran and specify acceptable evidence of eligibility of a diploma.

The new section implements the Texas Education Code, §28.0251(c), as added by Senate Bill 387, 77th Texas Legislature, 2001.

§61.1061. Application Form for Diploma and Evidence of Eligibility.

(a) In accordance with Texas Education Code (TEC), §28.0251, a school district may issue a high school diploma to a person who:

(1) is an honorably discharged member of the armed forces of the United States;

(2) was scheduled to graduate from high school after 1940 and before 1951; and

(3) left high school before graduation to serve in World War II.

(b) A school district may issue a diploma to an eligible veteran notwithstanding the fact that the person holds a high school equivalency certificate or is deceased.

(c) The Texas Education Agency will develop and make available an application form to be used by a veteran or a person acting on behalf of a deceased veteran. The application form is provided in this subsection entitled "Application for a High School Diploma for Certain Veterans."
Figure: 19 TAC §61.1061(c)

(d) Acceptable evidence of eligibility for a diploma under TEC, §28.0251, is:

(1) a completed, signed, and dated application form; and

(2) a copy of the discharge notification (DD form 214, enlisted record and report of separation, or discharge certificate) from the appropriate branch of the United States armed forces indicating dates of military service during World War II.

(e) The acceptable evidence of eligibility described in subsection (d) of this section must be submitted to the school district where the veteran was enrolled in high school. If the veteran's school district no longer exists (e.g., the district was consolidated into another district), the acceptable evidence must be submitted to the consolidated district, which will be responsible for issuing the high school diploma. In the case of high schools that have experienced consolidation or for some other reason no longer exist, the local school district that assumed the records of the previously existing school will make the determination as to which existing high school will issue the veteran's diploma.

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 June 11, 2001.

TRD-200103273
Criss Cloudt
Associate Commissioner, Accountability Reporting and Research
Texas Education Agency
Earliest possible date of adoption: July 22, 2001
For further information, please call: (512) 463-9701

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TITLE 22. EXAMINING BOARDS

PART 15. TEXAS STATE BOARD OF PHARMACY

CHAPTER 281. ADMINISTRATIVE PRACTICE AND PROCEDURES

SUBCHAPTER A. GENERAL PROVISIONS

22 TAC §281.19

The Texas State Board of Pharmacy proposes new §281.19, concerning Restrictions on Assignment of Vehicles. The new rule, if adopted, implements the rule-making provisions of the Texas Government Code, §2171.1045, concerning Restrictions on Assignment of Vehicles.

Gay Dodson, R.Ph., Executive Director/Secretary, has determined that, for the first five- year period the rule is in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering the rule.

Ms. Dodson has determined that, for each year of the first five-year period the rule will be in effect, the public benefit anticipated as a result of enforcing the rule will be compliance with the provisions of the Texas Government Code, §2171.1045. There is no fiscal impact anticipated for small or large businesses or to other entities who are required to comply with this section.

Comments on the proposal may be submitted to Steve Morse, R.Ph., Director of Professional Services, Texas State Board of Pharmacy, 333 Guadalupe Street, Suite 3-600, Box 21, Austin, Texas, 78701-3942, FAX (512) 305-8082. Comments must be received by 5 p.m., August 2, 2001.

The amendments are proposed under §2171.1045 of the Texas Government Code. The Board interprets §2171.1045 as requiring the Board to adopt rules concerning restrictions on the assignment of vehicles.

The statutes affected by this rule: Chapters 551-566, Texas Occupations Code.

§281.19. Restrictions on Assignment of Vehicles.

(a) Each agency vehicle, with the exception of the agency pool car, will be assigned to an individual field employee.

(b) The agency may assign a vehicle to a board member or an individual administrative or executive employee:

(1) on a temporary basis if field personnel are not available to assume responsibility for the car; or

(2) on a regular basis only if the agency makes a written documented finding that the assignment is critical to the needs and mission of the agency.

(c) The agency pool car is assigned to the agency motor pool and is available for checkout.

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 June 11, 2001.

TRD-200103267
Gay Dodson, R. Ph.
Executive Director/Secretary
Texas State Board of Pharmacy
Earliest possible date of adoption: July 22, 2001
For further information, please call: (512) 305-8028

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CHAPTER 291. PHARMACIES
SUBCHAPTER A. ALL CLASSES OF PHARMACIES

22 TAC §291.6

The Texas State Board of Pharmacy proposes amendments to §291.6 concerning Pharmacy License Fees. The proposed amendment, if adopted, will delete obsolete language, correct citations to the reflect the new codified Act, and increase the biennial pharmacy license fee from $324 to $363, for a license that has an expiration date on or after October 1, 2001. Included in this $363 total is $351 for processing and issuance or renewal of a pharmacist license, and a $12 surcharge to fund a program to aid impaired pharmacists and pharmacy students. The surcharge to fund this program has increased from a biennial fee of $10 to a biennial fee of $12 for each pharmacy license. The increase in the licensing fee is necessary to generate sufficient revenue that is collected by the agency through licensure fees, fines, and other miscellaneous revenue to support agency operations.

Gay Dodson, R.Ph., Executive Director/Secretary has determined that for the first five-year period the rule is in effect, there will be fiscal implications for state or local government as a result of enforcing or administering the rule. The effect on state government for the first five years the rule is in effect is an estimated increase in licensing revenue to the Texas State Board of Pharmacy fund of $101,417 in FY2002 and $105,598 in each FY2003-2006. In addition, an estimated increase of $5,664 in FY2002 and $5,808 in each FY2003-2006 will be used to administer a program to aid impaired pharmacists and pharmacy students.

A business is defined for the purpose of this preamble as a single licensed Texas pharmacy. The cost for compliance with this section for a small business will be an additional $39 every two years, to obtain a pharmacy license or renew a pharmacy license. The cost for large businesses will be the same as for small businesses. Based on the cost per employee, an estimated comparison of the cost of compliance for a small and large business can be made, if the number of employees for a small business and large business is known. The agency has no data on the total number of employees (pharmacists, technicians, support staff) in each pharmacy; however, the agency does have data on the number of pharmacists employed at each pharmacy. Based on this data, the following assumptions are made for this comparison.

Small business = Pharmacy that employs less than 10 pharmacists. The majority of licensed pharmacies fall into this category. Largest business = Pharmacy that employs 216 pharmacists.

This comparison shows that the cost of compliance for a small business is $3.90 per employee every two years, and the cost of compliance for the largest business is $0.18 per pharmacist employee every two years.

The anticipated economic cost to individuals who are required to comply with the section as proposed will be an additional $39 every two years if the individual is a pharmacy owner, to obtain or renew a pharmacy license.

Ms. Dodson also has determined that for each year of the first five-year period the rule as proposed is in effect, the public benefit anticipated as a result of enforcing the rule will be to ensure the safety of public health and welfare by assuring that the Texas State Board of Pharmacy is adequately funded to carry out its mission, and assuring the funding of a program to aid impaired pharmacists and pharmacy students.

Comments on the proposal may be submitted to Steve Morse, R.Ph., Director of Professional Services, Texas State Board of Pharmacy, 333 Guadalupe Street, Suite 3-600, Box 21, Austin, Texas, 78701-3942, FAX (512) 305-8082. Comments must be received by 5 p.m., August 2, 2001.

The amendments are proposed under §554.006 and §564.051 of the Texas Pharmacy Act (Chapters 551-566, Texas Occupations Code). The Board interprets §554.006 as authorizing the agency to establish reasonable and necessary fees to produce sufficient revenue to cover the cost of administering the Texas Pharmacy Act. The Board interprets §564.051 as authorizing the agency to add a surcharge to a license or license renewal fee to fund a program to aid impaired pharmacists and pharmacy students.

The statutes affected by this rule: Chapters 551-566, Texas Occupations Code.

§291.6. Pharmacy License Fees

(a) The Texas State Board of Pharmacy (board) shall require [~~annual or~~] biennial renewal of all licenses provided under the Pharmacy Act, §561.002 and §8 of Acts 1999, 76th Leg., ch. 1518, eff. Sept. 1, 1999, which amends §29(a) of Vernon's Ann.Civ.St. Art. 4542a-1 (now §561.002) without reference to the repeal of said article by Acts 1999, 76th Leg., Ch. 388, §6(a). [~~§31. In order to evenly distribute the revenue received from license fees, a pharmacy license fee may renew on an annual or biennial basis during the first 12 months~~

of the implementation of the biennial renewal cycle, beginning March 1, 2000. After the implementation of the biennial renewal system, all pharmacy licenses shall renew on a biennial basis.]

[(b)] [The board shall charge the following fees for the issuance or renewal of a pharmacy license.]

[(1) Renewals prior to March 1, 2000. The fee for initial or annual renewal of a pharmacy license shall be $164 for licenses with an expiration date on or after January 1, 1996. (This $164 fee includes $157 for processing the application and issuance of the pharmacy license or renewal as authorized by the Act, §39, and a $7.00 surcharge to fund a program to aid impaired pharmacists and pharmacy students as authorized by the Act, §27A.)]

[(2) Annual Renewal Cycle. The fee for initial or annual renewal of a pharmacy license shall be $162 for licenses with an expiration date on or after March 1, 2000. (This $162 fee includes $157 for processing the application and issuance of the pharmacy license or renewal as authorized by the Act, §39, and a $5.00 surcharge to fund a program to aid impaired pharmacists and pharmacy students as authorized by the Act, §27A.)]

[(3)] [Biennial Renewal Cycle.] The fee for initial or biennial renewal of a pharmacy license shall be as follows:

(1) $324 for licenses with an expiration date on or after March 1, 2000. (This $324 fee includes $314 for processing the application and issuance of the pharmacy license or renewal as authorized by the Act, §554.006 [§39], and a $10 surcharge to fund a program to aid impaired pharmacists and pharmacy students as authorized by the Act, §564.051 and §6 of Acts 1999, 76th Leg., ch. 1518, eff. Sept. 1, 1999, which amends §27A(g) of Vernon's Ann.Civ.St. Art. 4542a-1 (now §564.051) without reference to the repeal of said article by Acts 1999, 76th Leg., Ch. 388, §6(a).); or [§27A.)]

(2) $363 for licenses with an expiration date on or after October 1, 2001. (This $363 fee includes $351 for processing the application and issuance of the pharmacy license or renewal as authorized by the Act, §554.006, and a $12.00 surcharge to fund a program to aid impaired pharmacists and pharmacy students as authorized by the Act, §564.051 and §6 of Acts 1999, 76th Leg., ch. 1518, eff. Sept. 1, 1999, which amends §27A(g) of Vernon's Ann.Civ.St. Art. 4542a-1 (now §564.051) without reference to the repeal of said article by Acts 1999, 76th Leg., Ch. 388, §6(a).)

(b) [(c)] New pharmacy licenses shall be assigned an expiration date.

(c) [(d)] The fee for issuance of an amended pharmacy license shall be $20.

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 June 11, 2001.

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Gay Dodson, R. Ph.
Executive Director/Secretary
Texas State Board of Pharmacy
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For further information, please call: (512) 305-8028

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SUBCHAPTER B. COMMUNITY PHARMACY (CLASS A)

22 TAC §291.32, §291.36

The Texas State Board of Pharmacy proposes amendments to §291.32, concerning Personnel, and §291.36, concerning Class A Pharmacies Compounding Sterile Pharmaceuticals. The amendments, if adopted, will require certified pharmacy technicians to display their current certification certificates.

Gay Dodson, R.Ph., Executive Director/Secretary, has determined that, for the first five- year period the rule is in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering the rule.

Ms. Dodson has determined that, for each year of the first five-year period the rule will be in effect, the public benefit anticipated as a result of enforcing the rule will be to provide the public a method to verify a pharmacy technician's level of training (certification). There is no fiscal impact anticipated for small or large businesses or to other entities who are required to comply with this section.

Comments on the proposal may be submitted to Steve Morse, R.Ph., Director of Professional Services, Texas State Board of Pharmacy, 333 Guadalupe Street, Suite 3-600, Box 21, Austin, Texas, 78701-3942, FAX (512) 305-8082. Comments must be received by 5 p.m., August 2, 2001.

The amendments are proposed under §§551.002, 554.051, and 554.053 of the Texas Pharmacy Act (Chapters 551-566, Texas Occupations Code). The Board interprets §551.002 as authorizing the agency to protect the public through the effective control and regulation of the practice of pharmacy. The Board interprets §554.051 as authorizing the agency to adopt rules for the proper administration and enforcement of the Act. The Board interprets §554.053 as authorizing the Board to adopt rules for the use and duties of pharmacy technicians in a pharmacy.

The statutes affected by this rule: Chapters 551-566, Texas Occupations Code.

§291.32. Personnel.

(a) - (b) (No change.)

(c) Pharmacy technicians.

(1) Qualifications.

(A) - (B) (No change.)

(C) Certified Pharmacy Technicians.

(i) All certified pharmacy technicians shall have taken and passed the National Pharmacy Technician Certification Exam or other examination approved during an open meeting by the Board and maintain a current certification with the Pharmacy Technician Certification Board or any other entity providing an examination approved by the Board.

(ii) A certified pharmacy technician shall publicly display their current certification certificate in the technician's primary place of practice.

(2) - (5) (No change.)

(d) (No change.)

§291.36. Class A Pharmacies Compounding Sterile Pharmaceuticals.

(a) - (b) (No change.)

(c) Personnel.

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

(3) Pharmacy technicians.

(A) Qualifications.

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

(iii) Certified Pharmacy Technicians.

(I) All certified pharmacy technicians shall have taken and passed the National Pharmacy Technician Certification Exam or other examination approved during an open meeting by the Board and maintain a current certification with the Pharmacy Technician Certification Board or any other entity providing an examination approved by the Board.

(II) A certified pharmacy technician shall publicly display their current certification certificate in the technician's primary place of practice.

(B) - (E) (No change.)

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

(d) - (f) (No change.)

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

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Texas State Board of Pharmacy
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For further information, please call: (512) 305-8028

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SUBCHAPTER C. NUCLEAR PHARMACY (CLASS B)

22 TAC §291.53

The Texas State Board of Pharmacy proposes amendments to §291.53, concerning Personnel. The amendments, if adopted, will require certified pharmacy technicians to maintain current certification and display their current certification certificates.

Gay Dodson, R.Ph., Executive Director/Secretary, has determined that, for the first five- year period the rule is in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering the rule.

Ms. Dodson has determined that, for each year of the first five-year period the rule will be in effect, the public benefit anticipated as a result of enforcing the rule will be to provide the public a method to verify a pharmacy technician's level of training (certification). There is no fiscal impact anticipated for small or large businesses or to other entities who are required to comply with this section.

Comments on the proposal may be submitted to Steve Morse, R.Ph., Director of Professional Services, Texas State Board of Pharmacy, 333 Guadalupe Street, Suite 3-600, Box 21, Austin, Texas, 78701-3942, FAX (512) 305-8082. Comments must be received by 5 p.m., August 2, 2001.

The amendments are proposed under §§551.002, 554.051, and 554.053 of the Texas Pharmacy Act (Chapters 551-566, Texas Occupations Code). The Board interprets §551.002 as authorizing the agency to protect the public through the effective control and regulation of the practice of pharmacy. The Board interprets §554.051 as authorizing the agency to adopt rules for the proper administration and enforcement of the Act. The Board interprets §554.053 as authorizing the Board to adopt rules for the use and duties of pharmacy technicians in a pharmacy.

The statutes affected by this rule: Chapters 551-566, Texas Occupations Code.

§291.53. Personnel.

(a)-(b) (No change.)

(c) Pharmacy Technicians.

(1) General.

(A)-(D) (No change.)

(E) Effective January 1, 2001, all pharmacy technicians shall have taken and passed the National Pharmacy Technician Certification Exam or other examination approved during an open meeting by the Board or be a pharmacy technician trainee.

(F) All certified pharmacy technicians shall maintain a current certification with the Pharmacy Technician Certification Board or any other entity providing an examination approved by the Board.

(G) A certified pharmacy technician shall publicly display their current certification certificate in the technician's primary place of practice.

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

(d) (No change.)

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

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Texas State Board of Pharmacy
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SUBCHAPTER D. INSTITUTIONAL PHARMACY (CLASS C)

22 TAC §291.73

The Texas State Board of Pharmacy proposes amendments to §291.73, concerning Personnel. The amendments, if adopted, will require certified pharmacy technicians to display their current certification certificates.

Gay Dodson, R.Ph., Executive Director/Secretary, has determined that, for the first five-year period the rule is in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering the rule.

Ms. Dodson has determined that, for each year of the first five-year period the rule will be in effect, the public benefit anticipated as a result of enforcing the rule will be to provide the public a method to verify a pharmacy technician's level of training (certification). There is no fiscal impact anticipated for small or large

businesses or to other entities who are required to comply with this section.

Comments on the proposal may be submitted to Steve Morse, R.Ph., Director of Professional Services, Texas State Board of Pharmacy, 333 Guadalupe Street, Suite 3-600, Box 21, Austin, Texas, 78701-3942, FAX (512) 305-8082. Comments must be received by 5 p.m., August 2, 2001.

The amendments are proposed under sections 551.002, 554.051, and 554.053 of the Texas Pharmacy Act (Chapters 551-566, Texas Occupations Code). The Board interprets section 551.002 as authorizing the agency to protect the public through the effective control and regulation of the practice of pharmacy. The Board interprets section 554.051 as authorizing the agency to adopt rules for the proper administration and enforcement of the Act. The Board interprets section 554.053 as authorizing the Board to adopt rules for the use and duties of pharmacy technicians in a pharmacy.

The statutes affected by this rule: Chapters 551-566, Texas Occupations Code.

§291.73. Personnel.

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

(e) Pharmacy technicians.

(1) Qualifications.

(A)-(B) (No change.)

(C) Certified Pharmacy Technicians.

(i) All certified pharmacy technicians shall have taken and passed the National Pharmacy Technician Certification Exam or other examination approved during an open meeting by the Board and maintain a current certification with the Pharmacy Technician Certification Board or any other entity providing an examination approved by the Board.

(ii) A certified pharmacy technician shall publicly display their current certification certificate in the technician's primary place of practice.

(2)-(5) (No change.)

(f)-(g) (No change.)

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

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Executive Director/Secretary
Texas State Board of Pharmacy
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CHAPTER 295. PHARMACISTS

22 TAC §295.5

The Texas State Board of Pharmacy proposes amendments to §295.5 concerning Pharmacist License or Renewal Fees. The proposed amendment, if adopted, will delete obsolete language, correct citations to the reflect the new codified Act, and increase the biennial pharmacist license fee from $188 to $227, for a license that has an expiration date on or after October 1, 2001. Included in this $227 total is $215 for processing and issuance or renewal of a pharmacist license, and a $12 surcharge to fund a program to aid impaired pharmacists and pharmacy students. The surcharge to fund this program has increased from a biennial fee of $10 to a biennial fee of $12 for each pharmacist license. The increase in the licensing fee is necessary to generate the revenue that is collected by the agency through licensure fees, fines, and other miscellaneous revenue to support agency operations.

Gay Dodson, R.Ph., Executive Director/Secretary has determined that for the first five-year period the rule is in effect, there will be fiscal implications for state or local government as a result of enforcing or administering the rule. The effect on state government for the first five years the rule is in effect is an estimated increase in licensing revenue to the Texas State Board of Pharmacy fund of $369,038 in FY2002 and $401,376 in each FY2003-2006. In addition, an estimated increase of $19,748 in FY2002 and $21,496 in each FY2003-2006 will be used to administer a program to aid impaired pharmacists and pharmacy students.

Ms. Dodson also has determined that for each year of the first five-year period the rule as proposed is in effect, the public benefit anticipated as a result of enforcing the rule will be to ensure the safety of public health and welfare by assuring that the Texas State Board of Pharmacy is adequately funded to carry out its mission, and assuring the funding of a program to aid impaired pharmacists and pharmacy students.

There will be no cost of compliance with the section for small or large businesses (pharmacies), because a pharmacy is not required to pay the licensing fee for pharmacists that are employed at a pharmacy. A business is defined in for the purpose of this preamble as a single Texas pharmacy License.

The anticipated economic cost to individuals who are required to comply with the section as proposed will be an additional $39 every two years, to obtain or renew a pharmacist license.

Comments on the proposal may be submitted to Steve Morse, R.Ph., Director of Professional Services, Texas State Board of Pharmacy, 333 Guadalupe Street, Suite 3-600, Box 21, Austin, Texas, 78701-3942, FAX (512) 305-8082. Comments must be received by 5 p.m., August 2, 2001.

The amendments are proposed under sections 554.006 and 564.051 of the Texas Pharmacy Act (Chapters 551-566, Texas Occupations Code). The Board interprets section 554.006 as authorizing the agency to establish reasonable and necessary fees to produce sufficient revenue to cover the cost of administering the Texas Pharmacy Act. The Board interprets section 564.051 as authorizing the agency to add a surcharge to a license or license renewal fee to fund a program to aid impaired pharmacists and pharmacy students.

The statutes affected by this rule: Chapters 551-566, Texas Occupations Code.

§295.5. Pharmacist License or Renewal Fees.

(a) The Texas State Board of Pharmacy (board) shall require [~~annual or~~] biennial renewal of all licenses provided under the Pharmacy Act, §559.002. [~~§31. In order to evenly distribute the revenue received from license fees, a pharmacist license fee may renew on an annual or biennial basis during the first 12 months of the implementation of the biennial renewal cycle, beginning March 1, 2000. After the~~

~~implementation of the biennial renewal system, all pharmacist licenses shall renew on a biennial basis. The fee for issuance of a pharmacist license and for each renewal shall be as follows.~~]

~~[(1) Renewals prior to March 1, 2000. The fee for initial or annual renewal of a pharmacist license shall be $96 for licenses with an expiration date on or after January 1, 1996. (This $96 fee includes $89 for processing the application and issuance of the pharmacy license or renewal as authorized by the Act, §39, and a 7.00 surcharge to fund a program to aid impaired pharmacists and pharmacy students as authorized by the Act, §27A).]~~

~~[(2) Annual Renewal Cycle. The fee for initial or annual renewal of a pharmacist license shall be $94 for licenses with an expiration date on or after March 1, 2000. (This $94 fee includes $89 for processing the application and issuance of the pharmacy license or renewal as authorized by the Act, §39, and a $5.00 surcharge to fund a program to aid impaired pharmacists and pharmacy students as authorized by the Act §27A.)]~~

[~~(3) Biennial Renewal Cycle.~~] The fee for initial or biennial renewal of a pharmacist license shall be as follows:

(1) $188 for licenses with an expiration date on or after March 1, 2000. (This $188 fee includes $178 for processing the application and issuance of the pharmacist license or renewal as authorized by the Act, 554.006 [~~§39~~], and a $10 surcharge to fund a program to aid impaired pharmacists and pharmacy students as authorized by the Act, §564.051 and §6 of Acts 1999, 76th Leg., ch. 1518, eff. Sept. 1, 1999, which amends §27A(g) of Vernon's Ann.Civ.St. Art. 4542a-1 (now §564.051) without reference to the repeal of said article by Acts 1999, 76th Leg., Ch. 388, §6(a).); or [~~§27A.)~~]

(2) $227 for licenses with an expiration date on or after October 1, 2001. (This $227 fee includes $215 for processing the application and issuance of the pharmacist license or renewal as authorized by the Act, §554.006, and a $12.00 surcharge to fund a program to aid impaired pharmacists and pharmacy students as authorized by the Act, §564.051 and §6 of Acts 1999, 76th Leg., ch. 1518, eff. Sept. 1, 1999, which amends §27A(g) of Vernon's Ann.Civ.St. Art. 4542a-1 (now §564.051) without reference to the repeal of said article by Acts 1999, 76th Leg., Ch. 388, §6(a).)

(b) [~~Pursuant to Texas Civil Statutes, Article 4542a-1, §39(5), effective September 1, 1985, the~~] The license of a pharmacist who has been licensed by the Texas State Board of Pharmacy for at least 50 years and which such pharmacist is not actively practicing pharmacy, shall be renewed without payment of a fee. The renewal certificate of such pharmacist issued by the board shall reflect an inactive status. A person whose license is renewed pursuant to this subsection may not engage in the active practice of pharmacy without first paying the fee as set out in subsection (a) of this section.

(c) The fee for issuance of an amended pharmacist's license renewal certificate shall be $20.

(d) The fee for issuance of an amended license to practice pharmacy (wall certificate) only, or renewal certificate and wall certificate shall be $35.

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 June 11, 2001.

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Gay Dodson, R.Ph.
Executive Director/Secretary
Texas State Board of Pharmacy
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TITLE 30. ENVIRONMENTAL QUALITY

PART 1. TEXAS NATURAL RESOURCE CONSERVATION COMMISSION

CHAPTER 114. CONTROL OF AIR POLLUTION FROM MOTOR VEHICLES

SUBCHAPTER H. LOW EMISSION FUELS

DIVISION 1. GASOLINE VOLATILITY

30 TAC §114.307, §114.309

The Texas Natural Resource Conservation Commission (commission) proposes amendments to §114.307, Exemptions, and §114.309, Affected Counties. The commission proposes these amendments to Chapter 114, Control of Air Pollution from Motor Vehicles; Subchapter H, Low Emission Fuels; Division 1, Gasoline Volatility; and corresponding revisions to the state implementation plan (SIP).

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE PROPOSED RULES

The commission proposes these amendments to address concerns of research laboratories and academic institutions, and to provide flexibility by more closely matching the exemptions established for the gasoline Reid vapor pressure (RVP) rules to those exemptions allowed in the diesel fuel rules as specified in §114.317, Exemptions to Low Emission Diesel Requirements. The proposed amendments to the RVP rules are not expected to have a significant impact on air quality.

The regional low RVP gasoline program as established through the adoption of §114.301, Control Requirements for Reid Vapor Pressure; §114.304, Registration of Gasoline Producers and Importers; §114.305, Approved Test Methods; §114.306, Recordkeeping, Reporting, and Certification Requirements; and §114.309 in April 5, 2000, requires all conventional gasoline in the 95-county central and eastern Texas region to be limited to a maximum RVP of 7.8 pounds per square inch (psi) from May 1 through October 1 of each year, beginning May 1, 2000.

The 95-county central and eastern Texas region affected by these rules consists of Anderson, Angelina, Aransas, Atascosa, Austin, Bastrop, Bee, Bell, Bexar, Bosque, Bowie, Brazos, Burleson, Caldwell, Calhoun, Camp, Cass, Cherokee, Colorado, Comal, Cooke, Coryell, De Witt, Delta, Ellis, Falls, Fannin, Fayette, Franklin, Freestone, Goliad, Gonzales, Grayson, Gregg, Grimes, Guadalupe, Harrison, Hays, Henderson, Hill, Hood, Hopkins, Houston, Hunt, Jackson, Jasper, Johnson, Karnes, Kaufman, Lamar, Lavaca, Lee, Leon, Limestone, Live Oak, Madison, Marion, Matagorda, McLennan, Milam, Morris, Nacogdoches, Navarro, Newton, Nueces, Panola, Parker, Polk, Rains, Red River, Refugio, Robertson, Rockwall, Rusk, Sabine, San Jacinto, San Patricio, San Augustine, Shelby, Smith, Somervell, Titus, Travis, Trinity, Tyler, Upshur, Van Zandt, Victoria, Walker,

Washington, Wharton, Williamson, Wilson, Wise, and Wood Counties.

The research laboratories and academic institutions located within the RVP control areas are concerned that the current language in §114.301 does not allow them to conduct research and test fuels, additives, and/or motor vehicles using fuels with an RVP higher than allowed during the ozone control period. The ozone control period normally extends from May 1 through October 31 of each year or for about six months. This places an undue hardship on those institutions that need to test with the higher RVP fuels during the ozone control period. Also, test fuels are sometimes required to be stored in quantities greater than the currently exempted 500 gallons. The proposed amendments to §114.307 will clarify that these affected facilities are exempt from the provisions.

Other proposed amendments to §114.307 include an exemption for gasoline used for competition racing purposes; and an exemption for retail dispensing outlets from all monitoring, recordkeeping, and reporting requirements, except to maintain product transfer documents. Finally, the proposed amendments would exempt gasoline that does not meet the RVP requirements, to be stored or transferred in the affected counties as long as it is not ultimately used in the affected counties to power a gasoline-powered, spark-ignition engine in a motor vehicle or non-road equipment. This storage and transfer exemption does not apply to that fuel used in conjunction with agricultural use; aviation use; research, development, or testing purposes; or as competition racing fuel.

In addition, a proposed amendment will correct a typographical error relating to the name of Smith County, which is located in the RVP control area. In the rules adopted on April 5, 2000, Smith County was inadvertently listed as Judge Smith County. This proposed amendment will eliminate confusion and correct the error by deleting the word "Judge."

SECTION BY SECTION DISCUSSION

The proposed amendments to §114.307 add new subsections (b) - (e). The proposed amendments to this section will make the exemptions for gasoline consistent with the exemptions for diesel fuel specified in §114.317. Proposed subsection (b) establishes an exemption for gasoline used in research, development, or testing purposes of fuels, additives, and/or motor vehicles. Under the current rules, research facilities and academic institutions are limited to a maximum RVP of 7.8 psi from May 1 through October 1. This exemption would allow research facilities and academic institutions to use higher RVP fuels year-round for their fuels-related research. Proposed new subsection (c) establishes an exemption for gasoline used for competition racing purposes. Competition racing gasolines have higher RVP specifications than allowed which would effectively limit the competition racing events to the non-ozone control periods. This exemption would allow competition racing events year-round. Proposed new subsection (d) exempts the owner or operator of a retail fuel dispensing outlet from all monitoring, recordkeeping, and reporting requirements of these rules, except for the requirement to maintain product transfer documents. This exemption would eliminate unnecessary paperwork for retail gasoline dispensing outlets. The recordkeeping requirement related to product transfer documents was left unchanged because it allows the commission to track gasoline back to its producers if enforcement actions are needed. Finally, proposed new subsection (e) states that gasoline, which does not meet the RVP requirements, is allowed in the affected counties as long as it is not ultimately used to power a gasoline-powered, spark-ignition engine in a motor vehicle or non-road equipment in the affected counties. This exemption allows gasoline suppliers and transporters to ship and store their higher RVP fuels into and through the affected areas rather than having to ship or store the fuel outside of the affected areas. The exemption in subsection (e) does not apply to fuel used in conjunction with agricultural use; aviation use; research, development, or testing purposes; or as competition racing fuel.

The proposed amendments to §114.309 will correct a typographical error relating to the name of Smith County, which is located in the RVP control area. In the April 5, 2000 adopted revisions to this section, Smith County was inadvertently listed as "Judge Smith County."

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 ensure that research laboratories and academic institutions located within the 95-county regional low RVP gasoline program, will be able to conduct research and testing of fuels, additives, and/or motor vehicles, as these facilities may use fuels for testing which have higher RVP than is currently allowed. Also, these test fuels are sometimes required to be stored in quantities greater than the currently exempted 500 gallons. The proposed amendments will clarify that such facilities are exempt from provisions relating to the use of fuels which have higher RVP than currently allowed.

In addition, the proposed amendments would provide exemptions from the provisions restricting the use of fuels with higher RVP for gasoline used for competition racing purposes and owners or operators of retail fuel dispensing outlets would be exempt from certain recordkeeping requirements, except the current requirement to maintain product transfer documents. The RVP level of a batch of gasoline is set by fuel producers during the refining process, therefore, retail outlets do not have the ability to alter the RVP of the delivered fuel. The proposed amendments would clarify that retailers are exempt from recordkeeping and reporting requirements, except for maintaining product transfer documents which allow the commission to track gasoline back to its producers if enforcement actions are needed. The proposed amendments are not expected to impact current state and local government practices and are intended to clarify exemptions regarding these provisions; therefore, there will be no significant fiscal implication for the commission or state and local government. The proposed amendments would also correct a typographical error relating to the name of Smith County, which is located in the RVP control area.

The regional low RVP gasoline program was established in April 2000, and requires all conventional gasoline in the 95-county central and eastern Texas region to be limited to a maximum RVP of 7.8 psi from May 1 through October 1 of each year. This 95-county control area was established as part of a regional air pollution control strategy for the Dallas-Fort Worth (DFW) and Houston-Galveston (HGA) ozone nonattainment areas. Gasoline with a lower RVP evaporates more slowly, and therefore reduces the amount of volatile organic compounds (VOC) emitted to the atmosphere, which consequently reduces the potential for

ground-level ozone formation. The formation of ozone is also more likely to occur during the warmer times of the year.

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 a regional ozone reduction strategy while allowing research facilities to continue with the research, development, and testing of fuels during the regulatory period of May 1 through October 1 of each year. Much of the research at such facilities supports efforts to produce vehicle and engine systems that reduce pollutant emissions. In addition, the proposed amendments will clarify provisions relating to the use of competition racing fuel during the months of May 1 through October 1, and clarify recordkeeping and recording requirements for gas stations and other retail fuel outlets. There are no fiscal implications anticipated to businesses or individuals as a result of implementing the proposed amendments, because they are not expected to impact current practices.

The commission proposes these amendments in order to ensure that research laboratories and academic institutions located within the 95-county regional low RVP gasoline program, will be able to conduct research and testing of fuels, additives, and/or motor vehicles, as these facilities may use fuels for testing which have higher RVP than is currently allowed. Also, these test fuels are sometimes required to be stored in quantities greater than the currently exempted 500 gallons. The proposed amendments will clarify that such facilities are exempt from provisions relating to the use of fuels which have higher RVP than currently allowed.

In addition, the proposed amendments would clarify exemptions from the provisions restricting the use of fuels with higher RVP for gasoline used for competition racing purposes, and that owners or operators of retail fuel dispensing outlets would be exempt from certain recordkeeping requirements except the current requirement to maintain product transfer documents. The RVP level of a batch of gasoline is set by fuel producers during the refining process, therefore, retail outlets do not have the ability to alter the RVP of the delivered fuel. The proposed amendments would clarify that retailers are to remain exempted except for maintaining product transfer documents which allow the commission to track gasoline back to its producers if enforcement actions are needed. The proposed amendments are not expected to impact current practices and are intended to clarify exemptions regarding these provisions. The proposed amendments would also correct a typographical error relating to the name of Smith County which is located in the control area.

The regional low RVP gasoline program was established in April 2000, and requires all conventional gasoline in 95 central and eastern Texas counties to be limited to a maximum RVP of 7.8 psi from May 1 through October 1 of each year. This control area was established as part of a regional air pollution control strategy for the DFW and HGA ozone nonattainment areas. Gasolines with lower RVP evaporate more slowly and therefore reduce the amount of VOC emitted to the atmosphere and consequently reduce the potential for ground-level ozone formation. The formation of ozone is also more likely to occur during the warmer times of the year.

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. There are no known research laboratories or academic institutions considered to be small or micro-businesses. However, it is anticipated that there are many independent retailers of gasoline in the affected 95-county area that are small or micro-businesses. The proposed amendments do not vary with the size of the business and may result in positive fiscal implications through potential reduced reporting and recordkeeping requirements, though the fiscal implications are not considered to be significant. The proposed amendments are not expected to impact current practices and are intended to clarify exemptions regarding these provisions.

The commission proposes these amendments in order to ensure that research laboratories and academic institutions within the 95-county regional low RVP gasoline program, will be able to conduct research and testing of fuels, additives, and/or motor vehicles, as these facilities may use fuels for testing which have higher RVP than is currently allowed. Also, these test fuels are sometimes required to be stored in quantities greater than the currently exempted 500 gallons. The proposed amendments will clarify that such facilities are exempt from provisions relating to the use of fuels which have a higher RVP than currently allowed.

In addition, the proposed amendments would clarify exemptions from the provisions restricting the use of fuels with higher RVP for gasoline used for competition racing purposes, and that owners or operators of retail fuel dispensing outlets would be exempt from certain recordkeeping requirements, except the current requirement to maintain product transfer documents. The RVP level of a batch of gasoline is set by fuel producers during the refining process, therefore, retail outlets do not have the ability to alter the RVP of the delivered fuel. The proposed amendments would clarify that retailers are to remain exempted except for maintaining product transfer documents which allow the commission to track gasoline back to its producers if enforcement actions are needed. The proposed amendments are not expected to impact current practices and are intended to clarify exemptions regarding these provisions. The proposed amendments would also correct a typographical error relating to the name of Smith County which is located in the control area.

The regional low RVP gasoline program was established in April 2000, and requires all conventional gasoline in the 95-county central and eastern Texas region to be limited to a maximum RVP of 7.8 psi from May 1 through October 1 of each year. This control area was established as part of a regional air pollution control strategy for the DFW and HGA ozone nonattainment areas. Gasolines with lower RVP evaporate more slowly and therefore reduce the amount of VOC emitted to the atmosphere and consequently reduce the potential for ground-level ozone formation. The formation of ozone is also more likely to occur during the warmer times of the year.

DRAFT REGULATORY IMPACT ANALYSIS DETERMINATION

The commission reviewed the proposed rulemaking in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and determined that the proposed rulemaking is not subject to §2001.0225 because it does not meet the definition of a "major environmental rule" as defined in that statute. "Major environmental rule" means a rule, the specific intent of which is to protect the environment or reduce risks to human health from environmental exposure and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. The amendments to Chapter 114 are intended to protect the environment or reduce risks to human

health from environmental exposure to ozone but will not affect in a material way, a sector of the economy, competition, and the environment due to its impact on the fuel manufacturing and distribution network of the state. The amendments are intended to provide flexibility in the RVP air pollution control program as part of the strategy to reduce emissions of nitrogen oxides (NO_x) necessary for the counties included in the HGA ozone nonattainment area to be able to demonstrate attainment with the ozone national ambient air quality standard (NAAQS). Impacts on the fuel manufacturing and distribution network and the environment will not be significant because the proposed amendments simply add a few clarifying exemptions to §114.307, remove monitoring, recordkeeping, and reporting requirements for retail gasoline dispensing outlets except the requirement to maintain product transfer documents, and correct a typographical error. Based on this, the proposed amendments are not major environmental rules.

Additionally, even if these amendments were major environmental rules, §2001.0225 only applies to a major environmental rule that: 1.) exceeds a standard set by federal law, unless the rule is specifically required by state law; 2.) exceeds an express requirement of state law, unless the rule is specifically required by federal law; 3.) exceeds 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.) adopts a rule solely under the general powers of the agency instead of under a specific state law.

This proposed rulemaking action does not meet any of these four applicability requirements. Specifically, the RVP fuel requirements including these proposed amendments were developed in order to meet the ozone NAAQS set by the United States Environmental Protection Agency (EPA) under 42 United States Code (USC), §7409, and therefore meet a federal requirement. Provisions of 42 USC, §7410, require states to adopt a SIP which provides for "implementation, maintenance, and enforcement" of the primary NAAQS in each air quality control region of the state. While §7410 does not require specific programs, methods, or reductions in order to meet the standard, SIPs must include "enforceable emission limitations and other control measures, means or techniques (including economic incentives such as fees, marketable permits, and auctions of emissions rights), as well as schedules and timetables for compliance as may be necessary or appropriate to meet the applicable requirements of this chapter," (meaning Chapter 85, Air Pollution Prevention and Control). It is true that 42 USC does require some specific measures for SIP purposes, like the inspection and maintenance program, but those programs are the exception, not the rule, in the SIP structure of 42 USC. The provisions of 42 USC recognize that states are in the best position to determine what programs and controls are necessary or appropriate in order to meet the NAAQS. This flexibility allows states, affected industry, and the public, to collaborate on the best methods for attaining the NAAQS for the specific regions in the state. Even though 42 USC allows states to develop their own programs, this flexibility does not relieve a state from developing a program that meets the requirements of §7410. Thus, while specific measures are not generally required, the emission reductions are required. States are not free to ignore the requirements of §7410 and must develop programs to assure that the nonattainment areas of the state will be brought into attainment on schedule.

The requirement to provide a fiscal analysis of proposed regulations in the Texas Government Code was amended by Senate Bill (SB) 633 during the 75th Legislative Session, 1999. The intent of SB 633 was to require agencies to conduct a regulatory impact analysis (RIA) of extraordinary rules. These are identified in the statutory language as major environmental rules that will have a material adverse impact and will exceed a requirement of state law, federal law, or a delegated federal program, or are adopted solely under the general powers of the agency. With the understanding that this requirement would seldom apply, the commission provided a cost estimate for SB 633 that concluded "based on an assessment of rules adopted by the agency in the past, it is not anticipated that the bill will have significant fiscal implications for the agency due to its limited application." The commission also noted that the number of rules that would require assessment under the provisions of the bill was not large. This conclusion was based, in part, on the criteria set forth in the bill that exempted proposed rules from the full analysis unless the rule was a major environmental rule that exceeds a federal law. As previously discussed, 42 USC does not require specific programs, methods, or reductions in order to meet the NAAQS; thus, states must develop programs for each nonattainment area to ensure that area will meet the attainment deadlines. Because of the ongoing need to address nonattainment issues, the commission routinely proposes and adopts SIP rules. The legislature is presumed to understand this federal scheme. If each rule proposed for inclusion in the SIP was considered to be a major environmental rule that exceeds federal law, then every SIP rule would require the full RIA contemplated by SB 633. This conclusion is inconsistent with the conclusions reached by the commission in its cost estimate and by the Legislative Budget Board (LBB) in its fiscal notes. Since the legislature is presumed to understand the fiscal impacts of the bills it passes, and that presumption is based on information provided by state agencies and the LBB, the commission believes that the intent of SB 633 was only to require the full RIA for rules that are extraordinary in nature. While the SIP rules will have a broad impact, that impact is no greater than is necessary or appropriate to meet the requirements of 42 USC. For these reasons, rules proposed for inclusion in the SIP fall under the exception in Texas Government Code, §2001.0225(a), because they are required by federal law. The commission performed photochemical grid modeling which predicts that NO_x emission reductions, such as those required by these rules, will result in reductions in ozone formation in the HGA ozone nonattainment area. This rulemaking does not exceed an express requirement of state law. This rulemaking is intended to obtain NO_x emission reductions which will result in reductions in ozone formation in the HGA ozone nonattainment area and help bring HGA into compliance with the air quality standards established under federal law as NAAQS for ozone. The rulemaking does not exceed a standard set by federal law, exceed an express requirement of state law (unless specifically required by federal law), or exceed a requirement of a delegation agreement. The rulemaking was not developed solely under the general powers of the agency, but was specifically developed to meet the NAAQS established under federal law and authorized under Texas Clean Air Act (TCAA), §§382.011, 382.012, 382.017, 382.019, 382.037(g), and 382.039.

The commission invites public comment on the draft RIA determination.

TAKINGS IMPACT ASSESSMENT

The commission prepared a takings impact assessment for these proposed rules in accordance with Texas Government Code, §2007.043. The following is a summary of that assessment. The specific purpose of the proposed rulemaking is to

provide flexibility in the RVP fuel program which will act as an air pollution control strategy to reduce NO_x emissions necessary for the eight counties included in the HGA ozone nonattainment area to be able to demonstrate attainment with the ozone NAAQS. Promulgation and enforcement of the proposed rules will not burden private, real property because this proposed rulemaking action does not require an investment in the permanent installation of new refinery processing equipment. Although the proposed rules do not directly prevent a nuisance or prevent an immediate threat to life or property, the RVP program does prevent a real and substantial threat to public health and safety, and partially fulfill a federal mandate under 42 USC, §7410. Specifically, the emission limitations and control requirements within the RVP program have been developed in order to meet the ozone NAAQS set by the EPA under 42 USC, §7409. States are primarily responsible for ensuring attainment and maintenance of the NAAQS once the EPA has established them. Under §7410 and related provisions, states must submit, for approval by the EPA, SIPs that provide for the attainment and maintenance of NAAQS through control programs directed to sources of the pollutants involved. Therefore, the purpose of the proposed rules is to provide flexibility in implementing low RVP gasoline which is necessary for the HGA ozone nonattainment area to meet the air quality standards established under federal law as NAAQS. Consequently, the exemption which applies to these proposed rules is that of an action reasonably taken to fulfill an obligation mandated by federal law; therefore, these proposed rules do not constitute a takings under the Texas Government Code, Chapter 2007.

CONSISTENCY WITH THE COASTAL MANAGEMENT PROGRAM

The commission determined that the rulemaking action relates to an action or actions subject to the Texas Coastal Management Program (CMP) in accordance with the Coastal Coordination Act of 1991, as amended (Texas Natural Resources Code, §§33.201 et seq.), and the commission rules in 30 TAC Chapter 281, Subchapter B, concerning Consistency with the CMP. As required by 30 TAC §281.45(a)(3) and 31 TAC §505.11(b)(2), relating to actions and rules subject to the CMP, commission rules governing air pollutant emissions must be consistent with the applicable goals and policies of the CMP. The commission reviewed this action for consistency with the CMP goals and policies in accordance with the rules of the Coastal Coordination Council, and determined that the action is consistent with the applicable CMP goals and policies. The CMP goal applicable to this rulemaking action is the goal to protect, preserve, and enhance the diversity, quality, quantity, functions, and values of coastal natural resource areas (31 TAC §501.12(1)). No new sources of air contaminants will be authorized and NO_x air emissions will be reduced as a result of the existing RVP rules and these amendments. The CMP policy applicable to this rulemaking 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 rulemaking action complies with 40 CFR 51. Therefore, in compliance with 31 TAC §505.22(e), the commission affirms that 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.

ANNOUNCEMENT OF HEARING

The commission will hold a public hearing on this proposal on July 17, 2001, 10:00 a.m., Texas Natural Resource Conservation Commission, 12100 Park 35 Circle, Building F, Room 2210, 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. A four-minute time limit may be established at the hearing to assure that enough time is allowed for every interested person to speak. Open discussion will not occur during the hearing; however, agency staff members will be available to discuss the proposal 30 minutes prior to the hearing, and will answer questions before and after the hearing.

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

SUBMITTAL OF COMMENTS

Written comments may be submitted to Lola Brown, Office of Environmental Policy, Analysis, and Assessment, MC 205, P.O. Box 13087, Austin, Texas 78711-3087 or faxed to (512) 239-4808. All comments should reference Rule Log Number 2001-009-114-AI. Comments must be received by 5:00 p.m., July 23, 2001. For further information, please contact Scott Carpenter at (512) 239-1757 or Alan Henderson at (512) 239-1510.

STATUTORY AUTHORITY

The amendments are proposed under Texas Water Code (TWC), §5.103 and §5.105, 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, concerning Rules, which authorizes the commission to adopt rules consistent with the policy and purposes of the TCAA. The amendments are also proposed under TCAA, §382.011, concerning General Powers and Duties, which authorizes the commission to control the quality of the state's air; §382.012, concerning State Air Control Plan, which authorizes the commission to prepare and develop a general, comprehensive plan for the control of the state's air; §382.019, concerning Methods Used to Control and Reduce Emissions from Land Vehicles, which authorizes the commission to adopt rules to control and reduce emissions from engines used to propel land vehicles; §382.037(g), concerning Vehicle Emissions Inspection and Maintenance Program, which authorizes the commission to regulate fuel content if it is demonstrated to be necessary for attainment of the NAAQS; and §382.039, concerning Attainment Program, which authorizes the commission to develop and implement transportation programs and other measures necessary to demonstrate attainment and protect the public from exposure to hazardous air contaminants from motor vehicles.

The proposed amendments implement TCAA, §§382.002, 382.011, 382.012, 382.019, 382.037(g), and 382.039.

§114.307. Exemptions.

(a) (No change.)

(b) Any gasoline that is either in a research, development, or test status; or is sold to petroleum, automobile, engine, or component manufacturers for research, development, or test purposes; or any gasoline to be used by, or under the control of petroleum, additive, automobile, engine, component manufacturers for research, development, or test purposes; or any independent research laboratories or academic

institutions for use in research, development, or testing of petroleum, additive, automobile, engine, component products, is exempt from the provisions of this division (relating to Gasoline Volatility), provided that: [~~Gasoline that does not meet the requirements of §114.301 of this title is not prohibited from being transferred, placed, stored, and/or held within the affected counties and during the control period so long as it is not ultimately intended for use or used to power a gasoline engine in the affected counties during the control period.~~]

(1) the gasoline is kept segregated from non-exempt product, and the person possessing the product maintains documentation identifying the product as research, development, or testing fuel, as applicable, and stating that it is to be used only for research, development, or testing purposes; and

(2) the gasoline is not sold, dispensed, or transferred, or offered for sale, dispensing, or transfer from a retail fuel dispensing facility. It shall also not be sold, dispensed, or transferred, or offered for sale, dispensing, or transfer from a wholesale purchaser-consumer facility, unless such facility is associated with fuel, automotive, or engine research, development, or testing.

(c) Any gasoline that is refined, sold, dispensed, transferred, or offered for sale, dispensing, or transfer as competition racing fuel is exempted from the provisions of this division, provided that:

(1) the fuel is kept segregated from non-exempt fuel, and the party possessing the fuel for the purposes of refining, selling, dispensing, transferring, or offering for sale, dispensing, or transfer as competition racing fuel maintains documentation identifying the product as racing fuel, restricted for non-highway use in competition racing motor vehicles or engines;

(2) each pump stand at a regulated facility, from which the fuel is dispensed, is labeled with the applicable fuel identification and use restrictions described in paragraph (1) of this subsection; and

(3) the fuel is not sold, dispensed, transferred, or offered for sale, dispensing, or transfer for highway use in a motor vehicle.

(d) The owner or operator of a retail fuel dispensing outlet is exempt from all requirements of §114.306 of this title, except §114.306(b) of this title.

(e) Gasoline that does not meet the requirements of §114.301 of this title is not prohibited from being transferred, placed, stored, and/or held within the affected counties so long as it is not ultimately used to power:

(1) a gasoline-powered spark-ignition engine in a motor vehicle in the counties listed in §114.309 of this title (relating to Affected Counties), except for that used in conjunction with purposes stated in subsections (a), (b), and (c) of this section; or

(2) a gasoline-powered spark-ignition engine in non-road equipment in the counties listed in §114.309 of this title, except for that used in conjunction with purposes stated in subsections (a), (b), and (c) of this section.

§114.309. Affected Counties.

All affected persons in the following counties shall be in compliance with §§114.301 and 114.304 - 114.307 of this title (relating to Control Requirements for Reid Vapor Pressure; Registration of Gasoline Producers and Importers; Approved Test Methods; Recordkeeping, Reporting, and Certification Requirements; and Exemptions) no later than the dates specified in §114.301(b) of this title: Anderson, Angelina, Aransas, Atascosa, Austin, Bastrop, Bee, Bell, Bexar, Bosque, Bowie, Brazos, Burleson, Caldwell, Calhoun, Camp, Cass, Cherokee, Colorado, Comal, Cooke, Coryell, De Witt, Delta, Ellis, Falls, Fannin, Fayette, Franklin, Freestone, Goliad, Gonzales, Grayson, Gregg, Grimes, Guadalupe, Harrison, Hays, Henderson, Hill, Hood, Hopkins, Houston, Hunt, Jackson, Jasper, Johnson, Karnes, Kaufman, Lamar, Lavaca, Lee, Leon, Limestone, Live Oak, Madison, Marion, Matagorda, McLennan, Milam, Morris, Nacogdoches, Navarro, Newton, Nueces, Panola, Parker, Polk, Rains, Red River, Refugio, Robertson, Rockwall, Rusk, Sabine, San Jacinto, San Patricio, San Augustine, Shelby, [~~Judge~~] Smith, Somervell, Titus, Travis, Trinity, Tyler, Upshur, Van Zandt, Victoria, Walker, Washington, Wharton, Williamson, Wilson, Wise, and Wood.

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 June 8, 2001.

TRD-200103247
Margaret Hoffman
Director, Environmental Law Division
Texas Natural Resource Conservation Commission
Earliest possible date of adoption: July 22, 2001
For further information, please call: (512) 239-0348

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CHAPTER 116. CONTROL OF AIR POLLUTION BY PERMITS FOR NEW CONSTRUCTION OR MODIFICATION

The Texas Natural Resource Conservation Commission (agency or commission) proposes amendments to §116.12, Nonattainment Review Definitions; §116.160, Prevention of Significant Deterioration Requirements; and §116.162, Evaluation of Air Quality Impacts. Sections 116.12, 116.160, and 116.162 will be submitted to the United States Environmental Protection Agency (EPA) as a revision to the Texas state implementation plan (SIP).

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE PROPOSED RULES

The commission proposes this rulemaking to correct the definitions of "building, structure, facility, or installation" and "secondary emissions" as defined in §116.12 and 116.160. This proposal would eliminate the inconsistency in the commission's rules and the rules promulgated by the EPA on August 7, 1980, concerning the inclusion of marine vessel emissions in applicability determinations for prevention of significant deterioration (PSD) and nonattainment (NA) permits. The rulemaking would also revise §116.160 and §116.162 to incorporate updated federal regulation citations.

On August 7, 1980, the EPA promulgated regulations in the *Federal Register* (45 FR 52696) that defined "stationary source" as "any building, structure, facility, or installation which emits or may emit any air pollutant subject to regulation under the Act." In the preamble (45 FR 52695) to address whether dockside activities are included in the stationary source, the EPA established "purpose and control" criteria. The EPA discussed how the final definition of "building, structure, facility, or installation" would "encompass the activities of a marine terminal and only those dockside activities that would serve the purposes of the terminal directly and would be under the control of its owner or operator." The EPA noted that the term "dockside activities" meant "those activities in which the ships would engage while docked at the terminal." The EPA stated that "The activities of a terminal itself would be stationary, but all ship activities would not be. Only

those that would directly serve the purposes of the terminal, such as loading and unloading, would be stationary since they alone would be in a sense fixed to the particular site. Hence, 'stationary source' encompasses the activities of a marine terminal and only those dockside activities that would directly serve its purposes" (45 FR 52696). The EPA concluded that the "stationary source" definition was limited to those activities that were on contiguous or adjacent properties, thus, "only dockside activities would be located on 'property' that is contiguous or adjacent to the terminal," and that the activities must be under the control of one person or one group of persons under common control. Thus, "stationary source" only includes the "activities at a terminal and those over which the owner or operator of the terminal would have control." Finally, the EPA noted that the terminal activities and the dockside activities would fall under the same two-digit standard industrial classification code.

The EPA included a detailed analysis of vessel loading and unloading and specifically determined that vessel loading and unloading should be included in permit applicability determinations. The EPA concluded that loading and unloading "would in every case directly serve the purposes of the terminal and would be under the control of its owner or operator to a substantial extent." Further, the EPA expected that no loading activities would occur without consent from the terminal owner or operator and that the terminal would have significant involvement in the scheduling for loading and unloading. Other dockside activities were not individually addressed, but the EPA stated that the determination would be based on the same two criteria of "purpose and control." The EPA also stated that emissions resulting from propulsion of marine vessels as they approach or leave marine terminals (commonly referred to as "to and fro emissions") would be considered secondary emissions. Therefore "to and fro" emissions would not be included in applicability, but would be considered in the permit review. The definitions of "stationary source," "building, structure, facility, or installation," and "secondary emissions" are identical for purposes of PSD/NA permitting.

On July 15, 1981, the EPA issued a stay of the August 7, 1980 regulations (46 FR 36695) that, in part, reversed EPA's decision that vessel emissions should be included in applicability determinations for PSD/NA permitting. On December 17, 1981, the stay was extended and the EPA proposed a revised regulation to remove dockside vessel emissions from consideration in PSD/NA permit applicability and review, based on a new interpretation that marine vessels are mobile sources within the meaning of Federal Clean Air Act, §110(a)(5) as codified in 40 United States Code (USC), §7410(a)(5) and that terminals would be indirect sources of pollution. On June 25, 1982 (47 FR 27554), the EPA promulgated a rule that specifically excluded dockside vessel emissions and "to and fro" emissions from PSD/NA applicability determinations and permit review on the basis that marine vessels are mobile sources.

The Natural Resources Defense Council (NRDC) challenged the June 25, 1982 regulations with regard to the marine vessel emissions issue. In *Natural Resources Defense Council vs EPA*, 725 F.2d 761 (D.C. Cir. 1984), the court vacated the portion of the June 25, 1982 regulation which excepts the activities of any vessel from the emissions attributable to marine terminals. By vacating that portion of the June 25, 1982 regulations the court "implicitly reinstated" the August 7, 1980 regulation which requires that dockside vessel emissions be included in PSD/NA permit applicability and review. The court affirmed that portion of the EPA's 1982 rule which excluded "to and fro" vessel emissions from the definition of secondary emissions; thus, these emissions are not included in any PSD/NA permit applicability or review considerations. The court remanded the regulation so that the EPA could do a more detailed and specific analysis of each dockside activity to determine if it meets the two criteria in the 1980 rule ("purpose and control") and thus, should be included in applicability determinations for PSD/NA permits.

The commission believes that, even though the EPA has not initiated the court ordered review, the effect of the order is that the 1980 rules are effective and dockside vessel emissions are included in applicability determinations for PSD/NA permitting. However, because the EPA has not done the required rulemaking, the marine vessel sections of the vacated June 25, 1982 rules are still in the Code of Federal Regulations (CFR) in the definition of "building, structure, facility, or installation" in §52.21(b)(6) and §52.24(f)(2). In 1993, Chapter 116 was revised to incorporate the PSD/NA permitting requirements and definitions from the vacated 1982 regulations were included in §116.12(4) for NA and incorporated into §116.160(a) for PSD. This rulemaking will incorporate the correct federal regulation citations and definitions into Chapter 116.

In addition, several amendments to the federal PSD rules have been made since 1993 when the Chapter 116 PSD rules were last updated. This rulemaking will also update the federal PSD rules incorporated by reference into §116.160. These revisions will not have an impact on permit holders or applicants because the commission already conducts PSD reviews consistent with the most current PSD rules.

SECTION BY SECTION DISCUSSION

Subchapter A - 116.12, Definitions

As previously discussed, the commission proposes to amend §116.12(4), the definition of "building, structure, facility, or installation," to delete the language..."except the activities of any vessel." The amendment will make the definition in Chapter 116 consistent with the August 7, 1980 rule.

Subchapter B - Division 6, Prevention of Significant Deterioration Review

The commission proposes changes to §116.160(a) to incorporate the most recent version of PSD air quality regulations promulgated by the EPA in 40 CFR §52.21 as amended March 12, 1996, and the most recent version of 40 CFR §51.301, Definitions for Protection of Visibility, as amended on July 1, 1999.

The commission proposes to add a new §116.160(c) to specifically exclude the federal definition of "building, structure, facility, or installation" and "secondary emissions" contained in the CFR because it still contains the definitions from the June 25, 1982 rule which were vacated by the 1984 NRDC case. The commission also proposes to add definitions for these terms to §116.610(c) that reflect the requirements of the August 7, 1980 federal rule and the 1984 NRDC court decision.

Finally, the commission proposes to modify two references in §116.162 and to correct a typographical error. The commission proposes to revise §116.162(2) in order to clarify the reference to 40 CFR Part 60 related to reconstruction by identifying the specific section, 40 CFR §60.15, which relates to reconstruction. In addition, the commission proposes to modify §116.162(3) by deleting the reference to 40 CFR §51.118(c) which does not exist in the current federal rule. The references to federal regulations in §116.162(2) - (4) are proposed for clarification through specifying the promulgation date of the federal regulation being referenced.

There have been many amendments to portions of 40 CFR §§51.100, 51.118, 51.164, 51.301, and 52.21 since the promulgation and amendment dates specified in §116.160(a) and §116.162. However all these 40 CFR amendments, except one, affected portions of the CFR which were excluded from the adoptions by reference in Chapter 116. Therefore, Chapter 116 only needs to be updated to reflect only one of the CFR amendments. The 1996 amendment to 40 CFR §52.21(b)(23)(i) (61 FR 9918) amended the definition of "significant." The commission proposes to revise §116.160(a) to reflect the amendment date of 1996.

FISCAL NOTE: COSTS TO STATE AND LOCAL GOVERNMENT

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

The proposal is intended to make administrative changes, update definitions and references, and incorporate updated PSD air quality regulations promulgated by the EPA. The primary intent of this rulemaking is to eliminate inconsistency between the commission rules and the rules adopted by the EPA concerning the inclusion of marine vessel emissions in applicability determinations for PSD and NA permits. The EPA requires that vessel emissions at marine docks be considered in PSD and NA permit applicability determinations. This proposal will make changes to the commission rules to more clearly reflect these federal requirements.

Examples of sources subject to these requirements are those sites which have marine vessel docks that ships and barges use to perform activities which produce air emissions. These could range from chemical plants and refineries to small vessel cleaning or loading operations. The specific number and location of affected facilities is unknown. The proposed amendments do not change or add additional federal regulatory requirements that are not already required; therefore, the commission does not anticipate any fiscal implications for units of state and local government due to implementation of the proposed amendments.

PUBLIC BENEFITS AND COSTS

Mr. Davis also determined for each of the first five years the proposed amendments are in effect, the public benefit anticipated as a result on implementing the amendments will be protection of the environment through the continued enforcement of federal regulations requiring certain marine emissions be included in PSD and NA permit applicability determinations.

The proposal is intended to make administrative changes, update definitions and references, and incorporate updated PSD air quality regulations promulgated by the EPA in order to make the commission rules compatible with the EPA requirements to include vessel emissions at marine docks in PSD and NA permits applicability determinations.

Examples of sources subject to these requirements are those sites which have marine vessel docks that ships and barges use to perform activities which produce air emissions. These could range from chemical plants and refineries to small vessel cleaning or loading operations. The specific number and location of affected facilities is unknown. The proposed amendments do not change or add additional federal regulatory requirements that are not already required; therefore, the commission does not anticipate any fiscal implications for individuals and businesses due to implementation of the proposed amendments.

SMALL BUSINESS AND MICRO-BUSINESS ASSESSMENT

There will be no adverse fiscal implications for small or micro-businesses as a result of administration or enforcement of the proposed amendments, because the proposed amendments do not add additional federal regulatory requirements that are not already required.

The proposal is intended to make administrative changes, update definitions and references, and incorporate updated PSD air quality regulations promulgated by the EPA in order to make the commission rules compatible with the EPA requirements to include vessel emissions at marine docks in PSD and NA permit applicability determinations.

The commission estimates that there are small or micro-businesses, such as small vessel cleaning or loading businesses, affected by these regulations; however, this proposal does not change or add additional federal regulatory requirements that are not already required. Therefore, the commission does not anticipate any fiscal implications for small or micro-businesses due to implementation of the proposed amendments.

DRAFT REGULATORY IMPACT ANALYSIS DETERMINATION

The commission reviewed the rulemaking in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and determined that the rulemaking does not meet the definition of a "major environmental rule" as defined in that statute. "Major environmental rule" means a rule, the specific intent of which, is to protect the environment or reduce risks to human health from environmental exposure and that may adversely affect in a material way the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. The commission does not believe that the proposed rules will have an adverse, material affect on the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. Changes to the commission's rules being proposed in this rulemaking correct the definitions of "building, structure, facility, or installation" and "secondary emissions," and incorporate by reference the most recent amendments to the PSD rules.

The proposed rules do not meet any of the four applicability criteria for requiring a regulatory analysis of "major environmental rule" as defined in the Texas Government Code. Texas Government Code, §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.

During the 75th Legislative Session, 1997, Senate Bill (SB) 633 amended the Texas Government Code to require agencies to perform a REGULATORY IMPACT ANALYSIS (RIA) of certain rules. The intent of SB 633 was to require agencies to conduct a RIA of extraordinary rules. These are identified in the statutory language as major environmental rules that will have a material

adverse impact and will exceed a requirement of state law, federal law, or a delegated federal program, or are adopted solely under the general powers of the agency. With the understanding that this requirement would seldom apply, the commission provided a cost estimate for SB 633 that concluded based on an assessment of rules adopted by the agency in the past, it is not anticipated that the bill will have significant fiscal implications for the agency due to its limited application." The commission also noted that the number of rules that would require assessment under the provisions of the bill was not large. This conclusion was based, in part, on the criteria set forth in the bill that exempted proposed rules from the full analysis unless the rule was a major environmental rule that exceeds a federal law. If each rule proposed for implementation of federally required programs, such as PSD/NA permitting, was considered to be a major environmental rule that exceeds federal law, then every such rule would require the full RIA contemplated by SB 633. This conclusion is inconsistent with the conclusions reached by the commission in its cost estimate and by the Legislative Budget Board (LBB) in its fiscal notes. Because the legislature is presumed to understand the fiscal impacts of the bills it passes, and that presumption is based on information provided by state agencies and the LBB, the commission believes that the intent of SB 633 was only to require the full RIA for rules that are extraordinary in nature.

The agency has consistently applied this construction to its rules since this statute was enacted in 1997. Since that time, the legislature revised the Texas Government Code but left this provision substantially unamended. It is presumed that "when an agency interpretation is in effect at the time the legislature amends the laws without making substantial change in the statute, the legislature is deemed to have accepted the agency's interpretation." *Central Power & Light Co. v. Sharp*, 919 S.W.2d 485. 489 (Tex. App. Austin 1995), writ denied with per curiam opinion respecting another issue, 960 S.W.2d 617 (Tex. 1997); *Bullock v. Marathon Oil Co.*, 798 S.W.2d 353, 357 (Tex. App. Austin 1990, no writ). *Cf. Humble Oil & Refining Co. v. Calvert*, 414 S.W.2d 172 (Tex. 1967); *Sharp v. House of Lloyd, Inc.*, 815 S.W.2d 245 (Tex. 1991); *Southwestern Life Ins. Co. v. Montemayor*, 24 S.W.3d 581 (Tex. App.--Austin 2000, pet. denied); and *Coastal Indust. Water Auth. v. Trinity Portland Cement Div.*, 563 S.W.2d 916 (Tex. 1978).

These rules are proposed in order to meet the requirements of 40 CFR §52.21 and 52.24. Therefore, in addition to not exceeding an express standard set by federal law, these rules do not exceed state requirements, and are not adopted solely under the general powers of the agency because the provisions of the Texas Clean Air Act (TCAA) and Texas Water Code (TWC), provided in the STATUTORY AUTHORITY section of this preamble, provide the commission the authority necessary to implement the PSD/NA permit programs. The rules will achieve their stated purpose by correcting the definition of "building, structure, facility, or installation" and incorporating by reference of amendments to the PSD rules. The remaining applicability criteria, pertaining to exceeding a delegation agreement or contract between the state and the federal government does not apply. Thus, the commission is not required to conduct a regulatory analysis as provided in Texas Government Code, §2001.0225.

TAKINGS IMPACT ASSESSMENT

The commission evaluated this rulemaking action and performed an analysis of whether the proposed rules are subject to Texas Government Code, Chapter 2007. The following is a summary of that analysis. The purpose of this rulemaking is to address the inconsistencies which exist between Chapter 116 and the federal regulations for PSD/NA programs with regard to the definitions of "building, structure, facility, or installation" and "secondary emissions." The rules will achieve their stated purpose by correcting the definitions of "building, structure, facility, or installation" and "secondary emissions" and incorporating by reference of the most recent amendments to 40 CFR §52.21 and 51.301. The proposed rules also delete an incorrect reference to a federal rule and more specifically identify certain federal regulations. Because the amendments are an action that is reasonably taken to fulfill an obligation mandated by federal law, the amendments meet the exception in Texas Government Code, §2007.003(b)(4). The commission has included elsewhere in this preamble the necessity for the proposed rules. For these reasons the rules do not constitute a takings under Chapter 2007 and do not require additional analysis.

CONSISTENCY WITH THE COASTAL MANAGEMENT PROGRAM

The commission determined that the this rulemaking action relates to an action or actions subject to the Texas Coastal Management Program (CMP) in accordance with the Coastal Coordination Act of 1991, as amended (Texas Natural Resources Code, §§33.201 *et seq.*), and the commission rules in 30 TAC Chapter 281, Subchapter B, concerning Consistency with the Texas Coastal Management Program. As required by 30 TAC §281.45(a)(3) and 31 TAC §505.11(b)(2) relating to actions and rules subject to the CMP, commission rules governing air pollutant emissions must be consistent with the applicable goals and policies of the CMP. The commission reviewed this rulemaking action for consistency with the CMP goals and policies in accordance with the rules of the Coastal Coordination Council, and determined that this rulemaking action is consistent with the applicable CMP goals and policies. The CMP goal applicable to the proposed rules is 31 TAC §501.12(1). This goal requires the protection, preservation, restoration, and enhancement of the diversity, quality, quantity, functions, and values of coastal natural resource areas. The CMP policy applicable to the proposed rules is 31 TAC §501.14(q), concerning policies for specific activities and coastal natural resource areas. Section 501.14(q) requires commission rules under the Texas Health and Safety Code, Chapter 382, governing emissions of air pollutants, to comply with the regulations in 40 CFR, adopted in accordance with 42 USC §§7401 *et seq.*, to protect and enhance air quality in the coastal areas so as to protect coastal natural resource areas and promote public health, safety, and welfare. The purpose of this rulemaking is to address the inconsistencies which exist between Chapter 116 and the federal regulations for PSD/NA programs with regard to the definitions of "building, structure, facility, or installation" and "secondary emissions." The rules incorporate by reference the most recent amendments to 40 CFR §52.21 and §51.301. The proposed rules also delete an incorrect reference to a federal rule and more specifically identify certain federal regulations. These amendments are consistent with the previously stated goals and policies of the CMP.

Interested persons may submit comments during the public comment period on the consistency of the proposed rules with the CMP goals and policies.

EFFECT ON SITES SUBJECT TO THE PSD AND NA PERMITS PROGRAM

This proposal deals exclusively with major sources subject to PSD/NA permits. The proposed rulemaking should not affect any new or existing sites because this rulemaking does not

change the already existing requirements under the federal PSD/NA permitting programs. Therefore, this rulemaking does not subject sites to any new requirements, but merely clarifies the federal requirements. Owners or operators of major sources should be sure to consider dockside marine vessel emissions in applicability determinations for PSD and NA.

ANNOUNCEMENT OF HEARING

The commission will hold a public hearing on this proposal on July 19, 2001, at 2:00 p.m., Building F, Room 2210, Texas Natural Resource Conservation Commission Complex, located at 12100 Park 35 Circle, Austin, Texas. The hearing will be structured for the receipt of oral or written comments by interested persons. Individuals may present oral statements when called upon in order of registration. There will be no open discussion during the hearing; however, an agency staff member will be available to discuss the proposal 30 minutes prior to the hearing and will answer questions before and after the hearing.

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

SUBMITTAL OF COMMENTS

Comments may be submitted to Patricia Durón, Office of Environmental Policy, Analysis, and Assessment, MC 205, P.O. Box 13087, Austin, Texas 78711-3087 or faxed to (512) 239-4808. All comments should reference Rule Log Number 2001-002-116-AI. Comments must be received by 5:00 p.m., July 23, 2001. For further information, please contact Karen Olson, Air Permits Division, at (512) 239-1294 or Joseph Thomas, Policy and Regulations Division, at (512) 239-4580.

SUBCHAPTER A. DEFINITIONS

30 TAC §116.12

STATUTORY AUTHORITY

The amendment is proposed under TWC, §5.103, which authorizes the commission to adopt rules necessary to carry out its powers and duties under TWC; §5.105, which authorizes the commission to establish and approve commission policy; and under Texas Health and Safety Code, TCAA, §382.017, which authorizes the commission to adopt rules consistent with the policy and purposes of the TCAA. The amendment is also proposed under §382.011, which authorizes the commission to control the quality of the state's air; §382.012, which authorizes the commission to prepare and develop a general, comprehensive plan for the protection of the state's air; §382.051, which authorizes the commission to issue permits and adopt rules as necessary to comply with changes in federal law or regulations applicable to permits.

The proposed amendment implements TCAA, §§382.002, 382.017, 382.051, and TWC, §5.103, and §5.105.

§116.12. Nonattainment Review Definitions.

Unless specifically defined in the Texas Clean Air Act (TCAA) or in the rules of the commission, the terms used by the commission have the meanings commonly ascribed to them in the field of air pollution control. The terms in this section are applicable to permit review for major source construction and major source modification in nonattainment areas. In addition to the terms which are defined by the TCAA, and in §101.1 of this title (relating to Definitions), the following words and terms, when used in §116.150 and §116.151 of this title (relating to Nonattainment Review), shall have the following meanings, unless the context clearly indicates otherwise.

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

(4) Building, structure, facility, or installation--All of the pollutant-emitting activities which belong to the same industrial grouping, are located in one or more contiguous or adjacent properties, and are under the control of the same person (or persons under common control) [~~except the activities of any vessel~~]. Pollutant-emitting activities shall be considered as part of the same industrial grouping if they belong to the same "major group" (i.e., which have the same two-digit code) as described in the Standard Industrial Classification Manual, 1972, as amended by the 1977 supplement.

(5) - (18) (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 June 11, 2001.

TRD-200103263
Margaret Hoffman
Director, Environmental Law Division
Texas Natural Resource Conservation Commission
Earliest possible date of adoption: July 22, 2001
For further information, please call: (512) 239-0348

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SUBCHAPTER B. NEW SOURCE REVIEW PERMITS

DIVISION 6. PREVENTION OF SIGNIFICANT DETERIORATION REVIEW

30 TAC §116.160, 116.162

STATUTORY AUTHORITY

The amendments are proposed under TWC, §5.103, which authorizes the commission to adopt rules necessary to carry out its powers and duties under TWC; §5.105, which authorizes the commission to establish and approve commission policy; and under Texas Health and Safety Code, TCAA, §382.017, which authorizes the commission to adopt rules consistent with the policy and purposes of the TCAA. The amendments are also proposed under §382.011, which authorizes the commission to control the quality of the state's air; §382.012, which authorizes the commission to prepare and develop a general, comprehensive plan for the protection of the state's air; §382.051, which authorizes the commission to issue permits and adopt rules as necessary to comply with changes in federal law or regulations applicable to permits.

The proposed amendments implement TCAA, §§382.002, 382.017, 382.051, and TWC, §5.103, and §5.105.

§116.160. Prevention of Significant Deterioration Requirements.

(a) Each proposed new major source or major modification in an attainment or unclassifiable area shall comply with the Prevention of Significant Deterioration (PSD) of Air Quality regulations promulgated by the EPA in Title 40 Code of Federal Regulations (CFR) at 40 CFR §52.21 [~~52.21~~] as amended March 12, 1996 [~~June 3, 1993 (effective June 3, 1994)~~] and the Definitions for Protection of Visibility promulgated at 40 CFR §51.301 [~~51.301~~], as amended July 1, 1999, hereby incorporated by reference.

(b) (No change.)

(c) The definitions of building, structure, facility, or installation (40 CFR §52.21(b)(6)) and secondary emissions (40 CFR §52.21(b)(18)) are excluded and replaced with the following definitions:

(1) building, structure, facility, or installation--all of the pollutant- emitting activities which belong to the same industrial grouping, are located on one or more contiguous or adjacent properties, and are under the control of the same person (or persons under common control). Pollutant-emitting activities shall be considered as part of the same industrial grouping if they belong to the same "Major Group" (i.e., which have the same first two-digit code) as described in the Standard Industrial Classification Manual, 1972, as amended by the 1977 supplement.

(2) secondary emissions--emissions which would occur as a result of the construction or operation of a major stationary source or major modification, but do not come from the major stationary source or major modification itself. Secondary emissions include emissions from any offsite support facility which would not be constructed or increase its emission except as a result of the construction or operation of the major stationary source or major modification. Secondary emissions do not include any emissions which come directly from a mobile source, such as emissions from the tailpipe of a motor vehicle, from a train, or from a vessel.

(d) [~~(c)~~] The term "executive director" shall replace the word "administrator," except in 40 CFR §52.21(b)(17), (f)(1)(v), (f)(3), (f)(4)(i), (g), and (t) [~~52.21(b)(17), (f)(1)(v), (f)(3), (f)(4)(i), (g), and (t)~~]. "Administrator or executive director" shall replace "administrator" in 40 CFR §52.21(b)(3)(iii) [~~52.21(b)(3)(iii)~~], and "administrator and executive director" shall replace "administrator" in 40 CFR §52.21(p)(2) [~~52.21(p)(2)~~].

(e) [~~(d)~~] All estimates of ambient concentrations required under this subsection shall be based on the applicable air quality models and modeling procedures specified in the EPA Guideline on Air Quality Models, as amended, or models and modeling procedures currently approved by the EPA for use in the state program, and other specific provisions made in the PSD state implementation plan. If the air quality impact model approved by the EPA or specified in the guideline is inappropriate, the model may be modified or another model substituted on a case-by-case basis, or a generic basis for the state program, where appropriate. Such a change shall be subject to notice and opportunity for public hearing and written approval of the administrator of the EPA.

§116.162. Evaluation of Air Quality Impacts.

In evaluating air quality impacts under §116.160 of this title (relating to Prevention of Significant Deterioration Requirements) or §116.161 of this title (relating to Sources Located in an Attainment Area with a Greater Than De Minimis Impact), the owner or operator of a proposed new facility or modification of an existing facility shall not take credit for reductions in impact due to dispersion techniques as defined in Title 40 Code of Federal Regulations (CFR). The relevant federal regulations are incorporated herein by reference, as follows:

(1) (No change.)

(2) the definitions of "owner or operator," "emission limitation and emission standards," "stack," "a stack in existence," and "reconstruction," as given under 40 CFR §51.100(f), (z), (ff), (gg), promulgated November 7, 1986, and 40 CFR §60.15, promulgated December 16, 1975, [~~60~~], respectively;

(3) 40 CFR §51.118(a) and (b) [~~51.118(a), (b), and (c)~~], promulgated November 7, 1986; and

(4) 40 CFR §51.164, promulgated November 7, 1986 [~~51.164~~].

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 June 11, 2001.

TRD-200103264
Margaret Hoffman
Director, Environmental Law Division
Texas Natural Resource Conservation Commission
Earliest possible date of adoption: July 22, 2001
For further information, please call: (512) 239-0348

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CHAPTER 305. CONSOLIDATED PERMITS

The Texas Natural Resource Conservation Commission (commission) proposes amendments to §305.2, Definitions; §305.69, Solid Waste Permit Modification at the Request of the Permittee; §305.122, Characteristics of Permits; §305.150, Incorporation of References; and §305.571, Applicability; and new §305.175, Conditional Exemption for Demonstrating Compliance with Certain Air Standards.

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE PROPOSED RULES

The primary purpose of the proposed amendments is to revise the commission rules to conform to certain federal regulations, either by incorporating the federal regulations by reference or by introducing language into the commission rules which corresponds to the federal regulations. Establishing equivalency with federal regulations will enable the State of Texas to increase its level of authorization to operate aspects of the federal hazardous waste program in lieu of the United States Environmental Protection Agency (EPA). The federal regulations being addressed in this proposal were promulgated by the EPA in issues of the *Federal Register* from the years 1994, 1998, and 1999. Proposed amendments would also make editorial and administrative corrections to improve the readability of Chapter 305.

SECTION BY SECTION DISCUSSION

Ten definitions under §305.2 are proposed to be amended to make administrative corrections and changes for improved readability. The definitions under §305.2(3), "Class I sludge management facility"; §305.2(17), "Facility mailing list"; §305.2(30), "Primary industry category"; and §305.2(36), "Regional administrator" are proposed to be amended to streamline the references to Code of Federal Regulations (CFR). The definitions under §305.2(6), "Corrective action management unit or CAMU"; §305.2(16), "Facility"; and §305.2(37), "Remediation waste" are proposed to be amended to correct each statutory reference to Texas Solid Waste Disposal Act, Texas Health and Safety Code Annotated, §361.303 (relating to Corrective Action), by the replacing it with reference to Texas Water Code, §7.031 (relating to Corrective Action Relating to Hazardous Waste). This proposed correction is in accordance with Acts 1997, 75th Legislature, Chapter 1072, Section 2, effective September 1, 1997. Additional changes are proposed under §305.2(17) to spell out the "underground injection control" and under §305.2(36) to correct the agency's physical address. Also, §305.2(42), "Solid waste permit" and §305.2(48), "Wastewater discharge permit" are proposed to be changed to replace the phrase "pursuant to" with the

word "under." The definition under §305.2(44), "Texas pollutant discharge elimination system (TPDES)" is proposed to be corrected typographically.

Section 305.69(i)(1) is proposed to be amended by correcting the citation for Notice of Intent to Comply requirements from 40 CFR §63.1211 to 40 CFR §63.1210(b) and (c). The EPA corrected this citation in the July 7, 2000 publication of the *Federal Register* (65 FR 42292).

Section 305.69(k) is proposed to be amended by making administrative corrections and by adding a new modification under A.11. relating to the removal of permitting conditions which are no longer applicable. This proposed modification would conform to the federal regulations setting standards for hazardous air pollutants for hazardous waste combustors promulgated by EPA in the September 30, 1999 issue of the *Federal Register* (64 FR 52828). Proposed under D.3.g. is a new modification relating to the use of staging piles for closure activities. Proposed M.3. is a new modification relating to the approval of staging pile operating term extension pursuant to 40 CFR 264.554. These proposed modifications would conform to the federal regulations for hazardous waste remediation promulgated by EPA on November 30, 1998 (63 FR 65874).

Section 305.122(a)(3) and (4) is proposed to be amended to conform with the federal regulation promulgated by EPA in the December 6, 1994 issue of the *Federal Register* (59 FR 62896). Under proposed paragraph (3), the phrase "action plans, and will be implemented" in the second sentence following the word "response" was inadvertently omitted from the text of the rule and is proposed to be reinserted. Also in this sentence, an amendment is proposed to replace the reference to the federal regulation with the appropriate state rule. Paragraph (4) is proposed to be added to clarify that a permittee is required to comply with requirements promulgated under 40 CFR Part 265, Subparts AA, BB, or CC limiting air emissions, as adopted by reference under §335.112, even though the requirement may not be included in the permit terms.

Subchapter G is proposed to be amended in the title to add "hazardous and industrial," so that the title would properly reflect the content of the subchapter. Section 305.150 is proposed to be amended to update references to be consistent with 40 CFR §260.11, as amended by EPA on May 14, 1999 (64 FR 26315). This proposed amendment would incorporate updates to "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods," EPA Publication SW-846, Third Edition. Section 305.150 is also proposed to be amended to remove the superfluous wording "and adopted in the Code of Federal Regulations."

New §305.175 is proposed to be added to incorporate an exclusion from the requirements of Subchapter I for owners or operators of hazardous waste incinerators demonstrating compliance with certain air standards, conditioned by a provision that would allow the executive director to apply the requirements of Subchapter I, on a case-by-case basis, in order to establish certain permit conditions. These permit conditions are related to those necessary to protect human health and the environment, and those that may be necessary after the periodic review (i.e., every five years) of hazardous waste land disposal facility permits. In order to qualify for this conditional exemption, the owner or operator must demonstrate compliance with the air emission standards and limitations in 40 CFR Part 63, Subpart EEE by conducting a comprehensive performance test and submitting a Notification of Compliance. This proposed change would conform with the federal regulation promulgated by EPA in the September 30, 1999 issue of the *Federal Register* (64 FR 52828).

Section 305.571 is proposed to be amended by adding new language under subsection (b), and putting the existing language under proposed subsection (a). The proposed new language would incorporate an exclusion from the requirements of Subchapter Q for owners or operators of hazardous waste cement or lightweight aggregate kilns demonstrating compliance with certain air standards, conditioned by a provision that would allow the executive director to apply the requirements of Subchapter Q, on a case-by-case basis, in order to establish certain permit conditions. These permit conditions are related to those necessary to protect human health and the environment, and those that may be necessary after the periodic review (i.e., every five years) of hazardous waste land disposal facility permits. In order to qualify for this conditional exemption, the owner or operator must demonstrate compliance with the air emission standards and limitations in 40 CFR Part 63, Subpart EEE by conducting a comprehensive performance test and submitting a Notification of Compliance. This proposed change would conform with the federal regulation promulgated by EPA in the September 30, 1999 issue of the *Federal Register* (64 FR 52828).

FISCAL NOTE: COSTS TO STATE AND LOCAL GOVERNMENT

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

The proposed amendments are intended to adopt federal regulations requiring certain hazardous waste facilities to modify Resource Conservation and Recovery Act (RCRA) permits once the facilities have achieved compliance with maximum achievable control technologies (MACT) standards for hazardous air pollutants. This proposal is intended to revise the commission rules to conform to federal regulations, either by incorporating the federal regulations by reference or by introducing language into the commission rules which corresponds to the federal regulations. The federal regulations being addressed in this proposal were promulgated by the EPA in issues of the *Federal Register* in 1994, 1998, and 1999. The commission is required to maintain equivalency with the federal regulations in order to maintain enforcement authority over facilities in the state affected by the regulations.

Owners and operators of hazardous waste incinerators, hazardous waste-burning cement kilns, and hazardous waste-burning lightweight aggregate kilns that attain compliance with MACT standards will be required to submit a one-time RCRA permit modification to remove provisions from the RCRA permit that are also covered by an air quality permit. There are no known units of state and local government that own or operate these types of facilities; therefore, the commission anticipates that adoption of these federal standards into state rules will not result in increased costs to units of state and local government.

PUBLIC BENEFIT AND COSTS

Mr. Davis also determined that for each year of the first five years the proposed amendments are in effect, the public benefit anticipated from enforcement of and compliance with the proposed amendments would be protection of human health and the environment through the continued enforcement of hazardous waste permit requirements.

The proposed amendments are intended to adopt federal regulations requiring certain hazardous waste facilities to modify RCRA permits once the facilities have achieved compliance with MACT standards for hazardous air pollutants. These federal standards were adopted by the EPA in 1999.

Owners and operators of hazardous waste incinerators, hazardous waste-burning cement kilns, and hazardous waste-burning lightweight aggregate kilns that attain compliance with MACT standards will be required to submit a one-time RCRA Class 1 permit modification to remove provisions from the RCRA permit that are also covered by an air quality permit. The modification fee is $150. The commission estimates that it will cost these facilities approximately $1,500 to $7,500 to prepare the permit modification. There are nine commercial incinerators, 26 on-site incinerators, and one waste- burning kiln that may be affected by the proposed amendments.

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, which would require affected facilities to modify RCRA permits once the facilities have achieved compliance with MACT standards for hazardous air pollutants. These federal standards were adopted by the EPA in 1999.

The commission estimates that there are no hazardous waste incinerators, hazardous waste- burning cement kilns, or hazardous waste-burning lightweight aggregate kilns that are owned and operated by small or micro-businesses. These equipment types are primarily used by large industries to burn hazardous waste generated by company manufacturing operations or to burn waste from other companies generated offsite. Therefore, the commission anticipates there will be no fiscal implications for small or micro-businesses for these provisions of the rulemaking.

DRAFT REGULATORY IMPACT ANALYSIS DETERMINATION

The commission reviewed the proposed rulemaking in light of the regulatory analysis requirements of the Texas Government Code, §2001.0225, and determined that the rulemaking is not subject to §2001.0225 because it does not meet the definition of a "major environmental rule" as defined in that statute. The proposal would not adversely affect, in a material way, the economy, a section of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. The proposed amendments would update the commission's consolidated permits rules to incorporate certain federal regulations regarding air emission requirements and make administrative changes and corrections. The proposed amendments do not meet the definition of a "major environmental rule" as defined in the Texas Government Code, because §2001.0225 only applies to a major environmental rule, the result of which is to: 1) exceed a standard set by federal law, unless the rule is specifically required by state law; 2) exceed an express requirement of state law, unless the rule is specifically required by federal law; 3) exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or 4) adopt a rule solely under the general powers of the agency instead of under a specific state law.

The commission concludes that a regulatory analysis is not required in this instance because the proposed rules do not trigger any of the four criteria in Texas Government Code, §2001.0225.

TAKINGS IMPACT ASSESSMENT

The commission performed a preliminary assessment of these rules in accordance with Texas Government Code, §2007.043. The following is a summary of that assessment. The specific purpose of the proposed rulemaking is to ensure that the commission's consolidated permits hazardous waste rules on air emissions and remediation waste are equivalent to the federal regulations after which they are patterned. The proposed rules will substantially advance this stated purpose by adopting language intended to ensure that state rules are equivalent to the corresponding federal regulations. The commission's preliminary assessment indicates that Texas Government Code, Chapter 2007 does not apply to this proposed rulemaking because this is an action that is reasonably taken to fulfill an obligation mandated by federal law.

CONSISTENCY WITH THE COASTAL MANAGEMENT PROGRAM

The commission reviewed the proposed rulemaking and found that the proposal is a rulemaking identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11(b)(2), relating to Actions and Rules Subject to the Coastal Management Program (CMP), or will affect an action and/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 prepared a consistency determination for the proposed rules in accordance with 31 TAC §505.22 and found the proposed rulemaking is consistent with the applicable CMP goals and policies. The following is a summary of that determination. The CMP goal applicable to the proposed rulemaking is the goal to protect, preserve, restore, and enhance the diversity, quality, quantity, functions, and values of coastal natural resource areas (CNRAs). Applicable policies are construction and operation of solid waste treatment, storage, and disposal facilities, such that new solid waste facilities and areal expansions of existing solid waste facilities shall be sited, designed, constructed, and operated to prevent releases of pollutants that may adversely affect CNRAs and, at a minimum, comply with standards established under the Solid Waste Disposal Act, 42 United States Code, §§6901 et seq. Promulgation and enforcement of these rules are consistent with the applicable CMP goals and policies because the proposed rule amendments will update and enhance commission rules concerning consolidated permits for certain hazardous and industrial solid waste facilities. In addition, the proposed rules do not violate any applicable provisions of the CMP's stated goals and policies. The commission invites public comment on the consistency of the proposed rules.

SUBMITTAL OF COMMENTS

Comments may be mailed to Angela Slupe, Office of Environmental Policy, Analysis, and Assessment, MC-205, P. O. Box 13807, Austin, Texas 78711-3087; or by fax at (512) 239-4808. All comments should reference Rule Log Number 2000-044-335-WS. Comments must be received by 5:00 p.m., July 23, 2001. For further information, please contact Ray Henry Austin, Policy and Regulations Division, (512) 239-6814.

SUBCHAPTER A. GENERAL PROVISIONS

30 TAC §305.2

STATUTORY AUTHORITY

The amendment is proposed under Texas Water Code (TWC), §5.103 and §5.105, which provide the commission with the authority to adopt any rules necessary to carry out its powers and

duties under the provisions of the TWC or other laws of this state; and under Texas Health and Safety Code (THSC), Solid Waste Disposal Act, §361.017 and §361.024, which authorize the commission to regulate industrial solid waste and municipal hazardous waste and to adopt rules consistent with the general intent and purposes of the Act.

The proposed amendment implements THSC, Chapter 361.

§305.2. Definitions.

The definitions contained in the Texas Water Code, §§26.001, 27.002, and 28.001, and the Texas Health and Safety Code, §§361.003, 401.003, and 401.004, shall apply to this chapter. The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise.

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

(3) Class I sludge management facility - Any publicly owned treatment works (POTW) identified under 40 Code of Federal Regulations (CFR), §403.10(a) as being required to have an approved pretreatment program and any other treatment works treating domestic sewage classified as a Class I sludge management facility by the regional administrator in conjunction with the executive director because of the potential for its sludge use or disposal practices to adversely affect public health and the environment.

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

(6) Corrective action management unit (CAMU) [~~or CAMU~~] - An area within a facility that is designated by the commission under 40 CFR [~~Code of Federal Regulations~~] Part 264, Subpart S, for the purpose of implementing corrective action requirements under §335.167 of this title (relating to Corrective Action for Solid Waste Management Units) and Texas Water Code, §7.031 (relating to Corrective Action Relating to Hazardous Waste) [~~the Texas Solid Waste Disposal Act, Texas Health & Safety Code), §361.303 (relating to Corrective Action)~~]. A CAMU shall only be used for the management of remediation wastes while [~~pursuant to~~] implementing such corrective action requirements at the facility.

(7) - (15) (No change.)

(16) Facility - Includes:

(A) (No change.)

(B) for the purpose of implementing corrective action under §335.167 of this title (relating to Corrective Action for Solid Waste Management Units), all contiguous property under the control of the owner or operator seeking a permit for the storage, processing, and/or disposal of hazardous waste. This definition also applies to facilities implementing corrective action under the Texas Water Code, §7.031 (relating to Corrective Action Relating to Hazardous Waste); [~~Texas Solid Waste Disposal Act, Texas Health and Safety Code, §361.303 (concerning Corrective Action).~~]

(17) Facility mailing list - The mailing list for a facility maintained by the commission in accordance with 40 CFR [~~Code of Federal Regulations (CFR)~~] §124.10(c)(1)(ix) and §39.7 of this title (relating to Public Notice). For Class I injection well underground injectivon control (UIC) [~~UIC~~] permits, the mailing list also includes the agencies described in 40 CFR §124.10(c)(1)(viii).

(18) - (29) (No change.)

(30) Primary industry category - Any industry category listed in 40 CFR [~~Code of Federal Regulations~~], Part 122, Appendix A, adopted by reference by §305.532(d) of this title (relating to Adoption of Appendices by Reference).

(31) - (35) (No change.)

(36) Regional administrator - Except when used in conjunction with the words "state director," or when referring to EPA approval of a state program, where there is a reference in the EPA regulations adopted by reference in this chapter to the "regional administrator" or to the "director," the reference is more properly made, for purposes of state law, to the executive director of the Texas Natural Resource Conservation Commission, or to the Texas Natural Resource Conservation Commission, consistent with the organization of the agency as set forth in the Texas Water Code, Chapter 5, Subchapter B. When used in conjunction with the words "state director" in such regulations, regional administrator means the regional administrator for the Region VI office of the EPA or his or her authorized representative. A copy of 40 CFR [~~Code of Federal Regulations~~], Part 122, is available for inspection at the library of the Texas Natural Resource Conservation Commission, located on the first floor of Building A at 12100 Park 35 Circle [~~in Room B-20 of the Stephen F. Austin State Office Building, 1700 North Congress~~], Austin, Texas.

(37) Remediation waste - All solid and hazardous wastes, and all media (including groundwater, surface water, soils, and sediments) and debris, which contain listed hazardous wastes or which themselves exhibit a hazardous waste characteristic, that are managed for the purpose of implementing corrective action requirements under §335.167 of this title (relating to Corrective Action for Solid Waste Management Units) and Texas Water Code, §7.031 (relating to Corrective Action Relating to Hazardous Waste) [~~the Texas Solid Waste Disposal Act, Texas Health and Safety Code, §361.303 (concerning Corrective Action)~~]. For a given facility, remediation wastes may originate only from within the facility boundary, but may include waste managed in implementing corrective action for releases beyond the facility boundary under the Texas Water Code, §7.031 [~~Texas Solid Waste Disposal Act, the Texas Health and Safety Code, §361.303 (concerning Corrective Action)~~], §335.166(5) of this title (relating to Corrective Action Program), or §335.167(c) of this title [~~(relating to Corrective Action for Solid Waste Management Units)~~].

(38) - (41) (No change.)

(42) Solid waste permit - A permit issued under [~~pursuant to~~] Texas Civil Statutes, Article 4477-7, as amended.

(43) (No change.)

(44) Texas pollutant discharge elimination system (TPDES) - The state program for issuing, amending, terminating, monitoring, and enforcing permits, and imposing and enforcing pretreatment requirements, under CWA, §§307, 402, 318, and 405; [~~, the~~] Texas Water Code ; [~~,~~] and Texas Administrative Code regulations.

(45) - (47) (No change.)

(48) Wastewater discharge permit - A permit issued under [~~pursuant to the~~] Texas Water Code, Chapter 26.

(49) (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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Margaret Hoffman
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Texas Natural Resource Conservation Commission
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SUBCHAPTER D. AMENDMENTS, RENEWALS, TRANSFERS, CORRECTIONS, REVOCATION, AND SUSPENSION OF PERMITS

30 TAC §305.69

STATUTORY AUTHORITY

The amendment is proposed under TWC, §5.103 and §5.105, which provide the commission with the authority to adopt any rules necessary to carry out its powers and duties under the provisions of the TWC or other laws of this state; and under THSC, Solid Waste Disposal Act, §361.017 and §361.024, which authorize the commission to regulate industrial solid waste and municipal hazardous waste and to adopt rules consistent with the general intent and purposes of the Act.

The proposed amendment implements THSC, Chapter 361.

§305.69. Solid Waste Permit Modification at the Request of the Permittee.

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

(i) Combustion facility changes to meet Title 40 Code of Federal Regulations (CFR) Part 63 Maximum Achievable Control Technology (MACT) standards. The following procedures apply to hazardous waste combustion facility permit modifications requested under L.9. of Appendix I of this subchapter. [:]

(1) Facility owners or operators must comply with the Notification of Intent to Comply (NIC) requirements of 40 CFR §63.1210(b) and (c) [~~§63.1211~~], as amended through July 7, 2000 (65 FR 42292) [~~June 19, 1998, at 63 FedReg 33782~~], before a permit modification can be requested under this section. [~~; and~~]

(2) (No change.)

(j) (No change.)

(k) Appendix I. The following appendix will be used for the purposes of [~~Subchapter D~~] this subchapter which relates to industrial and hazardous solid waste permit modification at the request of the permittee.
Figure: 30 TAC §305.69(k)

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

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SUBCHAPTER F. PERMIT CHARACTERISTICS AND CONDITIONS

30 TAC §305.122

STATUTORY AUTHORITY

The amendment is proposed under TWC, §5.103 and §5.105, which provide the commission with the authority to adopt any rules necessary to carry out its powers and duties under the provisions of the TWC or other laws of this state; and under THSC, Solid Waste Disposal Act, §361.017 and §361.024, which authorize the commission to regulate industrial solid waste and municipal hazardous waste and to adopt rules consistent with the general intent and purposes of the Act.

The proposed amendment implements THSC, Chapter 361.

§305.122. Characteristics of Permits.

(a) Compliance with a RCRA [~~Resource Conservation and Recovery Act (RCRA)~~] permit during its term constitutes compliance, for purposes of enforcement, with subtitle C of RCRA except for those requirements not included in the permit which:

(1) (No change.)

(2) are promulgated under [~~Title~~] 40 Code of Federal Regulations (CFR) [~~,~~] Part 268, restricting the placement of hazardous wastes in or on the land; [~~or~~]

(3) are promulgated under [~~Title~~] 40 CFR [~~Code of Federal Regulations,~~] Part 264, regarding leak detection systems for new and replacement surface impoundment, waste pile, and landfill units, and lateral expansions of surface impoundment, waste pile, and landfill units. The leak detection system requirements include double liners, construction quality assurance [~~CQA~~] programs, monitoring, action leakage rates, and response action plans, and will be implemented through the Class 1 permit modifications procedures of §305.69 of this title (relating to Solid Waste Permit Modification at the Request of the Permittee) [~~Title 40 Code of Federal Regulations, §270.42 (concerning permit modification at the request of the permittee).~~] ; or

(4) are promulgated under 40 CFR Part 265, Subparts AA, BB, or CC limiting air emissions, as adopted by reference under §335.112 of this title (relating to Standards).

(b) - (d) (No change.)

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

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SUBCHAPTER G. ADDITIONAL CONDITIONS FOR HAZARDOUS AND INDUSTRIAL SOLID WASTE STORAGE, PROCESSING, OR DISPOSAL FACILITIES

30 TAC §305.150

STATUTORY AUTHORITY

The amendment is proposed under TWC, §5.103 and §5.105, which provide the commission with the authority to adopt any rules necessary to carry out its powers and duties under the provisions of the TWC or other laws of this state; and under THSC, Solid Waste Disposal Act, §361.017 and §361.024, which authorize the commission to regulate industrial solid waste and municipal hazardous waste and to adopt rules consistent with the general intent and purposes of the Act.

The proposed amendment implements THSC, Chapter 361.

§305.150. Incorporation of References.

When used in this chapter (relating to Consolidated Permits), the references contained in 40 Code of Federal Regulations §260.11 are incorporated by reference as amended [~~and adopted in the Code of Federal Regulations~~] through May 14, 1999 (64 FR 26315) [~~June 2, 1994, at 59 FedReg 28484~~].

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

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SUBCHAPTER I. HAZARDOUS WASTE INCINERATOR PERMITS

30 TAC §305.175

STATUTORY AUTHORITY

The new section is proposed under TWC, §5.103 and §5.105, which provide the commission with the authority to adopt any rules necessary to carry out its powers and duties under the provisions of the TWC or other laws of this state; and under THSC, Solid Waste Disposal Act, §361.017 and §361.024, which authorize the commission to regulate industrial solid waste and municipal hazardous waste and to adopt rules consistent with the general intent and purposes of the Act.

The proposed new section implements THSC, Chapter 361.

§305.175. Conditional Exemption for Demonstrating Compliance with Certain Air Standards.

When an owner or operator demonstrates compliance with the air emission standards and limitations in 40 Code of Federal Regulations Part 63, Subpart EEE by conducting a comprehensive performance test and submitting a Notification of Compliance, the requirements of this subchapter do not apply, except that the executive director may apply the provisions of this subchapter, on a case-by-case basis, and require a permittee or an applicant to submit information in order to establish permit conditions under §305.127(1)(B)(iii) or (4)(A) of this title (relating to Conditions To Be Determined for Individual Permits).

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

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SUBCHAPTER Q. PERMITS FOR BOILERS AND INDUSTRIAL FURNACES BURNING HAZARDOUS WASTE

30 TAC §305.571

STATUTORY AUTHORITY

The amendment is proposed under TWC, §5.103 and §5.105, which provide the commission with the authority to adopt any rules necessary to carry out its powers and duties under the provisions of the TWC or other laws of this state; and under THSC, Solid Waste Disposal Act, §361.017 and §361.024, which authorize the commission to regulate industrial solid waste and municipal hazardous waste and to adopt rules consistent with the general intent and purposes of the Act.

The proposed amendment implements THSC, Chapter 361.

§305.571. Applicability.

(a) Owners and operators of new boilers and industrial furnaces (those not operating under the interim status standards of 40 Code of Federal Regulations (CFR) §266.103 and §335.224 of this title (relating to Additional Interim Status Standards for Burners)) are subject to §305.572 of this title (relating to Permit and Trial Burn Requirements). Owners and operators of existing boilers and industrial furnaces operating under the interim status standards of 40 CFR §266.103 and §335.224 of this title are subject to §305.573 of this title (relating to Interim Status and Trial Burn Requirements).

(b) When an owner or operator of a cement or lightweight aggregate kiln demonstrates compliance with the air emission standards and limitations in 40 CFR Part 63, Subpart EEE by conducting a comprehensive performance test and submitting a Notification of Compliance, the requirements of this subchapter do not apply, except that the executive director may apply the provisions of this subchapter, on a case-by-case basis, and require a permittee or an applicant to submit information in order to establish permit conditions under §305.127(1)(B)(iii) or (4)(A) of this title (relating to Conditions To Be Determined for Individual Permits).

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 335. INDUSTRIAL SOLID WASTE AND MUNICIPAL HAZARDOUS WASTE

The Texas Natural Resource Conservation Commission (commission) proposes amendments to Subchapter A, Industrial Solid Waste and Municipal Hazardous Waste in General, §§335.1, 335.3, 335.4, 335.6, 335.9 - 335.14, 335.17, 335.24, 335.28, 335.29, and 335.31; Subchapter B, Hazardous Waste Management General Provisions, §§335.41 and 335.43 - 335.47; Subchapter C, Standards Applicable to Generators of Hazardous Waste, §§335.61, 335.67, 335.69, 335.76, and 335.78; Subchapter D, Standards Applicable to Transporters of Hazardous Waste, §§335.91, 335.93, and 335.94; Subchapter E, Interim Standards for Owners and Operators of Hazardous Waste Storage, Processing, or Disposal Facilities, §§335.111, 335.115, 335.117 - 335.119, 335.123, 335.125, and 335.127; Subchapter F, Permitting Standards for Owners and Operators of Hazardous Waste Storage, Processing, or Disposal Facilities, §§335.155, 335.164, 335.165, 335.168 - 335.169, 335.172, 335.177, 335.178, and 335.181; Subchapter G, Location Standards for Hazardous Waste Storage, Processing, or Disposal, §§335.201, 335.202, 335.205, and 335.206; Subchapter H, Standards for the Management of Specific Wastes and Specific Types of Facilities, Division 2, Hazardous Waste Burned for Energy Recovery, §§335.221, 335.222, 335.224, and 335.225; Division 3, Recyclable Materials Utilized For Precious Metal Recovery, §335.241; and Division 5, Universal Waste Rule, §335.262; Subchapter I, Prohibition of Open Dumps, §§335.303 - 335.305 and 335.307; Subchapter J, Hazardous Waste Generation, Facility and Disposal Fee System, §§335.321 - 335.323, 335.325, 335.326, 335.328, and 335.329; Subchapter K, Hazardous Substance Facilities Assessment and Remediation, §§335.341, 335.342, and 335.346; Subchapter N, Household Materials Which Could be Classified as Hazardous Wastes, §§335.401 - 335.403, 335.406, 335.407, 335.409, 335.411, and 335.412; Subchapter O, Land Disposal Restrictions, §335.431; Subchapter Q, Pollution Prevention: Source Reduction and Waste Minimization, §§335.471, 335.473 - 335.478, and 335.480; Subchapter R, Waste Classification, §§335.501 - 335.504, 335.507 - 335.509, 335.511 - 335.514, and 335.521; and Subchapter S, Risk Reduction Standards, §§335.559, 335.563, and 335.569.

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE PROPOSED RULES

The primary purpose of the proposed amendments is to revise the commission's rules to conform to certain federal regulations, either by incorporating the federal regulations by reference or by introducing language into the commission's rules which corresponds to the federal regulations. Establishing equivalency with federal regulations will enable the State of Texas to increase its level of authorization to operate aspects of the federal hazardous waste program in lieu of the United States Environmental Protection Agency (EPA). Most of the federal regulations being addressed in this proposal were promulgated by the EPA in issues of the *Federal Register* from November 1996 through June 2000. In addition, an earlier federal regulation promulgated in the December 6, 1994 issue of the *Federal Register* is also addressed.

The commission's previous review of Chapter 335, adopted by the commission on June 29, 2000 and published in the July 14, 2000 issue of the *Texas Register* (25 TexReg 6820), revealed a number of inconsistencies and incorrect references and citations, which are now being addressed in this proposal. For example, the statutory citations involving the Solid Waste Disposal Act are inconsistent throughout Chapter 335. Citations as long and complex as the following are found in Chapter 335: "Solid Waste Disposal Act, Texas Health and Safety Code, Chapter 361 (Vernon's Supplement 1991), Texas Civil Statutes, Article 4477-7." Another example is "Solid Waste Disposal Act, Health and Safety Code." Therefore, in order to bring consistency to Chapter 335 with regard to these statutory citations, the commission proposes to amend Chapter 335 to make all the citations involving the Solid Waste Disposal Act be "Texas Health and Safety Code, Chapter 361." Such amendments would also simplify the language and make the rules more readable. The commission also proposes to correct or delete the out-of-date references to the Texas Water Commission and the Texas Department of Health, and to correct rule references and make other administrative corrections, where appropriate.

SECTION BY SECTION DISCUSSION

Section 335.1(2), the definition of "Act," is proposed to be amended to simplify the statutory citation by changing "The Solid Waste Disposal Act, Texas Health and Safety Code, Chapter 361 (Vernon Pamphlet 1992)" to "Texas Health and Safety Code, Chapter 361."

Section 335.1(7), the definition of "Ancillary equipment," is proposed to be amended to add the phrase "solid waste or" just prior to each occurrence of the phrase "hazardous waste," in order to clarify that ancillary equipment is not limited to hazardous waste ancillary equipment. There are also stylistic changes to simplify and clarify the definition of "Ancillary equipment." There are a number of other such amendments proposed to clarify that the meanings are not limited in scope to definitions involving hazardous waste. These are as follows: §335.1(65), the definition of "In operation"; §335.1(69), the definition of "Individual generation site"; §335.1(79), the definition of "Land treatment facility"; §335.1(80), the definition of "Landfill"; §335.1(81), the definition of "Landfill cell"; §335.1(82), the definition of "Leachate"; §335.1(83), the definition of "Leak- detection system"; §335.1(84), the definition of "Liner"; §335.1(85), the definition of "Management or hazardous waste management"; §335.1(90), the definition of "Movement"; §335.1(104), the definition of "Personnel or facility personnel"; §335.1(107), the definition of "Pile"; §335.1(113), the definition of "Processing"; §335.1(132), the definition of "Spill"; §335.1(135), the definition of "Sump"; §335.1(138), the definition of "Tank system"; §335.1(140), the definition of "Thermal processing"; §335.1(152), the definition of "Unfit- for-use tank system"; and §335.1(162), the definition of "Zone of engineering control." The definition of "Unfit-for-use tank system" is also proposed to be amended to correct a typographical error by removing the extraneous phrase "Waste and Municipal Hazardous Waste except as otherwise specified in §335.261 of this title."

Section 335.1(14), the definition of "Class 1 wastes," is proposed to be amended to delete the sentence "Class 1 waste is also referred to throughout this chapter as Class I waste." This proposal contains deletions of every instance of "Class I," with "Class 1" being proposed as the replacement. Section 335.1(15), the definition of "Class 2 wastes," is proposed to be amended to delete the sentence "Class 2 waste is also referred to throughout this chapter as Class II waste." There are no other occurrences of "Class II" in this chapter. Section 335.1(16), the definition of "Class 3 wastes," is proposed to be amended to delete the sentence "Class 3 waste is also referred to throughout this chapter as Class III waste." The only other occurrence of "Class III" is

found under §335.53, where it is proposed to be deleted and replaced with "Class 3."

Section 335.1(29), (52), and (119), the definitions of "Corrective action management unit (CAMU)," "Facility," and "Remediation waste," respectively, are proposed to be corrected by changing "the Texas Solid Waste Disposal Act, Texas Health and Safety Code Annotated (Vernon Pamphet 1993), §361.303 (concerning Corrective Action)" to "Texas Water Code, §7.031 (Corrective Action Relating to Hazardous Waste)." These proposed amendments provide the correct statutory reference, in accordance with Acts 1997, 75th Legislature, Chapter 1072, Section 2, effective September 1, 1997.

Section §335.1(32) contains the phrase "Code of Federal Regulations (CFR)." The commission proposes that every subsequent occurrence of "Code of Federal Regulations" within this section be replaced with "CFR" for the purpose of improved readability. Such amendments are proposed as necessary throughout this proposal.

New §335.1(35) is proposed to be the definition of "Dioxins and furans (D/F)," meaning "Tetra, penta, hexa, hepta, and octa-chlorinated dibenzo dioxins and furans." This definition would conform to the federal regulations setting standards for hazardous air pollutants for hazardous waste combustors promulgated by EPA in the September 30, 1999 issue of the *Federal Register* (64 FR 52828). To account for the addition of this new proposed paragraph, the numbering in subsequent paragraphs is proposed to be increased by one.

Proposed §335.1(89) would be amended to conform to the EPA regulations concerning hazardous remediation wastes promulgated in the November 30, 1998 issue of the *Federal Register* (63 FR 65874). The commission proposes to amend the definition of "Miscellaneous unit" to add the phrase "staging pile" to the list of units excluded from this definition. Miscellaneous units are units that do not have regulatory provisions specific to that individual type of unit. Because provisions for staging piles are included in this proposal, it is appropriate to add "staging piles" to the list of units that fall outside the definition of miscellaneous unit.

Proposed §335.1(129)(A)(iv) is proposed to be amended to add punctuation marks and the word "through," and to replace the word "in" with ", at" for internal consistency. Section 335.1(129)(A)(iv) is also proposed to be amended to state that 40 Code of Federal Regulations (CFR) §261.38 would be adopted by reference as amended through July 7, 2000, (65 FR 42292). This proposed amendment would include technical corrections and clarifications made to the comparable fuel specifications promulgated by the EPA in the September 30, 1999 and November 19, 1999 issues of the *Federal Register* (64 FR 52828) and (64 FR 63209), respectively. Also under proposed §335.1(129)(A)(iv), the references to "30 TAC §335.1(123)(A)(iv)" would be changed to "subparagraph (A)(iv) under the definition of 'Solid Waste' at 30 TAC §335.1." This proposed amendment would preclude the necessity of amending the rule at a future date when the preceding paragraphs are renumbered. The same change is proposed under §335.1(129)(A)(iv)(I). Minor editing changes are also proposed under §335.1(129)(A)(iv).

New §335.1(132) is proposed to be the definition of "Staging pile," meaning "An accumulation of solid, non-flowing remediation waste, as defined in this section, that is not a containment building and that is used only during remedial operations for temporary storage at a facility. Staging piles must be designated by the executive director according to the requirements of 40 CFR §264.554, as adopted by reference at §335.152(a) of this title (relating to Standards)." This definition would conform to the EPA regulations concerning hazardous remediation wastes promulgated in the November 30, 1998 issue of the *Federal Register* (63 FR 65874). To account for the addition of this new proposed paragraph, the numbering in subsequent paragraphs is proposed to be increased by one.

New §335.1(138) is proposed to be the definition of "TEQ," meaning "Toxicity equivalence, the international method of relating the toxicity of various dioxin/furan congeners to the toxicity of 2,3,7,8-tetrachlorodibenzo-p-dioxin." This definition would conform to the federal regulations setting standards for hazardous air pollutants for hazardous waste combustors promulgated by EPA in the September 30, 1999 issue of the *Federal Register* (64 FR 52828). To account for the addition of this new proposed paragraph, the numbering in subsequent paragraphs is proposed to be increased by one.

Sections 335.3, 335.118(a)(2), 335.119(a)(2), 335.303, 335.305(c), 335.407(e), 335.411(b)(3), and 335.412(3) are proposed to be amended by changing "the Solid Waste Disposal Act, Texas Civil Statutes, Article 4477-7" to "Texas Health and Safety Code, Chapter 361."

Sections 335.4, 335.45(b), 335.177(1), 335.202(13), 335.224(5)(J), 335.303, 335.402(4), 335.403, 335.406(d)(1), and 335.569 are proposed to be amended by correcting the reference to the commission's predecessor agency "Texas Water Commission" to "Texas Natural Resource Conservation Commission."

Section 335.6(h) is proposed to be amended to correct the typographical error "§334.24," by changing it to "§335.24."

Section 335.9(a)(2)(B) is proposed to be deleted because this requirement for generators to submit their Annual Waste Summary electronically for the 1997 reporting year before January 25, 1998 is out-of-date. Subparagraph (C) is proposed to be amended to redesignate it as subparagraph (B) to account for the deletion of §335.9(a)(2)(B), and to delete the obsolete phrase "for calendar years after 1997."

Section 335.10(a)(1) is proposed to be amended to delete the obsolete reference to Form TNRCC-0311B, so that the end of this paragraph reads: "a Texas Natural Resource Conservation Commission (TNRCC) manifest on Form TNRCC-0311 is prepared." Section 335.10(b)(16) is proposed to be amended by deleting the obsolete reference to the Texas Department of Health's state registration and/or permit number, because these numbers are now TNRCC numbers. Section 335.10(b)(18) is proposed to be amended to delete the last sentence, which reads: "If additional space is necessary for waste descriptions, enter these additional descriptions in Item 28 on the continuation sheet," because this is no longer applicable. Section 335.10(d)(3) is proposed to be amended to change "§335.13(a)" to "§335.13(i)," in order to correct the rule reference.

Section 335.13(e) is proposed to be amended to remove references to maquiladora generators, because they are no longer registered at the TNRCC as generators. To this end, the third row in the table in this subsection is proposed to be deleted in its entirety. Similarly, the words "Maquiladora or" are proposed to be deleted in the fifth row of the table. For the same reason, §335.13(f) is proposed to be amended to delete paragraph (2),

which includes as a registered generator "a Texas parent or a Texas sister company of a twin plant (maquiladora) who imports hazardous waste or Class 1 waste from a foreign country into or through Texas."

Section 335.17(a)(2) is proposed to be amended by changing "the Solid Waste Disposal Act, Texas Civil Statutes, Article 4477-7, §2" to "Texas Health and Safety Code, §361.003."

Section 335.24(h) is proposed to be amended to correct the inadvertent omission of language previously existing under this section, regarding the requirement to provide notification of recycling nonhazardous industrial solid waste. As published in the October 23, 1998 issue of the *Texas Register* (23 TexReg 10878), the following phrase was inadvertently deleted: "industrial solid wastes that are nonhazardous recyclable materials and." This phrase is proposed to be reinserted under §335.24(h) in the second sentence just after the phrase "In addition." Section 335.24(i) is proposed to be amended by changing "the Solid Waste Disposal Act, Health and Safety Code, §361.090" to "Texas Health and Safety Code, §361.090." Section 335.24(l) is proposed to be corrected by changing the phrase "§335.261 of this title" to "Subchapter H, Division 5 of this chapter."

Section 335.28 is proposed to be amended by rearranging and updating the text, and dividing the context of this section into three subsections. In addition, because the memorandum with the Texas Department of Health is currently adopted by reference under §7.118 of this title, it is proposed that this section merely refer to this adoption by reference. Under §335.28(a), the memorandum of understanding between the Attorney General and the Texas Water Commission concerning public participation is proposed to be adopted by reference, with no substantial changes to the current rule language. Under proposed §335.28(b), the adoption by reference under §7.118 of this title of the memorandum of understanding between the Texas Department of Health and the Texas Natural Resource Conservation Commission is noted, as follows: "The memorandum of understanding between the Texas Department of Health and the Texas Natural Resource Conservation Commission, which concerns radiation control functions and mutual cooperation, is adopted by reference under §7.118 of this title (relating to Memorandum of Understanding between the Texas Department of Health and the Texas Natural Resource Conservation Commission Regarding Radiation Control Functions)." Under proposed §335.28(c), the chief clerk's office address, where copies of the memoranda of understanding are available, is updated.

Section 335.29, relating to Adoption of Appendices by Reference is proposed to be amended to update the *Federal Register* reference date for the adoption of Appendix IX under 40 CFR Part 261, by adding the parenthetical phrase "(as amended through October 19, 1999 (64 FR 56256))." This proposed change would update the adoption by reference of the wastes excluded by the EPA under 40 CFR §260.20 and §260.22.

Section 335.31 is proposed to be amended to update references to be consistent with 40 CFR §260.11, as amended by EPA as published in the May 14, 1999 issue of the *Federal Register* (64 FR 26315). This proposed amendment would incorporate updates to "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods," EPA Publication SW-846, Third Edition.

Section 335.43 is proposed to be amended to delete subsections (b) - (d) because they contain requirements and definitions that are either redundant with other portions of Chapter 335 or they are obsolete. Section 335.43(a) is proposed to be amended by correcting the reference to the commission's predecessor agency "Texas Water Commission" to "Texas Natural Resource Conservation Commission," and by deleting the phrase "subsection (b) of this section and" because subsection (b) is proposed for deletion. Subsections (b) and (d) are proposed for deletion because they are redundant with §335.2(c). Subsection (c) is proposed for deletion because it contains obsolete language. The terms "on-site storage, processing, or disposal" and "commenced on-site storage, processing, or disposal of hazardous waste" were rendered obsolete when these phrases were deleted from subsection (b) and from §335.2(c) as published in the October 25, 1991 issue of the *Texas Register* (16 TexReg 6065), in response to Senate Bill 1099, 72nd Legislature, 1991. As a result of these terms being removed from the aforementioned rules, there is no longer a need for them to be specifically defined. Section 335.43(e) is proposed to be amended by correcting the reference to the commission's predecessor agency "Texas Water Commission" to "Texas Natural Resource Conservation Commission," and by redesignating the subsection as §335.43(b) in order to account for the proposed deletion of subsections (b) - (d).

Section 335.44(a) is proposed to be amended to replace the reference to §335.43(b), which is proposed to be deleted, with a reference to §335.2(c), which contains the same language relating to the application deadline specified in existing §335.43(b).

Section 335.45(b), in addition to the proposed amendment involving the name of the commission discussed earlier in this preamble, is proposed to be amended by changing "the Waste Disposal Act, Chapter 361, Texas Health & Safety Code Annotated (Vernon Pamphlet 1992)" to "Texas Health and Safety Code, Chapter 361." Section 335.45(b) is also proposed to be amended to update the last sentence by including a reference to the section relating to solid waste permit modifications. This proposed amendment is necessary because such permits are subject to change not only by amendment, but by modification, as well. Thus, the following phrase is proposed to be added: "or to modification under §305.69 of this title (relating to Solid Waste Permit Modification at the Request of the Permittee)."

In addition to the changes regarding the phrase "Code of Federal Regulations" and "CFR" discussed earlier in this preamble, §335.47 is proposed to be amended to delete current subsection (b)(2) and (4) because the referenced federal regulations (i.e., 40 CFR §264.72 and §264.76, respectively) are not included in the commission's rules. In other words, 40 CFR §264.72 and §264.76 are excepted from adoption by reference under §335.152(a)(4) because the same requirements contained in these federal regulations are contained in the commission's rules under §335.12 and §335.15, respectively. Compliance with §335.12 and §335.15 is already required under §335.47(b)(5) and (6), respectively. Subsection (b)(3) - (6) is proposed to be renumbered as subsection (b)(2) - (5) to account for the proposed deletion of current subsection (b)(2). Under proposed §335.47(b)(3), the requirement to comply with 40 CFR §264.75, concerning biennial report, is added in order to update the commission's rule in this regard. This update is necessary due to the previous adoption of rules published in the May 14, 1999 issue of the *Texas Register* (24 TexReg 3726), which added this federal regulation concerning biennial reporting to the commission's rules and deleted §335.154, relating to Reporting Requirements for Owners and Operators, as a streamlining measure. In other words, the federal requirements under 40 CFR §264.75 were adopted by the commission to replace the requirements under §335.154. Therefore, because compliance

with §335.154 is currently required under §335.47(b)(6), it is appropriate to propose that compliance with its replacement, 40 CFR §264.75, be required, and that any reference to §335.154 be deleted. Under proposed §335.47(b)(4), the reference to §335.15 is proposed to be deleted because it is redundant with §335.47(b)(5). Under proposed §335.47(b)(5), the reference to §335.154 is deleted.

Section 335.69(a)(1)(A) and (B) is proposed to be amended by rearranging the location of the cross-reference to 40 CFR Part 265, Subpart CC. Section 335.69(a)(4)(A) is proposed to be amended to delete the superfluous comma between "CFR" and "Part 265." Section 335.69(f)(2) is proposed to be amended to add the phrase "and §265.178" to conform to the federal regulations published by the EPA in the December 6, 1994 issue of the *Federal Register* (59 FR 62896). This proposed amendment would revise the accumulation time provisions, for generators of greater than 100 kilograms but less than 1,000 kilograms of hazardous waste in a calendar month, by removing the requirement to comply with the air emission standards for containers of 40 CFR Part 265, Subparts AA, BB, and CC.

Sections 335.76(g) and 335.201(c) are proposed to be amended by deleting "the Solid Waste Disposal Act," so that the statutory reference is proposed as "Texas Health and Safety Code, Chapter 361."

Sections 335.78(c)(6), (f)(3)(G), (g)(3)(G), and 335.91(e) are proposed to be corrected by changing each occurrence of the phrase "§335.261 of this title" to "Subchapter H, Division 5 of this chapter."

Section 335.78(j) is proposed to be amended to conform to the federal regulations as promulgated by the EPA in the July 14, 1998 issue of the *Federal Register* (63 FR 37780). This proposed amendment addresses the situation where a conditionally exempt small quantity generator's wastes are mixed with used oil. The proposed amendment would delete "If a conditionally exempt small quantity generator's wastes are mixed with used oil and the mixture is going to recycling, the mixture is subject to Chapter 324 of this title (relating to Used Oil) and 40 CFR Part 279" and replace it with the following wording: "If a conditionally exempt small quantity generator's wastes are mixed with used oil, the mixture is subject to Chapter 324 of this title (relating to Used Oil Standards) and 40 CFR Part 279 if it is destined to be burned for energy recovery. Any material produced from such a mixture by processing, blending, or other treatment is also so regulated if it is destined to be burned for energy recovery." Note that the primary changes in the proposal are the addition of the phrase "if it is destined to be burned for energy recovery" and clarification of the requirements for materials produced from such mixtures.

Section 335.93(e) is proposed to be amended by replacing the general phrase "as may be required or approved by the commission" with a more specific reference to the applicable portion of the commission's spill rules, Chapter 327, relating to Spill Prevention and Control. Thus, this subsection is proposed to be amended to read as follows: "A transporter must clean up any hazardous waste discharge that occurs during transportation or take such action as required in §327.5 of this title (relating to Actions Required) so that the hazardous waste discharge no longer presents a hazard to human health or the environment."

Section 335.94(a) is proposed to be amended by adding the clarifying phrase "owned or operated by a registered transporter," so that the subsection reads as follows: "Unless the executive director determines that a permit should be required in order to protect human health and the environment, a transporter who stores manifested shipments of hazardous waste in containers meeting the requirements of §335.65 of this title (relating to Packaging) at a transfer facility owned or operated by a registered transporter for a period of ten days or less is not subject to the requirement for a permit under §335.2 of this title (relating to Permit Required), with respect to the storage of those wastes provided that the transporter complies with the following sections...."

Section 335.111(a) is proposed to be amended to conform to the federal regulations promulgated by the EPA in the December 6, 1994 issue of the *Federal Register* (59 FR 62896) and the November 30, 1998 issue of the *Federal Register* (63 FR 65874). Both of these promulgations address the applicability of the hazardous waste interim status standards. The first proposed amendment would add "Except as provided in 40 CFR §265.1080(b)" to the beginning of the second sentence under §335.111(a). This clarifies that the interim status standards under 40 CFR Part 265, Subpart CC do not apply to certain waste management units, as listed under 40 CFR §265.1080(b)(1) - (8). The second proposed amendment would add 40 CFR §264.554, relating to staging piles, to the requirements which apply to interim status facilities.

Section 335.115 is proposed to be amended to insert the following phrase for completeness of describing additional reports: "and the reports described in this subchapter."

Section 335.164(7)(B) is proposed to be amended by adding the clarifying phrase "that exhibit statistically significant evidence of contamination" just after the phrase "all monitoring wells." Section 335.164(7)(D)(i) is proposed to be amended in a similar fashion, adding the clarifying phrase "that exhibits statistically significant evidence of contamination" just after the phrase "each monitoring well."

Section 335.165(7) is proposed to be amended by adding the clarifying phrase "reasonably expected to be in or derived from waste managed at the site" just after the phrase "all constituents contained in Appendix IX of 40 CFR Part 264."

Section 335.168(b) is proposed to be amended by correcting a typographical error caused by a previous rulemaking as published in the February 13, 1996 issue of the *Texas Register* (21 TexReg 1142). At that time, the adoption of a new subsection (f) under §335.168, and the corresponding redesignations of the old subsections (f) - (i) to new subsections (g) - (j) created the need for a cross-reference change under subsection (b), which was not accomplished. Therefore, the existing cross-reference to subsection (i) under §335.168(b) needs to be changed to subsection (j), and this change is proposed. Section 335.168(e)(1)(C) is proposed to be changed to correct the grammar by adding the word "is" at the beginning of the subparagraph.

Section 335.181 is proposed to be amended by changing "the Texas Solid Waste Disposal Act, §361.0232" to "Texas Health and Safety Code, §361.0232."

Section 335.201(a)(3) is proposed to be amended by changing "the Texas Solid Waste Disposal Act, Texas Civil Statutes, Article 4477-7, §13" to "Texas Health and Safety Code, Chapter 361, Subchapter F."

Section 335.205(a) is proposed to be amended for clarity by adding the phrase "any of the following:" and by adding paragraphs (1) - (5) which consist of the text from existing subsections (a) - (e) and (h), so that it is clear that all the prohibitions under paragraphs (1) - (5) apply. Existing §335.205(d), (f), (g), (i), and (j) are proposed to be reformatted as new subsections (b) - (f).

Section 335.206 is proposed to be amended by changing "the Texas Solid Waste Disposal Act, Texas Health & Safety Code Ann. Chapter 361 (Vernon) §361.103" to "Texas Health and Safety Code, §361.103."

Section 335.221(a) is proposed to be amended to incorporate by reference 40 CFR Part 266, as amended through November 19, 1999 (64 FR 63209), except as noted in this section. This proposed amendment would incorporate changes promulgated in the September 30, 1999 issue of the *Federal Register* (64 FR 52828) which added language regarding integration of the MACT standards and which amended rule language regarding management prior to burning, standards to control particulate matter, and regulation of residues. The aforementioned November 19, 1999 promulgation amended 40 CFR Part 266, Appendix VIII Table by adding a note that analysis is not required for those compounds that do not have an established F039 nonwastewater concentration limit.

Section 335.221(a)(1) is proposed to be amended to correct cross-references. These proposed changes include changing "§266.100(b)" to "§266.100(c)," to account for the renumbering promulgated in the September 30, 1999 issue of the *Federal Register* (64 FR 53075); changing the incorrect reference "§266.212" to "§266.112;" and changing the reference to "the applicable requirements of subparts A through H, BB and CC of parts 264 and 265 of this chapter" to the corresponding commission regulations under Chapter 335. Section 335.221(a)(16) is proposed to be amended to conform with EPA's renumbering of 40 CFR §266.105(c) to §266.105(d) in the September 30, 1999 issue of the *Federal Register* (64 FR 52828). Section 335.221(a)(16) is also proposed to be amended by deleting the phrase "and except as provided by §335.226 of this title (relating to Standards for Burning Hazardous Waste in Commercial Combustion Facilities)," because §335.226 has been repealed. Section 335.221(b) is proposed to be amended by replacing the phrase "§§335.221 - 335.229 of this title (relating to Hazardous Waste Burned in Boilers and Industrial Furnaces)" with the phrase "this division," for simplification purposes and because §§335.226 - 335.229 have been repealed. Thus, "this division," as proposed in this context, refers to the following sections of Subchaper H, Division 2, relating to Hazardous Waste Burned for Energy Recovery: §§335.221 - 335.225.

Section 335.222(c) is proposed to be amended by adding the clarifying phrase "and processing."

Section 335.225(b) is proposed to be amended to delete the word "the" and the phrase: "provided by §335.226 of this title (relating to Standards for Burning Hazardous Waste in Commercial Combustion Facilities," because §335.226 is proposed to be deleted. The word "required" is proposed to be inserted as a clarification just before "standards" under §335.225(b), so that the subsection reads as follows: "The direct transfer of hazardous waste to a boiler or industrial furnace shall be conducted so that it does not adversely affect the capability of the boiler or industrial furnace to meet required standards."

Section 335.262(b) is proposed to be amended to delete the specific reference to paragraph (56) in the reference to "hazardous waste" as defined under §335.1(56) of this title (relating to Definitions)," so that the proposed phrase reads "hazardous waste" as defined under §335.1 of this title (relating to Definitions)." This proposed change is to minimize future rulemaking needs in instances where the paragraph number (56) changes to another paragraph number.

Section 335.303, in addition to the proposed amendments involving the statutory reference and the name of the commission discussed earlier in this preamble, is also proposed to be amended to provide the correct physical location of the commission's library, by deleting the obsolete reference to the Stephen F. Austin Building and adding "located on the first floor of Building A at 12100 Park 35 Circle, Austin, Texas."

Section 335.323 is proposed to be amended to restore language inadvertently omitted and incorrectly edited. This amendment is necessary to clarify that both industrial solid waste and hazardous solid waste generators are subject to fees under this subchapter as required by the Texas Health and Safety Code. Texas Health and Safety Code, §361.134(a) states: "The annual generation fee prescribed by this section is imposed on each generator who generates Class 1 industrial solid waste or hazardous waste during any part of the year." This proposed amendment would restore language adopted in the April 11, 1995 issue of the *Texas Register* (20 TexReg 2709). Proposed §335.323 would provide conformity with §335.321(a), related to Purpose, which states: "It is the purpose of this subchapter to establish an industrial solid waste and hazardous waste fee program."

Section 335.325(j) is proposed to be amended by correcting the cross-reference to subsections (k) - (p). Because an additional subsection (q) has previously been adopted, the cross-reference is proposed to be corrected to "subsections (k) - (q)."

Section 335.326(c) is proposed to be amended by correcting the cross-reference to §335.325(p). Since the context of §335.326(c) relates to hazardous waste injection wells, this proposed amendment corrects the cross-reference to read as follows: "§335.325(q) of this title (relating to Industrial Solid Waste and Hazardous Waste Management Fee Assessment)."

Section 335.341(a) is proposed to be amended by changing "Subchapter F of the Texas Solid Waste Disposal Act, Tex. Health and Safety Code Ann. Chapter 361 (Vernon Supplement), §§361.181 et. seq. as amended" to "Texas Health and Safety Code, Chapter 361, Subchapter F."

Section 335.346(a) is proposed to be amended to correct the sentence structure and simplify the language by replacing the phrase "without the advance" with "until" and "has been received," and replacing the word "after" with "and" and "has been provided;" so that the proposed paragraph reads as follows: "For facilities listed on the Registry or proposed for listing on the Registry, no person may perform any partial or total removals at such facility or conduct preliminary investigations of any type at such facility until written authorization of the executive director has been received and notice and opportunity for comment has been provided to all other potentially responsible parties." Section 335.346(b) is proposed to be amended simply by reformatting, as new paragraphs (1) - (4), the requirements for submittal to the executive director. Section 335.346(d) is proposed to be amended by replacing the phrase "the Act" with "Texas Health and Safety Code." Section 335.346(d) is also proposed to be amended by replacing the phrase "use money in

the Hazardous and Solid Waste Remediation Fee Account for" with the word "perform." In this regard, it should be noted that the commission has previously interpreted Texas Health and Safety Code (THSC), §361.133(c) to authorize the commission to perform removals and remedial actions. This interpretation is recognized statutorily in THSC, §361.197(d), which requires the commission to file a cost recovery action for the costs of "an action taken under Section 361.133(c)(1),(2),(3),(5), or (6) or Section 361.133(g)," and THSC, §361.133(i) which concerns notice requirements before the "commission begins cleanups or removals under Subsection (g)...." The commission specified that interpretation and delegated that authority explicitly to the executive director in §335.346(d). However, the language in §335.346(d) is internally inconsistent in its treatment of THSC, §361.133(c)(1) - (4), (5), and (g). With regard to THSC, §361.133(c)(1) - (4) and (g), the rule delegates the commission's authority to the executive director but retains the statutory language "may use the money...." In the case of THSC, §361.133(c)(5), the rule overtly states the commission's interpretation that the authorization to spend money inherently authorizes action, by stating "The executive director may also perform removals...." The commission believes that there is no difference in the provisions in THSC, §361.133(c)(1) - (4), (5), and (g) which would indicates that the legislature intended to treat the sections differently. The sections are qualified by the initial phrase "use the money..." at the beginning of THSC, §361.133(c) and (g). Therefore, there should be no difference between the rule provisions related to THSC, §361.133(c)(1) - (4), (5), and (g). In addition, the use of the word "also" in the rule language relating to THSC, §361.133(c)(5) indicates that the two sections were intended to be parallel in structure and authorization. To retain the differences in language between the two sections introduces uncertainty as to their intended interpretation where no difference in authorization was intended. To make the rule internally consistent and avoid confusion, the first sentence under §335.346(d) is proposed to read as follows: "Pursuant to the Texas Health and Safety Code, §361.133(c)(1) - (4) and (g), the executive director may perform necessary and appropriate removal and remedial action at sites at which solid waste or hazardous substances have been disposed if funds from a liable party, independent third party, or the federal government are not sufficient for the removal or remedial action."

Section 335.401 is proposed to be amended by deleting the obsolete sentence "The Texas Department of Health and the Texas Water Commission agree to establish and maintain a cooperative effort with regard to providing regulation and direction for hazardous household waste collection programs so as to insure that waste aggregated as a result of such programs is properly handled and disposed of in a safe manner." This amendment is proposed because the Texas Department of Health no longer regulates wastes under this subchapter.

Section 335.402(4) is proposed to be deleted because the reference to Texas Water Commission is outdated, and the term "Commission," referring to Texas Natural Resource Conservation Commission, is already defined in 30 TAC Chapter 3. Section 335.402(5) is proposed to be deleted because any reference to the Texas Department of Health is inappropriate in this subchapter, as the commission now solely regulates hazardous household wastes. Section 335.402(6) is proposed to be renumbered as paragraph (4) to account for these deletions, and changed to update the definition of "division" by replacing "Division of Solid Waste Management, Texas Department of Health" with "Small Business and Environmental Assistance Division, Texas Natural Resource Conservation Commission." Section 335.402(7) - (10) are proposed to be renumbered as §335.402(5) - (8) to account for the aforementioned proposed deletions.

The entire text of §335.403(a), concerning authority of the Texas Department of Health, is proposed to be deleted, because the commission now solely regulates non-hazardous municipal solid waste and hazardous household waste. Section 335.403(b), in addition to the proposed amendment involving the name of the commission discussed earlier in this preamble, is proposed to be revised to delete "(b) Authority of the Texas Water Commission," because that authority was transferred to the Texas Natural Resource Conservation Commission, and because the subsection heading is not needed. Section 335.403(b) is also proposed to be amended by adding the phrase "non-hazardous municipal solid waste and" just before "hazardous waste," in order to appropriately describe the commission's regulatory responsibilities under this subchapter. In addition, §335.403(b) is proposed to be amended by deleting the following language because it is obsolete: "The department and the commission agree that the commission has regulatory authority over persons transporting hazardous household waste that is required when shipped to be accompanied by a manifest, and over all aspects of solid waste management conducted at a hazardous waste processing, storage or disposal facility. Accordingly, the following regulatory portions of this subchapter shall be primarily implemented and enforced by the commission:." For the same reason, §335.403(b)(1) - (5) and §335.403(c) are proposed to be deleted.

Section 335.406(a) is proposed to be amended to update the name of the primary division implementing this subchapter by replacing "Division of Solid Waste Management, Texas Department of Health" with "Small Business and Environmental Assistance Division, Texas Natural Resource Conservation Commission." Section 335.406(a) is also proposed to be amended to delete the following sentence because it is obsolete: "The department may waive the requirements of this section for programs scheduled to be implemented within six months of the date these rules become effective, provided the collector or operator requests such waiver in writing." Section 335.406(b) is proposed to be amended by deleting the obsolete reference to "department" and replacing it with "division." This same revision of "department" to "division" is also proposed under §335.406(c)(12)(C). Section 335.406(d)(1) is proposed to be amended by changing "Texas Water Commission" to "Texas Natural Resource Conservation Commission."

In addition to the aforementioned substitution of "Texas Health and Safety Code, Chapter 361" for "the Solid Waste Disposal Act, Texas Civil Statutes, Article 4477-7," §335.407(e) is proposed to be amended by changing the out-of-date phrase "Class I industrial solid waste" to "Class 1 waste," in order to be consistent with §335.1.

Section 335.409(1) is proposed to be amended by changing "commission" to "executive director," so that the rule accurately reflects the responsibilities and authority of the executive director, with regard to receiving notifications from hazardous waste transporters. Section 335.409(5) is proposed to be deleted, because the commission does not believe it is necessary for copies of completed manifests to be provided to the division. To account for this deletion, §335.409(3) and (4) are appropriately reformatted.

Section 335.411(a) is proposed to be amended by deleting the superfluous phrase "obtained from the commission," so that the wording reads as follows: "No person shall transport any hazardous household waste required by this subchapter to be accompanied by a uniform hazardous waste manifest unless such person:." Section 335.411(a)(1) is proposed to be amended by substituting "executive director" for "Texas Water Commission" and correcting the notification rule reference by changing "335.6(e)" to "335.6(d)," in order to update the rule and maintain consistency with the referenced notification rule. Section 335.411(b)(2) is proposed to be amended by substituting "executive director" for "division" to reflect the responsibilities and authority of the executive director.

Section 335.412 is proposed to be amended to change "processing, storage, or disposal" to "storage, processing, or disposal."

Section 335.431(c)(1) is proposed to be amended to adopt by reference federal amendments to 40 CFR Part 268, relating to land disposal restrictions (LDR) through December 26, 2000 (65 FR 81373). The December 26, 2000 promulgation temporarily defers the requirement that polychlorinated biphenyls be considered a constituent subject to treatment in soils that exhibit the toxicity characteristic for metals. The commission also proposes to adopt the following federal amendments to the LDR regulation which occured prior to December 26, 2000: the September 4, 1998 emergency revisions to the treatment standards for carbamate production wastes (63 FR 47410); the September 9, 1998 compliance date extension for treatment standards for certain secondary lead slags (63 FR 48124); the September 24, 1998 revisions to the treatment standards for spent aluminum potliners (63 FR 51254); the November 30, 1998 revision of the definition of "Land disposal" as applicable to 40 CFR Part 268 and revision of 40 CFR §268.50 regarding the application of storage prohibitions to staging piles (63 FR 65874); the May 11, 1999 technical amendments to five previous final rules regarding treatment standards (64 FR 25408); the October 20, 1999 correction of two typographical errors, an omission in the May 11, 1999 rule, and three other corrections to 40 CFR Part 268 (64 FR 56469); the July 6, 1999 amendment regarding the applicability of LDR to universal wastes (64 FR 36466); and the March 17, 2000 vacature of regulatory provisions for certain organobromide wastes (65 FR 14472); the June 8, 2000 promulgation (65 FR 36365) corrected errors that appeared in the previous LDR final rule; and the November 8, 2000 revisions of 40 CFR Part 268 setting prohibitions on land disposal and treatment standards for newly listed chlorinated aliphatic wastes (65 FR 67068).

Section 335.471(2) is proposed to be deleted because the Texas Natural Resource Conservation Commission predecessor agency the Texas Air Control Board no longer exists, making this paragraph obsolete. Section 335.471(3) is proposed to be deleted because the reference to Texas Water Commission is outdated, and the term "Commission," referring to Texas Natural Resource Conservation Commission, is already defined in Chapter 3. Section 335.471(4), the definition of "Committee" as the waste reduction advisory committee is proposed to be deleted because there is no reference to this committee in this subchapter. Therefore, no such definition is needed. Then, in order to account for the proposed deletion of paragraph (4), as well as the proposed deletion of paragraphs (2) and (3), paragraphs (5) - (17) are proposed to be renumbered (2) - (4). Proposed §335.471(6), would be amended by changing "the Texas Solid Waste Disposal Act, Health and Safety Code Annotated, §361.131" to "Texas Health and Safety Code, §361.131."

Section 335.473(2) is proposed to be amended by adding "Texas" just before "Health and Safety Code, §361.431(3)."

Section 335.474(1)(J)(i)(V) and (3)(A)(v) is proposed to be amended for completeness, accuracy, and clarity by adding "if applicable," because certain persons do not have all the types of numbers requested in this subclause; by changing the references to the Texas Air Control Board or TACB and the Texas Water Commission or TWC to the TNRCC; by deleting from the list the TWC wastewater permit number; by adding to the list of numbers the Texas Pollutant Discharge Elimination System permit number and the EPA Toxics Release Inventory number; by changing "solid waste notice of registration number" to "solid waste registration number"; by changing "underground injection well code identification number" to "underground injection control well permit number"; and by rearranging the text to read as follows: "if applicable, TNRCC air account number, solid waste registration number, and underground injection control well permit number; EPA identification number and Toxics Release Inventory (TRI) identification number, National Pollutant Discharge Elimination System (NPDES) permit number; and Texas Pollutant Discharge Elimination System (TPDES) permit number." Section 335.474(3)(C) is proposed to be amended by adding "if applicable," because not all small quantity generators, to which this subparagraph applies, are required to report TRI releases.

Section 335.475 is proposed to be amended by replacing "commission and the board" with "executive director," in accordance with the responsibilities and authority of the executive director, and for reasons discussed earlier in this preamble.

Section 335.476(1)(B) is proposed to be amended by changing "the Texas Solid Waste Disposal Act, the Texas Health and Safety Code Annotated, §361.433(c)" to "Texas Health and Safety Code, §361.433(c)." Section 335.476(6) is proposed to be amended by making "executive directors" singular, rather than plural, and by deleting "of the commission and the board," because the board (i.e, Texas Air Control Board) no longer exists, and it is not necessary to have a reference to the "commission" because the definition under 30 TAC §3.2(16) makes the meaning of "executive director" sufficiently clear.

Similarly, §335.477(b) is proposed to be amended by making both references to "executive directors" singular, rather than plural, and by deleting "of the commission and the board" and "of the commission and board," for reasons discussed earlier in this preamble.

Section 335.478 is proposed to be amended by replacing "commission or the board" with "executive director," for reasons previously discussed in this preamble.

Under §335.480(a), the phrase "commission or board" is proposed to be deleted, for reasons previously discussed in this preamble, and changed to "agency," because this term is used in the context of a reference to agency personnel. The commission notes that the definition of "agency" under §3.2(1) is "The commission, executive director, and their staffs." Section 335.480(c) is proposed to be amended by replacing both occurrences of "commission or board" with "executive director" for the aforementioned reasons. Section 335.480(d) is proposed to be amended by replacing "commission or board or an employee of the commission or board" with "agency," for the aforementioned reasons. Section 335.480(e) is proposed to be amended by replacing the first occurrence of "commission or board" with "executive director" for the aforementioned reasons, and by replacing the second

occurrence of "commission or board" with "agency" for the aforementioned reason.

Section 335.501 is proposed to be amended by replacing "commission" with "agency," in accordance with the meaning of these terms under §3.2. The same substitution is made under proposed §335.502(a)(3) and §335.503(b) and (b)(4). Section 335.501 is also proposed to be amended by the addition of the following sentence, in order to clarify the scope of this subchapter: "Used oil, as defined and regulated under Chapter 324 of this title (relating to Used Oil), is not subject to the provisions of this subchapter." Section 335.501 is further proposed to be amended by deleting the word "will" just before paragraph (1); changing "provide" to "provides" and "a new" to "the" in paragraph (1); changing "establish" to "establishes" under paragraph (2); and deleting the out-of-date paragraphs (3) and (4), which relate to implementation scheduling dates in the years 1995 and 1996.

Section 335.502 is proposed to be amended by deleting from the heading the word "New" because this adjective is no longer appropriate. Section 335.502 is also proposed to be amended by deleting out-of-date subsections (a) - (f), which relate to implementation schedules involving dates in the years 1993 - 1996. As a result of these deletions, current subsection (b) is proposed to be designated as subsection (a), current subsection (d) is proposed to be designated as subsection (b), and current subsection (g) is proposed to be designated as subsection (c). Under proposed §335.502(a), the term "commission" is changed to "executive director," in accordance with the meaning of these terms under §3.2. The same substitution is made under proposed §§335.502(a)(1), 335.503(b)(2) and (3), 335.508(8) and (9)(B)(ii), 335.509(a) and (b), 335.511(a)(4), 335.512(b), 335.513(b), and 335.514(a)(2). Current §335.502(a)(2) is proposed to be deleted because it is an out-of-date implementation requirement; and current paragraphs (3) and (4) are proposed to be changed to paragraphs (2) and (3) to account for this deletion. Proposed §335.502(a)(2) is proposed to be amended for clarity by adding the phrase ", in accordance with the requirements of §335.6 of this title (relating to Notification Requirements)." Under proposed §335.502(b), the following sentence is deleted because it is based on a subsection which would no longer exist under this proposal: "This effective date may be revised by subsection (e) of this section." Proposed §335.502(c) contains internal reference corrections, substituting both occurrences of "(d)" with "(b)."

In addition to the proposed substitution of "agency" for "commission" discussed earlier in this preamble, §335.503(b) is proposed to be amended by deleting the following phrase relating to the aforementioned deleted implementation schedules: "As required under the schedule provided in §335.501 of this title (relating to Conversion to New Waste Notification and Classification System)." In addition to the proposed substitution of "executive director" for "commission" discussed earlier in this preamble, §335.503(b)(2) is proposed to be amended in the fourth sentence by replacing the phrase "rather than adding" with the phrase "or choose to add," for clarification purposes, so that this sentence reads as follows: "An in-state registered generator may choose to request the executive director assign a sequence number to a specific waste which is not regularly generated by a facility and is being shipped as a one-time shipment or choose to add that waste to the regular sequence numbers on a notice of registration." Under §335.503(b)(3), in addition to the proposed amendment changing "commission" to "executive director," as described earlier in this preamble, the paragraph is proposed to be simplified by changing it into one sentence with the addition of ", which" and the deletion of "Sequence numbers provided by the commission." Thus, the proposed paragraph reads as follows: "The executive director will provide in-state unregistered generators a four-digit sequence number for each regulated waste it generates, which may be a combination of alpha and numeric characters."

Section 335.504(1) is proposed to be amended by substituting the correct commission rule reference to definitions for the federal regulatory references to 40 CFR §§261.2, 261.3, or 261.4, so that the paragraph is proposed to read as follows: "Determine if the material is excluded from being a solid waste or hazardous waste per §335.1 of this title (relating to Definitions)." Section 335.504(2) is proposed to be amended for clarity by replacing the word "your" with "the," and by adding "solid" just before the first occurrence of the word "waste," so that the paragraph is proposed to read as follows: "If the material is a solid waste, determine if the waste is listed as, or mixed with, or derived from a listed hazardous waste identified in 40 Code of Federal Regulations (CFR) Part 261, Subpart D." Similarly, §335.504(3) is proposed to be amended by replacing the phrase "For purposes of complying with 40 CFR Part 268 or if the waste is not listed as a hazardous waste in 40 CFR Part 261, Subpart D, he or she must then" with the phrase "If the material is a solid waste," and by deleting an extraneous word "is," so that the sentence reads as follows: "If the material is a solid waste, determine whether the waste exhibits any characteristics of a hazardous waste as identified in 40 CFR Part 261, Subpart C." This proposed amendment should make it clear that the generator must determine whether the waste is characteristically hazardous. Then, since the determination required under this paragraph must involve either testing in accordance with the referenced federal regulation, or the use of process knowledge in accordance with §335.511; subparagraphs (A) and (B) are proposed to be deleted for simplification purposes, because they are superfluous. Also proposed for deletion as superfluous is paragraph (4), because, as proposed under §335.501, used oil is not subject to the provisions of this subchapter.

Section 335.507(4)(C) is proposed to be amended to add the term "executive director or the," just prior to "commission," in accordance with the meaning of these terms under §3.2. This amendment is proposed because either the executive director or the commission can challenge a detection level submitted by a generator.

Section 335.508(7) is proposed to be amended by replacing "Texas Solid Waste Disposal Act, the Health and Safety Code, §361.019 (Vernon Pamphlet 1992)" with "Texas Health and Safety Code, §361.019."

Section 335.513(c) is proposed to be amended for consistency in recordkeeping requirements, by changing "five years" to "three years," so that this proposed subsection reads as follows: "The following documentation shall be maintained by the generator on site immediately upon waste generation and for a minimum of three years after the waste is no longer generated or stored or until site closure:."

Section 335.514(a)(1) is proposed to be deleted because it relates to the aforementioned deleted implementation schedules, and paragraphs (2) and (3) are proposed to be renumbered as paragraphs (1) and (2) to account for this proposed deletion. Section 335.514(c) is proposed to be amended by replacing the out-of-date phrase "Chief Hearings Examiner of the Texas Water Commission" with "commission," so that the last sentence in

this subsection is proposed to read as follows: "If the person is not satisfied with the decision of the executive director he or she may request an evidentiary hearing to determine the appropriateness of the variance, by filing a request for hearing with the commission."

Section 335.521(b), Appendix 2, is proposed to be amended to update the address by replacing "Industrial and Hazardous Waste Division" with "Waste Permits Division"; replacing "Waste Evaluation Section" with "Industrial and Hazardous Waste Permits Section;" replacing the number of the mail code "129" with "130"; and by adding the internet site address "*http://home.tnrcc.state.tx.us/*."

Section 335.559(c) is proposed to be amended to change "Texas Air Control Board (TACB)" and "TACB" to "commission," for the aforementioned reason.

Section 335.563(f)(1)(B) is proposed to be amended to change "Texas Air Control Board (TACB)" to "commission," and to delete the phrase "of the TACB" for the aforementioned reason.

Section 335.569, as mentioned previously in this preamble, is proposed to be amended to change "Texas Water Commission" to "Texas Natural Resource Conservation Commission." This section is also proposed to be amended to change "the Texas Solid Waste Disposal Act, §361.002, Texas Health and Safety Code, Chapter 361" to "Texas Health and Safety Code, §361.002." In the certification portion of Appendix III, the year is proposed to be changed from "19___" to "20___" to reflect the change to the 21st century.

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 fiscal impacts to units of state or local government as a result of implementation of the proposed rules.

The proposed rules are primarily intended to adopt federal Resource Conservation and Recovery Act (RCRA) hazardous remediation waste regulations, and revised federal standards requiring implementation of Maximum Achievable Control Technologies (MACT) for hazardous air pollutants emitted from hazardous waste incinerators, hazardous waste burning cement kilns, and hazardous waste burning lightweight aggregate kilns. These federal standards were adopted by the EPA between 1994 and 2000. This proposal is intended to revise the commission's rules to conform to these federal regulations, either by incorporating the federal regulations by reference or by introducing language into the commission's rules which corresponds to the federal regulations. The commission is required to maintain equivalency with the federal regulations in order to maintain enforcement authority over facilities in the state affected by the regulations.

The proposed rules do not introduce additional regulatory requirements that are not currently in place. Additionally, there are no known units of state and local government that own or operate facilities affected by the proposed rules; therefore, the commission anticipates that adoption of these federal standards into state rules will not result in increased costs to units of state and local government.

PUBLIC BENEFIT 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 continued protection of human health and the environment through the state's adoption of stricter federal emission standards for hazardous waste tanks, surface impoundments, containers, hazardous waste incinerators, hazardous waste burning cement kilns, and hazardous waste burning lightweight aggregate kilns.

The proposed rules are primarily intended to adopt federal RCRA hazardous remediation waste regulations, and revised federal standards requiring implementation of MACT for hazardous air pollutants emitted from hazardous waste incinerators, hazardous waste burning cement kilns, and hazardous waste burning lightweight aggregate kilns. These federal standards were adopted by the EPA between 1994 and 2000.

There are nine commercial incinerators, 26 on-site incinerators, and one waste burning kiln that are currently affected by the federal MACT standards that would continue to be affected by the proposed rules. Since the proposal does not introduce any additional regulatory requirements, there are no fiscal implications anticipated to affected owners and operators beyond what is already required by the federal standards.

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 rules, which are intended to adopt federal RCRA regulations for hazardous waste tanks, surface impoundments, and containers.

The proposal would also adopt federal hazardous remediation waste regulations, and revised federal standards requiring implementation of MACT for hazardous air pollutants emitted from hazardous waste incinerators, hazardous waste burning cement kilns, and hazardous waste burning lightweight aggregate kilns. These federal standards were adopted by the EPA between 1994 and 2000.

The commission estimates that there are no hazardous waste incinerators, hazardous waste burning cement kilns, or hazardous waste burning lightweight aggregate kilns that are owned and operated by small or micro-businesses. These equipment types are primarily used by large industries to burn hazardous waste generated by company manufacturing operations or to burn waste from other companies generated offsite. Since the proposal does not introduce any additional regulatory requirements, there are no fiscal implications anticipated to affected small and micro-businesses beyond what is already required by the federal standards.

DRAFT REGULATORY IMPACT ANALYSIS DETERMINATION

The commission has reviewed the rulemaking in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and has determined that the rulemaking is not subject to §2001.0225 because it does not meet the definition of a "major environmental rule" as defined in that statute. Furthermore, it does not meet any of the four applicability requirements listed in §2001.0225(a).

Although these rules are proposed to protect the environment and reduce the risk to human health from environmental exposure, this is not a major environmental rule because it does not adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state.

There is no adverse effect in a material way on the economy, a sector of the economy, productivity, competition, or jobs of the state or a sector of the state because 42 United States Code (USC) §6926(g) immediately imposes on the regulated community any new requirements and prohibitions under the Hazardous and Solid Waste Amendments of 1984 that are more stringent than state rules, on the effective date of the federal regulation. In other words, under federal law, the regulated community must comply with such new requirements and prohibitions that are more stringent, beginning on the effective date of the federal regulation. Since these more stringent rules are the ones which could have an adverse effect in a material way on the economy, a sector of the economy, productivity, competition, or jobs of the state or a sector of the state; since the portions of this proposal which are more stringent than previously existing rules are imposed by the Hazardous and Solid Waste Amendments of 1984; and since the regulated community is already required to comply with these more stringent rules, there is no such adverse effect caused by the proposal of these state rules. The reason there is no adverse effect in a material way on the environment, or the public health and safety of the state or a sector of the state is because these proposed rules are designed to protect the environment, the public health, and the public safety of the state and all sectors of the state. In addition, these rules would not exceed a standard set by federal law, exceed an express requirement of state law, exceed a requirement of a delegation agreement, or propose a rule solely under the general powers of the agency. The commission invites public comment on the draft regulatory impact analysis determination.

TAKINGS IMPACT ASSESSMENT

The commission has prepared a takings impact assessment for these rules pursuant to Texas Government Code, §2007.043. The following is a summary of that assessment. The specific purpose of these rules is to ensure that Texas' state hazardous waste rules are equivalent to the federal regulations after which they are patterned, thus enabling the state to retain authorization to operate its own hazardous waste program in lieu of the corresponding federal program; to provide streamlining and regulatory reform provisions; and to make typographical and other administrative corrections designed to clarify certain rule language, to correct references to the CFR, and to correct other technical errors within the rules, including reinstating rule language which was previously inadvertently deleted and correcting cross-references. The proposed rules will substantially advance this stated purpose by proposing federal regulations by reference or by introducing language intended to ensure that state rules are equivalent to the corresponding federal regulations; by incorporating certain streamlining and regulatory reform elements; and by making technical corrections, including reinstatement of rule language and cross-reference corrections. Promulgation and enforcement of these rules will not affect private real property which is the subject of the rules because the rule language consists of technical corrections and updates to bring certain state hazardous waste regulations into equivalence with more recent federal regulations, as well as language which represents rule reform or streamlining of certain requirements. There is no burden on private real property because 42 USC §6926(g) immediately imposes on the regulated community any new requirements and prohibitions under the Hazardous and Solid Waste Amendments of 1984 that are more stringent than state rules, on the effective date of the federal regulation. In other words, under federal law, the regulated community must comply with such new requirements and prohibitions that are more stringent, beginning on the effective date of the federal regulation. Since these more stringent rules are the ones which could present a burden on private real property; since the portions of this proposal which are more stringent than previously existing rules are imposed by the Hazardous and Solid Waste Amendments of 1984; and since the regulated community is already required to comply with these more stringent rules, there is no such burden. The subject regulations do not affect a landowner's rights in private real property.

CONSISTENCY WITH THE COASTAL MANAGEMENT PROGRAM

The commission has reviewed the proposed rulemaking and found that the proposal is a rulemaking identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11(b)(2), relating to Actions and Rules Subject to the Texas Coastal Management Program (CMP), or will affect an action and/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 has prepared a consistency determination for the proposed rules pursuant to 31 TAC §505.22 and has found the proposed rulemaking is consistent with the applicable CMP goals and policies. The following is a summary of that determination. The CMP goal applicable to the proposed rulemaking is the goal to protect, preserve, restore, and enhance the diversity, quality, quantity, functions, and values of coastal natural resource areas (CNRAs). Applicable policies are construction and operation of solid waste treatment, storage, and disposal facilities, such that new solid waste facilities and areal expansions of existing solid waste facilities shall be sited, designed, constructed, and operated to prevent releases of pollutants that may adversely affect CNRAs, and at a minimum, comply with standards established under the Solid Waste Disposal Act, 42 USC, §§6901 et seq. Promulgation and enforcement of these rules are consistent with the applicable CMP goals and policies because the proposed rule amendments will update and enhance the commission's rules concerning hazardous and industrial solid waste facilities. In addition, the proposed rules do not violate any applicable provisions of the CMP's stated goals and policies. The commission invites public comment on the consistency of the proposed rules.

SUBMITTAL OF COMMENTS

Comments may be submitted to Angela Slupe, Office of Environmental Policy, Analysis, and Assessment, MC 205, P.O. Box 13087, Austin, Texas 78711-3087 or faxed to (512) 239-4808. All comments should reference Rule Log Number 2000-044-335-WS. Comments must be received by 5:00 p.m., July 23, 2001. For further information or questions concerning this proposal, please contact Ray Henry Austin, Policy and Regulations Division, (512) 239-6814.

SUBCHAPTER A. INDUSTRIAL SOLID WASTE AND MUNICIPAL HAZARDOUS WASTE IN GENERAL

30 TAC §§335.1, 335.3, 335.4, 335.6, 335.9 - 335.14, 335.17, 335.24, 335.28, 335.29, 335.31;

STATUTORY AUTHORITY

The amendments are proposed under Texas Water Code (TWC), §5.103 and §5.105, which provide the commission with the authority to adopt any rules necessary to carry out its powers and

duties under the provisions of the TWC or other laws of this state; and under Texas Health and Safety Code (THSC), Solid Waste Disposal Act, §361.017 and §361.024, which authorize the commission to regulate industrial solid waste and municipal hazardous waste and to adopt rules consistent with the general intent and purposes of the THSC.

The proposed amendments implement THSC, Chapter 361.

§335.1. Definitions.

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

(1) (No change.)

(2) Act--[~~The Solid Waste Disposal Act,~~] Texas Health and Safety Code, Chapter 361 [~~(Vernon Pamphlet 1992)~~].

(3) - (6) (No change.)

(7) Ancillary equipment--Any device [~~including, but not limited to, such devices as piping, fittings, flanges, valves, and pumps,~~] that is used to distribute, meter, or control the flow of solid waste or hazardous waste from its point of generation to a storage or processing tank(s), between solid waste or hazardous waste storage and processing tanks to a point of disposal on- site, or to a point of shipment for disposal off-site. Such devices include, but are not limited to, piping, fittings, flanges, valves, and pumps.

(8) - (13) (No change.)

(14) Class 1 wastes--Any industrial solid waste or mixture of industrial solid wastes which because of its concentration, or physical or chemical characteristics, is toxic, corrosive, flammable, a strong sensitizer or irritant, a generator of sudden pressure by decomposition, heat, or other means, or may pose a substantial present or potential danger to human health or the environment when improperly processed, stored, transported, or disposed of or otherwise managed, as further defined in §335.505 of this title (relating to Class 1 Waste Determination). [~~Class 1 waste is also referred to throughout this chapter as Class I waste.~~]

(15) Class 2 wastes--Any individual solid waste or combination of industrial solid waste which cannot be described as Hazardous, Class 1 or Class 3 as defined in §335.506 of this title (relating to Class 2 Waste Determination). [~~Class 2 waste is also referred to throughout this chapter as Class II waste.~~]

(16) Class 3 wastes--Inert and essentially insoluble industrial solid waste, usually including, but not limited to, materials such as rock, brick, glass, dirt, and certain plastics and rubber, etc., that are not readily decomposable, as further defined in §335.507 of this title (relating to Class 3 Waste Determination). [~~Class 3 waste is also referred to throughout this chapter as Class III waste.~~]

(17) - (28) (No change.)

(29) Corrective action management unit (CAMU) [~~or CAMU~~]--An area within a facility that is designated by the commission under 40 Code of Federal Regulations (CFR) Part 264, Subpart S, for the purpose of implementing corrective action requirements under §335.167 of this title (relating to Corrective Action for Solid Waste Management Units) and the Texas Water Code, §7.031 (Corrective Action related to Hazardous Waste) [~~Texas Solid Waste Disposal Act, Texas Health and Safety Code Annotated (Vernon Pamphlet 1993), §361.303 (concerning Corrective Action)~~]. A CAMU shall only be used for the management of remediation wastes pursuant to implementing such corrective action requirements at the facility.

(30) - (31) (No change.)

(32) Designated facility--A Class 1 [~~I~~] or hazardous waste storage, processing, or disposal facility which has received an EPA permit (or a facility with interim status) in accordance with the requirements of 40 CFR [~~Code of Federal Regulations,~~] Parts 270 and 124; a permit from a state authorized in accordance with 40 CFR [~~Code of Federal Regulations~~] Part 271 (in the case of hazardous waste); a permit issued pursuant to §335.2 of this title (relating to Permit Required) (in the case of nonhazardous waste); or that is regulated under §335.24(f), (g), or (h) of this title (relating to Requirements for Recyclable Materials and Nonhazardous Recyclable Materials) or §335.241 of this title (relating to Applicability and Requirements) and that has been designated on the manifest by the generator pursuant to §335.10 of this title (relating to Shipping and Reporting Procedures Applicable to Generators of Hazardous Waste or Class 1 [~~I~~] Waste and Primary Exporters of Hazardous Waste). If a waste is destined to a facility in an authorized state which has not yet obtained authorization to regulate that particular waste as hazardous, then the designated facility must be a facility allowed by the receiving state to accept such waste.

(33) - (34) (No change.)

(35) Dioxins and furans (D/F)--Tetra, penta, hexa, hepta, and octa-chlorinated dibenzo dioxins and furans.

(36) [~~(35)~~] Discharge or hazardous waste discharge--The accidental or intentional spilling, leaking, pumping, pouring, emitting, emptying, or dumping of waste into or on any land or water.

(37) [~~(36)~~] Disposal--The discharge, deposit, injection, dumping, spilling, leaking, or placing of any solid waste or hazardous waste (whether containerized or uncontainerized) into or on any land or water so that such solid waste or hazardous waste or any constituent thereof may enter the environment or be emitted into the air or discharged into any waters, including groundwaters.

(38) [~~(37)~~] Disposal facility--A facility or part of a facility at which solid waste is intentionally placed into or on any land or water, and at which waste will remain after closure. The term "disposal facility" does not include a corrective action management unit into which remediation wastes are placed.

(39) [~~(38)~~] Drip pad--An engineered structure consisting of a curbed, free-draining base, constructed of a non-earthen materials and designed to convey preservative kick-back or drippage from treated wood, precipitation, and surface water run-on to an associated collection system at wood preserving plants.

(40) [~~(39)~~] Elementary neutralization unit--A device which:

(A) is used for neutralizing wastes which are hazardous only because they exhibit the corrosivity characteristic defined in 40 CFR §261.22, or are listed in 40 CFR Part 261, Subpart D, only for this reason; or is used for neutralizing the pH of non-hazardous industrial solid waste; and

(B) meets the definition of tank, tank system, container, transport vehicle, or vessel as defined in this section.

(41) [~~(40)~~] Environmental Protection Agency acknowledgment of consent--The cable sent to EPA from the United States Embassy in a receiving country that acknowledges the written consent of the receiving country to accept the hazardous waste and describes the terms and conditions of the receiving country's consent to the shipment.

(42) [~~(41)~~] Environmental Protection Agency hazardous waste number--The number assigned by the EPA to each hazardous waste listed in 40 CFR [~~Code of Federal Regulations,~~] Part 26l, Subpart

D and to each characteristic identified in 40 CFR [~~Code of Federal Regulations,~~] Part 26l, Subpart C.

(43) [~~(42)~~] Environmental Protection Agency identification number--The number assigned by the EPA or the commission to each generator, transporter, and processing, storage, or disposal facility.

(44) [~~(43)~~] Essentially insoluble--Any material, which if representatively sampled and placed in static or dynamic contact with deionized water at ambient temperature for seven days, will not leach any quantity of any constituent of the material into the water in excess of current United States Public Health Service or EPA limits for drinking water as published in the Federal Register.

(45) [~~(44)~~] Equivalent method--Any testing or analytical method approved by the administrator under 40 CFR [~~Code of Federal Regulations~~] §260.20 and §260.21.

(46) [~~(45)~~] Existing portion--That land surface area of an existing waste management unit, included in the original Part A permit application, on which wastes have been placed prior to the issuance of a permit.

(47) [~~(46)~~] Existing tank system or existing component--A tank system or component that is used for the storage or processing of hazardous waste and that is in operation, or for which installation has commenced on or prior to July 14, 1986. Installation will be considered to have commenced if the owner or operator has obtained all federal, state, and local approvals or permits necessary to begin physical construction of the site or installation of the tank system and if either:

(A) a continuous on-site physical construction or installation program has begun; or

(B) the owner or operator has entered into contractual obligations--which cannot be canceled or modified without substantial loss--for physical construction of the site or installation of the tank system to be completed within a reasonable time.

(48) [~~(47)~~] Explosives or munitions emergency--A situation involving the suspected or detected presence of unexploded ordnance (UXO), damaged or deteriorated explosives or munitions, an improvised explosive device (IED), other potentially explosive material or device, or other potentially harmful military chemical munitions or device, that creates an actual or potential imminent threat to human health, including safety, or the environment, including property, as determined by an explosives or munitions emergency response specialist. These situations may require immediate and expeditious action by an explosives or munitions emergency response specialist to control, mitigate, or eliminate the threat.

(49) [~~(48)~~] Explosives or munitions emergency response--All immediate response activities by an explosives and munitions emergency response specialist to control, mitigate, or eliminate the actual or potential threat encountered during an explosives or munitions emergency, subject to the following:

(A) an explosives or munitions emergency response includes in-place render-safe procedures, treatment or destruction of the explosives or munitions and/or transporting those items to another location to be rendered safe, treated, or destroyed;

(B) any reasonable delay in the completion of an explosives or munitions emergency response caused by a necessary, unforeseen, or uncontrollable circumstance will not terminate the explosives or munitions emergency; and

(C) explosives and munitions emergency responses can occur on either public or private lands and are not limited to responses at hazardous waste facilities.

(50) [~~(49)~~] Explosives or munitions emergency response specialist--An individual trained in chemical or conventional munitions or explosives handling, transportation, render-safe procedures, or destruction techniques, including United States Department of Defense (DOD) emergency explosive ordnance disposal (EOD), technical escort unit (TEU), and DOD-certified civilian or contractor personnel; and, other federal, state, or local government, or civilian personnel similarly trained in explosives or munitions emergency responses.

(51) [~~(50)~~] Extrusion--A process using pressure to force ground poultry carcasses through a decreasing-diameter barrel or nozzle, causing the generation of heat sufficient to kill pathogens, and resulting in an extruded product acceptable as a feed ingredient.

(52) [~~(51)~~] Facility--Includes:

(A) all contiguous land, and structures, other appurtenances, and improvements on the land, used for storing, processing, or disposing of municipal hazardous waste or industrial solid waste. A facility may consist of several storage, processing, or disposal operational units (e.g., one or more landfills, surface impoundments, or combinations of them);

(B) for the purpose of implementing corrective action under §335.167 of this title (relating to Corrective Action for Solid Waste Management Units), all contiguous property under the control of the owner or operator seeking a permit for the storage, processing, and/or disposal of hazardous waste. This definition also applies to facilities implementing corrective action under Texas Water Code, §7.031 (Corrective Action Relating to Hazardous Waste) [~~the Texas Solid Waste Disposal Act, Texas Health and Safety Code Annotated (Vernon Pamphlet 1993), §361.303 (Corrective Action)~~].

(53) [~~(52)~~] Final closure--The closure of all hazardous waste management units at the facility in accordance with all applicable closure requirements so that hazardous waste management activities under Subchapter E of this chapter (relating to Interim Standards for Owners and Operators of Hazardous Waste Storage, Processing, or Disposal Facilities) and Subchapter F of this chapter (relating to Permitting Standards for Owners and Operators of Hazardous Waste Storage, Processing or Disposal Facilities) are no longer conducted at the facility unless subject to the provisions in §335.69 of this title (relating to Accumulation Time).

(54) [~~(53)~~] Food-chain crops--Tobacco, crops grown for human consumption, and crops grown for feed for animals whose products are consumed by humans.

(55) [~~(54)~~] Freeboard--The vertical distance between the top of a tank or surface impoundment dike, and the surface of the waste contained therein.

(56) [~~(55)~~] Free liquids--Liquids which readily separate from the solid portion of a waste under ambient temperature and pressure.

(57) [~~(56)~~] Generator--Any person, by site, who produces municipal hazardous waste or industrial solid waste; any person who possesses municipal hazardous waste or industrial solid waste to be shipped to any other person; or any person whose act first causes the solid waste to become subject to regulation under this chapter. For the purposes of this regulation, a person who generates or possesses Class 3 [~~III~~] wastes only shall not be considered a generator.

(58) [~~(57)~~] Groundwater--Water below the land surface in a zone of saturation.

(59) [~~(58)~~] Hazardous industrial waste--Any industrial solid waste or combination of industrial solid wastes identified or listed as a hazardous waste by the administrator of the EPA pursuant to the Resource Conservation and Recovery Act of 1976, §3001. The administrator has identified the characteristics of hazardous wastes and listed certain wastes as hazardous in 40 CFR [~~Code of Federal Regulations~~] Part 26l. The executive director will maintain in the offices of the commission a current list of hazardous wastes, a current set of characteristics of hazardous waste, and applicable appendices, as promulgated by the administrator.

(60) [~~(59)~~] Hazardous substance--Any substance designated as a hazardous substance under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), 40 CFR [~~Code of Federal Regulations,~~] Part 302.

(61) [~~(60)~~] Hazardous waste--Any solid waste identified or listed as a hazardous waste by the administrator of the EPA pursuant to the federal Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, 42 United States Code 6901 et seq., as amended.

(62) [~~(61)~~] Hazardous waste constituent--A constituent that caused the administrator to list the hazardous waste in 40 CFR [~~Code of Federal Regulations~~] Part 261, Subpart D or a constituent listed in Table 1 of 40 CFR [~~Code of Federal Regulations~~] §261.24.

(63) [~~(62)~~] Hazardous waste management facility--All contiguous land, including structures, appurtenances, and other improvements on the land, used for processing, storing, or disposing of hazardous waste. The term includes a publicly or privately owned hazardous waste management facility consisting of processing, storage, or disposal operational hazardous waste management units such as one or more landfills, surface impoundments, waste piles, incinerators, boilers, and industrial furnaces, including cement kilns, injection wells, salt dome waste containment caverns, land treatment facilities, or a combination of units.

(64) [~~(63)~~] Hazardous waste management unit--A landfill, surface impoundment, waste pile, industrial furnace, incinerator, cement kiln, injection well, container, drum, salt dome waste containment cavern, or land treatment unit, or any other structure, vessel, appurtenance, or other improvement on land used to manage hazardous waste.

(65) [~~(64)~~] In operation--Refers to a facility which is processing, storing, or disposing of solid waste or hazardous waste.

(66) [~~(65)~~] Inactive portion--That portion of a facility which is not operated after November 19, 1980. (See also "active portion" and "closed portion.")

(67) [~~(66)~~] Incinerator--Any enclosed device that:

(A) uses controlled flame combustion and neither meets the criteria for classification as a boiler, sludge dryer, or carbon regeneration unit, nor is listed as an industrial furnace; or

(B) meets the definition of infrared incinerator or plasma arc incinerator.

(68) [~~(67)~~] Incompatible waste--A hazardous waste which is unsuitable for:

(A) placement in a particular device or facility because it may cause corrosion or decay of containment materials (e.g., container inner liners or tank walls); or

(B) commingling with another waste or material under uncontrolled conditions because the commingling might produce heat or pressure, fire or explosion, violent reaction, toxic dusts, mists, fumes, or gases, or flammable fumes or gases.

(69) [~~(68)~~] Individual generation site--The contiguous site at or on which one or more solid waste or hazardous wastes are generated. An individual generation site, such as a large manufacturing plant, may have one or more sources of solid waste or hazardous waste but is considered a single or individual generation site if the site or property is contiguous.

(70) [~~(69)~~] Industrial furnace--Includes any of the following enclosed devices that use thermal treatment to accomplish recovery of materials or energy:

(A) cement kilns;

(B) lime kilns;

(C) aggregate kilns;

(D) phosphate kilns;

(E) coke ovens;

(F) blast furnaces;

(G) smelting, melting, and refining furnaces (including pyrometallurgical devices such as cupolas, reverberator furnaces, sintering machines, roasters, and foundry furnaces);

(H) titanium dioxide chloride process oxidation reactors;

(I) methane reforming furnaces;

(J) pulping liquor recovery furnaces;

(K) combustion devices used in the recovery of sulfur values from spent sulfuric acid;

(L) halogen acid furnaces (HAFs) for the production of acid from halogenated hazardous waste generated by chemical production facilities where the furnace is located on the site of a chemical production facility, the acid product has a halogen acid content of at least 3.0%, the acid product is used in a manufacturing process, and, except for hazardous waste burned as fuel, hazardous waste fed to the furnace has a minimum halogen content of 20% as generated; and

(M) other devices the commission may list, after the opportunity for notice and comment is afforded to the public.

(71) [~~(70)~~] Industrial solid waste--Solid waste resulting from or incidental to any process of industry or manufacturing, or mining or agricultural operation, which may include hazardous waste as defined in this section.

(72) [~~(71)~~] Infrared incinerator--Any enclosed device that uses electric powered resistance heaters as a source of radiant heat followed by an afterburner using controlled flame combustion and which is not listed as an industrial furnace.

(73) [~~(72)~~] Inground tank--A device meeting the definition of tank in this section whereby a portion of the tank wall is situated to any degree within the ground, thereby preventing visual inspection of that external surface area of the tank that is in the ground.

(74) [~~(73)~~] Injection well--A well into which fluids are injected. (See also "underground injection.")

(75) [~~(74)~~] Inner liner--A continuous layer of material placed inside a tank or container which protects the construction materials of the tank or container from the contained waste or reagents used to treat the waste.

(76) [~~(75)~~] Installation inspector--A person who, by reason of his knowledge of the physical sciences and the principles of

engineering, acquired by a professional education and related practical experience, is qualified to supervise the installation of tank systems.

(77) [~~(76)~~] International shipment--The transportation of hazardous waste into or out of the jurisdiction of the United States.

(78) [~~(77)~~] Lamp--Has the definition adopted under §335.261 of this title (relating to Universal Waste Rule).

(79) [~~(78)~~] Land treatment facility--A facility or part of a facility at which solid waste or hazardous waste is applied onto or incorporated into the soil surface and that is not a corrective action management unit; such facilities are disposal facilities if the waste will remain after closure.

(80) [~~(79)~~] Landfill--A disposal facility or part of a facility where solid waste or hazardous waste is placed in or on land and which is not a pile, a land treatment facility, a surface impoundment, an injection well, a salt dome formation, a salt bed formation, an underground mine, a cave, or a corrective action management unit.

(81) [~~(80)~~] Landfill cell--A discrete volume of a solid waste or hazardous waste landfill which uses a liner to provide isolation of wastes from adjacent cells or wastes. Examples of landfill cells are trenches and pits.

(82) [~~(81)~~] Leachate--Any liquid, including any suspended components in the liquid, that has percolated through or drained from solid waste or hazardous waste.

(83) [~~(82)~~] Leak-detection system--A system capable of detecting the failure of either the primary or secondary containment structure or the presence of a release of solid waste or hazardous waste or accumulated liquid in the secondary containment structure. Such a system must employ operational controls (e.g., daily visual inspections for releases into the secondary containment system of aboveground tanks) or consist of an interstitial monitoring device designed to detect continuously and automatically the failure of the primary or secondary containment structure or the presence of a release of solid waste or hazardous waste into the secondary containment structure.

(84) [~~(83)~~] Liner--A continuous layer of natural or man-made materials, beneath or on the sides of a surface impoundment, landfill, or landfill cell, which restricts the downward or lateral escape of solid waste or hazardous waste, hazardous waste constituents, or leachate.

(85) [~~(84)~~] Management or hazardous waste management--The systematic control of the collection, source separation, storage, transportation, processing, treatment, recovery, and disposal of solid waste or hazardous waste.

(86) [~~(85)~~] Manifest--The waste shipping document which accompanies and is used for tracking the transportation, disposal, treatment, storage, or recycling of shipments of hazardous wastes or Class 1 industrial solid wastes. The form used for this purpose is TNRCC-0311 (Uniform Hazardous Waste Manifest) which is furnished by the executive director or may be printed through the agency's "Print Your Own Manifest Program."

(87) [~~(86)~~] Manifest document number--A number assigned to the manifest by the commission for reporting and recordkeeping purposes.

(88) [~~(87)~~] Military munitions--All ammunition products and components produced or used by or for the DOD or the United States Armed Services for national defense and security, including military munitions under the control of the DOD, the United States Coast Guard, the United States Department of Energy (DOE), and National Guard personnel. The term "military munitions":

(A) includes confined gaseous, liquid, and solid propellants, explosives, pyrotechnics, chemical and riot control agents, smokes, and incendiaries used by DOD components, including bulk explosives and chemical warfare agents, chemical munitions, rockets, guided and ballistic missiles, bombs, warheads, mortar rounds, artillery ammunition, small arms ammunition, grenades, mines, torpedoes, depth charges, cluster munitions and dispensers, demolition charges, and devices and components thereof; and

(B) includes non-nuclear components of nuclear devices, managed under DOE's nuclear weapons program after all required sanitization operations under the Atomic Energy Act of 1954, as amended, have been completed; but

(C) does not include wholly inert items, improvised explosive devices, and nuclear weapons, nuclear devices, and nuclear components thereof.

(89) [~~(88)~~] Miscellaneous unit--A hazardous waste management unit where hazardous waste is stored, processed, or disposed of and that is not a container, tank, surface impoundment, pile, land treatment unit, landfill, incinerator, boiler, industrial furnace, underground injection well with appropriate technical standards under Chapter 331 of this title (relating to Underground Injection Control), corrective action management unit, containment building, staging pile, or unit eligible for a research, development, and demonstration permit or under Chapter 305, Subchapter K of this title (relating to Research Development and Demonstration Permits).

(90) [~~(89)~~] Movement--That solid waste or hazardous waste transported to a facility in an individual vehicle.

(91) [~~(90)~~] Municipal hazardous waste--A municipal solid waste or mixture of municipal solid wastes which has been identified or listed as a hazardous waste by the administrator of the United States Environmental Protection Agency.

(92) [~~(91)~~] Municipal solid waste--Solid waste resulting from or incidental to municipal, community, commercial, institutional, and recreational activities; including garbage, rubbish, ashes, street cleanings, dead animals, abandoned automobiles, and all other solid waste other than industrial waste.

(93) [~~(92)~~] New tank system or new tank component--A tank system or component that will be used for the storage or processing of hazardous waste and for which installation has commenced after July 14, 1986; except, however, for purposes of 40 CFR [~~Code of Federal Regulations~~] §264.193(g)(2) (incorporated by reference at §335.152(a)(8) of this title (relating to Standards)) and 40 CFR [~~Code of Federal Regulations~~] §265.193(g)(2) (incorporated by reference at §335.112(a)(9) of this title (relating to Standards)), a new tank system is one for which construction commences after July 14, 1986 (see also "existing tank system.")

(94) [~~(93)~~] Off-site--Property which cannot be characterized as on-site.

(95) [~~(94)~~] Onground tank--A device meeting the definition of tank in this section and that is situated in such a way that the bottom of the tank is on the same level as the adjacent surrounding surface so that the external tank bottom cannot be visually inspected.

(96) [~~(95)~~] On-site--The same or geographically contiguous property which may be divided by public or private rights-of-way, provided the entrance and exit between the properties is at a cross-roads intersection, and access is by crossing, as opposed to going along, the right-of-way. Noncontiguous properties owned by the same person but connected by a right-of-way which he controls and to which the public does not have access, is also considered on-site property.

(97) [~~(96)~~] Open burning--The combustion of any material without the following characteristics:

(A) control of combustion air to maintain adequate temperature for efficient combustion;

(B) containment of the combustion-reaction in an enclosed device to provide sufficient residence time and mixing for complete combustion; and

(C) control of emission of the gaseous combustion products. (See also "incineration" and "thermal treatment.")

(98) [~~(97)~~] Operator--The person responsible for the overall operation of a facility.

(99) [~~(98)~~] Owner--The person who owns a facility or part of a facility.

(100) [~~(99)~~] Partial closure--The closure of a hazardous waste management unit in accordance with the applicable closure requirements of Subchapters E and F of this chapter (relating to Interim Standards for Owners and Operators of Hazardous Waste Storage, Processing, or Disposal Facilities; and Permitting Standards for Owners and Operators of Hazardous Waste Storage, Processing or Disposal Facilities) at a facility that contains other active hazardous waste management units. For example, partial closure may include the closure of a tank (including its associated piping and underlying containment systems), landfill cell, surface impoundment, waste pile, or other hazardous waste management unit, while other units of the same facility continue to operate.

(101) [~~(100)~~] PCBs or polychlorinated biphenyl compounds--Compounds subject to Title 40, CFR [~~Code of Federal Regulations,~~] Part 761.

(102) [~~(101)~~] Permit--A written permit issued by the commission which, by its conditions, may authorize the permittee to construct, install, modify or operate a specified municipal hazardous waste or industrial solid waste storage, processing, or disposal facility in accordance with specified limitations.

(103) [~~(102)~~] Person--Any individual, corporation, organization, government or governmental subdivision or agency, business trust, partnership, association or any other legal entity.

(104) [~~(103)~~] Personnel or facility personnel--All persons who work at, or oversee the operations of, a solid waste or hazardous waste facility, and whose actions or failure to act may result in noncompliance with the requirements of this chapter.

(105) [~~(104)~~] Pesticide--Has the definition adopted under §335.261 of this title [~~(relating to Universal Waste Rule)~~].

(106) [~~(105)~~] Petroleum substance--A crude oil or any refined or unrefined fraction or derivative of crude oil which is a liquid at standard conditions of temperature and pressure.

(A) Except as provided in subparagraph (C) of this paragraph for the purposes of this chapter, a "petroleum substance" shall be limited to a substance in or a combination or mixture of substances within the following list (except for any listed substance regulated as a hazardous waste under the federal Solid Waste Disposal Act, Subtitle C (42 United States Code §§6921, et seq.)) and which is liquid at standard conditions of temperature (20 degrees Centigrade) and pressure (1 atmosphere):

(i) basic petroleum substances--i.e., crude oils, crude oil fractions, petroleum feedstocks, and petroleum fractions;

(ii) motor fuels--a petroleum substance which is typically used for the operation of internal combustion engines and/or motors (which includes but is not limited to stationary engines and engines used in transportation vehicles and marine vessels);

(iii) aviation gasolines--i.e., Grade 80, Grade 100, and Grade 100-LL;

(iv) aviation jet fuels--i.e., Jet A, Jet A-1, Jet B, JP-4, JP-5, and JP-8;

(v) distillate fuel oils--i.e., Number 1-D, Number 1, Number 2-D, and Number 2;

(vi) residual fuel oils--i.e., Number 4-D, Number 4-light, Number 4, Number 5-light, Number 5- heavy, and Number 6;

(vii) gas-turbine fuel oils--i.e., Grade O-GT, Grade 1-GT, Grade 2-GT, Grade 3-GT, and Grade 4- GT;

(viii) illuminating oils--i.e., kerosene, mineral seal oil, long-time burning oils, 300 oil, and mineral colza oil;

(ix) lubricants--i.e., automotive and industrial lubricants;

(x) building materials--i.e., liquid asphalt and dust-laying oils;

(xi) insulating and waterproofing materials--i.e., transformer oils and cable oils;

(xii) used oils--(See definition for "used oil" in this section); and

(B) For the purposes of this chapter, a "petroleum substance" shall include solvents or a combination or mixture of solvents (except for any listed substance regulated as a hazardous waste under the federal Solid Waste Disposal Act, Subtitle C (42 United States Code §§6921, et seq.)) and which is liquid at standard conditions of temperature (20 degrees Centigrade) and pressure (1 atmosphere) i.e., Stoddard solvent, petroleum spirits, mineral spirits, petroleum ether, varnish makers' and painters' naphthas, petroleum extender oils, and commercial hexane.

(C) The following materials are not considered petroleum substances:

(i) polymerized materials, i.e., plastics, synthetic rubber, polystyrene, high and low density polyethylene;

(ii) animal, microbial, and vegetable fats;

(iii) food grade oils;

(iv) hardened asphalt and solid asphaltic materials--i.e., roofing shingles, roofing felt, hot mix (and cold mix); and

(v) cosmetics.

(107) [~~(106)~~] Pile--Any noncontainerized accumulation of solid, nonflowing solid waste or hazardous waste that is used for processing or storage, and that is not a corrective action management unit or a containment building.

(108) [~~(107)~~] Plasma arc incinerator--Any enclosed device using a high intensity electrical discharge or arc as a source of heat followed by an afterburner using controlled flame combustion and which is not listed as an industrial furnace.

(109) [~~(108)~~] Poultry--Chickens or ducks being raised or kept on any premises in the state for profit.

(110) [~~(109)~~] Poultry carcass--The carcass, or part of a carcass, of poultry that died as a result of a cause other than intentional slaughter for use for human consumption.

(111) [~~(110)~~] Poultry facility--A facility that:

(A) is used to raise, grow, feed, or otherwise produce poultry for commercial purposes; or

(B) is a commercial poultry hatchery that is used to produce chicks or ducklings.

(112) [~~(111)~~] Primary exporter--Any person who is required to originate the manifest for a shipment of hazardous waste in accordance with the regulations contained in 40 CFR [~~Code of Federal Regulations,~~] Part 262, Subpart B, which are in effect as of November 8, 1986, or equivalent state provision, which specifies a treatment, storage, or disposal facility in a receiving country as the facility to which the hazardous waste will be sent and any intermediary arranging for the export.

(113) [~~(112)~~] Processing--The extraction of materials, transfer, volume reduction, conversion to energy, or other separation and preparation of solid waste for reuse or disposal, including the treatment or neutralization of solid waste or hazardous waste, designed to change the physical, chemical, or biological character or composition of any solid waste or hazardous waste so as to neutralize such waste, or so as to recover energy or material from the waste or so as to render such waste nonhazardous, or less hazardous; safer to transport, store or dispose of; or amenable for recovery, amenable for storage, or reduced in volume. The transfer of solid waste for reuse or disposal as used in this definition does not include the actions of a transporter in conveying or transporting solid waste by truck, ship, pipeline, or other means. Unless the executive director determines that regulation of such activity is necessary to protect human health or the environment, the definition of processing does not include activities relating to those materials exempted by the administrator of the Environmental Protection Agency pursuant to the federal Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, 42 United States Code §§6901 et seq., as amended.

(114) [~~(113)~~] Publicly-owned treatment works (POTW)--Any device or system used in the treatment (including recycling and reclamation) of municipal sewage or industrial wastes of a liquid nature which is owned by a state or municipality (as defined by the Clean Water Act, §502(4)). The definition includes sewers, pipes or other conveyances only if they convey wastewater to a POTW providing treatment.

(115) [~~(114)~~] Qualified groundwater scientist--A scientist or engineer who has received a baccalaureate or post-graduate degree in the natural sciences or engineering, and has sufficient training and experience in groundwater hydrology and related fields as may be demonstrated by state registration, professional certifications, or completion of accredited university courses that enable that individual to make sound professional judgments regarding groundwater monitoring and contaminant fate and transport.

(116) [~~(115)~~] Receiving country--A foreign country to which a hazardous waste is sent for the purpose of treatment, storage, or disposal (except short-term storage incidental to transportation).

(117) [~~(116)~~] Regional administrator--The regional administrator for the Environmental Protection Agency region in which the facility is located, or his designee.

(118) [~~(117)~~] Remediation--The act of eliminating or reducing the concentration of contaminants in contaminated media.

(119) [~~(118)~~] Remediation waste--All solid and hazardous wastes, and all media (including groundwater, surface water, soils, and sediments) and debris, which contain listed hazardous wastes or which themselves exhibit a hazardous waste characteristic, that are managed for the purpose of implementing corrective action requirements under §335.167 of this title (relating to Corrective Action for Solid Waste Management Units) and the Texas Water Code, §7.031 (Corrective Action Relating to Hazardous Waste [~~Texas Solid Waste Disposal Act, Texas Health and Safety Code Annotated (Vernon Pamphlet 1993), §361.303 (Corrective Action)~~]. For a given facility, remediation wastes may originate only from within the facility boundary, but may include waste managed in implementing corrective action for releases beyond the facility boundary under the Texas Solid Waste Disposal Act, Texas Health and Safety Code Annotated (Vernon Pamphlet 1993), §361.303 (Corrective Action), §335.166(5) of this title (relating to Corrective Action Program), or §335.167(c) of this title (relating to Corrective Action for Solid Waste Management Units).

(120) [~~(119)~~] Remove--To take waste, contaminated design or operating system components, or contaminated media away from a waste management unit, facility, or area to another location for storage, processing, or disposal.

(121) [~~(120)~~] Replacement unit--A landfill, surface impoundment, or waste pile unit:

(A) from which all or substantially all the waste is removed; and

(B) that is subsequently reused to treat, store, or dispose of hazardous waste. "Replacement unit" does not apply to a unit from which waste is removed during closure, if the subsequent reuse solely involves the disposal of waste from that unit and other closing units or corrective action areas at the facility, in accordance with an approved closure plan or EPA or state approved corrective action.

(122) [~~(121)~~] Representative sample--A sample of a universe or whole (e.g., waste pile, lagoon, groundwater) which can be expected to exhibit the average properties of the universe or whole.

(123) [~~(122)~~] Run-off--Any rainwater, leachate, or other liquid that drains over land from any part of a facility.

(124) [~~(123)~~] Run-on--Any rainwater, leachate, or other liquid that drains over land onto any part of a facility.

(125) [~~(124)~~] Saturated zone or zone of saturation--That part of the earth's crust in which all voids are filled with water.

(126) [~~(125)~~] Shipment--Any action involving the conveyance of municipal hazardous waste or industrial solid waste by any means off-site.

(127) [~~(126)~~] Sludge dryer--Any enclosed thermal treatment device that is used to dehydrate sludge and that has a maximum total thermal input, excluding the heating valve of the sludge itself, of 2,500 Btu/lb of sludge treated on a wet-weight basis.

(128) [~~(127)~~] Small quantity generator--A generator who generates less than 1,000 kg of hazardous waste in a calendar month.

(129) [~~(128)~~] Solid Waste--

(A) Any garbage, refuse, sludge from a waste treatment plant, water supply treatment plant or air pollution control facility, and other discarded material, including solid, liquid, semisolid, or contained gaseous material resulting from industrial, municipal, commercial, mining, and agricultural operations, and from community and institutional activities, but does not include:

(i) solid or dissolved material in domestic sewage, or solid or dissolved material in irrigation return flows, or industrial discharges subject to regulation by permit issued pursuant to the Texas Water Code, Chapter 26 (an exclusion applicable only to the actual point source discharge that does not exclude industrial wastewaters while they are being collected, stored or processed before discharge, nor does it exclude sludges that are generated by industrial wastewater treatment);

(ii) uncontaminated soil, dirt, rock, sand and other natural or man-made inert solid materials used to fill land if the object of the fill is to make the land suitable for the construction of surface improvements. The material serving as fill may also serve as a surface improvement such as a structure foundation, a road, soil erosion control, and flood protection. Man-made materials exempted under this provision shall only be deposited at sites where the construction is in progress or imminent such that rights to the land are secured and engineering, architectural, or other necessary planning have been initiated. Waste disposal shall be considered to have occurred on any land which has been filled with man-made inert materials under this provision if the land is sold, leased, or otherwise conveyed prior to the completion of construction of the surface improvement. Under such conditions, deed recordation shall be required. The deed recordation shall include the information required under §335.5(a) of this title (relating to Deed Recordation), prior to sale or other conveyance of the property;

(iii) waste materials which result from activities associated with the exploration, development, or production of oil or gas or geothermal resources, as those activities are defined in this section, and any other substance or material regulated by the Railroad Commission of Texas pursuant to the Natural Resources Code, §91.101, unless such waste, substance, or material results from activities associated with gasoline plants, natural gas or natural gas liquids processing plants, pressure maintenance plants, or repressurizing plants and is a hazardous waste as defined by the administrator of the United States Environmental Protection Agency pursuant to the federal Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, 42 United States Code §§6901 et seq., as amended; or

(iv) a material excluded by 40 CFR [~~Code of Federal Regulations (CFR)~~] §261.4(a)(1) - (19), as amended through May 11, 1999, [~~in~~] (64 FR [~~FedReg~~] 25408), subject to the changes in this clause, or by variance granted under §335.18 of this title (relating to Variances from Classification as a Solid Waste) and §335.19 of this title (relating to Standards and Criteria for Variances from Classification as a Solid Waste). For the purposes of the exclusion under 40 CFR §261.4(a)(16), [~~as amended June 19, 1998 at 63 FedReg 33782,~~] 40 CFR §261.38 is adopted by reference as amended through July 7, 2000 (65 FR 42292), and is revised as follows, with "subparagraph (A)(iv) under the definition of 'Solid Waste' in 30 TAC §335.1 [~~§335.1(123)(A)(iv)~~]" meaning "subparagraph (A)(iv) under the definition of 'Solid Waste' in §335.1 [~~§335.1(123)(A)(iv)~~] of this title (relating to Definitions)":

(I) in the certification statement under 40 CFR §261.38(c)(1)(i)(C)(4), the reference to "40 CFR §261.38" is changed to "40 CFR §261.38, as revised under subparagraph (A)(iv) under the definition of 'Solid Waste' in 30 TAC §335.1 [~~§335.1(123)(A)(iv)~~]," and the reference to "40 CFR §261.28(c)(10)" is changed to "40 CFR §261.38(c)(10)";

(II) in 40 CFR §261.38(c)(2), the references to "§260.10 of this chapter" are changed to "§335.1 of this title (relating to Definitions)," and the reference to "parts 264 or 265 of this chapter" is changed to "Chapter 335, Subchapter E of this title (relating to Interim Standards for Owners and Operators of Hazardous Waste Storage, Processing, or Disposal Facilities) or Chapter 335, Subchapter F of this title (relating to Permitting Standards for Owners and Operators of Hazardous Waste Storage, Processing, or Disposal Facilities)";

(III) in 40 CFR §261.38(c)(3), (4), and (5), the references to "parts 264 and 265, or §262.34 of this chapter" are changed to "Chapter 335, Subchapter E of this title (relating to Interim Standards for Owners and Operators of Hazardous Waste Storage, Processing, or Disposal Facilities) and Chapter 335, Subchapter F of this title (relating to Permitting Standards for Owners and Operators of Hazardous Waste Storage, Processing, or Disposal Facilities), or §335.69 of this title (relating to Accumulation Time)";

(IV) in 40 CFR §261.38(c)(5), the reference to "§261.6(c) of this chapter" is changed to "§335.24(e) and (f) of this title (relating to Requirements for Recyclable Materials and Nonhazardous Recyclable Materials)";

(V) in 40 CFR §261.38(c)(7), the references to "appropriate regulatory authority" and "regulatory authority" are changed to "executive director";

(VI) in 40 CFR §261.38(c)(8), the reference to "§262.11 of this chapter" is changed to "§335.62 of this title (relating to Hazardous Waste Determination and Waste Classification)";

(VII) in 40 CFR §261.38(c)(9), the reference to "§261.2(c)(4) of this chapter" is changed to "§335.1(129)(D)(iv) [~~"§335.1(123)(D)(iv)~~] of this title (relating to Definitions)"; and

(VIII) in 40 CFR §261.38(c)(10), the reference to "implementing authority" is changed to "executive director."

(B) A discarded material is any material which is:

(i) abandoned, as explained in subparagraph (C) of this paragraph;

(ii) recycled, as explained in subparagraph (D) of this paragraph; or

(iii) considered inherently waste-like, as explained in subparagraph (E) of this paragraph.

(iv) a military munition identified as a solid waste in 40 CFR §266.202.

(C) Materials are solid wastes if they are abandoned by being:

(i) disposed of;

(ii) burned or incinerated; or

(iii) accumulated, stored, or processed (but not recycled) before or in lieu of being abandoned by being disposed of, burned, or incinerated.

(D) Except for materials described in subparagraph (H) of this paragraph, materials are solid wastes if they are "recycled" or accumulated, stored, or processed before recycling as specified in this subparagraph. The chart referred to as Table 1 indicates only which materials are considered to be solid wastes when they are recycled and is not intended to supersede the definition of solid waste provided in subparagraph (A) of this paragraph.

(i) Used in a manner constituting disposal. Materials noted with an asterisk in Column 1 of Table 1 are solid wastes when they are:

(I) applied to or placed on the land in a manner that constitutes disposal; or

(II) used to produce products that are applied to or placed on the land or are otherwise contained in products that are

applied to or placed on the land (in which cases the product itself remains a solid waste). However, commercial chemical products listed in 40 CFR §261.33 are not solid wastes if they are applied to the land and that is their ordinary manner of use.

(ii) Burning for energy recovery. Materials noted with an asterisk in Column 2 of Table 1 are solid wastes when they are:

(I) burned to recover energy; or

(II) used to produce a fuel or are otherwise contained in fuels (in which cases the fuel itself remains a solid waste). However, commercial chemical products, which are listed in 40 CFR §261.33, not listed in §261.33 but that exhibit one or more of the hazardous waste characteristics, or would be considered nonhazardous waste if disposed, are not solid wastes if they are fuels themselves and burned for energy recovery.

(iii) Reclaimed. Materials noted with an asterisk in Column 3 of Table 1 are solid wastes when reclaimed (except as provided under 40 CFR §261.4(a)(17)). Materials without an asterisk in Column 3 of Table 1 are not solid wastes when reclaimed (except as provided under 40 CFR §261.4(a)(17)).

(iv) Accumulated speculatively. Materials noted with an asterisk in Column 4 of Table 1 are solid wastes when accumulated speculatively.

Figure: 30 TAC §335.1(129)(D)(iv)

[~~Figure: 30 TAC §335.1(128)(D)(iv)~~]

(E) Materials that are identified by the administrator of the EPA as inherently waste-like materials under 40 CFR §261.2(d) are solid wastes when they are recycled in any manner.

(F) Materials are not solid wastes when they can be shown to be recycled by being:

(i) used or reused as ingredients in an industrial process to make a product, provided the materials are not being reclaimed;

(ii) used or reused as effective substitutes for commercial products;

(iii) returned to the original process from which they were generated, without first being reclaimed or land disposed. The material must be returned as a substitute for feedstock materials. In cases where the original process to which the material is returned is a secondary process, the materials must be managed such that there is no placement on the land. In cases where the materials are generated and reclaimed within the primary mineral processing industry, the conditions of the exclusion found at 40 CFR §261.4(a)(17) apply rather than this provision; or

(iv) secondary materials that are reclaimed and returned to the original process or processes in which they were generated where they are reused in the production process provided:

(I) only tank storage is involved, and the entire process through completion of reclamation is closed by being entirely connected with pipes or other comparable enclosed means of conveyance;

(II) reclamation does not involve controlled flame combustion (such as occurs in boilers, industrial furnaces, or incinerators);

(III) the secondary materials are never accumulated in such tanks for over 12 months without being reclaimed; and

(IV) the reclaimed material is not used to produce a fuel, or used to produce products that are used in a manner constituting disposal.

(G) Except for materials described in subparagraph (H) of this paragraph, the following materials are solid wastes, even if the recycling involves use, reuse, or return to the original process, as described in subparagraph (F) of this paragraph:

(i) materials used in a manner constituting disposal, or used to produce products that are applied to the land;

(ii) materials burned for energy recovery, used to produce a fuel, or contained in fuels;

(iii) materials accumulated speculatively; or

(iv) materials deemed to be inherently waste-like by the administrator of the EPA [~~Environmental Protection Agency~~], as described in 40 CFR §261.2(d)(1) - 2 [~~§261.2(d)(2)~~].

(H) With the exception of contaminated soils which are being relocated for use under §350.36 of this title (relating to Relocation of Soils Containing Chemicals of Concern for Reuse Purposes) and other contaminated media, materials that would otherwise be identified as nonhazardous solid wastes if disposed of are not considered solid wastes when recycled by being applied to the land or used as ingredients in products that are applied to the land, provided these materials can be shown to meet all of the following criteria:

(i) a legitimate market exists for the recycling material as well as its products;

(ii) the recycling material is managed and protected from loss as would be raw materials or ingredients or products;

(iii) the quality of the product is not degraded by substitution of raw material/product with the recycling material;

(iv) the use of the recycling material is an ordinary use and it meets or exceeds the specifications of the product it is replacing without treatment or reclamation, or if the recycling material is not replacing a product, the recycling material is a legitimate ingredient in a production process and meets or exceeds raw material specifications without treatment or reclamation;

(v) the recycling material is not burned for energy recovery, used to produce a fuel or contained in a fuel;

(vi) the recycling material can be used as a product itself or to produce products as it is generated without treatment or reclamation;

(vii) the recycling material must not present an increased risk to human health, the environment, or waters in the state when applied to the land or used in products which are applied to the land and the material, as generated:

(I) is a Class 3 waste under Chapter 335, Subchapter R of this title (relating to Waste Classification), except for arsenic, cadmium, chromium, lead, mercury, nickel, selenium, and total dissolved solids; and

(II) for the metals listed in subclause (I) of this clause:

(-a-) is a Class 2 or Class 3 waste under Chapter 335, Subchapter R of this title [~~(relating to Waste Classification)~~]; and

(-b-) does not exceed a concentration limit under 30 TAC §312.43(b)(3), Table 3; and

(viii) notwithstanding the requirements under §335.17(a)(8) of this title (relating to Special Definitions for Recyclable Materials and Nonhazardous Recyclable Materials):

(I) at least 75% (by weight or volume) of the annual production of the recycling material must be recycled or transferred to a different site and recycled on an annual basis; and

(II) if the recycling material is placed in protective storage, such as a silo or other protective enclosure, at least 75% (by weight or volume) of the annual production of the recycling material must be recycled or transferred to a different site and recycled on a biennial basis.

(I) Respondents in actions to enforce the industrial solid waste regulations who raise a claim that a certain material is not a solid waste, or is conditionally exempt from regulation, must demonstrate that there is a known market or disposition for the material, and that they meet the terms of the exclusion or exemption. In doing so, they must provide appropriate documentation (such as contracts showing that a second person uses the material as an ingredient in a production process) to demonstrate that the material is not a waste, or is exempt from regulation. In addition, owners or operators of facilities claiming that they actually are recycling materials must show that they have the necessary equipment to do so and that the recycling activity is legitimate and beneficial.

(J) Materials that are reclaimed from solid wastes and that are used beneficially are not solid wastes and hence are not hazardous wastes under 40 CFR §261.3(c) unless the reclaimed material is burned for energy recovery or used in a manner constituting disposal.

(K) Other portions of this chapter that relate to solid wastes that are recycled include §335.6 of this title (relating to Notification Requirements), §335.17 of this title (relating to Special Definitions for Recyclable Materials and Nonhazardous Recyclable Materials), §335.18 of this title (relating to Variances from Classification as a Solid Waste), §335.19 of this title (relating to Standards and Criteria for Variances from Classification as a Solid Waste), §335.24 of this title (relating to Requirements for Recyclable Materials and Nonhazardous Recyclable Materials), and Subchapter H of this chapter (relating to Standards for the Management of Specific Wastes and Specific Types of Materials).

(130) [~~(129)~~] Sorbent--A material that is used to soak up free liquids by either adsorption or absorption, or both. Sorb means to either adsorb or absorb, or both.

(131) [~~(130)~~] Spill--The accidental spilling, leaking, pumping, emitting, emptying, or dumping of solid waste or hazardous wastes or materials which, when spilled, become solid waste or hazardous wastes into or on any land or water.

(132) Staging pile--An accumulation of solid, non-flowing remediation waste, as defined in this section, that is not a containment building and that is used only during remedial operations for temporary storage at a facility. Staging piles must be designated by the executive director according to the requirements of 40 CFR §264.554, as adopted by reference under §335.152(a) of this title (relating to Standards).

(133) [~~(131)~~] Storage--The holding of solid waste for a temporary period, at the end of which the waste is processed, disposed of, recycled or stored elsewhere.

(134) [~~(132)~~] Sump--Any pit or reservoir that meets the definition of tank in this section and those troughs/trenches connected to it that serve to collect solid waste or hazardous waste for transport to solid waste or hazardous waste storage, processing, or disposal facilities; except that as used in the landfill, surface impoundment, and waste pile rules, "sump" means any lined pit or reservoir that serves to collect liquids drained from a leachate collection and removal system or leak detection system for subsequent removal from the system.

(135) [~~(133)~~] Surface impoundment or impoundment--A facility or part of a facility which is a natural topographic depression, man-made excavation, or diked area formed primarily of earthen materials (although it may be lined with man-made materials), which is designed to hold an accumulation of liquid wastes or wastes containing free liquids, and which is not an injection well or a corrective action management unit. Examples of surface impoundments are holding, storage, settling, and aeration pits, ponds, and lagoons.

(136) [~~(134)~~] Tank--A stationary device, designed to contain an accumulation of solid waste which is constructed primarily of non-earthen materials (e.g., wood, concrete, steel, plastic) which provide structural support.

(137) [~~(135)~~] Tank system--A solid waste or hazardous waste storage or processing tank and its associated ancillary equipment and containment system.

(138) TEQ--Toxicity equivalence, the international method of relating the toxicity of various dioxin/furan congeners to the toxicity of 2,3,7,8-tetrachlorodibenzo-p-dioxin.

(139) [~~(136)~~] Thermal processing--The processing of solid waste or hazardous waste in a device which uses elevated temperatures as the primary means to change the chemical, physical, or biological character or composition of the solid waste or hazardous waste. Examples of thermal processing are incineration, molten salt, pyrolysis, calcination, wet air oxidation, and microwave discharge. (See also "incinerator" and "open burning.")

(140) [~~(137)~~] Thermostat--Has the definition adopted under §335.261 of this title [~~(relating to Universal Waste Rule)~~].

(141) [~~(138)~~] Totally enclosed treatment facility--A facility for the processing of hazardous waste which is directly connected to an industrial production process and which is constructed and operated in a manner which prevents the release of any hazardous waste or any constituent thereof into the environment during processing. An example is a pipe in which acid waste is neutralized.

(142) [~~(139)~~] Transfer facility--Any transportation-related facility including loading docks, parking areas, storage areas, and other similar areas where shipments of hazardous or industrial solid waste are held during the normal course of transportation.

(143) [~~(140)~~] Transit country--Any foreign country, other than a receiving country, through which a hazardous waste is transported.

(144) [~~(141)~~] Transport vehicle--A motor vehicle or rail car used for the transportation of cargo by any mode. Each cargo-carrying body (trailer, railroad freight car, etc.) is a separate transport vehicle. Vessel includes every description of watercraft, used or capable of being used as a means of transportation on the water.

(145) [~~(142)~~] Transporter--Any person who conveys or transports municipal hazardous waste or industrial solid waste by truck, ship, pipeline, or other means.

(146) [~~(143)~~] Treatability study--A study in which a hazardous or industrial solid waste is subjected to a treatment process to determine:

(A) whether the waste is amenable to the treatment process;

(B) what pretreatment (if any) is required;

(C) the optimal process conditions needed to achieve the desired treatment;

(D) the efficiency of a treatment process for a specific waste or wastes; or

(E) the characteristics and volumes of residuals from a particular treatment process. Also included in this definition for the purpose of 40 CFR §261.4(e) and (f) (§§335.2, 335.69, and 335.78 of this title (relating to Permit Required; Accumulation Time; and Special Requirements for Hazardous Waste Generated by Conditionally Exempt Small Quantity Generators)) exemptions are liner compatibility, corrosion, and other material compatibility studies and toxicological and health effects studies. A treatability study is not a means to commercially treat or dispose of hazardous or industrial solid waste.

(147) [~~(144)~~] Treatment--To apply a physical, biological, or chemical process(es) to wastes and contaminated media which significantly reduces the toxicity, volume, or mobility of contaminants and which, depending on the process(es) used, achieves varying degrees of long-term effectiveness.

(148) [~~(145)~~] Treatment zone--A soil area of the unsaturated zone of a land treatment unit within which hazardous constituents are degraded, transferred, or immobilized.

(149) [~~(146)~~] Underground injection--The subsurface emplacement of fluids through a bored, drilled, or driven well; or through a dug well, where the depth of the dug well is greater than the largest surface dimension. (See also "injection well.")

(150) [~~(147)~~] Underground tank--A device meeting the definition of tank in this section whose entire surface area is totally below the surface of and covered by the ground.

(151) [~~(148)~~] Unfit-for-use tank system--A tank system that has been determined through an integrity assessment or other inspection to be no longer capable of storing or processing solid waste or hazardous waste without posing a threat of release of solid waste or hazardous waste to the environment. [~~Waste and Municipal Hazardous Waste except as otherwise specified in §335.261 of this title.~~]

(152) [~~(149)~~] Universal waste--Any of the hazardous wastes defined as universal waste under §335.261(b)(13)(F) of this title that are managed under the universal waste requirements of Subchapter H, Division 5 of this chapter (relating to Universal Waste Rule).

(153) [~~(150)~~] Universal waste handler--Has the definition adopted under §335.261 of this title [~~(relating to Universal Waste Rule)~~].

(154) [~~(151)~~] Universal waste transporter--Has the definition adopted under §335.261 of this title [~~(relating to Universal Waste Rule)~~].

(155) [~~(152)~~] Unsaturated zone or zone of aeration--The zone between the land surface and the water table.

(156) [~~(153)~~] Uppermost aquifer--The geologic formation nearest the natural ground surface that is an aquifer, as well as lower aquifers that are hydraulically interconnected within the facility's property boundary.

(157) [~~(154)~~] Used oil--Any oil that has been refined from crude oil, or any synthetic oil, that has been used, and, as a result of such use, is contaminated by physical or chemical impurities. Used oil fuel includes any fuel produced from used oil by processing, blending, or other treatment. Rules applicable to nonhazardous used oil, oil characteristically hazardous from use versus mixing, Conditionally Exempt Small Quantity Generator (CESQG) hazardous used oil, and household used oil after collection that will be recycled are found in Chapter 324 of this title (relating to Used Oil) and 40 CFR Part 279 (Standards for Management of Used Oil).

(158) [~~(155)~~] Wastewater treatment unit--A device which:

(A) is part of a wastewater treatment facility subject to regulation under either the Federal Water Pollution Control Act (Clean Water Act), 33 United States Code §466 et seq., §402 or §307(b), as amended;

(B) receives and processes or stores an influent wastewater which is a hazardous or industrial solid waste, or generates and accumulates a wastewater treatment sludge which is a hazardous or industrial solid waste, or processes or stores a wastewater treatment sludge which is a hazardous or industrial solid waste; and

(C) meets the definition of tank or tank system as defined in this section.

(159) [~~(156)~~] Water (bulk shipment)--The bulk transportation of municipal hazardous waste or Class 1 [~~I~~] industrial solid waste which is loaded or carried on board a vessel without containers or labels.

(160) [~~(157)~~] Well--Any shaft or pit dug or bored into the earth, generally of a cylindrical form, and often walled with bricks or tubing to prevent the earth from caving in.

(161) [~~(158)~~] Zone of engineering control--An area under the control of the owner/operator that, upon detection of a solid waste or hazardous waste release, can be readily cleaned up prior to the release of solid waste or hazardous waste or hazardous constituents to groundwater or surface water.

§335.3. Technical Guidelines.

In order to promote the proper collection, handling, storage, processing, and disposal of industrial solid waste or municipal hazardous waste in a manner consistent with the purposes of Texas Health and Safety Code, Chapter 361 [~~the Solid Waste Disposal Act, Texas Civil Statutes, Article 4477- 7~~], the executive director will make available on request, copies of technical guidelines outlining methods designed to aid in the prevention of the conditions prohibited in this chapter. Guidelines should be considered as suggestions only.

§335.4. General Prohibitions.

In addition to the requirements of §335.2 of this title (relating to Permit Required), no person may cause, suffer, allow, or permit the collection, handling, storage, processing, or disposal of industrial solid waste or municipal hazardous waste in such a manner so as to cause:

(1) the discharge or imminent threat of discharge of industrial solid waste or municipal hazardous waste into or adjacent to the waters in the state without obtaining specific authorization for such a discharge from the Texas Natural Resource Conservation [~~Water~~] Commission;

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

§335.6. Notification Requirements.

(a) - (b) (No change.)

(c) Any person who generates hazardous waste in a quantity greater than the limits specified in §335.78 of this title (relating to Special Requirements for Hazardous Waste Generated by Conditionally Exempt Small Quantity Generators) in any calendar month or greater than 100 kilograms in any calendar month of industrial Class 1 waste shall notify the executive director of such activity using electronic notification software or paper forms provided by the executive director. Any registered generator who generates 1,000 kilograms or more of

hazardous waste in any calendar month, must meet the requirements of this subsection by electronic notification using software provided by the executive director unless the executive director has granted a written request to use paper forms or an alternative notification method or the software does not have features capable of meeting the requirements. The executive director may require submission of information necessary to determine whether the storage, processing, or disposal is compliant with the terms of this chapter. Notifications submitted pursuant to this section shall be in addition to information provided in any permit applications required by §335.2 of this title [~~(relating to Permit Required)~~], or any reports required by §335.9 of this title (relating to Recordkeeping and Annual Reporting Procedures Applicable to Generators), §335.10 of this title (relating to Shipping and Reporting Procedures Applicable to Generators of Hazardous Waste or Class 1 Waste and Primary Exporters of Hazardous Waste), and §335.13 of this title (relating to Recordkeeping and Reporting Procedures Applicable to Generators of Hazardous Waste or Class 1 Waste and Primary Exporters of Hazardous Waste). Any person who provides notification pursuant to this subsection shall have the continuing obligation to immediately document any changes or additional information with respect to such notification and within 90 days of the occurrence of such change or of becoming aware of such additional information, provide notice to the executive director in writing or using electronic notification software provided by the executive director, of any such changes or additional information to that reported previously. Any registered generator who generates 1,000 kilograms or more of hazardous waste in any calendar month, must meet the requirements of this subsection by electronic notification using software provided by the executive director unless the executive director has granted a written request to use paper forms or an alternative notification method or the software does not have features capable of meeting the requirements. If waste is recycled on-site or managed pursuant to §335.2(d) of this title [~~(relating to Permit Required)~~], the generator must also comply with the notification requirements specified in subsection (h) of this section. The information submitted pursuant to the notification requirements of this subchapter and to the additional requirements of §335.503 of this title (relating to Waste Classification and Waste Coding Required) shall include, but is not limited to:

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

(4) a proper hazardous waste determination which includes the appropriate EPA hazardous waste number(s) described in 40 Code of Federal Regulations (CFR) Part 261. Generators must determine whether such waste is hazardous as defined in 40 CFR [~~Code of Federal Regulations~~] Part 261 and submit the results of that hazardous waste determination to the executive director;

(5) the disposition of each solid waste generated, if subject to the notification requirement of this subsection, including the following information:

(A) - (C) (No change.)

(D) whether each unit is permitted, or qualifies for an exemption, under §335.2 of this title [~~(relating to Permit Required)~~].

(d) Any person who transports hazardous or Class 1 waste shall notify the executive director of such activity on forms furnished or approved by the executive director, except:

(1) industrial generators who generate less than 100 kilograms of Class 1 waste per month and less than the quantity limits of hazardous waste specified in §335.78 of this title [~~(relating to Special Requirements for Hazardous Waste Generated by Conditionally Exempt Small Quantity Generators)~~] and who only transport their own waste; and

(2) (No change.)

(e) - (g) (No change.)

(h) Any person who conducts or intends to conduct the recycling of industrial solid waste or municipal hazardous waste as defined in §335.24 of this title [~~(relating to Requirements for Recyclable Materials and Nonhazardous Recyclable Materials)~~] or Subchapter H of this chapter (relating to Standards for the Management of Specific Wastes and Specific Types of Facilities) and who is required to notify under §335.24 [~~§334.24~~] of this title or Subchapter H of this chapter must submit in writing to the executive director, at a minimum, the following information: the type(s) of industrial solid waste or municipal hazardous waste to be recycled, the method of storage prior to recycling, and the nature of the recycling activity. New recycling activities require such notification a minimum of 90 days prior to engaging in such activities. Recycling operations may commence 90 days after the initial notification of the intent to recycle, or upon receipt of confirmation that the executive director has reviewed the information found in this section. Persons engaged in recycling of industrial solid waste or municipal hazardous waste prior to the effective date of this section shall submit such notification within 60 days of the effective date of this subsection.

(i) The owner or operator of a facility qualifying for the small quantity burner exemption under 40 CFR [~~Code of Federal Regulations (CFR)~~] §266.108 must provide a one-time signed, written notification to the EPA [~~United States Environmental Protection Agency~~] and to the executive director indicating the following:

(1) (No change.)

(2) The owner and operator are in compliance with the requirements of 40 CFR §266.108, §335.221(a)(19) of this title (relating to Applicability and Standards) and this subsection of this section; and

(3) (No change.)

(j) (No change.)

(k) Other portions of this chapter that relate to solid wastes that are recycled include §335.1 of this title (relating to Definitions), under the definition of "Solid Waste," §335.17 of this title (relating to Special Definitions for Recyclable Materials and Nonhazardous Recyclable Materials), §335.18 of this title (relating to Variances from Classification as a Solid Waste), §335.19 of this title (relating to Standards and Criteria for Variances from Classification as a Solid Waste), §335.24 of this title [~~(relating to Requirements for Recyclable Materials and Nonhazardous Recyclable Materials)~~], and Subchapter H of this chapter [~~(relating to Standards for the Management of Specific Wastes and Specific Types of Materials)~~].

§335.9. Recordkeeping and Annual Reporting Procedures Applicable to Generators.

(a) Except with regard to nonhazardous recyclable materials regulated pursuant to §335.24(h) of this title (relating to Requirements for Recyclable Materials and Nonhazardous Recyclable Materials), each generator of hazardous or industrial solid waste shall comply with the following.

(1) (No change.)

(2) The generator shall submit to the executive director a complete and correct Annual Waste Summary detailing the management of each hazardous and Class 1 waste generated on-site during the reporting calendar year. The Annual Waste Summary shall also include the management of any hazardous or Class 1 waste generated in a year previous to the reporting year, but managed in the reporting calendar year. The Annual Waste Summary shall be submitted using electronic

software or paper forms provided or approved by the executive director. Upon written request by the generator, the executive director may authorize an extension to the report due date. Any registered generator who generates 1,000 kilograms or more of hazardous waste in any calendar month, must submit the Annual Waste Summary using software provided by the executive director unless the executive director has granted a written request to use paper forms or an alternative reporting method. Generators shall report as follows.

(A) (No change.)

[~~(B) Generators submitting their Annual Waste Summary electronically for the 1997 reporting year must do so on or before January 25, 1998.~~]

(B) [~~(C)~~] Generators submitting their Annual Waste Summary electronically [~~for calendar years after 1997~~] must do so on or before March 1 of the year following the reporting calendar year.

(3) Generators are not required to submit the information required in paragraph (1) of this subsection if they certify on the annual summary that all of the following conditions have been met:

(A) (No change.)

(B) no acute hazardous waste was generated or accumulated during the year exceeding the limits specified in §335.78(e)(1) and (2) of this title [~~(relating to Special Requirements for Hazardous Waste Generated by Conditionally Exempt Small Quantity Generators)~~];

(C) (No change.)

(4) Generators who are regulated under §335.78 of this title [~~(relating to Special Requirements for Hazardous Waste Generated by Conditionally Exempt Small Quantity Generators)~~] and also meet the requirements of paragraph (3) of this subsection are not required to submit an annual summary.

(b) A generator who ships his hazardous waste off-site must also report the information specified in §335.71 of this title (relating to Biennial Reporting). Any waste related information that has already been submitted by generators under the requirements of this section or §335.71 of this title need not be included in the reports from permitted or interim status facilities under 40 CFR §264.75 or §265.75.

§335.10. Shipping and Reporting Procedures Applicable to Generators of Hazardous Waste or Class 1 Waste and Primary Exporters of Hazardous Waste.

(a) Except as provided in subsection (g) and (h) of this section, no generator of hazardous or Class 1 waste consigned to an off-site solid waste process, storage, or disposal facility within the United States or primary exporters of hazardous waste consigned to a foreign country shall cause, suffer, allow, or permit the shipment of hazardous waste or Class 1 waste unless:

(1) for generators of industrial nonhazardous Class 1 waste in a quantity greater than 100 kilograms per month and/or generators of hazardous waste shipping hazardous waste which is part of a total quantity of hazardous waste generated in quantities greater than 100 kilograms in a calendar month, or quantities of acute hazardous waste in excess of quantities specified in §335.78(e) of this title (relating to Special Requirements for Hazardous Waste Generated by Conditionally Exempt Small Quantity Generators), who consign that waste to an off-site solid waste storage, processing, or disposal facility in Texas; a Texas Natural Resource Conservation Commission (TNRCC) manifest on Form TNRCC-0311 [~~, and, if necessary, TNRCC-0311B~~] is prepared;

(2) the generator is either an industrial generator that generates less than 100 kilograms of nonhazardous Class 1 waste per month and less than the quantity limits of hazardous waste specified in §335.78 of this title [~~(relating to Special Requirements for Hazardous Waste Generated by Conditionally Exempt Small Quantity Generators)~~] or a municipal generator that generates less than the quantity limit of hazardous waste specified in §335.78 of this title;

(3) - (6) (No change.)

(b) The manifest shall contain the following information.

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

(5) The manifest shall contain the generator's TNRCC [~~Texas Natural Resource Conservation Commission (TNRCC)~~] registration and/or permit number. Conditionally exempt small quantity generators (CESQGs) of hazardous waste or industrial generators of less than 100 kg per month of nonhazardous Class 1 waste and less than CESQG limits of hazardous waste that are exempt from manifesting may voluntarily choose to manifest their hazardous or Class 1 industrial nonhazardous waste. Such exempt generators may utilize the letters "CESQG" for their TNRCC generator registration number.

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

(14) The manifest shall contain the company name and site address of the facilities designated to receive the waste identified on the manifest and an alternate facility, if designated. Except as provided otherwise in §335.78 of this title [~~(relating to Special Requirements for Hazardous Waste Generated by Conditionally Exempt Small Quantity Generators)~~] for the shipment of hazardous wastes that are required to be manifested under subsection (a) of this section, generators shall designate on the manifest only those storage, processing, or disposal facilities which are authorized under the Resource Conservation and Recovery Act (RCRA) of 1976, Subtitle C, or an approved state hazardous waste program administered in lieu thereof.

(15) (No change.)

(16) The manifest shall contain the TNRCC [~~Texas Natural Resource Conservation Commission's or Texas Department of Health's state~~] storage, processing, or disposal facility registration and/or permit number.

(17) The manifest shall contain the appropriate notation in the hazardous materials (HM) column of the Texas uniform hazardous waste manifest. The form has been designed to allow the listing of both federally regulated wastes and wastes regulated solely by the state. In order to distinguish between federally regulated wastes and other waste, as required by United States Department of Transportation (DOT) regulations (49 Code of Federal Regulations (CFR) §172.201(a)(1)), the TNRCC [~~Texas Natural Resource Conservation Commission~~] has added an HM [~~a hazardous materials (HM)~~] column on the manifest before the DOT [~~United States Department of Transportation~~] description. When a waste shipment consists of both federally regulated materials and state-regulated wastes, the HM [~~hazardous materials (HM)~~] column must be checked or marked for only those line entries which are regulated under federal law as hazardous wastes or hazardous materials.

(18) The manifest shall contain the DOT [~~United States Department of Transportation~~] proper shipping name, hazard class, and identification number (UN/NA) for each hazardous waste as identified in 49 CFR [~~Code of Federal Regulations~~] Parts 171-177. If the shipment contains non-hazardous waste solely regulated by the TNRCC [~~Texas Natural Resource Conservation Commission~~], then the TNRCC

[~~Texas Natural Resource Conservation Commission~~] waste classification code description should be used. [~~If additional space is needed for waste descriptions, enter these additional descriptions in Item 28 on the continuation sheet.~~]

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

(21) The manifest shall contain the unit of measure of each waste described on each line. The appropriate abbreviation for the unit of measure may be found in Appendix I, Table 1 of 40 CFR [~~Code of Federal Regulations,~~] Parts 264 or 265.

(22) The manifest shall contain the TNRCC [~~Texas Natural Resource Conservation Commission~~] waste classification code assigned to the waste by the generator.

(23) - (24) (No change.)

(c) (No change.)

(d) At the time of waste transfer, the generator shall:

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

(3) retain one copy, in accordance with §335.13(i) [~~§335.123(a)~~] of this title (relating to Recordkeeping and Reporting Procedures Applicable to Generators Shipping Hazardous Waste or Class 1 [~~I~~] Waste and Primary Exporters of Hazardous Waste); and

(4) (No change.)

(e) For shipments of hazardous waste or Class 1 [~~I~~] waste within the United States solely by water (bulk shipments only), the generator shall send three copies of the manifest dated and signed in accordance with this section to the owner or operator of the designated facility or to the last water (bulk shipment) transporter to handle the waste in the United States if exported by water. Copies of the manifest are not required for each transporter.

(f) For rail shipments of hazardous waste or Class 1 [~~I~~] waste within the United States which originate at the site of generation, the generator shall send at least three copies of the manifest dated and signed in accordance with this section to:

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

(g) No manifest is required for the shipment of Class 1 [~~I~~] waste which is not hazardous waste to property owned or otherwise effectively controlled by the owner or operator of an industrial plant, manufacturing plant, mining operation, or agricultural operation from which the waste results or is produced, provided that the property is within 50 miles of the plant or operation and the waste is not commingled with waste from any other source or sources. An industrial plant, manufacturing plant, mining operation, or agricultural operation owned by one person shall not be considered another source with respect to other plants or operations owned by the same person.

(h) (No change.)

§335.11. Shipping Requirements for Transporters of Hazardous Waste or Class 1 [~~I~~] Waste.

(a) No transporter may cause, suffer, allow, or permit the shipment of solid waste for which a manifest is required under §335.10 of this title (relating to Shipping and Reporting Procedures Applicable to Generators of Hazardous Waste or Class 1 [~~I~~] Waste and Primary exporters of hazardous waste) to an off-site storage, processing, or disposal facility, unless the transporter:

(1) obtains a manifest completed by the generator or primary exporter where appropriate in accordance with §335.10 of this title [~~(relating to Shipping and Reporting Procedures Applicable to Generators of Hazardous Waste or Class I Waste and Primary Exporters of Hazardous Waste)~~];

(2) - (4) (No change.)

(b) The transporter shall ensure that the manifest accompanies the municipal hazardous waste or Class 1 [~~I~~] waste.

(c) No transporter may cause, suffer, allow, or permit the delivery of a shipment of hazardous waste or Class 1 [~~I~~] waste to another transporter designated on the manifest, unless the transporter:

(1) (No change.)

(2) retains one copy of the manifest in accordance with §335.14(a) of this title (relating to Recordkeeping Requirements Applicable to Transporters of Hazardous Waste or Class 1 [~~I~~] Waste);

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

(d) No transporter may cause, suffer, allow, or permit the delivery of a shipment of municipal hazardous waste or Class 1 [~~I~~] waste to a storage, processing, or disposal facility, unless the transporter:

(1) (No change.)

(2) retains one copy of the manifest in accordance with §335.14(a) of this title [~~(relating to Recordkeeping Requirements Applicable to Transporters of Hazardous Waste or Class I Waste)~~]; and

(3) (No change.)

(e) The requirements of subsections (b) - (d) and (f) of this section do not apply to water (bulk shipment) transporters if:

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

(5) a copy of the shipping paper or manifest is retained by each water (bulk shipment) transporter in accordance with §335.14(b) of this title [~~(relating to Recordkeeping Requirements Applicable to Transporters of Hazardous Waste or Class I Waste)~~].

(f) For shipments involving rail transportation, the requirements of subsections (b) - (e) of this section do not apply and the following requirements do apply.

(1) When accepting Class 1 [~~I~~] waste from a nonrail transporter, the initial rail transporter must:

(A) - (C) (No change.)

(D) retain one copy of the manifest and rail shipping paper in accordance with §335.14(c) of this title [~~(relating to Recordkeeping Requirements Applicable to Transporters of Hazardous Waste or Class I Waste)~~].

(2) (No change.)

(3) When delivering Class 1 [~~I~~] waste or municipal hazardous waste to the designated facility, a rail transporter must:

(A) (No change.)

(B) retain a copy of the manifest or signed shipping paper in accordance with §335.14(c) of this title [~~(relating to Recordkeeping Requirements Applicable to Transporters of Hazardous Waste or Class I Waste)~~].

(4) When delivering hazardous waste or Class 1 [~~I~~] waste to a nonrail transporter, a rail transporter must:

(A) (No change.)

(B) retain a copy of the manifest in accordance with §335.14(c) of this title [~~(relating to Recordkeeping Requirements Applicable to Transporters of Hazardous Waste or Class I Waste)~~].

(5) Before accepting municipal hazardous waste or Class 1 [~~I~~] waste from a rail transporter, a nonrail transporter must sign and date the manifest and provide a copy to the rail transporter.

(g) Transporters who transport hazardous waste or Class 1 [~~I~~] waste out of the United States shall:

(1) indicate on the manifest the date the municipal hazardous waste or Class 1 [~~I~~] waste left the United States under the item labeled "special handling instructions and additional information";

(2) sign the manifest and retain one copy in accordance with §335.14(c) of this title [~~(relating to Recordkeeping Requirements Applicable to Transporters of Hazardous Waste or Class I Waste)~~];

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

(h) The transporter must deliver the entire quantity of municipal hazardous waste or Class 1 [~~I~~] waste which he has accepted from a generator or a transporter to:

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

(i) (No change.)

§335.12. Shipping Requirements Applicable to Owners or Operators of Storage, Processing, or Disposal Facilities.

(a) No owner or operator of a storage, processing, or disposal facility may accept delivery of solid waste for which a manifest is required under §335.10 of this title (relating to Shipping and Reporting Procedures Applicable to Generators of Hazardous Waste or Class 1 [~~I~~] Waste and Primary Exporters of Hazardous Waste), for off-site storage, processing, or disposal unless:

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

(b) If a facility receives, from a rail or water (bulk shipment) transporter, hazardous waste or Class 1 [~~I~~] waste which is accompanied by a shipping paper containing all the information required on the manifest, the owner or operator, or his agent, shall:

(1) sign and date each copy of the manifest or shipping paper (if the manifest has not been received) to certify that the hazardous waste or Class 1 [~~I~~] waste covered by the manifest or the shipping paper was received;

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

(4) retain at the facility a copy of each shipping paper and manifest in accordance with §335.15(a) of this title [~~(relating to Recordkeeping and Reporting Requirements Applicable to Owners or Operators of Storage, Processing, or Disposal Facilities)~~].

(c) If a facility receives hazardous waste or Class 1 [~~I~~] waste accompanied by a manifest, or in the case of shipments by rail or water (bulk shipment), by a shipping paper, the owner or operator, or his agent, must note any significant discrepancies on each copy of the manifest or shipping paper (if the manifest has not been received).

(1) Manifest discrepancies are differences between the quantity or type of hazardous waste or Class 1 [~~I~~] waste designated on the manifest or shipping paper, and the quantity or type of hazardous waste or Class 1 [~~I~~] waste a facility actually received. Significant discrepancies in type are obvious differences which can be discovered by inspection or waste analysis, such as waste solvent substituted for waste acid, or toxic constituents not reported in the manifest or shipping paper. Significant discrepancies in quantity are:

(A) - (B) (No change.)

(2) (No change.)

(d) (No change.)

§335.13. Recordkeeping and Reporting Procedures Applicable to Generators Shipping Hazardous Waste or Class 1 Waste and Primary Exporters of Hazardous Waste.

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

(e) The following figure is a graphic representation illustrating generator, waste type, shipment type, and report method.
Figure: 30 TAC §335.13(e)

(f) A registered generator is defined as[~~:~~]

[~~(1)~~] an in-state generator who has complied with §335.6 of this title (relating to Notification Requirements), and is assigned a solid waste registration number [~~; or~~]

[~~(2) a Texas parent or a Texas sister company of a twin plant (maquiladora) who imports hazardous waste or Class 1 waste from a foreign country into or through Texas~~].

(g) - (n) (No change.)

§335.14. Recordkeeping Requirements Applicable to Transporters of Hazardous Waste or Class 1[~~I~~] Waste.

(a) A transporter of hazardous waste or Class 1 [~~I~~] waste shall retain a copy of each manifest signed by the generator or, in the case of exports of hazardous waste, the primary exporter; the transporter; and the next designated transporter, or the owner or operator of the facility designated on the manifest for a minimum of at least three years from the date of initial shipment.

(b) For shipments delivered to the facility designated on the manifest by water (bulk shipment), each water (bulk shipment) transporter must retain a copy of a shipping paper containing all the information required by §335.11(e) of this title (relating to Shipping Requirements for Transporters of Hazardous Waste or Class 1 [~~I~~] Waste) for a minimum of three years from the date of initial shipment.

(c) For shipments of hazardous waste or Class 1 [~~I~~] waste by rail within the United States:

(1) the initial rail transporter must keep a copy of the manifest and shipping paper with all of the information required in §335.11(f)(2) of this title [~~(relating to Shipping Requirements for Transporters of Hazardous Waste or Class I Waste)~~] for a period of three years from the date the hazardous waste or Class 1 [~~I~~] waste was accepted by the initial transporter; and

(2) the final rail transporter must keep a copy of the signed manifest (or the shipping paper if signed by the designated facility in lieu of the manifest) for a period of three years from the date the hazardous waste or Class 1 [~~I~~] waste was accepted by the initial transporter.

(d) - (e) (No change.)

§335.17. Special Definitions for Recyclable Materials and Nonhazardous Recyclable Materials.

(a) For the purposes of the definition of solid waste in §335.1 of this title (relating to Definitions) and §335.24 of this title (relating to Requirements for Recyclable Materials and Nonhazardous Recyclable Materials):

(1) (No change.)

(2) sludge has the same meaning used in Texas Health and Safety Code, §361.003 [~~the Solid Waste Disposal Act, Texas Civil Statutes, Article 4477-7, §2~~];

(3) - (7) (No change.)

(8) a material is accumulated speculatively if it is accumulated before being recycled. A material is not accumulated speculatively, however, if the person accumulating it can show that the material is potentially recyclable and has a feasible means of being recycled; and that, during the calendar year (commencing on January 1), the amount of material that is recycled, or transferred to a different site for recycling, equals at least 75% by weight or volume of the amount of that material accumulated at the beginning of the period. In calculating the percentage of turnover, the 75% requirement is to be applied to each material of the same type (e.g., slags from a single smelting process) that is recycled in the same way (i.e., from which the same material is recovered or that is used in the same way). Materials accumulating in units that would be exempt from regulation under 40 Code of Federal Regulations (CFR) §261.4(c) are not to be included in making the calculation. (Materials that are already defined as solid wastes also are not to be included in making the calculation.) Materials are no longer in this category once they are removed from accumulation for recycling, however.

(9) (No change.)

(10) Processed scrap metal is scrap metal which has been manually or physically altered to either separate it into distinct materials to enhance economic value or to improve the handling of materials. Processed scrap metal includes, but is not limited to, scrap metal which has been baled, shredded, sheared, chopped, crushed, flattened, cut, melted, or separated by metal type (i.e., sorted), and, fines, drosses and related materials which have been agglomerated. (Note: shredded circuit boards being sent for recycling are not considered processed scrap metal. They are covered under the exclusion from the definition of solid waste for shredded circuit boards being recycled (40 CFR [~~Code of Federal Regulations~~] §261.4(a)(14)).

(11) - (12) (No change.)

(b) Other portions of this chapter that relate to solid wastes that are recycled include §335.1 of this title [~~(relating to Definitions)~~], under the definition of Solid Waste, §335.6 of this title (relating to Notification Requirements), §335.18 of this title (relating to Variances from Classification as a Solid Waste), §335.19 of this title (relating to Standards and Criteria for Variances from Classification as a Solid Waste), §335.24 of this title [~~(relating to Requirements for Recyclable Materials and Nonhazardous Recyclable Materials)~~], and Subchapter H of this chapter (relating to Standards for the Management of Specific Wastes and Specific Types of Materials).

§335.24. Requirements for Recyclable Materials and Nonhazardous Recyclable Materials.

(a) - (b) (No change.)

(c) The following recyclable materials are not subject to regulation under Subchapters B-I or O of this chapter (relating to Hazardous Waste Management General Provisions; Standards Applicable to Generators of Hazardous Waste; Standards Applicable to Transporters of Hazardous Waste; Permitting Standards for Owners and Operators of Hazardous Waste Storage, Processing, or Disposal Facilities; Interim Standards for Owners and Operators of Hazardous Waste Storage, Processing, or Disposal Facilities; Location Standards for Hazardous Waste Storage, Processing, or Disposal; Standards for the Management of Specific Wastes and Specific Types of Facilities; Prohibition on Open Dumps; and Land Disposal Restrictions); Chapter 1 of this title (relating to Purpose of Rules, General Provisions); Chapter 3 of this title (relating to Definitions); Chapter 10 of this title (relating to Commission Meetings); Chapter 20 of this title (relating to Rulemaking); Chapter 37 of this title (relating to Financial Assurance); Chapter 39 of this title (relating to Public Notice); Chapter 40 of this title (relating to Alternative Dispute Resolution Procedures); Chapter 50 of this title (relating to Action on Applications); Chapter 55 of this title (relating to Request for Contested Case Hearings); Chapter 70 of this title (relating to Enforcement); Chapter 80 of this title (relating to Contested Case Hearings); Chapter 86 of this title (relating to Special Provisions for Contested Case Hearings; Chapter 261 of this title (relating to Introductory Provisions); Chapter 277 of this title (relating to Use Determinations for Tax Exemption for Pollution Control Property) or Chapter 305 of this title (relating to Consolidated Permits), except as provided in subsections (g) and (h) of this section:

(1) (No change.)

(2) scrap metal that is not already excluded under 40 CFR [~~Code of Federal Regulations~~] §261.4(a)(13);

(3) fuels produced from the refining of oil-bearing hazardous waste along with normal process streams at a petroleum refining facility if such wastes result from normal petroleum refining, production, and transportation practices (this exemption does not apply to fuels produced from oil recovered from oil- bearing hazardous waste, where such recovered oil is already excluded under 40 CFR [~~Code of Federal Regulations~~] §261.4(a)(12)); and

(4) (No change.)

(d) (No change.)

(e) Owners or operators of facilities that store recyclable materials before they are recycled are regulated under all applicable provisions of this chapter, and Chapter 305 of this title (relating to Consolidated Permits); Chapter 1 of this title (relating to Purpose of Rules, General Provisions); Chapter 3 of this title (relating to Definitions); Chapter 10 of this title (relating to Commission Meetings); Chapter 20 of this title (relating to Rulemaking); Chapter 37 of this title (relating to Financial Assurance); Chapter 39 of this title (relating to Public Notice); Chapter 40 of this title (relating to Alternative Dispute Resolution Procedures); Chapter 50 of this title (relating to Action on Applications); Chapter 55 of this title (relating to Request for Contested Case Hearings); Chapter 70 of this title (relating to Enforcement); Chapter 80 of this title (relating to Contested Case Hearings); Chapter 277 of this title (relating to Use Determinations for Tax Exemption for Pollution Control Property); and the notification requirements under §335.6 of this title [~~(relating to Notification Requirements)~~], except as provided in subsections (a) - (c) of this section. The recycling process itself is exempt from regulation.

(f) Owners or operators of facilities that recycle recyclable materials without storing them before they are recycled are subject to the following requirements, except as provided in subsections (a) - (c) of this section:

(1) notification requirements under §335.6 of this title [~~(relating to Notification Requirements)~~];

(2) (No change.)

(g) Recyclable materials (excluding those listed in subsections (b)(4), (c)(1) and (2) - (5) of this section) remain subject to the requirements of §§335.4, 335.6, and 335.9 - 335.15 [~~§§335.9-335.15~~] of this title (relating to General Prohibitions; Notification Requirements; Recordkeeping and Annual Reporting Procedures Applicable to Generators; Shipping and Reporting Procedures Applicable to Generators of Hazardous Waste or Class 1 Waste and Primary Exporters of Hazardous Waste; Shipping Requirements for Transporters of Hazardous Waste or Class 1 Waste; Shipping Requirements Applicable to Owners or Operators of Storage, Processing, or Disposal Facilities; Recordkeeping and Reporting Procedures Applicable to Generators Shipping Hazardous Waste or Class 1 Waste; Recordkeeping Requirements Applicable to

Transporters of Hazardous Waste or Class 1 Waste; and Recordkeeping and Reporting Requirements Applicable to Owners or Operators of Storage, Processing, or Disposal Facilities), as applicable. Recyclable materials listed in subsections (b)(4) and (c)(2) of this section remain subject to the requirements of subsection (h) of this section.

(h) Industrial solid wastes that are nonhazardous recyclable materials and recyclable materials listed in subsection (b)(4) and subsection (c)(2) of this section remain subject to the requirements of §335.4 of this title [~~(relating to General Prohibitions)~~]. In addition, industrial solid wastes that are nonhazardous recyclable materials and recyclable materials listed in subsection (c)(2) of this section remain subject to the requirements of §335.6 of this title [~~(relating to Notification Requirements)~~]. Industrial solid wastes that are nonhazardous recyclable materials and recyclable materials listed in subsection (b)(4) and subsection (c)(2) of this section may also be subject to the requirements of §§335.10 - 335.15 of this title [~~(relating to Shipping and Reporting Procedures Applicable to Generators of Hazardous Waste or Class 1 Waste and Primary Exporters of Hazardous Waste; Shipping Requirements for Transporters of Hazardous Waste or Class 1 Waste; Shipping Requirements Applicable to Owners or Operators of Storage, Processing, or Disposal Facilities; Recordkeeping and Reporting Procedures Applicable to Generators Shipping Hazardous Waste or Class 1 Waste and Primary Exporters of Hazardous Waste; Recordkeeping Requirements Applicable to Transporters of Hazardous Waste or Class 1 Waste; and Recordkeeping and Reporting Requirements Applicable to Owners or Operators of Storage, Processing, or Disposal Facilities)~~], as applicable, if the executive director determines that such requirements are necessary to protect human health and the environment. In making the determination, the executive director shall consider the following criteria:

(1) - (9) (No change.)

(i) Except as provided in Texas Health and Safety Code, [~~the Solid Waste Disposal Act, Health and Safety Code,~~] §361.090, facilities managing recyclable materials that are required to obtain a permit under this section may also be permitted to manage nonhazardous recyclable materials at the same facility if the executive director determines that such regulation is necessary to protect human health and the environment. In making this determination, the executive director shall consider the following criteria:

(1) - (12) (No change.)

(j) (No change.)

(k) Owners or operators of facilities subject to hazardous waste permitting requirements with hazardous waste management units that recycle hazardous wastes are subject to the requirements of 40 CFR [~~Code of Federal Regulations~~] Part 264 or Part 265, Subparts AA and BB, as adopted by reference under §335.152(a)(17) - (18) and §335.112(a)(19) - (20) of this title (relating to Standards).

(l) Hazardous waste that is exported to or imported from designated member countries of the Organization for Economic Cooperation and Development (OECD), as defined in 40 CFR [~~Code of Federal Regulations (CFR)~~] §262.58(a)(1), for purpose of recovery, and any person who exports or imports such hazardous waste, is subject to the requirements of 40 CFR Part 262, Subpart H (both federal regulation references as amended and adopted through April 12, 1996 at 61 FedReg 16290), if the hazardous waste is subject to the federal manifesting requirements of 40 CFR Part 262, or subject to the universal waste management standards of 40 CFR Part 273, or subject to Subchapter H, Division 5 of this chapter [~~§335.261 of this title~~] (relating to Universal Waste Rule).

(m) Other portions of this chapter that relate to solid wastes that are recycled include §335.1 of this title (relating to Definitions), under the definition of "Solid Waste," §335.6 of this title [~~(relating to Notification Requirements)~~], §335.17 of this title (relating to Special Definitions for Recyclable Materials and Nonhazardous Recyclable Materials), §335.18 of this title (relating to Variances from Classification as a Solid Waste), §335.19 of this title (relating to Standards and Criteria for Variances from Classification as a Solid Waste), and Subchapter H of this chapter [~~(relating to Standards for the Management of Specific Wastes and Specific Types of Materials)~~].

§335.28. Adoption of Memoranda of Understanding by Reference.

(a) The [~~following memoranda of understanding between the commission and other state agencies, required to be adopted by rule as set forth in the Texas Water Code, §5.104, are adopted by reference. Copies of these documents are available upon request from the Texas Natural Resource Conservation Commission, Chief Clerk's Office, P.O. Box 13087, Austin, Texas 78711-3087, (512) 239-3300.~~]

[~~(1) The~~] memorandum of understanding (effective July 14, 1987) between the attorney general of Texas and the Texas Water Commission, which concerns public participation in the state hazardous waste enforcement process, is adopted by reference.

(b) [~~(2)~~] The memorandum of understanding [~~(effective September 1, 1987)~~] between the Texas Department of Health and the Texas Natural Resource Conservation [~~Water~~] Commission, which concerns radiation control functions and mutual cooperation, is adopted by reference under §7.118 of this title (relating to Memorandum of Understanding between the Texas Department of Health and the Texas Natural Resource Conservation Commission Regarding Radiation Control Functions [~~the regulation and management of radioactive mixed wastes~~].

(c) Copies of these documents are available upon request from the Texas Natural Resource Conservation Commission, Office of the Chief Clerk, MC 105, P.O. Box 13087, Austin, Texas 78711- 3087, (512) 239-3300.

§335.29. Adoption of Appendices by Reference.

The following appendices contained in 40 Code of Federal Regulations Part 261 are adopted by reference as amended and adopted through April 1, 1987, and as further amended as indicated in each paragraph:

(1) Appendix I - Representative Sampling Methods;

(2) Appendix II - Method 1311 Toxicity Characteristic Leaching Procedure (TCLP) (as amended through August 31, 1993, [~~at~~] (58 FR [~~FedReg~~] 46040));

(3) Appendix III--Chemical Analysis Test Methods (as amended through August 31, 1993, [~~at~~] (58 FR [~~FedReg~~] 46040));

(4) Appendix VII - Basis for Listing Hazardous Waste (as amended through August 6, 1998, [~~at~~] (63 FR [~~FedReg~~] 42110));

(5) Appendix VIII - Hazardous Constituents (as amended through May 4, 1998, [~~at~~] (63 FR [~~FedReg~~] 24596)); and

(6) Appendix IX - Wastes Excluded Under §260.20 and §260.22 (as amended through October 19, 1999, (64 FR 56256)).

§335.31. Incorporation of References.

When used in Chapter 335 of this title (relating to Industrial Solid Waste and Municipal Hazardous Waste), the references contained in 40 Code of Federal Regulations (CFR)§260.11 are incorporated by reference as amended and adopted in the CFR [~~Code of Federal Regulations~~] through May 14, 1999 (64 FR 26315) [~~June 13, 1997, at 62 FedReg 32451~~].

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 June 8, 2001.

TRD-200103223
Margaret Hoffman
Director, Environmental Law Division
Texas Natural Resource Conservation Commission
Proposed date of adoption: July 23, 2001
For further information, please call: (512) 239-4712

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SUBCHAPTER B. HAZARDOUS WASTE MANAGEMENT GENERAL PROVISIONS

30 TAC §§335.41, 335.43 - 335.47

STATUTORY AUTHORITY

The amendments are proposed under Texas Water Code (TWC), §5.103 and §5.105, which provide the commission with the authority to adopt any rules necessary to carry out its powers and duties under the provisions of the TWC or other laws of this state; and under Texas Health and Safety Code (THSC), Solid Waste Disposal Act, §361.017 and §361.024, which authorize the commission to regulate industrial solid waste and municipal hazardous waste and to adopt rules consistent with the general intent and purposes of the THSC.

The proposed amendments implement THSC, Chapter 361.

§335.41. Purpose, Scope and Applicability.

(a) The purpose of this chapter is to implement a state hazardous waste program which controls from point of generation to ultimate disposal those wastes which have been identified by the administrator of the EPA [~~United States Environmental Protection Agency (EPA)~~] in 40 Code of Federal Regulations (CFR) Part 261.

(b) (No change.)

(c) Except as provided in §335.47 of this title (relating to Special Requirements for Persons Eligible for a Federal Permit by Rule), Subchapter E of this chapter [~~(relating to Interim Standards for Owners and Operators of Hazardous Waste Storage, Processing or Disposal Facilities)~~] and Subchapter F of this chapter [~~(relating to Permitting Standards for Owners and Operators of Hazardous Waste, Storage, Processing, or Disposal Facilities)~~] do not apply to the owner or operator of a publicly-owned treatment works (POTW) which processes, stores, or disposes of hazardous waste.

(d) Subchapter E of this chapter [~~(relating to Interim Standards for Owners and Operators of Hazardous Waste Storage, Processing, or Disposal Facilities)~~] and Subchapter F of this chapter [~~(relating to Permitting Standards for Owners and Operators of Hazardous Waste, Storage, Processing, or Disposal Facilities)~~] do not apply to:

(1) the owner or operator of an elementary neutralization unit or a wastewater treatment unit as defined in §335.1 of this title [~~(relating to Definitions)~~], provided that if the owner or operator is diluting hazardous ignitable (D001) wastes (other than the D001 High TOC Subcategory defined in 40 CFR §268.40, Table Treatment Standards for Hazardous Wastes), or reactive (D003) waste, to remove the characteristic before land disposal, the owner/operator must comply with the requirements set out in 40 CFR §264.17(b);

(2) - (4) (No change.)

(e) Subchapter E of this chapter does not apply to:

(1) (No change.)

(2) the owner or operator of a solid waste facility who stores, processes, or disposes of hazardous waste received from a conditionally exempt small quantity generator.

(f) The following requirements apply to residues of hazardous waste in containers. [~~:~~]

(1) (No change.)

(2) For purposes of determining whether a container is empty under this subsection, the following provisions apply:

(A) a container or an inner liner removed from a container that has held any hazardous waste, except a waste that is a compressed gas or that is identified as an acute hazardous waste listed in 40 CFR §§261.31, 261.32, or 261.33(e) is empty if:

(i) - (iii) (No change.)

(B) (No change.)

(C) a container or an inner liner removed from a container that has held an acute hazardous waste listed in 40 CFR §§261.31, 261.32, or 261.33(e) is empty if:

(i) - (iii) (No change.)

(g) Subchapters B - F and O of this chapter [~~(relating to Hazardous Waste Management General Provisions; Standards Applicable to Generators of Hazardous Waste; Standards Applicable to Transporters of Hazardous Waste; Interim Standards for Owners and Operators of Hazardous Waste Storage, Processing, or Disposal Facilities; Permitting Standards for Owners and Operators of Hazardous Waste Storage, Processing or Disposal Facilities; and Land Disposal Restrictions)~~] do not apply to hazardous waste which is managed as a recyclable material described in §§335.24(b) and (c) of this title (relating to Requirements for Recyclable Materials and Nonhazardous Recyclable Materials), except to the extent that requirements of these subchapters are referred to in Subchapter H of this chapter (relating to Standards for the Management of Specific Wastes and Specific Types of Facilities) and Chapter 324 of this title (relating to Used Oil).

(h) Subchapter E of this chapter [~~(relating to Interim Standards for Owners and Operators of Hazardous Waste, Storage, Processing, or Disposal Facilities)~~] and Subchapter F of this chapter [~~(relating to Permitting Standards for Owners and Operators of Hazardous Waste, Storage, Processing, or Disposal Facilities)~~] apply to owners or operators of all facilities which treat, store, or dispose of hazardous waste referred to in Subchapter O of this chapter [~~(relating to Land Disposal Restrictions)~~].

(i) Except as provided in §335.47 of this title [~~(relating to Special Requirements for Persons Eligible for a Federal Permit by Rule)~~], Subchapter F of this chapter [~~(relating to Permitting Standards for Owners and Operators of Hazardous waste Storage, Processing, or Disposal Facilities)~~] does not apply to persons disposing of hazardous waste by means of underground injection. However, Subchapter F of this chapter does apply to the aboveground storage or processing of hazardous waste before it is injected underground.

(j) (No change.)

§335.43. Permit Required.

(a) Except as provided in [~~subsection (b) of this section and~~] §335.2 of this title (relating to Permit Required), no person shall store, process, or dispose of hazardous waste without first having obtained a permit from the Texas Natural Resource Conservation [~~Water~~] Commission.

[(b) Any owner or operator of a solid waste management facility that is in existence on the effective date of a statutory or regulatory change that subjects the owner or operator to a requirement to obtain a hazardous waste permit who has filed a hazardous waste permit application with the commission in accordance with the rules and regulations of the commission, may continue the storage, processing, or disposal of hazardous waste until such time as the Texas Water Commission approves or denies the application, or, if the owner or operator becomes subject to a requirement to obtain a hazardous waste permit after November 8, 1984, except as provided by the United States Environmental Protection Agency or commission rules relative to termination of interim status. If a solid waste facility which has been receiving waste from off-site sources has become a commercial hazardous waste management facility as a result of the federal toxicity characteristic rule effective September 25, 1990, and is required to obtain a hazardous waste permit, such a facility that qualifies for interim status is limited to those activities that qualify it for interim status until the facility obtains the hazardous waste permit. Owners and operators of waste management facilities that are in existence on the effective date of statutory or regulatory amendments under the Solid Waste Disposal Act, Texas Civil Statutes, Article 4477-7, or the Resource Conservation and Recovery Act of 1976, as amended, 42 United States Code, §6901 et seq., that render the facility subject to the requirement to obtain a hazardous waste permit, may continue to operate if Part A of their permit application is submitted no later than:]

[(1) six months after the date of publication of regulations by the United States Environmental Protection Agency pursuant to the Resource Conservation and Recovery Act of 1976, as amended, which first require them to comply with the standards set forth in Subchapter E of this chapter (relating to Interim Standards for Owners and Operators of Hazardous Waste Storage, Processing or Disposal Facilities), or Subchapter H of this chapter (relating to Standards for the Management of Specific Wastes and Specific Types of Facilities); or]

[(2) 30 days after the date they first become subject to the standards set forth in Subchapter E of this chapter (relating to Interim Standards for owners and Operators of Hazardous Waste Storage, Processing or Disposal Facilities), or Subchapter H of this chapter (relating to Standards for the Management of Specific Wastes and Specific Types of Facilities); whichever first occurs; or]

[(3) for generators who generate greater than 100 kilograms but less than 1,000 kilograms of hazardous waste in a calendar month and who process, store, or dispose of these wastes on-site, a Part A permit application shall be submitted to the Environmental Protection Agency by March 24, 1987, as required by 40 Code of Federal Regulations, §270.10(e)(1)(iii).]

[(c) The following words and terms, when used in subsection (b) of this section, shall have the following meanings unless the text clearly indicates otherwise.]

[(1) On-Site Storage, Processing, or Disposal--On-site storage, processing, or disposal occurs when industrial solid waste is:]

[(A) Collected, handled, stored, processed, or disposed of within the property boundaries of a tract of land owned or otherwise effectively controlled by the owners or operators of the particular industrial plant, manufacturing plant, mining operation, or agricultural operation from which the waste results or is produced, and which tract of land is within 50 miles from the plant or operation which is the source of the industrial waste; and]

[(B) The industrial solid waste is not collected, handled, stored, processed, or disposed of with solid waste from any other source or sources. An industrial plant, manufacturing plant, mining operation, or agricultural operation owned by one person shall not be considered an "other source" with respect to other plants and operations owned by the same person.]

[(2) Commenced On-Site Storage, Processing, or Disposal of Hazardous Waste--A person has commenced on-site storage, processing, or disposal of hazardous waste if the owner or operator has obtained all necessary federal, state, and local preconstruction approvals or permits as required by applicable federal, state, and local hazardous waste control statutes, regulations, or ordinances; and either:]

[(A) a continuous physical, on-site construction program has begun; or]

[(B) the owner or operator has entered into contractual obligations, which cannot be cancelled or modified without substantial loss, for construction of the facility to be completed within a reasonable time.]

[(d) Subsection (b) of this section shall not apply to a facility if it has been previously denied a hazardous waste permit or if authority to operate the facility has been previously terminated.]

(b) [(e)] Upon receipt of federal Hazardous and Solid Waste Act (HSWA) authorization for the Texas Natural Resource Conservation [Water] Commission's [(commission)] Hazardous Waste Program, the commission shall be authorized to enforce the HSWA provisions that the EPA [Environmental Protection Agency (EPA)] imposed in hazardous waste permits that were issued before the HSWA authorization was granted.

§335.44. Application for Existing On-Site Facilities.

(a) In order to satisfy the application deadline specified in §335.2(c) [§335.43(b)] of this title (relating to Permit Required), an application must be submitted prior to that date which contains information defining the following:

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

(b) - (d) (No change.)

§335.45. Effect on Existing Facilities.

(a) Effect on permitted off-site facilities. Subchapters B - E of this chapter (relating to Hazardous Waste Management General Provisions; Standards Applicable to Generators of Hazardous Waste; Standards Applicable to Transporters of Hazardous Waste; and Interim Standards for Owners and Operators of Hazardous Waste Storage, Processing, or Disposal Facilities), provide minimum requirements applicable to all persons generating, transporting, storing, processing, and disposing of hazardous waste. All persons holding permits or any other authorizations from the commission or its predecessor agencies, which relate to hazardous waste, shall meet the requirements of Subchapter E of this chapter [(relating to Interim Standards for Owners and Operators of Hazardous Waste Storage, Processing, or Disposal Facilities)] until final administrative disposition of their permit application pursuant to standards prescribed by Subchapter F of this chapter (relating to Permitting Standards for Owners and Operators of Hazardous Waste Storage, Processing, or Disposal Facilities) is made. However, where the permit or authorization specifies additional or more stringent requirements, the provisions of the permit or authorization shall be complied with.

(b) Effect on off-site facilities without a permit to re-use, recycle, or reclaim hazardous waste, or to burn hazardous waste in boilers or industrial furnaces. Any person who has commenced the off-site storage, processing, or disposal of hazardous wastes, or activities that are listed, identified or described by the administrator of the United States Environmental Protection Agency in 40 Code of Federal Regulations Part 261, on or before the effective date of statutory or regulatory amendments under the Resource Conservation and Recovery Act

of 1976, as amended, 42 United States Code §§6901 et seq., concerning the re-use, recycling, or reclamation of hazardous waste, or relating to the burning of hazardous waste in boilers or industrial furnaces, that render such wastes or activities subject to the requirements to have a hazardous waste permit, shall file an application with the commission on or before the effective date of such amendments, which includes the applicable information required by §335.44 of this title (relating to Application for Existing On-site Facilities). Any person who has commenced off-site storage, processing, or disposal of hazardous waste on or before the effective date of such amendments, who has filed a hazardous waste permit application with the commission on or before the effective date of such amendments in accordance with the rules and regulations of the commission, and who complies with requirements in this chapter applicable to such activities, may continue the off-site storage, processing, or disposal of the newly listed or identified wastes or waste activities until such time as the Texas Natural Resource Conservation [~~Water~~] Commission approves or denies the application. In cases where the aforementioned federal statutory or regulatory amendments become effective prior to the effective date of state statutory or regulatory amendments under Texas Health and Safety Code, Chapter 361 [~~the Texas Solid Waste Disposal Act, Texas Health and Safety Code Annotated, Chapter 361 (Vernon Pamphlet 1992)~~], submittal to the executive director of a copy of the properly filed EPA [~~United States Environmental Protection Agency~~] permit application within 30 days of the effective date of the applicable state statutory or regulatory requirements shall constitute compliance with this subsection with regard to application filing requirements. Facilities that have received a permit for the re-use, recycling, or reclamation of hazardous waste in accordance with Subchapter F of this chapter [~~(relating to Permitting Standards for Owners and Operators of Hazardous Waste Storage, Processing, or Disposal Facilities)~~] are not required to comply with this subsection and may operate pursuant to their existing permit. Such permits, however, are subject to amendment under §305.62 of this title (relating to Amendment) or to modification under §305.69 of this title (relating to Solid Waste Permit Modification at the Request of the Permittee) to reflect new regulatory requirements.

§335.46. Sharing of Information.

Any information obtained or used by the commission in the administration of a hazardous waste program authorized under the Resource Conservation and Recovery Act of 1976, §3006 and 40 Code of Federal Regulations (CFR) Part 271 shall be available to the Environmental Protection Agency upon request without restriction. If the information has been submitted to the commission under a claim of confidentiality, the commission shall submit that claim to the Environmental Protection Agency when providing information under this section. Any information obtained from the commission and subject to a claim of confidentiality will be treated by the Environmental Protection Agency in accordance with 40 CFR [~~Code of Federal Regulations~~] Part 2. If the Environmental Protection Agency obtains information that is not claimed to be confidential, the Environmental Protection Agency may make that information available to the public without further notice.

§335.47. Special Requirements for Persons Eligible for a Federal Permit by Rule.

(a) The following persons are eligible for a permit by rule under 40 Code of Federal Regulations (CFR) §270.60:

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

(b) To be eligible for a permit by rule, such person shall comply with the requirements of 40 CFR [~~Code of Federal Regulations~~] §270.60 and the following rules:

(1) 40 CFR [~~Code of Federal Regulations~~] §264.11 (EPA identification number);

~~[(2) 40 Code of Federal Regulations §264.72 (manifest discrepancies);]~~

(2) [~~(3)~~] 40 CFR [~~Code of Federal Regulations~~] §264.73(a) and (b)(1) (operating record);

(3) [~~(4)~~] 40 CFR §264.75 (biennial report) [~~40 Code of Federal Regulations §264.76 (unmanifested waste report)~~];

(4) [~~(5)~~] §335.12 of this title (relating to Shipping Requirements Applicable to Owners or Operators of Storage, Processing, or Disposal Facilities) [~~and §335.15 of this title (relating to Recordkeeping and Reporting Requirements Applicable to Owners of Storage, Processing, or Disposal Facilities) (shipping and reporting procedures)~~]; and

(5) [~~(6)~~] §335.15 of this title (relating to Recordkeeping and Reporting Requirements Applicable to Owners or Operators of Storage, Processing, or Disposal Facilities) [~~and §335.154 of this title (relating to Reporting Requirements for Owners and Operators) (annual and monthly reports)~~].

(c) In addition to the requirements stated in subsection (b) of this section, the owner or operator of an injection well used to dispose of hazardous waste shall:

(1) comply with the applicable personnel training requirements of 40 CFR [~~Code of Federal Regulations~~] §264.16;

(2) (No change.)

(3) for underground injection control permits issued after November 8, 1984, comply with §335.167 of this title (relating to Corrective Action for Solid Waste Management Units). Where the underground injection well is the only unit at a facility which requires a permit, comply with 40 CFR [~~Code of Federal Regulations~~] §270.14(d) (concerning information requirements for solid waste management units). Persons who dispose of hazardous waste by means of underground injection must obtain a permit under the Texas Water Code, Chapter 27.

(d) In addition to the requirements stated in subsection (b) of this section, the owner or operator of a POTW [~~publicly owned treatment works (POTW)~~] which accepts hazardous waste for treatment shall:

(1) (No change.)

(2) for National Pollutant Discharge Elimination System [~~(NPDES)~~] permits issued after November 8, 1984, comply with §335.167 of this title [~~(relating to Corrective Action for Solid Waste Management Units)~~].

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

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SUBCHAPTER C. STANDARDS APPLICABLE TO GENERATORS OF HAZARDOUS WASTE

30 TAC §§335.61, 335.67, 335.69, 335.76, 335.78

STATUTORY AUTHORITY

The amendments are proposed under Texas Water Code (TWC), §5.103 and §5.105, which provide the commission with the authority to adopt any rules necessary to carry out its powers and duties under the provisions of the TWC or other laws of this state; and under Texas Health and Safety Code (THSC), Solid Waste Disposal Act, §361.017 and §361.024, which authorize the commission to regulate industrial solid waste and municipal hazardous waste and to adopt rules consistent with the general intent and purposes of the THSC.

The proposed amendments implement THSC, Chapter 361.

§335.61. Purpose, Scope and Applicability.

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

(d) An owner or operator who initiates a shipment of hazardous waste from a processing, storage or disposal facility must comply with the generator standards contained in §335.10 of this title (relating to Shipping and Reporting Procedures Applicable to Generators of Hazardous Waste or Class 1 [I] Waste and Primary Exporters of Hazardous Waste) and §335.13 of this title (relating to Recordkeeping and Reporting Procedures Applicable to Generators Shipping Hazardous Waste or Class 1 [I] Waste and Primary Exporters of Hazardous Waste), and this subchapter. The provisions of §335.69 of this title (relating to Accumulation Time) are applicable to on-site accumulation of hazardous wastes by generators. Therefore, the provisions of §335.69 of this title [~~(relating to Accumulation Time)~~] only apply to owners or operators who are shipping hazardous waste which they generate at that facility.

(e) A farmer who generates waste pesticides which are hazardous waste and who complies with §335.77 of this title [~~(relating to Farmers)~~] is not required to comply with this chapter with respect to those pesticides.

(f) - (h) (No change.)

§335.67. Marking.

(a) Before transporting or offering hazardous waste for transportation off-site, a generator must mark each package of hazardous waste in accordance with the applicable Department of Transportation regulations on hazardous materials under 49 Code of Federal Regulations (CFR) Part 172.

(b) Before transporting or offering hazardous waste for transportation off-site, a generator must mark each container of 110 gallons or less used in such transportation with the following words and information displayed in accordance with the requirements of 49 CFR [~~Code of Federal Regulations~~] §172.304: HAZARDOUS WASTE - Federal Law Prohibits Improper Disposal. If found, contact the nearest police or public safety authority or the EPA [~~U. S. Environmental Protection Agency~~].

§335.69. Accumulation Time.

(a) Generators that comply with the requirements of paragraph (1) of this subsection are exempt from all requirements adopted by reference in §335.112(a)(6) and (7) of this title (relating to Standards), except 40 Code of Federal Regulations (CFR) §265.111 and §265.114. Except as provided in subsections (f) - (k) of this section, a generator may accumulate hazardous waste on-site for 90 days without a permit or interim status provided that:

(1) the waste is placed:

(A) in containers and the generator complies with the applicable requirements of 40 CFR Part 265, Subparts I, AA, and BB, and CC, as adopted by reference under §335.112(a) of this title [~~(relating to Standards), and 40 CFR Part 265, Subpart CC~~]; and/or

(B) in tanks and the generator complies with the applicable requirements of 40 CFR Part 265, Subparts J, AA, BB, and CC, except 40 CFR §265.197(c) and §265.200, as adopted by reference under §335.112(a) of this title [~~(relating to Standards), and 40 CFR Part 265, Subpart CC, except 40 CFR §265.197(c) and §265.200~~]; and/or

(C) on drip pads and the generator complies with §335.112(a)(18) of this title [~~(relating to drip pads)~~] and maintains the following records at the facility: a description of procedures that will be followed to ensure that all wastes are removed from the drip pad and associated collection system at least once every 90 days; and documentation of each waste removal, including the quantity of waste removed from the drip pad and the sump or collection system and the date and time of removal; [~~,~~] and/or

(D) the waste is placed in containment buildings and the generator complies with 40 CFR Part 265, Subpart DD, as adopted by reference under §335.112(a) of this title [~~(relating to Standards)~~] and has placed its professional engineer certification that the building complies with the design standards specified in 40 CFR §265.1101 in the facility's operating record prior to operation of the unit. The owner or operator shall maintain the following records at the facility:

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

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

(4) the generator complies with the following:

(A) the requirements for owners or operators in 40 CFR Part 265, Subparts C and D and with 40 CFR §265.16, as adopted by reference in §335.112(a) of this title [~~(relating to Standards)~~];

(B) - (C) (No change.)

(b) - (e) (No change.)

(f) A generator who generates greater than 100 kilograms but less than 1,000 kilograms of hazardous waste in a calendar month may accumulate hazardous waste on-site for 180 days or less without a permit or without having interim status provided that:

(1) (No change.)

(2) the generator complies with the requirements of 40 CFR Part 265, Subpart I, as adopted by reference under §335.112(a) of this title [~~(relating to Standards)~~], except 40 CFR §265.176 and §265.178;

(3) the generator complies with the requirements of 40 CFR §265.201, as adopted by reference under §335.112(a) of this title [~~(relating to Standards)~~];

(4) the generator complies with the requirements of:

(A) (No change.)

(B) 40 CFR Part 265, Subpart C, as adopted by reference under §335.112(a) of this title [~~(relating to Standards)~~]; and

(C) 40 CFR §268.7(a)(5), as adopted by reference under §335.431(c) of this title [~~(relating to Purpose, Scope, and Applicability)~~]; and

(5) (No change.)

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

(j) A generator of 1,000 kilograms or greater of hazardous waste per calendar month who also generates wastewater treatment sludges from electroplating operations that meet the listing description

for EPA hazardous waste number F006, may accumulate F006 waste on-site for more than 90 days, but not more than 180 days without a permit or without having interim status provided that:

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

(4) the F006 waste is managed in accordance with the following:

(A) the F006 waste is placed:

(i) in containers and the generator complies with the applicable requirements of 40 CFR Part 265, Subparts I, AA, and BB, as adopted by reference under §335.112(a) of this title [~~(relating to Standards)~~], and 40 CFR Part 265, Subpart CC; and/or

(ii) in tanks and the generator complies with the applicable requirements of 40 CFR Part 265, Subparts J, AA, BB, as adopted by reference under §335.112(a) of this title [~~(relating to Standards)~~], and 40 CFR Part 265, Subpart CC, except 40 CFR §265.197(c) and §265.200; and/or

(iii) in containment buildings and the generator complies with 40 CFR Part 265, Subpart DD, as adopted by reference under §335.112(a) of this title [~~(relating to Standards)~~], and has placed its professional engineer certification that the building complies with the design standards specified in 40 CFR §265.1101 in the facility's operating record prior to operation of the unit. The owner or operator shall maintain the following records at the facility:

(I) - (II) (No change.)

(B) the generator complies with 40 CFR §265.111 and §265.114, as adopted by reference under §335.112(a)(6) of this title [~~(relating to Standards)~~];

(C) - (D) (No change.)

(E) the generator complies with the following:

(i) the requirements for owners or operators in 40 CFR Part 265, Subparts C and D, and 40 CFR §265.16, as adopted by reference under §335.112(a) of this title [~~(relating to Standards)~~];

(ii) 40 CFR §268.7(a)(5), as adopted by reference under §335.431(c) of this title [~~(relating to Purpose, Scope, and Applicability)~~]; and

(iii) §335.113 of this title [~~(relating to Reporting of Emergency Situations by Emergency Coordinator)~~].

(k) (No change.)

(l) A generator accumulating F006 waste in accordance with subsection (j) or (k) of this section who accumulates F006 waste on-site for more than 180 days (or for more than 270 days if the generator must transport this waste, or offer this waste for transportation, over a distance of 200 miles or more), or who accumulates more than 20,000 kilograms of F006 waste on-site is an operator of a hazardous waste storage facility and is subject to the requirements of this chapter and Chapter 305 of this title [~~(relating to Consolidated Permits)~~] applicable to such owners and operators, unless the generator has been granted an extension to the 180-day (or 270-day if applicable) period or an exception to the 20,000 kilogram accumulation limit. Such extensions and exceptions may be granted by the executive director if F006 waste must remain on-site for longer than 180 days (or 270 days if applicable) or if more than 20,000 kilograms of F006 waste must remain on-site due to unforeseen, temporary, and uncontrollable circumstances. An extension of up to 30 days or an exception to the accumulation limit may be granted at the discretion of the executive director on a case-by-case basis.

§335.76. Additional Requirements Applicable to International Shipments.

(a) Any person who exports hazardous waste to a foreign country or imports hazardous waste from a foreign country into the state must comply with the requirements of this title and with the special requirements of this section. Except to the extent the regulations contained in 40 Code of Federal Regulations (CFR) §262.58, as amended and adopted through April 12, 1996 (61 FR 16290) [~~April 12, 1996, at 61 FedReg 16290,~~] provide otherwise, a primary exporter of hazardous waste must comply with the special requirements of this section as they apply to primary exporters, and a transporter transporting hazardous waste for export must comply with applicable requirements of §335.11 of this title (relating to Shipping Requirements for Transporters of Hazardous Waste or Class 1 Waste) and §335.14 of this title (relating to Recordkeeping Requirements Applicable to Transporters of Hazardous Waste or Class 1 Waste) and Subchapter D of this chapter (relating to Standards Applicable to Transporters of Hazardous Waste). 40 CFR §262.58 sets forth the requirements of international agreements between the United States and receiving countries which establish different notice, export, and enforcement procedures for the transportation, processing, storage, and disposal of hazardous waste for shipments between the United States and those countries.

(b) Exports of hazardous waste are prohibited except in compliance with the applicable requirements of this subchapter, the special requirements of this section, and §335.11 of this title (relating to Shipping Requirements for Transporters of Hazardous Waste or Class 1 Waste) and §335.14 of this title (relating to Recordkeeping Requirements Applicable to Transporters of Hazardous Waste or Class 1 Waste) and Subchapter D of this chapter (relating to Standards Applicable to Transporters of Hazardous Waste). Exports of hazardous waste are prohibited unless:

(1) notification in accordance with the regulations contained in 40 CFR §262.53, as amended and adopted through April 12, 1996 (61 FR 16290) [~~April 12, 1996, at 61 FedReg 16290,~~] has been provided;

(2) - (4) (No change.)

(5) the primary exporter complies with the manifest requirements of §335.10(a) - (d) of this title (relating to Shipping and Reporting Procedures Applicable to Generators of Hazardous Waste or Class 1 Waste and Primary Exporters of Hazardous Waste) except that:

(A) - (C) (No change.)

(D) the following statement must be added to the end of the first sentence of the certification set forth in item 16 of the uniform hazardous waste manifest form, as set out in §335.10(b)(23) of this title [~~(relating to Shipping and Reporting Procedures Applicable to Generators of Hazardous Waste or Class 1 Waste and Primary Exporters of Hazardous Waste)~~]: "and conforms to the terms of the attached EPA acknowledgment of consent";

(E) (No change.)

(F) in lieu of the requirements of §335.10(a) of this title [~~(relating to Shipping and Reporting Procedures Applicable to Generators of Hazardous Waste or Class 1 Waste and Primary Exporters of Hazardous Waste)~~], where a shipment cannot be delivered for any reason to the designated or alternate consignee, the primary exporter must:

(i) - (iii) (No change.)

(G) (No change.)

(H) the primary exporter shall provide the transporter with an additional copy of the manifest for delivery to the United

States customs official at the point the hazardous waste leaves the United States in accordance with §335.11(g)(4) of this title [~~(relating to Shipping Requirements of Transporters of Hazardous Waste or Class I Waste)~~].

(c) (No change.)

(d) When importing hazardous waste into the state from a foreign country, a person must prepare a manifest in accordance with the requirements of §335.10 of this title [~~(relating to Shipping and Reporting Procedures Applicable to Generators of Hazardous Waste or Class 1 Waste and Primary Exporters of Hazardous Waste)~~] for the manifest except that:

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

(e) (No change.)

(f) Any person who exports hazardous waste to a foreign country or imports hazardous waste from a foreign country into the state must comply with the requirements of the regulations contained in 40 CFR §262.58 (International Agreements), as amended and adopted through April 12, 1996 (61 FR 16290) [~~April 12, 1996, at 61 FedReg 16290)~~].

(g) Except to the extent that they are clearly inconsistent with [~~the Solid Waste Disposal Act,~~] Texas Health and Safety Code, Chapter 361, or the rules of the commission, primary exporters must comply with the regulations contained in 40 CFR §262.57, which are in effect as of November 8, 1986.

(h) (No change.)

§335.78. Special Requirements for Hazardous Waste Generated by Conditionally Exempt Small Quantity Generators.

(a) - (b) (No change.)

(c) When making the quantity determinations of Subchapters A - C of this chapter (relating to Industrial Solid Waste and Municipal Hazardous Waste in General; Hazardous Waste Management General Provisions; and Standards Applicable to Generators of Hazardous Waste), the generator must include all hazardous waste it generates, except hazardous waste that:

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

(4) is used oil managed under the requirements of §335.24(j) of this title [~~(relating to Requirements for Recyclable Materials and Nonhazardous Recyclable Materials)~~] and Chapter 324 of this title (relating to Used Oil);

(5) (No change.)

(6) is universal waste managed under §335.41(j) of this title (relating to Purpose, Scope and Applicability) and Subchapter H, Division 5 of this chapter [~~§335.261 of this title~~] (relating to Universal Waste Rule).

(d) - (e) (No change.)

(f) In order for acute hazardous wastes generated by a generator of acute hazardous wastes in quantities equal to or less than those set forth in subsection (e)(1) or (2) of this section to be excluded from full regulation under this section, the generator must comply with the following requirements:

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

(3) A conditionally exempt small quantity generator may either process or dispose of its acute hazardous waste in an on-site facility, or ensure delivery to an off-site storage, processing or disposal facility, either of which, if located in the United States, is:

(A) permitted by the EPA [~~United States Environmental Protection Agency~~] under 40 CFR Part 270;

(B) - (F) (No change.)

(G) for universal waste managed under Subchapter H, Division 5 of this chapter [~~§335.261 of this title (relating to Universal Waste Rule)~~], a universal waste handler or destination facility subject to the requirements of Subchapter H, Division 5 of this chapter [~~§335.261 of this title (relating to Universal Waste Rule)~~].

(g) In order for hazardous waste generated by a conditionally exempt small quantity generator in quantities of less than 100 kilograms of hazardous waste during a calendar month to be excluded from full regulation under this section, the generator must comply with the following requirements:

(1) The conditionally exempt small quantity generator must comply with §335.62 of this title [~~(relating to Hazardous Waste Determination)~~].

(2) (No change.)

(3) A conditionally exempt small quantity generator may either process or dispose of its hazardous waste in an on-site facility, or ensure delivery to an off-site storage, processing or disposal facility, either of which, if located in the United States, is:

(A) permitted by the EPA [~~United States Environmental Protection Agency~~] under 40 CFR Part 270;

(B) - (F) (No change.)

(G) for universal waste managed under Subchapter H, Division 5 of this chapter [~~§335.261 of this title (relating to Universal Waste Rule)~~], a universal waste handler or destination facility subject to the requirements of Subchapter H, Division 5 of this chapter [~~§335.261 of this title (relating to Universal Waste Rule)~~].

(h) - (i) (No change.)

(j) If a conditionally exempt small quantity generator's wastes are mixed with used oil [~~and the mixture is going to recycling~~], the mixture is subject to Chapter 324 of this title (relating to Used Oil Standards) and 40 CFR Part 279 if it is destined to be burned for energy recovery. Any material produced from such a mixture by processing, blending, or other treatment is also so regulated if it is destined to be burned for energy recovery.

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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SUBCHAPTER D. STANDARDS APPLICABLE TO TRANSPORTERS OF HAZARDOUS WASTE

30 TAC §§335.91, 335.93, 335.94

STATUTORY AUTHORITY

The amendments are proposed under Texas Water Code (TWC), §5.103 and §5.105, which provide the commission with the authority to adopt any rules necessary to carry out its powers and duties under the provisions of the TWC or other laws of this state; and under Texas Health and Safety Code (THSC), Solid Waste Disposal Act, §361.017 and §361.024, which authorize the commission to regulate industrial solid waste and municipal hazardous waste and to adopt rules consistent with the general intent and purposes of the THSC.

The proposed amendments implement THSC, Chapter 361.

§335.91. Scope.

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

(e) A transporter of hazardous waste subject to the federal manifesting requirements of 40 Code of Federal Regulations (CFR) Part 262, or subject to state hazardous waste manifesting requirements of §335.11 of this title (relating to Shipping Requirements for Transporters of Hazardous Waste or Class 1 [I] Waste), or subject to the universal waste management standards of 40 CFR Part 273, or subject to Subchapter H, Division 5 of this chapter [§335.261 of this title] (relating to Universal Waste Rule), that is being imported from or exported to any of the countries listed in 40 CFR §262.58(a)(1) for purposes of recovery is subject to this subchapter and to all other relevant requirements of 40 CFR Part 262, Subpart H, including, but not limited to, 40 CFR §262.84 for tracking documents.

(f) - (g) (No change.)

§335.93. Hazardous Waste Discharges.

(a) - (b) (No change.)

(c) An air, rail, highway, or water transporter who has discharged hazardous waste must also:

(1) give notice, if required by 49 Code of Federal Regulations (CFR) §171.15, to the National Response Center (800-424-8802 or 202-426-2675); and

(2) report in writing as required by 49 CFR [Code of Federal Regulations] §171.16 to the Director, Office of Hazardous Waste Materials Regulations, Materials Transportation Bureau, Department of Transportation, Washington, D.C. 20590.

(d) A water (bulk shipment) transporter who has discharged hazardous waste must give the same notice as required by 33 CFR [Code of Federal Regulations] §153.203 for oil and hazardous substances.

(e) A transporter must clean up any hazardous waste discharge that occurs during transportation or take such action as required in §327.5 of this title (relating to Actions Required) [may be required or approved by the commission] so that the hazardous waste discharge no longer presents a hazard to human health or the environment.

§335.94. Transfer Facility Requirements.

(a) Unless the executive director determines that a permit should be required in order to protect human health and the environment, a transporter who stores manifested shipments of hazardous waste in containers meeting the requirements of §335.65 of this title (relating to Packaging) at a transfer facility owned or operated by a registered transporter for a period of ten [10] days or less is not subject to the requirement for a permit under §335.2 of this title (relating to Permit Required), with respect to the storage of those wastes provided that the transporter complies with the following sections:

(1) 40 Code of Federal Regulations (CFR) §265.14 (relating to Security);

(2) 40 CFR [Code of Federal Regulations] §265.15 (relating to General Inspection Requirements);

(3) 40 CFR [Code of Federal Regulations] §265.16 (relating to Personnel Training);

(4) 40 CFR [Code of Federal Regulations] Part 265, Subpart C;

(5) 40 CFR [Code of Federal Regulations] Part 265, Subpart D (except §265.56(j)) and §335.113 of this title (relating to Reporting of Emergency Situations by Emergency Coordinator); and

(6) 40 CFR [Code of Federal Regulations] Part 265, Subpart I.

(b) (No change.)

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

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SUBCHAPTER E. INTERIM STANDARDS FOR OWNERS AND OPERATORS OF HAZARDOUS WASTE STORAGE, PROCESSING, OR DISPOSAL FACILITIES

30 TAC §§335.111, 335.115, 335.117 - 335.119, 335.123, 335.125, 335.127

STATUTORY AUTHORITY

The amendments are proposed under Texas Water Code (TWC), §5.103 and §5.105, which provide the commission with the authority to adopt any rules necessary to carry out its powers and duties under the provisions of the TWC or other laws of this state; and under Texas Health and Safety Code (THSC), Solid Waste Disposal Act, §361.017 and §361.024, which authorize the commission to regulate industrial solid waste and municipal hazardous waste and to adopt rules consistent with the general intent and purposes of the THSC.

The proposed amendments implement THSC, Chapter 361.

§335.111. Purpose, Scope and Applicability.

(a) The purpose of this subchapter is to establish minimum requirements that define the acceptable management of hazardous waste prior to the issuance or denial of a hazardous waste permit and until certification of final closure or, if the facility is subject to post-closure requirements, until post-closure responsibilities are fulfilled. Except as provided in 40 Code of Federal Regulations (CFR) §265.1080(b), this [This] subchapter and the standards of 40 CFR [Code of Federal Regulations] §264.552, [and] §264.553, and §264.554 apply to owners and operators of hazardous waste storage, processing, or disposal facilities who have fully complied with the requirements for interim status under the Resource Conservation and Recovery Act, §3005(e), except as specifically provided for in §335.41 of this title (relating to Purpose, Scope and Applicability).

(b) EPA [~~Environmental Protection Agency (EPA)~~] Hazardous Waste Numbers F020, F021, F022, F023, F026, or F027 must not be managed at facilities subject to regulation under this subchapter, unless:

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

(3) the waste is stored or processed in waste piles that meet the requirements of 40 CFR [~~Code of Federal Regulations~~] §264.250(c) as well as all other applicable requirements of 40 CFR [~~Code of Federal Regulations~~] Part 265, Subpart L, and §335.120 of this title (relating to Containment for Waste Piles);

(4) the waste is burned in incinerators that are certified pursuant to the standards and procedures in 40 CFR [~~Code of Federal Regulations~~] §265.352; or

(5) the waste is burned in facilities that thermally process the waste in a device other than an incinerator and that are certified pursuant to the standards and procedures in 40 CFR [~~Code of Federal Regulations~~] §265.383.

(c) The requirements of this section apply to owners or operators of all facilities which process, store or dispose of hazardous waste referred to in 40 CFR [~~Code of Federal Regulations,~~] Part 268, and the 40 CFR [~~Code of Federal Regulations,~~] Part 268 standards are considered material conditions or requirements of the Part 265 interim status standards incorporated by reference in §335.112 of this title (relating to Standards).

§335.115. Additional Reports.

In addition to submitting the waste reports described in §335.15 of this title (relating to Recordkeeping and Reporting Requirements Applicable to Owners and Operators of Storage, Processing, or Disposal Facilities) and the reports described in this subchapter, the owner or operator must also report to the executive director:

(1) releases, fires, and explosions as specified in 40 Code of Federal Regulations (CFR) §265.56(j);

(2) groundwater contamination and monitoring data as specified in 40 CFR [~~Code of Federal Regulations,~~] §265.93 and §335.117 of this title (relating to Recordkeeping and Reporting);

(3) facility closure as specified in 40 CFR [~~Code of Federal Regulations~~] §265.115; and

(4) as otherwise required by §335.112(a)(2) of this title (relating to Standards), which incorporates the requirements of 40 CFR [~~Code of Federal Regulations,~~] Part 265, Subparts AA and BB.

§335.117. Recordkeeping and Reporting.

(a) Unless the groundwater is monitored to satisfy the requirements of 40 Code of Federal Regulations (CFR) §265.93(d)(4), the owner or operator must:

(1) keep records of the analyses required in 40 CFR [~~Code of Federal Regulations~~] §265.92(c) and (d), the associated groundwater surface elevations required in 40 CFR [~~Code of Federal Regulations~~] §265.92(e), and the evaluations required in §335.93(b) of this title (relating to Hazardous Waste Discharges) throughout the active life of the facility, and, for disposal facilities, throughout the post-closure care period as well; and

(2) report the following groundwater monitoring information to the executive director:

(A) during the first year, when initial background concentrations are being established for the facility, concentrations or values of the parameters listed in 40 CFR [~~Code of Federal Regulations~~] §265.92(b)(1) for each groundwater monitoring well within 15 days after completing each quarterly analysis. The owner or operator must separately identify for each monitoring well any parameters whose concentration or value has been found to exceed the maximum contaminant levels listed in Appendix III of 40 CFR [~~Code of Federal Regulations~~] Part 265.

(B) quarterly, during the initial year of groundwater monitoring, concentrations or values of the parameters listed in 40 CFR [~~Code of Federal Regulations~~] §265.92(b)(2) and (3) for each groundwater monitoring well. Annually thereafter, concentrations or values of the parameters listed in 40 CFR [~~Code of Federal Regulations~~] §265.92(b)(3) for each groundwater monitoring well, along with the required evaluations for these parameters under 40 CFR [~~Code of Federal Regulations~~] §265.93(b). The owner or operator must separately identify any significant differences from initial background found in the upgradient wells, in accordance with 40 CFR [~~Code of Federal Regulations~~] §265.93(c)(1). In addition, concentration of the groundwater quality parameters listed in 40 CFR [~~Code of Federal Regulations~~] §265.92(b)(2) shall be reported annually.

(C) as a part of the annual report, results of the evaluation of groundwater surface elevations under 40 CFR [~~Code of Federal Regulations~~] §265.93(f), and a description of the response to that evaluation where applicable.

(b) If the groundwater is monitored to satisfy the requirements of 40 CFR [~~Code of Federal Regulations~~] §265.93(d)(4), the owner or operator must:

(1) keep records of the analyses and evaluations specified in the plan which satisfies the requirements of 40 CFR [~~Code of Federal Regulations~~] §265.93(d)(3), throughout the active life of the facility, and, for disposal facilities, throughout the post-closure care period as well; and

(2) (No change.)

(c) - (d) (No change.)

§335.118. Closure Plan; Submission and Approval of Plan.

(a) Except as provided in this section, the owner or operator must submit his closure plan to the executive director in accordance with the procedures outlined in 40 Code of Federal Regulations (CFR) 265.112.The owner or operator must submit his closure plan to the executive director no later than 15 days after:

(1) (No change.)

(2) issuance of a judicial decree or compliance order under the Resource Conservation and Recovery Act of 1976, or Texas Health and Safety Code, Chapter 361 [~~Texas Civil Statutes, Article 4477-7~~], to cease receiving wastes or close.

(b) (No change.)

§335.119. Post-Closure Plan; Submission and Approved of Plan.

(a) The owner or operator of a facility with hazardous waste management units subject to the post- closure care requirements in 40 Code of Federal Regulations (CFR) Part 265, Subpart G, must submit his post-closure plan to the executive director at least 180 days before the date he expects to begin partial or final closure of the first hazardous waste disposal unit. The date when he expects to begin closure must be either within 30 days after the date on which the hazardous waste management unit receives the known final volume of hazardous wastes or, if there is a reasonable possibility that the hazardous waste management unit will receive additional hazardous waste no later than one year after the date on which the unit received the most recent volume of hazardous wastes. The owner or operator must submit his post-closure plan to the executive director no later than 15 days after:

(1) (No change.)

(2) issuance of a judicial decree or compliance order under the Resource Conservation and Recovery Act of 1976, §3008, as amended, or Texas Health and Safety Code, Chapter 361 [~~the Solid Waste Disposal Act, Texas Civil Statutes, Article 4477-7~~], to cease receiving wastes or close.

(b) The executive director will provide the owner or operator and the public, through a newspaper notice, the opportunity to submit written comments on the post-closure plan and request modifications of the plan, including modification of the 30-year post-closure period required in 40 CFR [~~Code of Federal Regulations~~] §265.117 within 30 days of the date of the notice. The owner or operator is responsible for the cost of publication. The executive director may, in response to a request or at his own discretion, hold a public hearing whenever a hearing might clarify one or more issues concerning the post-closure plan. The executive director will give the public notice of the hearing at least 30 days before it occurs. (Public notice of the hearing may be given at the same time as notice of the opportunity for written public comments and the two notices may be combined.) The executive director will approve, modify, or disapprove the plan within 90 days of its receipt. If the executive director does not approve the plan, he shall provide the owner or operator with a detailed written statement of reasons for the refusal and the owner or operator must modify the plan or submit a new plan for approval within 30 days after receiving such written statement. The executive director will approve or modify this plan in writing within 60 days. If the executive director modifies the plan, this modified plan becomes the approved post-closure plan. The executive director must ensure that the approved post-closure plan is consistent with 40 CFR [~~Code of Federal Regulations~~] §§265.117 - 265.120. A copy of this modified plan with a detailed statement of reasons for the modifications must be mailed to the owner or operator. If an owner or operator plans to begin closure before November 19, 1981, he must submit the post-closure plan by May 19, 1981.

§335.123. Closure and Post-Closure (Land Treatment Facilities).

(a) In the closure plan under 40 Code of Federal Regulations (CFR) §265.112 and the post-closure plan under 40 CFR [~~Code of Federal Regulations~~] §265.118, the owner or operator must address the following objectives and indicate how they will be achieved:

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

(4) compliance with 40 CFR [~~Code of Federal Regulations~~] §265.276, concerning the growth of food-chain crops.

(b) The owner or operator must consider at least the following factors addressing the closure and post- closure care objectives of subsection (a) of this section:

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

(6) unsaturated zone monitoring information obtained under 40 CFR [~~Code of Federal Regulations~~] §265.278; and

(7) (No change.)

(c) (No change.)

(d) In addition to the requirements of 40 CFR [~~Code of Federal Regulations~~] Part 265; Subpart G, relating to closure and post-closure, §335.118 of this title (relating to Closure Plan; Submission and Approval of Plan) and §335.119 of this title (relating to Post-Closure Plan; Submission and Approval Plan), during the closure period the owner or operator of a land treatment facility must:

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

(3) maintain the run-off management system required under §335.121(c) of this title [~~(relating to General Operating Requirements (Land Treatment Facilities))~~]; and

(4) (No change.)

(e) For the purpose of complying with 40 CFR [~~Code of Federal Regulations~~] §265.115 concerning certification of closure, when closure is completed, the owner or operator may submit to the executive director certification both by the owner or operator and by an independent qualified soil scientist, in lieu of an independent registered professional engineer, that the facility has been closed in accordance with the specifications in the approved closure plan.

(f) In addition to the requirements of 40 CFR [~~Code of Federal Regulations~~] §265.117 concerning post-closure care and use of property during the post-closure care period, the owner or operator of a land treatment unit must:

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

(3) assure that growth of food chain crops complies with 40 CFR [~~Code of Federal Regulations~~] §265.276 concerning food chain crops; and

(4) (No change.)

§335.125. Special Requirements for Bulk and Containerized Waste.

(a) - (b) (No change.)

(c) A container holding liquid waste or waste containing free liquids must not be placed in a landfill unless:

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

(3) the container is disposed of in accordance with 40 Code of Federal Regulations (CFR) §265.316.

(d) To demonstrate the absence or presence of free liquids in either a containerized or a bulk waste, the following test must be used: Method 9095 (Paint Filter Liquids Test) as described in "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods," EPA Publication SW-846, as incorporated by reference in 40 CFR [~~Code of Federal Regulations~~] §260.11 and in §335.31 of this title (relating to Incorporation of References).

(e) - (f) (No change.)

§335.127. Cost Estimate for Closure.

In addition to the requirements of 40 Code of Federal Regulations §265.142 (excluding 40 CFR [~~Code of Federal Regulations~~] §265.142(a)(2)), the closure cost estimate must be based on the costs to the owner or operator of hiring a third party to close the facility. A third party is a party who is neither a parent nor a subsidiary of the owner or operator (see the definition of parent corporation in 40 CFR [~~Code of Federal Regulations~~] §265.141(d)). Notwithstanding other closure costs, such estimate must also include the costs associated with third party removal, shipment off-site, and processing or disposal off-site of the following wastes to an authorized storage, processing, or disposal facility:

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

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

Filed with the Office of the Secretary of State, on June 8, 2001.

TRD-200103227
Margaret Hoffman
Director, Environmental Law Division
Texas Natural Resource Conservation Commission
Proposed date of adoption: July 23, 2001
For further information, please call: (512) 239-4712

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SUBCHAPTER F. PERMITTING STANDARDS FOR OWNERS AND OPERATORS OF HAZARDOUS WASTE STORAGE, PROCESSING, OR DISPOSAL FACILITIES

30 TAC §§335.155, 335.164, 335.165, 335.168, 335.169, 335.172, 335.177, 335.178, 335.181

STATUTORY AUTHORITY

The amendments are proposed under Texas Water Code (TWC), §5.103 and §5.105, which provide the commission with the authority to adopt any rules necessary to carry out its powers and duties under the provisions of the TWC or other laws of this state; and under Texas Health and Safety Code (THSC), Solid Waste Disposal Act, §361.017 and §361.024, which authorize the commission to regulate industrial solid waste and municipal hazardous waste and to adopt rules consistent with the general intent and purposes of the THSC.

The proposed amendments implement THSC, Chapter 361.

§335.155. Additional Reports.

In addition to submitting the waste reports described in §335.15 of this title (relating to Recordkeeping and Reporting Requirements Applicable to Owners and Operators of Storage, Processing, or Disposal Facilities), the owner or operator must also report to the executive director:

(1) releases, fires, and explosions as specified in 40 Code of Federal Regulations (CFR) §264.56(j);

(2) facility closure as specified in 40 CFR [~~Code of Federal Regulations~~] §264.115;

(3) as otherwise required by 40 CFR [~~Code of Federal Regulations~~] Part 264, Subparts F, K-N, X, AA, and BB.

§335.164. Detection Monitoring Program.

An owner or operator required to establish a detection monitoring program must, at a minimum, discharge the following responsibilities:

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

(3) The owner or operator must conduct a groundwater monitoring program for each chemical parameter and hazardous constituent specified in its permit pursuant to paragraph (1) of this section in accordance with §335.163(7) of this title [~~(relating to General Groundwater Monitoring Requirements)~~]. The owner or operator must maintain a record of groundwater analytical data as measured and in a form necessary for the determination of statistical significance under §335.163(8) of this title [~~(relating to General Groundwater Monitoring Requirements)~~].

(A) The owner or operator must comply with §335.163(7) of this title [~~(relating to General Groundwater Monitoring Requirements)~~] in developing the data base used to determine background values.

(B) The owner or operator must express background values in a form necessary for the determination of statistically significant increases under §335.163(8) of this title [~~(relating to General Groundwater Monitoring Requirements)~~].

(C) In taking samples used in the determination of background values, the owner or operator must use a groundwater monitoring system that complies with §335.163(1)(A), (2), and (3) of this title [~~(relating to General Groundwater Monitoring Requirements)~~].

(4) The commission will specify the frequencies for collecting samples and conducting statistical tests to determine whether there is statistically significant evidence of contamination for any parameter or hazardous constituent specified in the permit under paragraph (1) of this section in accordance with §335.163(7) of this title [~~(relating to General Groundwater Monitoring Requirements)~~]. A sequence of at least four samples from each well (background and compliance wells) must be collected at least semiannually during detection monitoring.

(5) (No change.)

(6) The owner or operator must determine whether there is statistically significant evidence of contamination for any chemical parameter or hazardous constituent specified in the permit pursuant to paragraph (1) of this section at a frequency specified under paragraph (4) of this section.

(A) In determining whether statistically significant evidence of contamination exists, the owner or operator must use the method(s) specified in the permit under §335.163(8) of this title [~~(relating to General Groundwater Monitoring Requirements)~~]. These method(s) must compare data collected at the compliance point(s) to the background groundwater quality data.

(B) (No change.)

(7) If the owner or operator determines pursuant to paragraph (6) of this section that there is statistically significant evidence of contamination for chemical parameters or hazardous constituents specified pursuant to paragraph (1) of this section at any monitoring well at the compliance point, he must:

(A) (No change.)

(B) immediately sample the groundwater in all monitoring wells that exhibit statistically significant evidence of contamination and determine whether constituents in the list of Appendix IX of 40 Code of Federal Regulations Part 264 are present, and if so, in what concentration;

(C) (No change.)

(D) within 90 days, submit to the executive director an application for a permit amendment or modification to establish a compliance monitoring program meeting the requirements of §335.165 of this title (relating to Compliance Monitoring Program). The application must include the following information:

(i) an identification of the concentration of any Appendix IX constituent detected in the groundwater at each monitoring well that exhibits statistically significant evidence of contamination at the compliance point;

(ii) any proposed changes to the groundwater monitoring system at the facility necessary to meet the requirements of §335.165 of this title [~~(relating to Compliance Monitoring Program)~~];

(iii) any proposed additions or changes to the monitoring frequency, sampling and analysis procedures or methods, or statistical methods used at the facility necessary to meet the requirements of §335.165 of this title [~~(relating to Compliance Monitoring Program)~~]; and

(iv) for each hazardous constituent detected at the compliance point, a proposed concentration limit under §335.160(a)(1) or (2) of this title (relating to Concentration Limits), or a notice of intent to seek an alternate concentration limit under §335.160(b) of this title [~~(relating to Concentration Limits)~~];

(E) - (F) (No change.)

(8) (No change.)

§335.165. Compliance Monitoring Program.

An owner or operator required to establish a compliance monitoring program must, at a minimum, discharge the following responsibilities.

(1) (No change.)

(2) The owner or operator must install a groundwater monitoring system at the compliance point as specified under §335.161 of this title [~~(relating to Point of Compliance)~~]. The groundwater monitoring system must comply with §335.163(1)(B), (2), and (3) of this title (relating to General Groundwater Monitoring Requirements).

(3) The commission will specify the sampling procedures and statistical methods appropriate for the constituents at the facility, consistent with §335.163(7) and (8) of this title [~~(relating to General Groundwater Monitoring Requirements)~~].

(A) The owner or operator must conduct a sampling program for each chemical parameter or hazardous constituent in accordance with §335.163(7) of this title [~~(relating to General Groundwater Monitoring Requirements)~~].

(B) The owner or operator must record groundwater analytical data as measured by and in a form necessary for the determination of statistical significance under §335.163(8) of this title [~~(relating to General Groundwater Monitoring Requirements)~~] for the compliance period of the facility.

(4) The owner or operator must determine whether there is statistically significant evidence of increased contamination for any chemical parameter or hazardous constituent specified in the permit, pursuant to paragraph (1) of this section, at a frequency specified under paragraph (6) under this section.

(A) In determining whether statistically significant evidence of increased contamination exists, the owner or operator must use the method(s) specified in the permit under §335.163(8) of this title [~~(relating to General Groundwater Monitoring Requirements)~~]. The method(s) must compare data collected at the compliance point(s) to a concentration limit developed in accordance with §335.163 of this title [~~(relating to General Groundwater Monitoring Requirements)~~].

(B) (No change.)

(5) (No change.)

(6) The commission will specify the frequencies for collecting samples and conducting statistical tests to determine statistically significant evidence of increased contamination in accordance with §335.163(7) of this title [~~(relating to General Groundwater Monitoring Requirements)~~]. A sequence of at least four samples from each well (background and compliance wells) must be collected at least semiannually during the compliance period of the facility.

(7) The owner or operator must analyze samples from all monitoring wells at the compliance point for all constituents contained in Appendix IX of 40 Code of Federal Regulations Part 264 reasonably expected to be in or derived from waste managed at the site at least annually to determine whether additional hazardous constituents are present in the uppermost aquifer and, if so, at what concentration, pursuant to procedures in §335.164(6) of this title (relating to Detection Monitoring Program). If the owner or operator finds Appendix IX constituents in the groundwater that are not already identified in the permit as monitoring constituents, the owner or operator may resample within one month and repeat the Appendix IX analysis. If the second analysis confirms the presence of new constituents, the owner or operator must report the concentration of these additional constituents to the executive director within seven days after the completion of the second analysis and add them to the monitoring list. If the owner or operator chooses not to resample, then he must report the concentrations of these additional constituents to the executive director within seven days after completion of the initial analysis and add them to the monitoring list.

(8) If the owner or operator determines, pursuant to paragraph (4) of this section, that any concentration limits under §335.160 of this title [~~(relating to Concentration Limits)~~] are being exceeded at any monitoring well at the point of compliance, he must:

(A) (No change.)

(B) submit to the executive director an investigation report to establish a corrective action program meeting the requirements of §335.166 of this title (relating to Corrective Action Program) within 180 days, or within 90 days if an engineering feasibility study has been previously submitted to the executive director under §335.164(7)(E) of this title [~~(relating to Detection Monitoring Program)~~]. The report must at a minimum include the following information:

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

(9) - (11) (No change.)

§335.168. Design and Operating Requirements (Surface Impoundments).

(a) Any surface impoundment that is not covered by subsection (c) of this section or 40 Code of Federal Regulations (CFR) §265.221 must have a liner for all portions of the impoundment (except for existing portions of such impoundments). The liner must be designed, constructed, and installed to prevent any migration of wastes out of the impoundment to the adjacent subsurface soil or groundwater or surface water at any time during the active life (including the closure period) of the impoundment. The liner may be constructed of materials that may allow wastes to migrate into the liner (but not into the adjacent subsurface soil or groundwater or surface water) during the active life of the facility, provided that the impoundment is closed in accordance with §335.169(a)(1) of this title (relating to Closure and Post-Closure Care (Surface Impoundments)). For impoundments that will be closed in accordance with §335.169(a)(2) of this title [~~(relating to Closure and Post-Closure Care (Surface Impoundments))~~], the liner must be constructed of materials that can prevent wastes from migrating into the liner during the active life of the facility. The liner must be:

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

(b) The owner or operator will be exempted from the requirements of subsections (a) and (j) [~~(i)~~] of this section if the commission finds, based on a demonstration by the owner or operator, that alternate design and operating practices, together with location characteristics, will prevent the migration of any hazardous constituents (see §335.159 of this title (relating to Hazardous Constituents)) into the groundwater or surface water at any future time. In deciding whether to grant an exemption, the commission will consider:

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

(c) The owner or operator of each new surface impoundment unit on which construction commences after January 29, 1992, each lateral expansion of a surface impoundment unit on which construction commences after July 29, 1992, and each replacement of an existing surface impoundment unit that is to commence reuse after July 29, 1992, must meet the requirements of 40 CFR §264.221(c), as amended through January 29, 1992 (57 FR 3487) [~~January 29, 1992, at 57 FedReg 3487~~].

(d) The executive director may approve alternative design or operating practices to those specified in subsection (c) of this section if the owner or operator demonstrates to the executive director that he

meets the requirements of 40 CFR 264.221(d), as amended through January 29, 1992 (57 FR 3462) [~~January 29, 1992, at 57 FedReg 3462~~].

(e) The double liner requirement set forth in subsection (c) of this section may be waived by the commission for any monofill which contains only hazardous wastes from foundry furnace emission controls or metal casting molding sand, and such wastes do not contain constituents which would render the wastes hazardous for reasons other than the toxicity characteristics in 40 CFR [~~Code of Federal Regulations~~] §261.24, and is in compliance with either of the following requirements:

(1) the monofill:

(A) - (B) (No change.)

(C) is in compliance with groundwater monitoring requirements of this subchapter; or

(2) (No change.)

(f) The owner or operator of any replacement surface impoundment unit is exempt from subsection (c) of this section if:

(1) The existing unit was constructed in compliance with the design standards of Resource Conservation and Recovery Act, §3004(o)(1)(A)(i) and (o)(5) [~~of the Resource Conservation and Recovery Act~~]; and

(2) (No change.)

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

(j) A surface impoundment (except for an existing portion of a surface impoundment) that will be closed in accordance with §335.169(a)(2) of this title [~~(relating to Closure and Post-Closure Care (Surface Impoundments))~~] must have an additional liner to that required in subsection (a) of this section which:

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

§335.169. Closure and Post-Closure Care (Surface Impoundments).

(a) At closure, the owner or operator must:

(1) remove or decontaminate all waste residues, contaminated containment system components (liners, etc.) contaminated subsoils, and structures and equipment contaminated with waste and leachate, and manage them as hazardous waste unless 40 Code of Federal Regulations (CFR) §261.3(d) applies; or

(2) (No change.)

(b) If some waste residues or contaminated materials are left in place at final closure, the owner or operator must comply with all post-closure requirements contained in 40 CFR [~~Code of Federal Regulations~~] §§264.117 - 264.120, including maintenance and monitoring throughout the post-closure care period (specified in the permit under 40 CFR [~~Code of Federal Regulations~~] §264.117). The owner or operator must:

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

(c) If an owner or operator plans to close a surface impoundment in accordance with subsection (a)(1) of this section, and the impoundment does not comply with the liner requirements of §335.168(a) of this title (relating to Design and Operating Requirements (Surface Impoundments)) and is not exempt from them in accordance with §335.168(b) of this title [~~(relating to Design and Operating Requirements (Surface Impoundments))~~], then:

(1) the closure plan for the impoundment under 40 CFR [~~Code of Federal Regulations~~] §264.112 must include both a plan for complying with subsection (a)(1) of this section and a contingent plan for complying with subsection (a)(2) of this section, in case not all contaminated subsoils can be practicably removed at closure; and the owner or operator must prepare a contingent post-closure plan under 40 CFR [~~Code of Federal Regulations~~] §264.118 for complying with subsection (b) of this section, in case not all contaminated subsoils can be practicably removed at closure;

(2) the cost estimates calculated under 40 CFR [~~Code of Federal Regulations~~] §264.142 and §264.144 for closure and post-closure care of an impoundment subject to this subsection must include the cost of complying with the contingent closure plan and the contingent post- closure plan, but are not required to include the cost of expected closure under subsection (a)(1) of this section.

§335.172. Closure and Post-Closure Care (Land Treatment Units).

(a) During the closure period, the owner or operator must:

(1) (No change.)

(2) continue all operations in the treatment zone to minimize run-off of hazardous constituents as required under §335.171(3) of this title [~~(relating to Design and Operating Requirements (Land Treatment Units))~~];

(3) maintain the run-on control system required under §335.171(3) of this title [~~(relating to Design and Operating Requirements (Land Treatment Units))~~];

(4) maintain the run-off management system required under §335.171(4) of this title [~~(relating to Design and Operating Requirements (Land Treatment Units))~~];

(5) control wind dispersal of hazardous waste if required under §335.171(6) of this title [~~(relating to Design and Operating Requirements (Land Treatment Units))~~];

(6) continue to comply with any prohibitions or conditions concerning growth of food-chain crops under 40 Code of Federal Regulations (CFR) §264.276;

(7) continue unsaturated zone monitoring in compliance with 40 CFR [~~Code of Federal Regulations~~] §264.278, except that soil-pore liquid monitoring may be terminated 90 days after the last application of waste to the treatment zone; and

(8) (No change.)

(b) For the purpose of complying with 40 CFR [~~Code of Federal Regulations~~] §264.115, when closure is completed, the owner or operator may submit to the executive director certification by an independent qualified soil scientist, in lieu of an independent registered professional engineer, that the facility has been closed in accordance with the specifications in the approved closure plan.

(c) During the post-closure care period, the owner or operator must:

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

(3) maintain the run-on control system required under §335.171(3) of this title [~~(relating to Design and Operating Requirements (Land Treatment Units))~~];

(4) maintain the run-off management system required under §335.171(4) of this title [~~(relating to Design and Operating Requirements (Land Treatment Units))~~];

(5) control wind dispersal of hazardous waste if required under §335.171(6) of this title [~~(relating to Design and Operating Requirements (Land Treatment Units))~~];

(6) continue to comply with any prohibition or conditions concerning growth of food-chain crops under 40 CFR [~~Code of Federal Regulations~~] §264.276; and

(7) continue unsaturated zone monitoring in compliance with 40 CFR [~~Code of Federal Regulations~~] §264.278, except that soil-pore liquid monitoring may be terminated 90 days after the last application of waste to the treatment zone.

(d) The owner or operator is not subject to regulation under subsections (a)(8) and (c) of this section if the commission finds that the level of hazardous constituents in the treatment zone does not exceed the background value of those constituents by an amount that is statistically significant when using the test specified in paragraph (3) of this subsection. The owner or operator may submit such a demonstration to the executive director at any time during the closure or post-closure care periods.

(1) The owner or operator must establish background soil values and determine whether there is a statistically significant increase over those values for all hazardous constituents specified in the facility permit under 40 CFR [~~Code of Federal Regulations~~] §264.271(b).

(A) - (B) (No change.)

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

(e) The owner or operator is not subject to regulation under §§335.156 - 335.166 of this title (relating to Applicability of Groundwater Monitoring and Response; Required Programs; Groundwater Protection Standard; Hazardous Constituents; Concentration Limits; Point of Compliance; Compliance Period; General Groundwater Monitoring Requirements; Detection Monitoring Program; Compliance Monitoring Program; and Corrective Action Program); if the commission finds that the owner or operator satisfied subsection (d) of this section and if unsaturated zone monitoring under 40 CFR [~~Code of Federal Regulations~~] §264.278 indicates that hazardous constituents have not migrated beyond the treatment zone during the active life of the land treatment unit.

§335.177. General Performance Standard.

No person may cause, suffer, allow, or permit the storage, processing, or disposal of hazardous waste in such a manner so as to cause:

(1) the discharge or imminent threat of discharge of hazardous waste, hazardous or nonhazardous constituents, or any other materials resulting from industrial solid waste activities, including, but not limited to, reaction products, into or adjacent to the waters in the state without specific authorization for such discharge from the Texas Natural Resource Conservation [~~Water~~] Commission;

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

§335.178. Cost Estimate for Closure.

In addition to the requirements of 40 Code of Federal Regulations (CFR)§264.142 (excluding 40 CFR [~~Code of Federal Regulations~~] §264.142(a)(2)), the closure cost estimate must be based on the costs to the owner or operator of hiring a third party to close the facility. A third party is a party who is neither the parent nor a subsidiary of the owner or operator (see definition of parent corporation in 40 CFR [~~Code of Federal Regulations~~] §264.141(d)). Notwithstanding [~~Not withstanding~~] other closure costs, such estimate must also include the costs associated with third party removal, shipment, off-site, and processing or disposal off-site, and processing or disposal off-site of the following wastes to an authorized storage, processing, or disposal facility:

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

§335.181. Need for Specific Commercial Hazardous Waste Management Technologies.

In evaluating an application for a new commercial hazardous waste management facility permit, the commission shall determine the need for the specific technology proposed in the facility to manage new or increased volumes of waste generated in the state, in accordance with Texas Health and Safety Code [~~the Texas Solid Waste Disposal Act~~], §361.0232.

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

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SUBCHAPTER G. LOCATION STANDARDS FOR HAZARDOUS WASTE STORAGE, PROCESSING, OR DISPOSAL

30 TAC §§335.201, 335.202, 335.205, 335.206

STATUTORY AUTHORITY

The amendments are proposed under Texas Water Code (TWC), §5.103 and §5.105, which provide the commission with the authority to adopt any rules necessary to carry out its powers and duties under the provisions of the TWC or other laws of this state; and under Texas Health and Safety Code (THSC), Solid Waste Disposal Act, §361.017 and §361.024, which authorize the commission to regulate industrial solid waste and municipal hazardous waste and to adopt rules consistent with the general intent and purposes of the THSC.

The proposed amendments implement THSC, Chapter 361.

§335.201. Purpose, Scope, and Applicability.

(a) This subchapter establishes minimum standards for the location of facilities used for the storage, processing, and disposal of hazardous waste. These standards are to be applied in the evaluation of an application for a permit to manage hazardous waste. Except as otherwise provided in this section, this subchapter applies to permit applications for new hazardous waste management facilities and areal expansions of existing hazardous waste management facilities, filed on or after September 1, 1984. These sections do not apply to the following:

(1) (No change.)

(2) permit applications filed pursuant to §335.2(a) of this title [~~(relating to Permit Required)~~] which have been submitted in accordance with Chapter 305 of this title (relating to Consolidated Permits) and which have been declared to be administratively complete pursuant to §281.3 of this title (relating to Initial Review) prior to September 1, 1984; and

(3) on-site remedial actions conducted pursuant to the federal Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 United States Code §9601 et seq., as amended

by the Superfund Amendments Reauthorization Act of 1986 or Texas Health and Safety Code, Chapter 361, Subchapter F [~~the Texas Solid Waste Disposal Act, Texas Civil Statutes, Article 4477-7, §13~~].

(b) The standards contained in §335.204(a)(6) - (9), (b)(7) - (12), (c)(6) - (11), (d)(6) - (11), and (e)(8) - (13)[~~§§335.204(a)(6)-(9), 335.204(b)(7)-(12), 335.204(c)(6)-(11), 335.204(d)(6)-(11), 335.204(e)(8)-(13)~~] are not applicable to facilities that have submitted a notice of intent to file a permit application pursuant to §335.391 of this title (relating to Pre-Application Review) prior to May 3, 1988, or to facilities that have filed permit applications pursuant to §335.2(a) of this title [~~(relating to Permit Required)~~] which were submitted in accordance with Chapter 305 of this title [~~(relating to Consolidated Permits)~~] and that were declared to be administratively complete pursuant to §281.3 of this title (relating to Initial Review) prior to May 3, 1988.

(c) The purpose of this subchapter is to condition issuance of a permit for a new hazardous waste management facility or the areal expansion of an existing hazardous waste management facility on selection of a site that reasonably minimizes possible contamination of surface water and groundwater; to define the characteristics that make an area unsuitable for a hazardous waste management facility; and to prohibit issuance of a permit for a facility to be located in an area determined to be unsuitable, unless the design, construction and operational features of the facility will prevent adverse effects from unsuitable site characteristics. Nothing herein is intended to restrict or abrogate the commission's general authority under Texas Health and Safety Code, Chapter 361 [~~the Solid Waste Disposal Act~~] to review site suitability for all facilities which manage municipal hazardous waste or industrial solid waste.

§335.202. Definitions.

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

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

(9) Existing hazardous waste management facility--Any facility used for the storage, processing, or disposal of hazardous waste and which is authorized by a hazardous waste permit. Facilities identified in the following pending applications will also be considered existing hazardous waste management facilities pending final action on the application by the commission:

(A) (No change.)

(B) an application filed pursuant to §335.2(a) of this title [~~(relating to Permit Required)~~] which has been submitted in accordance with Chapter 305 of this title (relating to Consolidated Permits) and which has been declared to be administratively complete pursuant to §281.3 of this title (relating to Initial Review) prior to September 1, 1984.

(10) - (12) (No change.)

(13) Regional aquifer--An aquifer which has been identified by the Texas Natural Resource Conservation [~~Water~~] Commission as a major or minor aquifer. Major aquifers yield large quantities of water in large areas of the state. Minor aquifers yield large quantities of water in small areas of the state or small quantities of water in large areas of the state. (These aquifers are identified in Appendix B of the Texas Department of Water Resources Report Number 238).

(14) - (15) (No change.)

(16) Sole-source aquifer--An aquifer designated pursuant to the Safe Drinking Water Act of 1974, §1424(e), which solely or principally supplies drinking water to an area, and which, if contaminated, would create a significant hazard to public health. The Edwards Aquifer has been designated a sole-source aquifer by the EPA [~~United States Environmental Protection Agency~~]. The Edwards Aquifer recharge zone is specifically that area delineated on maps in the offices of the executive director.

(17) - (18) (No change.)

§335.205. Prohibition of Permit Issuance.

(a) The commission shall not issue a permit for any of the following:

(1) a new hazardous waste management facility or an areal expansion of an existing facility if the facility or expansion does not meet the requirements of §335.204 of this title (relating to Unsuitable Site Characteristics); [~~.~~]

(2) [~~(b) The commission shall not issue a permit for~~] a new hazardous waste landfill or the areal expansion of an existing hazardous waste landfill if there is a practical, economic, and feasible alternative to such a landfill that is reasonably available to manage the types and classes of hazardous waste which might be disposed of at the landfill; [~~.~~]

(3) [~~(c) No permit shall be issued for~~] a new commercial hazardous waste management facility as defined in §335.202 of this title (relating to Definitions) including such facilities that burn or propose to burn waste-derived fuel, as defined in this section, or the subsequent areal expansion of such a facility or unit of that facility if the boundary of the unit is to be located within 1/2 of a mile (2,640 feet) of an established residence, church, school, day care center, surface water body used for a public drinking water supply, or dedicated public park;[~~.~~]

[~~(d) For a subsequent areal expansion of a new commercial hazardous waste management facility that is required to comply with subsection (c) of this section, distances shall be measured from an established residence, church, school, day care center, surface water body used for a public drinking water supply, or dedicated public park only if such structure, water supply, or park was in place at the time the distance was certified for the original permit.~~]

(4) [~~(e) No permit shall be issued for~~] a new commercial hazardous waste management facility that is proposed to be located at a distance greater than 1/2 mile (2,640 feet) from an established residence, church, school, day care center, surface water body used for a public drinking water supply, or dedicated public park unless the applicant demonstrates to the satisfaction of the commission that the facility will be operated so as to safeguard public health and welfare and protect physical property and the environment, at any distance beyond the facility's property boundaries; or [~~.~~]

[~~(f) The measurement of distances required in subsections (a), (c), (d), and (e) of this section shall be taken toward an established residence, church, school, day care center, surface water body used for a public drinking water supply, or dedicated public park that is in use when the notice of intent to file a permit application is filed with the commission or, if no notice of intent is filed, when the permit application is filed with the commission. The restrictions imposed by subsections (a), (c), (d), and (e) of this section do not apply to an established residence, church, school, day care center, surface water body used for a public drinking water supply, or dedicated public park located within the boundaries of a commercial hazardous waste management facility, or property owned by the permit applicant.~~]

[~~(g) The measurement of distances required in subsections (a), (c), (d), and (e) of this section shall be taken from a perimeter around the proposed hazardous waste management unit. The perimeter shall be not more than 75 feet from the edge of the proposed hazardous waste management unit.~~]

(5) [~~(h) No permit shall be issued for~~] a Class I injection well, a proposed hazardous waste management facility other than a Class I injection well, or a capacity expansion of an existing hazardous waste management facility if a fault exists within 2-1/2 miles from the proposed or existing wellbore of the Class I injection well or the area within the cone of influence whichever is greater, or if a fault exists within 3,000 feet of the proposed hazardous waste management facility other than a Class I injection well or of the capacity expansion of an existing hazardous waste management facility unless the applicant demonstrates to the satisfaction of the commission unless previously demonstrated to the commission or to the EPA [~~United States Environmental Protection Agency~~] that:

(A) [~~(1)~~] in the case of Class I injection wells, that the fault is not sufficiently transmissive or vertically extensive to allow migration of hazardous constituents out of the injection zone; or

(B) [~~(2)~~] in the case of a proposed hazardous waste management facility other than a Class I injection well or for a capacity expansion of an existing hazardous waste management facility, that:

(i) [~~(A)~~] the fault has not had displacement within Holocene time, or if faults have had displacement within Holocene time, that no such faults pass within 200 feet of the portion of the surface facility where treatment, storage, or disposal of hazardous waste will be conducted; and

(ii) [~~(B)~~] the fault will not result in structural instability of the surface facility or provide for groundwater movement to the extent that there is endangerment to human health or the environment.

(b) For a subsequent areal expansion of a new commercial hazardous waste management facility that is required to comply with subsection (a)(3) of this section, distances shall be measured from an established residence, church, school, day care center, surface water body used for a public drinking water supply, or dedicated public park only if such structure, water supply, or park was in place at the time the distance was certified for the original permit.

(c) The measurement of distances required in subsection (a)(1), (3), and (4), and subsection (b) of this section shall be taken toward an established residence, church, school, day care center, surface water body used for a public drinking water supply, or dedicated public park that is in use when the notice of intent to file a permit application is filed with the commission or, if no notice of intent is filed, when the permit application is filed with the commission. The restrictions imposed by subsection (a)(1), (3), and (4), and subsection (b) of this section do not apply to an established residence, church, school, day care center, surface water body used for a public drinking supply, or dedicated public park located within the boundaries of a commercial hazardous waste management facility, or property owned by the permit applicant.

(d) The measurement of distances required in subsection (a)(1), (3), and (4), and subsection (b) of this section shall be taken from a perimeter around the proposed hazardous waste management unit. The perimeter shall be not more than 75 feet from the edge of the proposed hazardous waste management unit.

(e) [~~(i)~~] Nothing in this subchapter shall be construed to require the commission to issue a permit notwithstanding a finding that the proposed facility would satisfy the requirements of §335.203 of this title (relating to Site Selection to Protect Groundwater or Surface Water) and notwithstanding the absence of site characteristics which would disqualify the site from permitting pursuant to §335.204 of this title [~~(relating to Unsuitable Site Characteristics)~~].

(f) [~~(j)~~] The term "Waste-derived fuel" when used in this section, shall mean any material resulting from the blending or inclusion of hazardous waste that is to be burned for energy recovery. Such fuel does not include material derived from nonhazardous waste such as nonhazardous waste garbage, rubbish, refuse, tires, sludge from a wastewater treatment plant, water supply treatment plant, or air pollution control facility, or other nonhazardous waste solid, liquid, semisolid, or contained gaseous material resulting from industrial, municipal, commercial, mining, or agricultural operations or from community or institutional activities.

§335.206. Petitions for Rulemaking.

Local governments may petition the commission for a rule which restricts or prohibits the siting of a new hazardous waste management facility in areas including, but not limited to, those meeting one or more of the characteristics delineated in Texas Health and Safety Code, [~~the Texas Solid Waste Disposal Act, Texas Health and Safety Code Annotated, Chapter 361 (Vernon)~~], §361.022, and §335.204 of this title (relating to Unsuitable Site Characteristics). Such petitions shall be submitted in writing and shall comply with the requirements of §275.78 of this title (relating to Petition for Adoption of Rules). No rule adopted by the commission under this section shall affect the siting of a new hazardous waste management facility if an application or a notice of intent to file an application with respect to such facility has been filed with the commission prior to the filing of a petition under this section.

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

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SUBCHAPTER H. STANDARDS FOR THE MANAGEMENT OF SPECIFIC WASTES AND SPECIFIC TYPES OF FACILITIES
DIVISION 2. HAZARDOUS WASTE BURNED FOR ENERGY RECOVERY

30 TAC §§335.221, 335.222, 335.224, 335.225

STATUTORY AUTHORITY

The amendments are proposed under Texas Water Code (TWC), §5.103 and §5.105, which provide the commission with the authority to adopt any rules necessary to carry out its powers and duties under the provisions of the TWC or other laws of this state; and under Texas Health and Safety Code (THSC), Solid Waste Disposal Act, §361.017 and §361.024, which authorize the commission to regulate industrial solid waste and municipal hazardous waste and to adopt rules consistent with the general intent and purposes of the THSC.

The proposed amendments implement THSC, Chapter 361.

§335.221. Applicability and Standards.

(a) The following regulations contained in 40 Code of Federal Regulations (CFR) Part 266 (including all appendices to Part 266) are

adopted by reference, as amended and adopted in the CFR [~~Code of Federal Regulations~~] through November 19, 1999 (64 FR 63209), except as noted in this section [~~June 13, 1997, at 62 FedReg 32451~~]:

(1) §266.100 -- Applicability, except §266.100(c) [~~§266.100(b)~~];

(A) reference to "§266.212" is changed to "§266.112"; and

(B) reference to "the applicable requirements of subparts A through H, BB and CC of parts 264 and 265 of this chapter" is changed to "the applicable requirements of §§335.111 of this title (relating to Purpose, Scope and Applicability), 335.112(a)(1) - (7), (20), and (21) of this title (relating to Standards), 335.151 of this title (relating to Purpose, Scope and Applicability), and 335.152(a)(1) - (6), (18), and (19) of this title (relating to Standards);

(2) - (15) (No change.)

(16) §266.105 - Standards to Control Particulate Matter, except §266.105(d) [~~§266.105(c) and except as provided by §335.226 of this title (relating to Standards for Burning Hazardous Waste in Commercial Combustion Facilities)~~];

(17) - (23) (No change.)

(b) The following hazardous wastes and facilities are not regulated under this division [~~§§335.221-335.229 of this title (relating to Hazardous Waste Burned in Boilers and Industrial Furnaces)~~]:

(1) used oil burned for energy recovery that is also a hazardous waste solely because it exhibits a characteristic of hazardous waste identified in 40 CFR Part 261, Subpart C, from use versus mixing. Such used oil is subject to regulation by the EPA [~~United States Environmental Protection Agency~~] under 40 CFR Part 279 and Chapter 324 of this title (relating to Used Oil). This exception does not apply if the used oil has been made hazardous by mixing with characteristic or listed hazardous waste other than by a CESQG or household generator;

(2) - (4) (No change.)

§335.222. Management Prior To Burning.

(a) - (b) (No change.)

(c) Storage and processing facilities. The provisions listed under paragraph (1) of this subsection apply to storage or processing by burners and by intermediaries such as processors, blenders, and distributors between the generator and the burner.

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

§335.224. Additional Interim Status Standards for Burners.

In addition to the interim status standards for burners under §335.221(a)(7) - (14) of this title (relating to Applicability and Standards), owners and operators of "existing" boilers and industrial furnaces that burn hazardous waste are subject to the following provisions, including the applicable provisions of Subchapter A of this chapter (relating to Industrial Solid Waste and Municipal Hazardous Waste Management in General) and Subchapter E of this chapter (relating to Interim Standards for Owners and Operators of Hazardous Waste Storage, Processing, or Disposal Facilities), as follows:

(1) If a boiler or industrial furnace is located at a facility that already has a permit or interim status, then the owner or operator must comply with the applicable rules and regulations dealing with permit amendments or modifications under Chapter 305 of this title (relating to Consolidated Permits) and 40 Code of Federal Regulations (CFR) §270.42, or revisions of applications for hazardous waste permits and changes during interim status under Chapter 305 of this title [~~(relating to Consolidated Permits)~~] and 40 CFR §270.72.

(2) The requirements of this section and §335.221(a)(7) - (14) of this title [~~(relating to Applicability and Standards)~~] do not apply to hazardous wastes and facilities exempt under §335.221(b) of this title or exempt under 40 CFR §266.108, as adopted under §335.221(a)(19) of this title.

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

(5) On or before August 21, 1992, the owner or operator must submit a notice for publication in a newspaper regularly published, and generally circulated within the county and area wherein the facility is located and send a copy of the notice of those persons and entities listed under §305.103(b)(2) - (12) of this title (relating to Notice by Mail). The owner and operator must provide to the executive director, with the certification of precompliance, evidence of submittal of the notice for publication. The public notice requirements of this subsection do not apply to recertifications under 40 CFR [~~Code of Federal Regulations~~] §266.103(b)(8). The notice shall be entitled "Notice of Certification of Precompliance with Hazardous Waste Burning Requirements of 40 Code of Federal Regulations §266.103(b) and 30 TAC §335.224(4) and (5)." An owner or operator who satisfied the public notice requirements under 40 CFR [~~Code of Federal Regulations~~] §266.103(b)(6) will be considered compliant with this paragraph provided that the owner or operator submits evidence of such public notice on or before 30 days after the effective date of this paragraph. The notice shall include:

(A) - (B) (No change.)

(C) brief description of the regulatory process required to comply with the interim status requirements of this section, §335.221(a)(7) - (14) of this title [~~(relating to Applicability and Standards)~~], and 40 CFR §266.103, including required emissions testing to demonstrate conformance with emissions standards for organic compounds, particulate matter, metals, and HCl and Cl_2;

(D) - (J) (No change.)

(6) On or before August 21, 1992, the owner or operator shall conduct emissions testing to document compliance with the emissions standards of 40 CFR §§266.103(a)(5)(i)(D), 266.104(b) - (e), and 266.105 - 266.107 [~~266.105, 266.106, and 266.107~~], under the procedures prescribed by this paragraph and paragraphs (7) and (8) of this section and 40 CFR §266.103(c), except under extensions of time provided by 40 CFR §266.103(c)(7). Based on the compliance test, the owner or operator shall submit to the executive director a complete and accurate "certification of compliance," in accordance with 40 CFR §266.103(c)(4), with those emission standards establishing limits on the operating parameters specified in 40 CFR §266.103(c)(1). In accordance with paragraphs (12) and (13) of this section, the executive director may reject the certification of compliance or require additional information to be submitted within specified time frames.

(7) Compliance testing must be conducted under conditions for which the owner or operator has submitted a certification of precompliance under 40 CFR [~~Code of Federal Regulations (CFR)~~] §266.103(b) and paragraphs (4) - (5) of this section, and under conditions established in the notification of compliance testing required by 40 CFR §266.103(c)(2). The owner and operator may seek approval on a case-by-case basis to use compliance test data from one unit in lieu of testing a similar on-site unit. To support the request, the owner or operator must provide a comparison of the hazardous waste burned and other feedstreams, and the design, operation, and maintenance of both the tested unit and the similar unit. The director shall provide a written approval to use compliance test data in lieu of testing a similar unit if he finds that the hazardous wastes, the devices, and the operating conditions are sufficiently similar, and the data from

the other compliance test is adequate to meet the requirements of §266.103(c).

(8) - (13) (No change.)

(14) If the owner or operator does not comply with the interim status compliance schedule provided by paragraphs (4) - (6), (9), or (11) of this section, hazardous waste burning must terminate on the date of the deadline, closure activities must begin under 40 CFR [~~Code of Federal Regulations~~] §266.103(l), and hazardous waste burning may not resume except under an operating permit issued under Chapter 305 of this title [~~(relating to Consolidated Permits)~~]. For purposes of compliance with the closure provisions of paragraph (4) of this subsection and 40 CFR [~~Code of Federal Regulations~~] §265.112(d)(2) and §265.113 (as adopted in §335.112(a)(6) of this title (relating to Standards)) the boiler or industrial furnace has received "the known final volume of hazardous waste" on the date that the deadline is missed.

(15) (No change.)

§335.225. Additional Standards for Direct Transfer.

(a) (No change.)

(b) The direct transfer of hazardous waste to a boiler or industrial furnace shall be conducted so that it does not adversely affect the capability of the boiler or industrial furnace to meet required [~~the~~] standards [~~provided by §335.226 of this title (relating to Standards for Burning Hazardous Waste in Commercial Combustion Facilities)~~].

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DIVISION 3. RECYCLABLE MATERIALS UTILIZED FOR PRECIOUS METAL RECOVERY

30 TAC §335.241

STATUTORY AUTHORITY

The amendment is proposed under Texas Water Code (TWC), §5.103 and §5.105, which provide the commission with the authority to adopt any rules necessary to carry out its powers and duties under the provisions of the TWC or other laws of this state; and under Texas Health and Safety Code (THSC), Solid Waste Disposal Act, §361.017 and §361.024, which authorize the commission to regulate industrial solid waste and municipal hazardous waste and to adopt rules consistent with the general intent and purposes of the THSC.

The proposed amendment implements THSC, Chapter 361.

§335.241. Applicability and Requirements.

(a) (No change.)

(b) Persons who generate, transport, or store recyclable materials that are regulated under this section are subject to the following requirements:

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

(3) §§335.9 - 335.12 of this title (relating to Shipping and Reporting Procedures Applicable to Generators; Shipping and Reporting Procedures Applicable to Generators of Municipal Hazardous Waste or Class 1 [~~I~~] Industrial Solid Waste; Shipping Requirements for Transporters of Municipal Hazardous Waste or Class 1 [~~I~~] Industrial Solid Waste; Shipping Requirements Applicable to Owners or Operators of Storage, Processing, or Disposal Facilities), for generators, transporters, or persons who store, as applicable; and

(4) (No change.)

(c) - (d) (No change.)

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

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DIVISION 5. UNIVERSAL WASTE RULE

30 TAC §335.262

STATUTORY AUTHORITY

The amendment is proposed under Texas Water Code (TWC), §5.103 and §5.105, which provide the commission with the authority to adopt any rules necessary to carry out its powers and duties under the provisions of the TWC or other laws of this state; and under Texas Health and Safety Code (THSC), Solid Waste Disposal Act, §361.017 and §361.024, which authorize the commission to regulate industrial solid waste and municipal hazardous waste and to adopt rules consistent with the general intent and purposes of the THSC.

The proposed amendment implements THSC, Chapter 361.

§335.262. Standards for Management of Paint and Paint-Related Waste.

(a) (No change.)

(b) Paint and paint-related waste is used or unused paint and paint-related material which is "hazardous waste" as defined under §335.1 [~~§335.1(56)~~] of this title (relating to Definitions), as determined under §335.504 of this title (relating to Hazardous Waste Determination), and which is any mixture of pigment and a suitable liquid which forms a closely adherent coating when spread on a surface or any material which results from painting activities.

(c) - (d) (No change.)

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

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SUBCHAPTER I. PROHIBITION ON OPEN DUMPS

30 TAC §§335.303 - 335.305, 335.307

STATUTORY AUTHORITY

The amendments are proposed under Texas Water Code (TWC), §5.103 and §5.105, which provide the commission with the authority to adopt any rules necessary to carry out its powers and duties under the provisions of the TWC or other laws of this state; and under Texas Health and Safety Code (THSC), Solid Waste Disposal Act, §361.017 and §361.024, which authorize the commission to regulate industrial solid waste and municipal hazardous waste and to adopt rules consistent with the general intent and purposes of the THSC.

The proposed amendments implement THSC, Chapter 361.

§335.303. Criteria for Classification of Solid Waste Disposal Facilities and Practices.

Except to the extent that they are clearly inconsistent with the express provisions of Texas Health and Safety Code, Chapter 361 [~~the Solid Waste Disposal Act, Texas Civil Statutes, Article 4477-7~~], or the rules of the commission, the regulations contained in 40 Code of Federal Regulations (CFR) [~~,~~] Part 257 are adopted by reference. The executive director will maintain in the offices of the commission a set of the regulations contained in 40 CFR [~~Code of Federal Regulations,~~] Part 257 and adopted by reference herein. The regulations may be examined in the library of the Texas Natural Resource Conservation [~~Water~~] Commission, located on the first floor of Building A at 12100 Park 35 Circle, Austin, Texas [~~Stephen F. Austin Building, 1700 North Congress, Austin~~].

§335.304. Classification of Facilities.

The executive director may evaluate all existing solid waste disposal facilities, except those exempted under 40 Code of Federal Regulations (CFR)§257.1, according to the criteria in 40 CFR [~~Code of Federal Regulations,~~] Part 257. The executive director shall classify as open dumps all facilities which fail to satisfy these criteria and shall prepare a list of those facilities. This list shall be submitted to the EPA [~~U.S. Environmental Protection Agency~~] for inclusion in the open dump inventory under the Resource Conservation and Recovery Act of 1976, §4005.

§335.305. Upgrading or Closing of Open Dumps.

(a) - (b) (No change.)

(c) Nothing in this section precludes the executive director from seeking any relief deemed necessary for violation of this subchapter, any provision of Texas Health and Safety Code, Chapter 361 [~~the Solid Waste Disposal Act, Texas Civil Statutes, Article 4477-7~~], or any other regulations of the commission nor does this section establish any prerequisite for seeking that relief.

§335.307. Notification of Classification by Commission.

(a) Upon determination by the commission that a facility or practice violates any of the criteria set forth in 40 Code of Federal Regulations (CFR) [~~,~~] Part 257 and should be in the open dump inventory under the Resource Conservation and Recovery Act of 1976, §4005(b), the owner or operator of such facility shall be so notified in writing by the commission at least 30 days prior to the initial submission of the classification to the EPA [~~U. S. Environmental Protection Agency~~]. If the owner or operator wishes to contest that determination, he must so notify the commission within 20 days of the date of the notification and include any information indicating that the facility does not violate any of the criteria classification set forth in 40 CFR [~~Code of Federal Regulations,~~] Part 257. If the owner or operator fails to respond to the notification, or if the commission determines that the information provided by the owner or operator does not affect its initial determination, the commission shall forward the name of the facility to the EPA [~~U.S. Environmental Protection Agency~~] for publication in the *Federal Register*. The commission may delete the name of a facility from the list to be forwarded to the EPA [~~U. S. Environmental Protection Agency~~] if, in the opinion of the commission, the information presented by the owner or operator pursuant to this subsection shows that the facility or practice does not violate any of the criteria set forth in 40 CFR [~~Code of Federal Regulations,~~] Part 257.

(b) The commission shall also provide written notification of the availability of the results of any classification pursuant to §335.304 of this title (relating to Classification of Facilities) to all other persons on the list required by §335.306 of this title (relating to List of Interested or Affected Persons) at least 30 days prior to the initial submission of any classifications to the EPA [~~U. S. Environmental Protection Agency~~].

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

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SUBCHAPTER J. HAZARDOUS WASTE GENERATION, FACILITY AND DISPOSAL FEE SYSTEM

30 TAC §§335.321 - 325.323, 335.325, 335.326, 335.328, 335.329

STATUTORY AUTHORITY

The amendments are proposed under Texas Water Code (TWC), §5.103 and §5.105, which provide the commission with the authority to adopt any rules necessary to carry out its powers and duties under the provisions of the TWC or other laws of this state; and under Texas Health and Safety Code (THSC), Solid Waste Disposal Act, §361.017 and §361.024, which authorize the commission to regulate industrial solid waste and municipal hazardous waste and to adopt rules consistent with the general intent and purposes of the THSC.

The proposed amendments implement THSC, Chapter 361.

§335.321. Purpose.

(a) It is the purpose of this subchapter to establish an industrial solid waste and hazardous waste fee program. Under this program the following fees are imposed:

(1) an annual fee on each generator of Class 1 [I] industrial solid waste or hazardous waste;

(2) an annual fee on each facility which either holds a Class 1 [I] industrial solid waste or hazardous waste permit or operates Class 1 [I] industrial solid waste or hazardous waste management units subject to permit authorization;

(3) a fee on the operator of a commercial solid waste disposal facility for Class 1 [I] industrial waste which is disposed on site by the facility;

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

(b) Hazardous and solid waste fees fund.

(1) The hazardous and solid waste fees fund shall be used for the purpose of regulation of industrial solid waste and hazardous waste, including payment to other state agencies for services provided under contract relating to enforcement of the Texas Health and Safety Code, Chapter 361.

(2) The fund shall consist of:

(A)-(B) (No change.)

(C) hazardous waste management fees and Class 1 [I] industrial waste disposal fees assessed and apportioned under §335.325 of this title (relating to Industrial Solid Waste and Hazardous Waste Management Fee Assessment);

(D) application fees assessed under §305.53 of this title [(relating to Application Fees)]; and

(E) (No change.)

(c) Hazardous and solid waste remediation fee fund.

(1) The hazardous and solid waste remediation fee fund shall be used for the purpose of the following:

(A)-(B) (No change.)

(C) expenses related to complying with the federal Comprehensive Environmental Response, Compensation and Liability Act of 1980 (42 United States Code §§9601 et seq.) as amended, the federal Superfund Amendments and Reauthorization Act of 1986 (10 United States Code §§2701 et seq.), and the Texas Health and Safety Code, Chapter 361, Subchapters F and I;

(D)-(E) (No change.)

(2) The fund shall consist of:

(A) hazardous waste management fees and Class 1 [I] industrial waste disposal fees assessed and apportioned under §335.325 of this title [(relating to Industrial Solid Waste and Hazardous Waste Management Fee Assessment)];

(B) (No change.)

(C) money paid by a person liable for facility cleanup and maintenance under provisions of the Texas Health and Safety Code, §361.197;

(D) (No change.)

(E) monies collected on behalf of the commission or transferred from other agencies under any applicable provisions of the Texas Health and Safety Code, including §361.138 concerning fees on lead-acid batteries, or grants from any person made for the purpose of remediation of facilities under the Texas Health and Safety Code, Chapter 361.

(d) Waste management fees collected under §335.325 of this title [(relating to Industrial Solid Waste and Hazardous Waste Management Fee Assessment)] shall be credited to the funds of the state as follows.

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

§335.322. Definitions.

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

(1) (No change.)

(2) Authorized hazardous waste management unit--A unit at a hazardous waste management facility which is authorized by permit or which is identified in an application submitted pursuant to and in accordance with §335.2(c) of this title [(relating to Permit Required)] or §335.43(b) of this title [(relating to Permit Required)].

(3) (No change.)

(4) Class 1 [I] waste--Any industrial solid waste or mixture of industrial solid wastes meeting the definition of Class 1 [I] waste under §335.1 of this title (relating to Definitions).

(5) Class 1 [I] nonhazardous waste--Any Class 1 [I] waste which is not a hazardous waste as defined in this section.

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

(11) Hazardous waste--Those solid wastes not otherwise exempted which have been identified or listed as hazardous wastes by the administrator of the EPA [United States Environmental Protection Agency] pursuant to the federal Solid Waste Disposal Act, 42 United States Code §§6901 et seq., as amended.

(12)-(13) (No change.)

(14) Injection well--As provided in the Texas Water Code (TWC), §27.002(11).

(15) Interim status--The status of any person who owns or operates a facility required to have a permit under this chapter, and who is required to submit an application for a permit pursuant to §335.2(c) of this title [(relating to Permit Required)] or §335.43(b) of this title [(relating to Permit Required)].

(16) Land disposal facility--Any landfill, surface impoundment (excluding an impoundment treating, processing, or storing waste that is disposed pursuant to TWC [Texas Water Code], Chapter 26 or Chapter 27), waste pile, facility at which land farming, land treatment, or a land application process is used, or an injection well. Land disposal does not include the normal application of agricultural chemicals or fertilizers.

(17) (No change.)

(18) On-site land disposal facility--A hazardous waste unit which meets the definition of land disposal facility of this section and on-site disposal as defined in §335.1 of this title [(relating to Definitions)].

(19) Processing--For the purposes of this subchapter, the term "processing" has the same meaning as defined in §335.1 of this title [(relating to Definitions)].

(20) (No change.)

§335.323. Generation Fee Assessment.

(a) An annual generation fee is hereby assessed each industrial or hazardous solid waste generator that is required to notify [which has notified] under §335.6 of this title (relating to Notification

Requirements) and which generates Class 1 industrial solid waste or hazardous waste or whose act first causes such waste to become subject to regulation under Subchapter B of this chapter (relating to Hazardous Waste Management--General Provisions) on or after September 1, 1985. These fees shall be deposited in the hazardous and solid waste fee fund. The amount of a generation fee is determined by the total amount of Class 1 nonhazardous waste or hazardous waste generated during the previous calendar year. The annual generation fee may not be less than $50. The annual generation fee for hazardous waste shall not be more than $50,000 and for nonhazardous waste not more than $10,000.

(b) Wastewaters are exempt from assessment under the following conditions.

(1) Wastewaters containing hazardous wastes which are designated as hazardous solely because they exhibit a hazardous characteristic as defined in 40 Code of Federal Regulations[~~,~~] Part 261, Subpart C, concerning characteristics of hazardous waste, and are rendered non-hazardous by neutralization or other treatment on-site in totally enclosed treatment facilities or wastewater treatment units for which no permit is required under §335.2 of this title (relating to Permit Required) or §335.41 of this title (relating to Purpose, Scope, and Applicability) are exempt from the assessment of hazardous waste generation fees.

(2) Wastewaters classified as Class 1 industrial solid wastes because they meet the criteria for a Class 1 waste under the provisions of §335.505 of this title (relating to Class 1 Waste Determination) and are treated on-site in totally enclosed treatment facilities or wastewater treatment units for which no permit is required under §335.2 of this title [~~(relating to Permit Required)~~] or §335.41 of this title [~~(relating to Purpose, Scope, and Applicability)~~] and no longer meet the criteria for a Class 1 waste are exempt from the assessment of waste generation fees.

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

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

§335.325. Industrial Solid Waste and Hazardous Waste Management Fee Assessment.

(a) A fee is hereby assessed on each owner or operator of a waste storage, processing, or disposal facility, except as provided in subsections (b) - (e) of this section. A fee is assessed for hazardous wastes which are stored, processed, disposed, or otherwise managed and for Class 1 [~~I~~] industrial wastes which are disposed at a commercial facility. For the purpose of this section, the storage, processing, or disposal of hazardous waste for which no permit is required under §335.2 of this title (relating to Permit Required) or §335.41 of this title (relating to Purpose, Scope, and Applicability) is not subject to a hazardous waste management fee.

(b)-(i) (No change.)

(j) Except as provided in subsections (k) - (q) [~~(k) - (p)~~] of this section, waste management fees shall be assessed according to the following schedule.

(1) (No change.)

(2) Class 1 [~~I~~] non-hazardous waste.

Figure: 30 TAC §335.325(j)(2)

(k)-(l) (No change.)

(m) A fee for storage of hazardous waste shall be assessed in addition to any fee for other waste management methods at a facility. No fee shall be assessed under this section for the storage of a hazardous waste for a period of less than 90 days as determined from the date of receipt or generation of the waste (or the effective date of this section). The fee rate specified in the schedule under subsection (j) of this section shall apply to the quantity of waste in any month which has been in storage for more than 90 days or the number for which an extension has been granted under §335.69 of this title [~~(relating to Accumulation Time)~~].

(n)-(o) (No change.)

(p) A commercial waste disposal facility receiving solid waste not subject to assessment under this section shall pay any assessment due under Chapter 330, Subchapter P of this title (relating to Fees and Reports). No fee for disposal of a solid waste under Chapter 330, Subchapter P of this title, shall be assessed in addition to a fee for disposal under this section.

(q) An operator of a hazardous waste injection well electing to separately measure inorganic salts in the determination of dry weight under the provisions of §335.326(c) of this title [~~(relating to Dry Weight Determination)~~] shall pay a fee equivalent to 20% of the fee for underground injection assessed in subsection (j) of this section for the components of the waste stream determined to be inorganic salts.

§335.326. Dry Weight Determination.

(a) The method of calculating the dry weight of each waste stream subject to assessment under §335.325 of this title (relating to Industrial Solid Waste and Hazardous Waste Management Fee Assessment) shall be determined initially and at any time the waste stream undergoes a significant change in water content using the appropriate method(s) as specified in this section. Determinations shall be made from a representative sample collected by grab or composite. Collection methods and sample preservation shall be by methods to minimize volatilization.

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

(3) Organic-based wastes which contain suspended solids less than 15% of the sample by weight and which contain a single liquid phase shall have the dry weight determination calculated using:

(A) (No change.)

(B) the method specified in Appendix II in §335.332 of this title [~~(relating to Appendices I and II)~~].

(4) Wastes which do not meet any of the criteria specified in paragraphs (1) - (3) of this subsection shall have the dry weight determination calculated using:

(A) (No change.)

(B) the method specified in Appendix II in §335.332 of this title [~~(relating to Appendices I and II)~~]; or

(C) (No change.)

(5) The method for calculating the dry weight shall be that method specified in Appendix I in §335.332 of this title [~~(relating to Appendices I and II)~~] or an alternate method selected by the generator pursuant to §335.327 of this title (relating to Alternate Methods of Dry Weight Determination), if the waste cannot be analyzed by one of the other required methods of this section due to interfering constituents. Documentation identifying the method of analysis and describing the interference shall be maintained by the generator.

(b) (No change.)

(c) If the dry weight ratio of a hazardous waste as measured under this section exceeds 10%, an operator of a hazardous waste injection well may elect to determine the composition of the waste stream that is inorganic salts or brines and separately record the weight of such inorganic salts for the purpose of assessment of the fee under §335.325(q)

[§335.325(p)] of this title [(relating to Industrial Solid Waste and Hazardous Waste Management Fee Assessment)]. The methods used to determine the weight of inorganic salts in a hazardous waste stream are subject to review and approval by the executive director. This subsection does not apply to:

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

(d) For purposes of a fee assessed under §335.325 of this title [(relating to Industrial Solid Waste and Hazardous Waste Management Fee Assessment)], the dry weight of a waste disposed in an underground injection well, to which brine, inorganic salts, or other authorized agents are added to maintain density control to assure compliance with no-migration requirements of 40 Code of Federal Regulations 148 Subpart C, shall be determined prior to the addition of the agent. No solid waste, as defined by the Texas Health and Safety Code, §361.003(37), may be excluded from the determination of dry weight under this subsection.

§335.328. Fees Payment.

(a) Generation and facility fees are payable each year for all Class 1 [I] industrial solid waste and hazardous waste generators, permittees, and facilities. Fees must be paid by check, certified check, or money order payable to Texas Natural Resource Conservation Commission. Annual facility fees are payable by permittees, owners, or operators regardless of whether the facility is in actual operation. All annual generation and facility fees shall be due by a date to be established by the Texas Natural Resource Conservation Commission at the time payment is requested.

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

§335.329. Records and Reports.

(a) Generators are required to:

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

(4) submit the appropriate reports required under §335.13(b) of this title (relating to Recordkeeping and Reporting Procedures Applicable to Generators Shipping Hazardous Waste or Class 1 [I] Waste and Primary Exporters of Hazardous Waste) on forms furnished or approved by the executive director.

(b) Owners or operators of waste storage, processing, or disposal facilities are required to:

(1) for on-site facilities, keep records of all hazardous waste and industrial solid waste activities regarding the quantities stored, processed, and disposed on site or shipped off site for storage, processing, or disposal in accordance with the requirements of §335.9 of this title [(relating to Recordkeeping and Annual Reporting Procedures Applicable to Generators)];

(2)-(4) (No change.)

(5) except as provided in §335.328 of this title (relating to Fees Payment), submit a monthly summary of on-site waste management activities subject to the assessment of fees under §335.325 of this title [(relating to Industrial Solid Waste and Hazardous Waste Management Fee Assessment)] on forms furnished or approved by the executive director. This summary report shall be due by the 25th day following the end of the month (or quarter) for which a report is made. An owner or operator required to comply with this subsection shall continue to prepare and submit monthly (or quarterly) summaries, regardless of whether any storage, processing, or disposal was made during a particular month (or quarter), by preparing and submitting a summary indicating that no waste was managed during that month (or quarter).

(c)-(d) (No change.)

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

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SUBCHAPTER K. HAZARDOUS SUBSTANCE FACILITIES ASSESSMENT AND REMEDIATION

30 TAC §§335.341, 335.342, 335.346

STATUTORY AUTHORITY

The amendments are proposed under Texas Water Code (TWC), §5.103 and §5.105, which provide the commission with the authority to adopt any rules necessary to carry out its powers and duties under the provisions of the TWC or other laws of this state; and under Texas Health and Safety Code (THSC), Solid Waste Disposal Act, §361.017 and §361.024, which authorize the commission to regulate industrial solid waste and municipal hazardous waste and to adopt rules consistent with the general intent and purposes of the THSC.

The proposed amendments implement THSC, Chapter 361.

§335.341. Purpose and Scope.

(a) The purpose of this subchapter is to establish an assessment and remediation program to identify and assess 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 provisions of this subchapter supplement and therefore should be read in conjunction with the provisions of Texas Health and Safety Code, Chapter 361, Subchapter F [of the Texas Solid Waste Disposal Act, Tex. Health and Safety Code Ann. Chapter 361 (Vernon Supplement), §§361.181 et. seq. as amended], herein referred to as the Act.

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

§335.342. Definitions.

Definitions set forth in the Act that are not specifically included in this section shall also apply. The following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise.

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

(6) Hazard ranking system--The method used by the EPA and the agency to evaluate the relative potential of hazardous substance releases to cause health or safety problems, ecological or environmental damage. The scoring system was developed by the EPA as set out in 40 Code of Federal Regulations (CFR) Part 300, Appendix A, as amended.

(7) Hazardous and Solid Waste Remediation Fee Account--The fund as described in the Texas Health and Safety Code [Act], §361.133.

(8) Health and safety plan--A document that addresses the protection of on-site personnel and the public from potential hazards

associated with implementing the remedial investigation or remedial action at a particular facility. The plan shall conform to applicable Occupational Safety and Health Administrative Rules, including but not limited to relevant portions of 29 CFR [~~Code of Federal Regulations~~] §1910 and §1926.

(9)-(13) (No change.)

(14) Potentially responsible party (PRP)--A person potentially responsible for solid waste as defined in Texas Health and Safety Code [~~the Act~~], §361.271 and §361.275(g).

(15) Presumptive remedy--A remedy in a commission document titled "Presumptive Remedies" which describes site specific remedial alternatives for a facility in lieu of a full feasibility study as required by §335.348 of this title [~~(relating to General Requirements for Remedial Investigations)~~].

(16)-(19) (No change.)

(20) Remedial investigation (RI)--An investigative study (i.e., an affected property assessment conducted in accordance with Chapter 350, Subchapter C of this title (relating to Affected Property Assessment) which may include removals and/or a feasibility study, in addition to the development of protective concentration levels in accordance with Chapter 350, Subchapter D of this title (relating to Development of Protective Concentration Levels) designed to adequately determine the nature and extent of a release or threatened release of hazardous substances and, as appropriate, its impact on air, soils, groundwater, and surface water, both within and beyond the boundaries of the facility in accordance with the requirements of §335.348 of this title [~~(relating to General Requirements for Remedial Investigations)~~].

(21) Responsible party (RP)--A person responsible for solid waste as defined in Texas Health and Safety Code [~~the Act~~], §361.271 and §361.275(g).

(22)-(25) (No change.)

§335.346. Removals and Preliminary Site Investigations.

(a) For facilities listed on the Registry or proposed for listing on the Registry, no person may perform any partial or total removals at such facility or conduct preliminary investigations of any type at such facility until [~~without the advance~~] written authorization of the executive director has been received and [~~after~~] notice and opportunity for comment has been provided to all other potentially responsible parties.

(b) To expedite the executive director's consideration of a proposal to conduct removals or preliminary investigations at a facility, the person proposing such actions shall submit to the executive director:

(1) a workplan describing the removal and/or investigation activities proposed; [~~,~~]

(2) a health and safety plan; [~~,~~]

(3) a quality assurance project plan; [~~,~~] and

(4) an implementation schedule for completing various subtasks identified in the workplan.

(c) Any authorization by the executive director to perform preliminary investigations, investigation activities, or partial or total removals at a facility does not constitute a finding or determination by the executive director that such preliminary investigation constitutes an approved remedial investigation or that the removal constitutes the final remedial action. An authorization by the executive director to perform any partial or total removals or investigation activities also does not constitute a determination or finding by the executive director that any release or threatened release attributed to the removed materials is divisible as defined in Texas Health and Safety Code [~~the Act~~], §361.276.

(d) Pursuant to Texas Health and Safety Code [~~the Act~~], §361.133(c)(1) - (4) and (g), the executive director may perform [~~use money in the Hazardous and Solid Waste Remediation Fee Account for~~] necessary and appropriate removal and remedial action at sites at which solid waste or hazardous substances have been disposed if funds from a liable party, independent third party, or the federal government are not sufficient for the removal or remedial action. The executive director may also perform removals under Texas Health and Safety Code [~~the Act~~], §361.133(c)(5) to protect human health and the environment.

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SUBCHAPTER N. HOUSEHOLD MATERIALS WHICH COULD BE CLASSIFIED AS HAZARDOUS WASTES

30 TAC §§335.401 - 335.403, 335.406, 335.407, 335.409, 335.411, 335.412

STATUTORY AUTHORITY

The amendments are proposed under Texas Water Code (TWC), §5.103 and §5.105, which provide the commission with the authority to adopt any rules necessary to carry out its powers and duties under the provisions of the TWC or other laws of this state; and under Texas Health and Safety Code (THSC), Solid Waste Disposal Act, §361.017 and §361.024, which authorize the commission to regulate industrial solid waste and municipal hazardous waste and to adopt rules consistent with the general intent and purposes of the THSC.

The proposed amendments implement THSC, Chapter 361.

§335.401. Purpose.

The purpose of this subchapter is to provide requirements for interested persons to engage in activities which involve the collection, disposal, or recycling of hazardous household wastes and other types of household waste materials that may, due to their quantity and characteristics, pose a potential endangerment to human health or the environment if improperly handled. [~~The Texas Department of Health and the Texas Water Commission agree to establish and maintain a cooperative effort with regard to providing regulation and direction for hazardous household waste collection programs so as to insure that waste aggregated as a result of such programs is properly handled and disposed of in a safe manner.~~]

§335.402. Definitions.

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

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

[(4) Commission -- The Texas Water Commission.]

[(5) Department -- The Texas Department of Health.]

(4) [(6)] Division -- The Small Business and Environmental Assistance Division, Texas Natural Resource Conservation Commission [Division of Solid Waste Management, Texas Department of Health].

(5) [(7)] Hazardous household waste -- Any solid waste generated in a household by a consumer which, except for the exclusion provided in 40 Code of Federal Regulations (CFR) §261.4(b)(1), would be classified as a hazardous waste under 40 CFR [Code of Federal Regulations,] Part 261.

(6) [(8)] Hazardous waste processing, storage, or disposal facility -- A hazardous waste processing, storage, or disposal facility that has received an EPA [Environmental Protection Agency (EPA)] permit (or a facility with interim status) in accordance with the requirements of 40 CFR [Code of Federal Regulations] Parts 270 and 124, or that has received a permit from a state authorized in accordance with 40 CFR [Code of Federal Regulations] Part 271.

(7) [(9)] Household -- Single and multiple residences, hotels and motels, bunkhouses, ranger stations, crew quarters, campgrounds, picnic grounds, and day-use recreational areas.

(8) [(10)] Recurring collection program -- An organized effort to collect and/or aggregate hazardous household waste in a community at scheduled intervals, at least annually.

§335.403. Authority.

[(a) Authority of the Texas Department of Health. The Texas Department of Health (the department) is the state agency having responsibility for regulation of nonhazardous municipal solid waste. The department and the commission agree that the department has primary regulatory authority over hazardous household waste; persons who provide point of generation pick-up of hazardous household waste; and persons who establish and operate hazardous household waste collection centers, other than those located at established hazardous waste processing, storage, or disposal facilities which are regulated by the Texas Water Commission (the commission). The following regulatory portions of this subchapter shall be primarily implemented and enforced by the department:]

[(1) §335.406(a) - (c) of this title (relating to General Requirements for Collectors and Operators);]

[(2) §335.407(a)-(f) of this title (relating to Operation of Collection Centers);]

[(3) §335.408 of this title (relating to Household Pick-Up);]

[(4) §335.410 of this title (relating to Reuse of Collected Material), except in those cases where the collector or operator determining the reuse suitability of the collected material is the owner/operator of a hazardous waste processing, storage, or disposal facility; and]

[(5) §335.411(b) of this title (relating to General Requirements for Transporters).]

[(b)] [Authority of the Texas Water Commission.] The Texas Natural Resource Conservation [Water] Commission is the state agency having responsibility for regulating non-hazardous municipal solid waste and hazardous waste as defined by the EPA [United States Environmental Protection Agency] in 40 Code of Federal Regulations Part 261. Except for collected materials being used or planned to be used or reused in accordance with §335.410 of this title (relating to Reuse of Collected Material), all hazardous household waste once collected and aggregated at a collection center or at a transporter's facility shall be transported only by hazardous waste transporters and shall be shipped only to authorized hazardous waste processing, storage, or disposal facilities. [The department and the commission agree that the commission has regulatory authority over persons transporting hazardous household waste that is required when shipped to be accompanied by a manifest, and over all aspects of solid waste management conducted at a hazardous waste processing, storage, or disposal facility. Accordingly, the following regulatory portions of this subchapter shall be primarily implemented and enforced by the commission:]

[(1) §335.406(d) of this title (relating to General Requirements for Collectors and Operators);]

[(2) §335.407(g) of this title (relating to Operation of Collection Centers);]

[(3) §335.410 of this title (relating to Reuse of Collected Material), except in those cases where the collector or operator determining the reuse suitability of the collected material is subject to the requirements of §335.406(a) - (c) of this title (relating to General Requirements for Collectors and Operators);]

[(4) §335.411(a) of this title (relating to General Requirements for Transporters); and]

[(5) §335.412 of this title (relating to General Requirements for Processing, Storage, or Disposal Facilities).]

[(c) Joint authority. The department and commission shall jointly implement, and each may enforce as appropriate, the requirements contained in §335.409 of this title (relating to General Shipping, Manifesting, Recordkeeping, and Reporting Requirements).]

§335.406. General Requirements for Collectors and Operators.

(a) Except as provided in subsection (d) of this section, no person may engage in any activity to collect or aggregate hazardous household waste that has been segregated from other solid waste without having first notified the Small Business and Environmental Assistance Division, Texas Natural Resource Conservation Commission [Division of Solid Waste Management, Texas Department of Health] (division), in accordance with subsection (b) of this section and without having submitted to the division an operational plan as provided for in subsection (c) of this section. [The department may waive the requirements of this section for programs scheduled to be implemented within six months of the date these rules become effective, provided the collector or operator requests such waiver in writing.]

(b) The notification shall be submitted 90 days prior to the expected collection date, by letter or on a form provided by the division [department]. It shall include the following information:

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

(c) The collector or operator shall submit to the division a complete operational plan not less than 45 days.

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

(9) The following operational concepts shall be discussed in detail:

(A) - (D) (No change.)

(E) procedures to ensure that unauthorized waste, i.e., hazardous waste (or Class 1 [I] industrial solid waste) from industries, businesses, or institutions subject to regulations of the commission, is not accepted as hazardous household waste;

(F) - (K) (No change.)

(10) The operator shall provide information on the planned disposal of the waste collected, to include the transporter's name and the EPA [~~United States Environmental Protection Agency~~] identification number, and the name, location, and the EPA [~~United States Environmental Protection Agency~~] identification number of the hazardous waste facility which is to be used for the processing, storage, disposal, or recycling of the waste. The operator, in developing the plan for disposal of waste to be received at the collection center, should determine the feasibility of managing collected hazardous household waste in the following order of preference:

(A) - (E) (No change.)

(11) (No change.)

(12) The plan shall include the following attachments:

(A) - (B) (No change.)

(C) Attachment 3 -- evidence of financial responsibility. Collectors or operators other than governmental entities shall submit evidence of financial responsibility which assures the division [~~department~~] that sufficient assets are available to properly operate the collection center, enable appropriate shipment and disposal of the waste, and to provide for proper closure of the collection center. The amount and type of financial assurance shall be determined by the division after discussing the scope of the collection effort with the operator.

(D) - (E) (No change.)

(d) Owners or operators of hazardous waste processing, storage, or disposal facilities who accept or intend to accept unmanifested hazardous household waste directly from household waste generators or their representatives are not subject to the requirements of this section, provided that prior to first accepting such waste they notify the executive director [~~of the Texas Water Commission~~] in writing concerning their intention to accept such waste, and in the notification indicate:

(1) their Texas Natural Resource Conservation [~~Water~~] Commission registration number and EPA [~~Environmental Protection Agency~~] identification number;

(2) - (8) (No change.)

§335.407. Operation of Collection Centers.

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

(e) Waste accepted and excluded. The collection center should accept only household wastes. The operator shall take necessary precautions to prohibit the receipt of waste defined as a hazardous waste by Texas Health and Safety Code, Chapter 361 [~~the Solid Waste Disposal Act, Texas Civil Statutes, Article 4477-7~~]; or as Class 1 [~~I industrial solid~~] waste by the commission. Other requirements related to acceptance or exclusion of wastes are as follows:

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

(f) - (g) (No change.)

§335.409. General Shipping, Manifesting, Recordkeeping, and Reporting Requirements.

Except for those collected reusable materials handled in accordance with the requirements of §335.410 of this title (relating to Reuse of Collected Material) and waste received at the center, which can be disposed o f at a municipal solid waste facility in accordance with the requirements of §335.407 of this title (relating to Operation of Collection Centers), persons who collect, receive, or aggregate hazardous household waste shall:

(1) when transporting or shipping such waste from a collection center or from a transporter's facility, utilize only hazardous waste transporters who have notified the executive director [~~commission~~] with respect to transportation of hazardous waste, who have notified the EPA [~~United States Environmental Protection Agency~~] of their involvement in transporting hazardous waste, and who have been issued an EPA [~~Environmental Protection Agency~~] identification number;

(2) (No change.)

(3) assure, prior to offering such waste for shipment, that such waste is packaged and labeled so as to comply with applicable United States Department of Transportation (DOT) requirements and to comply with the requirements contained in §335.10 of this title (relating to Shipping and Reporting Procedures Applicable to Generators of Municipal Hazardous Waste or Class 1 [~~I~~] Industrial Solid Waste); and

(4) retain for at least one year from the date of shipment copies of all manifests utilized for the shipment of such waste. [~~; and~~]

[~~(5) provide, within 30 days of receiving the completed copy of such manifests showing the signature of the receiver and date of receipt, a copy of the completed manifest to the division, or in those cases where the person shipping the waste is the owner or operator of a hazardous waste processing, storage, or disposal facility, to the commission.~~]

§335.411. General Requirements for Transporters.

(a) No person shall transport any hazardous household waste required by this subchapter to be accompanied by a uniform hazardous waste manifest [~~obtained from the commission~~], unless such person:

(1) has notified the executive director [~~Texas Water Commission~~] with respect to such transportation activities in accordance with the requirements contained in §335.6(d) [~~§335.6(e)~~] of this title (relating to Notification Requirements);

(2) has notified the EPA [~~United States Environmental Protection Agency~~] as to his or her transporter status, and has been issued an EPA [~~Environmental Protection Agency~~] identification number;

(3) complies with the requirements outlined in §335.11 of this title (relating to Shipping Requirements for Transporters of Municipal Hazardous Waste or Class 1 [~~I~~] Industrial Solid Waste) with respect to all manifested household waste;

(4) complies with the requirements outlined in §335.14 of this title (relating to Recordkeeping Requirements Applicable to Transporters of Municipal Hazardous Waste or Class 1 [~~I~~] Industrial Solid Waste) with respect to all manifested household waste; and

(5) (No change.)

(b) Transporters engaged in point of generation pick-up of hazardous household waste, who operate or intend to operate hazardous household waste collection centers, or who otherwise handle or accept unmanifested hazardous household waste, are subject to all the requirements of this subchapter set forth for collectors and shall comply with paragraphs (1) - (4) of this subsection.

(1) (No change.)

(2) All activities to collect and/or aggregate hazardous household waste shall be in accordance with rules of this subchapter applicable to collectors and operators and written instructions from the executive director [~~division~~].

(3) All hazardous household waste accumulated by the transporter shall be kept separate and apart from hazardous waste or Class 1 [~~I~~] industrial solid waste as defined in Texas Health and Safety Code, Chapter 361 [~~the Texas Solid Waste Disposal Act, Texas Civil~~

Statutes, Article 4477-7], which may be accumulated at a transporter's facilities.

(4) (No change.)

§335.412. General Requirements for Storage, Processing, [Storage,] or Disposal Facilities.

Owners or operators of hazardous waste storage, processing, [storage,] or disposal facilities may receive manifested shipments of hazardous household waste or other household waste provided they:

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

(3) handle on-site all received or aggregated hazardous household waste in the same manner as if the waste were defined as a hazardous waste under Texas Health and Safety Code, Chapter 361 [the Texas Solid Waste Disposal Act, Texas Civil Statutes, Article 4477-7];

(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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SUBCHAPTER O. LAND DISPOSAL RESTRICTIONS

30 TAC §335.431

STATUTORY AUTHORITY

The amendment is proposed under Texas Water Code (TWC), §5.103 and §5.105, which provide the commission with the authority to adopt any rules necessary to carry out its powers and duties under the provisions of the TWC or other laws of this state; and under Texas Health and Safety Code (THSC), Solid Waste Disposal Act, §361.017 and §361.024, which authorize the commission to regulate industrial solid waste and municipal hazardous waste and to adopt rules consistent with the general intent and purposes of the THSC.

The proposed amendment implements THSC, Chapter 361.

§335.431. Purpose, Scope, and Applicability.

(a) (No change.)

(b) Scope and Applicability.

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

(3) Universal waste handlers and universal waste transporters, as defined in and subject to regulation under Subchapter H, Division 5 of this chapter (relating to Universal Waste Rule) are exempt from 40 CFR [Code of Federal Regulations] §268.7 and §268.50.

(c) Adoption by Reference.

(1) except as provided in paragraph (2) of this subsection, and subject to the changes indicated in subsection (d) of this section, the regulations contained in 40 CFR[,] Part 268, as amended through December 26, 2000 (65 FR 81373) [August 31, 1998, in 63 FedReg 46332] are adopted by reference.

(2) (No change.)

(3) Appendices IV, VI-IX, and XI of 40 CFR, Part 268 are adopted by reference as amended through May 12, 1997 (62 FR 25998) [May 12, 1997, in 62 FedReg 25998].

(d) (No change.)

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

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SUBCHAPTER Q. POLLUTION PREVENTION: SOURCE REDUCTION AND WASTE MINIMIZATION

30 TAC §§335.471, 335.473 - 335.478, 335.480

STATUTORY AUTHORITY

The amendments are proposed under Texas Water Code (TWC), §5.103 and §5.105, which provide the commission with the authority to adopt any rules necessary to carry out its powers and duties under the provisions of the TWC or other laws of this state; and under Texas Health and Safety Code (THSC), Solid Waste Disposal Act, §361.017 and §361.024, which authorize the commission to regulate industrial solid waste and municipal hazardous waste and to adopt rules consistent with the general intent and purposes of the THSC.

The proposed amendments implement THSC, Chapter 361.

§335.471. Definitions.

The words and terms used in this subchapter have the meanings given in the Waste Reduction Policy Act of 1991, Senate Bill 1099, or the regulations promulgated thereunder. The following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise. Further, the following words and terms, as defined herein, shall only have application to this subchapter.

(1) Acute hazardous waste -- Hazardous waste listed by the administrator of the EPA [United States Environmental Protection Agency] under the federal Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act (RCRA) of 1976 (42 United States Code §6901 et seq.), because the waste meets the criteria for listing hazardous waste identified in 40 Code of Federal Regulations §261.11(a)(2).

[(2) Board -- The Texas Air Control Board.]

[(3) Commission -- The Texas Water Commission.]

[(4) Committee --The waste reduction advisory committee established by the Texas Solid Waste Disposal Act, the Health and Safety Code Annotated, §361.0215.]

(2) [~~(5)~~] Conditionally exempt small quantity generator -- A generator that does not accumulate more than 1,000 kilograms of hazardous waste at any one time on his facility and who generates less than 100 kilograms of hazardous waste in any given month.

(3) [~~(6)~~] Environment -- Water, air, and land and the interrelationship that exists among and between water, air, land, and all living things.

(4) [~~(7)~~] Facility -- All buildings, equipment, structures, and other stationary items located on a single site or on contiguous or adjacent sites that are owned or operated by a person who is subject to this subchapter or by a person who controls, is controlled by, or is under common control with a person subject to this subchapter.

(5) [~~(8)~~] Generator and generator of hazardous waste -- Have the meaning assigned by Texas Health and Safety Code [~~the Texas Solid Waste Disposal Act, the Health and Safety Code Annotated~~], §361.131.

(6) [~~(9)~~] Large quantity generator -- A generator that generates, through ongoing processes and operations at a facility:

(A) more than 1,000 kilograms of hazardous waste in a month; or

(B) more than one kilogram of acute hazardous waste in a month.

(7) [~~(10)~~] Media and medium -- Air, water, and land into which waste is emitted, released, discharged, or disposed.

(8) [~~(11)~~] Pollutant or contaminant -- Includes any element, substance, compound, disease-causing agent, or mixture that after release into the environment and on exposure, ingestion, inhalation, or assimilation into any organism, either directly from the environment or indirectly by ingestion through food chains, will or may reasonably be anticipated to cause death, disease, behavioral abnormalities, cancer, genetic mutation, physiological malfunctions, including malfunctions in reproduction, or physical deformations in the organism or its offspring. The term does not include petroleum, crude oil, or any fraction of crude oil that is not otherwise specifically listed or designated as a hazardous substance under §101(14)(A) - (F) of the environmental response law, nor does it include natural gas, natural gas liquids, liquefied natural gas, synthetic gas of pipeline quality, or mixtures of natural gas and synthetic gas.

(9) [~~(12)~~] Release -- Any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing into the environment. The term does not include:

(A) a release that results in an exposure to a person solely within a workplace, concerning a claim that the person may assert against the person's employer;

(B) an emission from the engine exhaust of a motor vehicle, rolling stock, aircraft, vessel, or pipeline pumping station engine;

(C) a release of source, by-product, or special nuclear material from a nuclear incident, as those terms are defined by the Atomic Energy Act of 1954, as amended (42 United States Code §2011 et seq.), if the release is subject to requirements concerning financial protection established by the United States Nuclear Regulatory Commission under that Act, §170;

(D) for the purposes of the federal Comprehensive Environmental Response, Compensation and Liability Act of 1980 (42 United States Code §9601 et seq.), §104, or other response action, a release of source, by-product, or special nuclear material from a processing site designated under the Uranium Mill Tailings Radiation Control Act of 1978 (42 United States Code §7912 and §7942), §102(a)(1) or §302(a)); and

(E) the normal application of fertilizer.

(10) [~~(13)~~] Small quantity generator -- A generator that generates through ongoing processes and operation at a facility:

(A) equal to or less than 1,000 kilograms but more than or equal to 100 kilograms of hazardous waste in a month; or

(B) equal to or less than one kilogram of acute hazardous waste in a month.

(11) [~~(14)~~] Source reduction -- Has the meaning assigned by the federal Pollution Prevention Act of 1990, Publication Law 101-508, §6603, 104 Stat. 1388.

(12) [~~(15)~~] Tons -- 2,000 pounds, also referred to as short tons.

(13) [~~(16)~~] Toxic release inventory (TRI) -- A program which includes those chemicals on the list in Committee Print Number 99-169 of the United States Senate Committee on Environment and Public Works, titled "Toxic Chemicals Subject to the Emergency Planning and Community Right- To-Know Act of 1986 (EPCRA, 42 United States Code, §11023), 313" including any revised version of the list as may be made by the Administrator of the EPA [~~Environmental Protection Agency (EPA)~~].

(14) [~~(17)~~] Waste minimization -- A practice that reduces the environmental or health hazards associated with hazardous wastes, pollutants, or contaminants. Examples may include reuse, recycling, neutralization, and detoxification.

§335.473. Applicability.

This subchapter applies to facilities which are required to develop a source reduction and waste minimization plan pursuant to the Waste Reduction Policy Act of 1991, Senate Bill 1099, or the regulations promulgated thereunder, including:

(1) (No change.)

(2) all generators other than large quantity generators and conditionally exempt small quantity generators as defined by Texas [~~the~~] Health and Safety Code, §361.431(3);

(3) (No change.)

§335.474. Source Reduction and Waste Minimization Plans.

All persons identified under §335.473 of this title (relating to Applicability) shall prepare a five year (or more) source reduction and waste minimization plan which may be updated annually as appropriate according to the schedule listed in §335.475 (relating to Implementation Dates). Plans shall be updated as necessary to assure that there never exists a time period for which a plan is not in effect. Prior to completion of the plan and each succeeding plan, a new five-year (or more) plan shall be prepared. Plans prepared under paragraphs (1) - (3) of this section shall contain a separate component addressing source reduction activities and a separate component addressing waste minimization activities.

(1) With the exception of small quantity generators which are subject to paragraph (3) of this section, the plan shall include, at a minimum:

(A) an initial survey that identifies:

(i) for facilities described in §335.473(1) of this title [~~(relating to Applicability)~~], activities that generate hazardous waste; and

(ii) for facilities described in §335.473(3) of this title [(relating to Applicability)], activities that result in the release of pollutants or contaminants designated under §335.472 of this title (relating to Pollutants and Contaminants);

(B) - (I) (No change.)

(J) an executive summary of the plan which shall include at a minimum:

(i) a description of the facility which shall include:

(I) - (IV) (No change.)

(V) if applicable, Texas Natural Resource Conservation Commission (TNRCC) air account number, solid waste registration number, and underground injection control well permit number; EPA identification number and Toxics Release Inventory (TRI) identification number, National Pollutant Discharge Elimination System (NPDES) permit number; and Texas Pollutant Discharge Elimination System (TPDES) permit number. [Texas Air Control Board (TACB) account number, Texas Water Commission (TWC) solid waste notice of registration number, TWC wastewater permit number, Environmental Protection Agency (EPA) identification number (RCRA number), National Pollutant Discharge Elimination System (NPDES) permit number, and underground injection well code identification number;]

(ii) - (ix) (No change.)

(2) (No change.)

(3) The plans of small quantity generators shall include, at a minimum:

(A) a description of the facility which shall include:

(i) - (iv) (No change.)

(v) if applicable, TNRCC air account number, solid waste registration number, and underground injection control well permit number; EPA identification number and TRI identification number, NPDES permit number; and TPDES permit number. [TACB account number, TWC solid waste notice of registration number, TWC wastewater permit number, EPA identification number (RCRA number), NPDES permit number, and underground injection well code identification number;]

(B) (No change.)

(C) if applicable, a list of all reportable TRI releases and the volume of each;

(D) - (K) (No change.)

(4) (No change.)

§335.475. Implementation Dates.

All facilities subject to this subchapter shall develop a source reduction and waste minimization plan. The implementation year shall be determined by the prior year's reported volumes of hazardous waste generated and/or total toxic release inventory (TRI) releases. A facility once subject to this subchapter shall remain subject until it no longer meets the requirements of §335.473 of this title (relating to Applicability) or are exempted under §335.477 of this title (relating to Exemptions). Volumes for calculations will be based on total hazardous waste generated and/or total TRI releases. The executive summary shall be submitted to the executive director [commission and the board] on the date the plan is required to be in place. Plan implementation will be according to the following schedule:

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

§335.476. Reports and Recordkeeping.

All persons required to develop a source reduction and waste minimization plan for a facility under this subchapter shall submit to the commission, concurrent with implementation of the plan under §335.475 of this title (relating to Implementation Dates), an initial executive summary of such plan and a copy of the certification of completeness and correctness in §335.474(1)(H) of this title (relating to Source Reduction and Waste Minimization Plans). Within 30 days of any revision of such plan, a revised executive summary including a copy of a new certificate of completeness and correctness shall be submitted. All owners and operators required to develop a plan under §335.473(1) and (3) of this title (relating to Applicability) shall also submit an annual report as defined in paragraphs (1) - (3) [(1), (2), and (3)] of this section according to the schedule outlined in paragraph (4) of this section. Persons required to develop a source reduction and waste minimization plan for a facility under §335.473(2) of this title [(relating to Applicability)] may meet the annual reporting requirements by submitting their annual waste summary required under §335.9 of this title (relating to Recordkeeping and Annual Reporting Procedures Applicable to Generators) and by submitting their hazardous waste reduction goals as required under §335.474(K)(ii) of this title [(relating to Source Reduction and Waste Minimization Plans)].

(1) The report shall detail the facility's progress in implementing the source reduction and waste minimization plan and include:

(A) (No change.)

(B) a statement to include, for facilities described in §335.473(1) of this title [(relating to Applicability)], the amount of hazardous waste generated and, for facilities described in §335.473(3) of this title, the amount of the release of reportable pollutants or contaminants designated under Texas Health and Safety Code [the Texas Solid Waste Disposal Act, the Health and Safety Code], §361.433(c) in the year preceding the report, and a comparison of those amounts with the amounts generated or released using 1987 as the base year;

(C) (No change.)

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

(4) The report and the executive summary of the plan shall be submitted according to the following schedule and annually thereafter.

(A) For all facilities meeting the specifications of §335.475(1) of this title [(relating to Implementation Dates)], the first report will be due on or before March 1, 1994. The report will cover calendar year 1993. Subsequent annual reports will be submitted on or before July 1 of each year.

(B) For all facilities meeting the specifications of §335.475(2) of this title, the first report will be due on or before July 1, 1995. The report will cover calendar year 1994.

(C) For all facilities meeting the specifications of §335.475(3) of this title, the first report will be due on or before July 1, 1996. The report will cover calendar year 1995.

(D) For all facilities meeting the specifications of §335.475(4) of this title, the first report will be due on or before July 1, 1997. The report will cover calendar year 1996.

(E) For all facilities meeting the specifications of §335.475(5) of this title, the first report will be due on or before July 1, 1998. The report will cover calendar year 1997.

(5) (No change.)

(6) The report shall be submitted on forms furnished or approved by the executive director [directors of the commission and the board] and shall contain at a minimum the information specified in

paragraph (1) of this section. Upon written request by the facility, the executive director [directors] may authorize a modification in the reporting period.

§335.477. Exemptions.

(a) (No change.)

(b) Owners and operators of facilities listed in §335.473 of this title (relating to Applicability) may apply on a case-by-case basis to the executive director [directors of the commission and the board] for an exemption from this subchapter. The executive director [directors of the commission and board] may grant an exemption if the applicant demonstrates that sufficient reductions have been achieved. If an exemption is granted, it is valid only for the following year, but can be renewed, on an annual basis, by filing a new application. The executive director's [directors'] decision will be based upon the following standards and criteria for determining practical economic and technical completion of the plan:

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

§335.478. Administrative Completeness.

The executive director [commission or the board] may review a source reduction and waste minimization plan or annual report to determine whether the plan or report complies with this subchapter.

§335.480. Confidentiality.

(a) A source reduction and waste minimization plan shall be maintained at each facility owned or operated by a person and/or generator who is subject to this subchapter and shall be available to agency [commission or board] personnel for inspection. The source reduction and waste minimization plan is not a public record for the purposes of Chapter 424, Acts of the 63rd Legislature, 1973 (Texas Civil Statues, Article 6252-17a).

(b) (No change.)

(c) If an owner or operator of a facility for which a source reduction and waste minimization plan has been prepared shows to the satisfaction of the executive director [commission or board] that an executive summary of the plan, annual report, or portion of a summary or report prepared under this subchapter would divulge a trade secret if made public, the executive director [commission or board] shall classify as confidential the summary, report, or portion of the summary or report.

(d) To the extent that a plan, executive summary, annual report, or portion of a plan, summary, or annual report would otherwise qualify as a trade secret, an action by the agency [commission or board or an employee of the commission or board] does not affect its status as a trade secret.

(e) Information classified by the executive director [commission or board] as confidential under this section is not a public record for purposes of Chapter 424, Acts of the 63rd Legislature, 1973 (Texas Civil Statutes, Article 6252-17a), and may not be used in a public hearing or disclosed to a person outside the agency [commission or board] unless a court decides that the information is necessary for the determination of an issue being decided at the public hearing.

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

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SUBCHAPTER R. WASTE CLASSIFICATION

30 TAC §§335.501 - 335.504, 335.507 - 335.509, 335.511 - 335.514, 335.521

STATUTORY AUTHORITY

The amendments are proposed under Texas Water Code (TWC), §5.103 and §5.105, which provide the commission with the authority to adopt any rules necessary to carry out its powers and duties under the provisions of the TWC or other laws of this state; and under Texas Health and Safety Code (THSC), Solid Waste Disposal Act, §361.017 and §361.024, which authorize the commission to regulate industrial solid waste and municipal hazardous waste and to adopt rules consistent with the general intent and purposes of the THSC.

The proposed amendments implement THSC, Chapter 361.

§335.501. Purpose, Scope, and Applicability.

Persons who generate industrial solid waste or municipal hazardous waste shall comply with the provisions of this subchapter. Wastes that are regulated under Chapter 334, Subchapter K, of this title (relating to Storage, Treatment and Reuse Procedures for Petroleum-Substance Contaminated Soil) are not subject to the provisions of this subchapter. Persons who generate wastes in Texas shall classify their own waste according to the standards set forth in this subchapter and may do so without any prior approval or communication with the agency [commission] other than notification of waste generation activities pursuant to §335.6 of this title (relating to Notification Requirements) and submittal of required documentation pursuant to §335.513 of this title (relating to Documentation Required). A generator of industrial solid waste or special waste as defined by §330.2 of this title (relating to Definitions) shall refer to Chapter 330 of this title (relating to Municipal Solid Waste) for regulations regarding the disposal of such waste prior to shipment to a municipal landfill. Used oil, as defined and regulated under Chapter 324 of this title (relating to Used Oil), is not subject to the provisions of this subchapter. This subchapter [will]:

(1) provides [provide] a procedure [and time schedule] for implementation of [a new] Texas waste notification system; and

(2) establishes [establish] standards for classification of industrial solid waste and municipal hazardous waste managed in Texas. [,]

[(3) after June 7, 1995, apply to all classifications involving new waste streams and existing unclassified waste streams; and]

[(4) on January 1, 1996, require the completion of all existing waste stream notifications in accordance with the classification requirements of this subchapter.]

§335.502. Conversion to [New] Waste Notification and Classification System.

[(a) These rules relating to waste classification are effective as outlined below. The rules shall be implemented as defined in subsections (b)-(g) of this section, which are summarized as follows.]

[(1) January 1, 1993 - On and after this date all waste classifications involving new waste streams and existing unclassified waste

streams shall be classified and coded according to the requirements of this subchapter.]

[(2) July 1, 1994 - This is the completion deadline for updating all hazardous and nonhazardous waste stream notifications.]

[(3) October 1, 1994 - This date is the deadline for the commission to provide notice in the Texas Register concerning final implementation of rules.]

[(4) January 1, 1995 - The rules shall be fully implemented on or before this date. All waste must be managed according to the classification assigned under this subchapter.]

(a) [(b)] Waste notification information as required under §335.6 of this title (relating to Notification Requirements) and waste codes required under §335.10(b) of this title (relating to Shipping and Reporting Procedures Applicable to Generators of Hazardous Waste or Class 1 [I] Waste and Primary Exporters of Hazardous Waste) shall be assigned by the generator and provided to the executive director [commission] as provided by this chapter.

(1) All waste notification information provided [to the commission] in accordance with the schedule set forth in this subchapter shall be provided in a format defined by the executive director [commission].

[(2) All existing waste notification information on file with the commission shall be updated to the new format by the generator no later than July 1, 1994.]

(2) [(3)] All waste notification information may be submitted on paper or by electronic data transmission, in accordance with the requirements of §335.6 of this title.

(3) [(4)] Forms and format information for submitting notice of registration information on paper or by electronic means may be obtained by contacting the agency [commission] at the address listed in Appendix 2 of this subchapter.

[(c) All industrial solid waste and municipal hazardous waste managed in the state shall be classified by the generator according to the provisions of this subchapter.]

[(1) After January 1, 1993, all new waste streams and waste streams not previously classified shall be classified and managed pursuant to the provisions of this subchapter.]

[(2) All generators that have existing waste streams classified as Class 1, Class 2, or Class 3 under any previous system are required to reevaluate the waste under the provisions of this subchapter and to submit the updated information to the commission pursuant to subsection (b) of this section. However, generators of waste classified under a previous waste classification system may continue to manage and dispose of that waste under the existing classification until the effective management date provided in subsection (d) of this section. If a generator chooses to continue to manage waste under a previous waste classification system the existing waste code shall be used when shipping, storing, disposing, or otherwise managing the waste. The generator shall use the new waste code when the waste is to be managed under the new classification designation. Once a waste is reclassified and the waste is managed based on the new classification and using the new waste code, the generator may not return to managing the waste under the old classification system.]

(b) [(d)] The effective date for management of all wastes under this chapter is January 1, 1995. On and after this date, all solid waste generated or otherwise handled in the state shall be classified and accordingly managed pursuant to this subchapter. [This effective date may be revised by subsection (e) of this section.]

[(e) Not later than October 1, 1994, the commission shall assess the impact of the implementation of this subchapter. The commission shall evaluate waste capacity issues, costs to the regulated community and the state, personnel and staffing levels of the commission, and review the applicability of the rules themselves. The commission may use information from any source necessary to assess the impact. Based on this evaluation, by October 1, 1994, the commission shall give public notice in the Texas Register that either:]

[(1) these waste classification requirements take full force and effect on January 1, 1995; or]

[(2) implementation of these waste classification requirements shall be delayed. If implementation is delayed, the commission shall provide a revised implementation date and give additional information as necessary to guide the regulated community until the revised effective date.]

[(f) If the commission fails to give public notice in the Texas Register as required in subsection (e) of this section, this subchapter takes full force and effect on January 1, 1995.]

(c) [(g)] After the effective management date as provided in subsection (b) [(d)] of this section, future reclassification of a waste may be required because of changes in classification criteria. A generator whose waste stream is reclassified to a more stringent waste classification after the effective management date of this subchapter as provided in subsection (b) [(d)] of this section must reclassify the waste and begin managing the waste according to the more stringent classification requirements according to the following schedule:

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

§335.503. Waste Classification and Waste Coding Required.

(a) All industrial solid and municipal hazardous waste generated, stored, processed, transported, or disposed of in the state shall be classified according to the provisions of this subchapter.

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

(4) After making the hazardous waste determination as required in paragraph (3) of this subsection, if the waste is determined to be nonhazardous, the generator shall then classify the waste as Class 1, Class 2, or Class 3, pursuant to §§335.505-335.507 of this title (relating to Class 1 Waste Determination, Class 2 Waste Determination, and Class 3 Waste Determination) using one or more of the following methods:

(A) use the criteria for waste classification as provided in §§335.505 - 335.507 of this title [(relating to Class 1 Waste Determination, Class 2 Waste Determination, and Class 3 Waste Determination)];

(B) - (D) (No change.)

(b) All [As required under the schedule provided in §335.501 of this title (relating to Conversion to New Waste Notification and Classification System), all] industrial solid waste and municipal hazardous waste generated, stored, processed, transported or disposed of in the state shall be coded with an eight-digit waste code number which shall include a four-digit waste sequence number, a three-digit form code, and a one-character classification (either H, 1, 2, or 3). Form codes are provided in §335.521(c) of this title (relating to Appendix 3). Procedures for assigning waste code numbers and sequence numbers are outlined as follows and available from the agency [commission] at the address listed in §335.521(b) of this title (relating to Appendix 2).

(1) (No change.)

(2) In-state generators will assign a unique four-digit sequence number to each individual waste. These sequence numbers will

range from 0001 to 9999. They need not be assigned in sequential order. An in-state registered generator may choose to request the executive director [commission] assign a sequence number to a specific waste which is not regularly generated by a facility and is being shipped as a one-time shipment or choose to add [rather than adding] that waste to the regular sequence numbers on a notice of registration. Sequence numbers provided by the executive director [commission] may be a combination of alpha and numeric characters.

(3) The executive director will provide in-state [In-state] unregistered generators [will be provided] a four-digit sequence number [by the commission] for each regulated waste it generates, which [. Sequence numbers provided by the commission] may be a combination of alpha and numeric characters.

(4) Generators of wastes resulting from a spill may obtain a sequence number for the spill related wastes from the agency [commission]'s Emergency Response Section.

(5) - (7) (No change.)

(8) A facility which receives a waste and consolidates that waste with other like waste, other than its own, (thus not changing the form code of the waste stream or its composition, hazardous, or Texas waste class), or stores a waste without treating, processing (as defined in §335.1 of this title (relating to Definitions)), or changing the form or composition of that waste may ship that waste to a storage, treatment, or disposal facility using the sequence code "TSDF" in the first four positions of the waste code. This does not pertain to wastes which are treated or altered or combined with unlike wastes. This "TSDF" designation is only to be used by facilities that store and/or accumulate a quantity of wastes from more than one site for subsequent shipment to a treatment or disposal facility. Manifest documents must note a final destination designated to receive a consolidated waste. The designated "final destination" receiving facility noted on the manifest must be a permitted facility in order to terminate the manifest, unless the waste is nonhazardous and does not require manifesting in accordance with §335.10(g) of this title [(relating to Shipping and Reporting Procedures Applicable to Generators of Hazardous Waste or Class 1 Waste and Primary Exporters of Hazardous Waste)] and is going to a facility described in §335.10(g) of this title [(relating to Shipping and Reporting Procedures Applicable to Generators of Hazardous Waste or Class 1 Waste and Primary Exporters of Hazardous Waste)]. A consolidated waste shipped to a non-permitted facility prior to being shipped to the final destination must proceed with the original manifests (noted with any appropriate changes) to the facility designated on the manifest for final handling.

§335.504. Hazardous Waste Determination.

A person who generates a solid waste must determine if that waste is hazardous using the following method:

(1) Determine if the material is excluded from being a solid waste or hazardous waste per §335.1 of this title (relating to Definitions) [40 Code of Federal Regulations §§261.2, 261.3, or 261.4].

(2) If the [your] material is a solid waste, determine if the waste is listed as, or mixed with, or derived from a listed hazardous waste identified in 40 Code of Federal Regulations (CFR) Part 261, Subpart D.

(3) If the material is a solid waste, [For purposes of complying with 40 CFR Part 268 or if the waste is not listed as a hazardous waste in 40 CFR Part 261, Subpart D, he or she must then] determine whether the waste exhibits any characteristics of a hazardous waste as [is] identified in 40 CFR Part 261, Subpart C. [, by either:]

[(A) Testing the waste according to methods set forth in 40 CFR Part 261, Subpart C, or according to an equivalent method approved by the administrator under 40 CFR §260.21; or]

[(B) Applying knowledge of the hazardous characteristic of the waste in light of the materials and/or process used to generate the waste, pursuant to §335.511 of this title (relating to Use of Process Knowledge)].

[(4) For purposes of complying with Chapter 324 of this title (relating to Used Oil), if the waste is a used oil, determine whether used oil is a listed hazardous waste per 40 Code of Federal Regulations §261.3(a)(2)(v). Used oil made hazardous by mixing with listed or characteristically hazardous waste is regulated as hazardous waste under this chapter. Other used oil that is to be recycled is managed per Chapter 324 of this title.]

§335.507. Class 3 Waste Determination.

An industrial solid waste is a Class 3 waste if it is inert and essentially insoluble, and poses no threat to human health and/or the environment. Class 3 wastes include, but are not limited to, materials such as rock, brick, glass, dirt, and certain plastics and rubber, which are not readily decomposable. An industrial solid waste is a Class 3 waste if it:

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

(4) is essentially insoluble.

(A) Essential insolubility is established:

(i) (No change.)

(ii) using the test methods described in 40 Code of Federal Regulations Part 261, Appendix II, or equivalent methods approved by the executive director under the procedures set forth in §335.509 of this title (relating to Waste Analysis), the extract(s) from the representative sampling of the waste does not exhibit detectable levels of constituents found in §335.521(a)(1) of this title (relating to Appendix 1, Table 1) including constituents in §335.521(a)(3) of this title which are marked with an asterisk. This excludes the constituents listed in §335.521(a)(3) of this title which were addressed in clause (i) of this subparagraph; and

(iii) - (iv) (No change.)

(B) (No change.)

(C) If the detection level submitted by the generator is challenged by the executive director or the commission, and for other enforcement purposes, the burden is on the generator to demonstrate that the detection level was reasonable for the material in question and for the technology in use at the time the waste was classified.

§335.508. Classification of Specific Industrial Solid Wastes.

The following nonhazardous industrial solid wastes shall be classified no less stringently than according to the provisions of this section.

(1) Industrial solid waste containing asbestos material identified as regulated asbestos containing material (RACM), as defined in 40 Code of Federal Regulations (CFR)[,] Part 61, shall be classified as a Class 1 waste.

(2) - (5) (No change.)

(6) Wastes which are petroleum substances or contain contamination from petroleum substances, as defined in §335.1 of this title [(relating to Definitions)] shall be classified as a Class 1 waste until a generator demonstrates that the waste's total petroleum hydrocarbon concentration (TPH) is less than or equal to 1,500 parts per million (ppm). Where hydrocarbons cannot be differentiated into specific

petroleum substances, then such wastes with a TPH concentration of greater than 1,500 ppm shall be classified as a Class 1 waste. Wastes resulting from the cleanup of leaking underground storage tanks (USTs) which are regulated under Chapter 334, Subchapter K of this title (relating to Petroleum Substance Waste) are not subject to classification under this subchapter.

(7) Wastes generated by the mechanical shredding of automobiles, appliances, or other items of scrap, used, or obsolete metals shall be handled according to the provisions set forth in Texas Health and Safety Code [~~Texas Solid Waste Disposal Act, the Health and Safety Code~~], §361.019, until the commission develops specific standards for the classification of this waste and assures adequate disposal capacity.

(8) If a nonhazardous industrial solid waste is generated as a result of commercial production of a "new chemical substance" as defined by the federal Toxic Substances Control Act, 15 United States Code §2602(9), the generator shall notify the executive director [~~commission~~] prior to the processing or disposal of the waste and shall submit documentation requested under §335.513 (b) and (c) of this title [~~(relating to Documentation Required)~~] for [~~commission~~] review. The waste shall be managed as a Class 1 waste, unless the generator can provide appropriate analytical data and/or process knowledge which demonstrates that the waste is Class 2 or Class 3, and the executive director [~~commission~~] concurs. If the generator has not received concurrence from the executive director [~~commission~~] within 120 days from the date of the request for review, the generator may manage the waste according to the requested classification, but not prior to giving ten [~~10~~] working days written notice to the executive director [~~commission~~].

(9) All nonhazardous industrial solid waste generated outside the state of Texas and transported into or through Texas for processing, storage, or disposal shall be classified as:

(A) (No change.)

(B) may be classified as a Class 2 or Class 3 waste if:

(i) (No change.)

(ii) a request for Class 2 or Class 3 waste determination is submitted to the executive director [~~commission~~] accompanied by all supporting documentation as required by §335.513 of this title [~~(relating to Document Required)~~]. Waste generated out-of-state may be assigned a Class 2 or Class 3 classification only after approval by the executive director [~~commission~~].

(10) Wastes which are hazardous solely because they exhibit a hazardous characteristic, which are not considered hazardous debris as defined in 40 CFR §268.2(g), which are subsequently stabilized and no longer exhibit a hazardous characteristic and which meet the land disposal restrictions as defined in 40 CFR Part 268 may be classified according to the Class 1 or Class 2 classification criteria as defined in §§335.505, 335.506, and 335.508 of this title [~~(relating to Class 1 Waste Determination; Class 2 Waste Determination; and Classification of Specific Industrial Solid Wastes)~~].

§335.509. Waste Analysis.

(a) Generators who use analytical methods to classify their waste must use methods described in "Test Methods for the Evaluation of Solid Waste, Physical/Chemical Methods" (EPA SW-846), "Methods for Chemical Analysis of Water and Wastes" (EPA-600/4-79/020), "Standard Methods for the Examination of Water and Wastewater", American Society for Testing and Materials (ASTM) Standard Methods, or any other approved EPA methods or may request in writing that the executive director [~~commission~~] review and approve an alternate method. The generator must also choose representative sample(s) of their waste, as described in Chapter 9 of EPA SW-846. A generator who proposes to use an alternate method must validate the alternate method by demonstrating that the method is equal to or superior in accuracy, precision, and sensitivity to the corresponding SW-846, EPA-600, Standard Method or ASTM method identified in this subsection.

(b) The generator proposing an alternate method shall provide the executive director [~~commission~~] with the following information:

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

(c) (No change.)

§335.511. Use of Process Knowledge.

(a) Generators may use their existing knowledge about the process to classify or assist in classifying a waste as hazardous, Class 1, Class 2, or Class 3. Process knowledge must be documented and maintained on-site pursuant to §335.513 of this title (relating to Documentation Required). Material safety data sheets, manufacturers' literature, and other documentation generated in conjunction with a particular process may be used to classify a waste provided that the literature provides sufficient information about the waste and addresses the criteria set forth in §§335.504 - 335.508 of this title (relating to Hazardous Waste Determination, Class 1 Waste Determination, Class 2 Waste Determination, Class 3 Waste Determination, and Classification of Specific Industrial Solid Wastes). For classes other than hazardous or Class 1, a generator must be able to demonstrate requisite knowledge of his or her process by satisfying all of the following.

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

(4) Documentation of the waste classification must be maintained and, if requested or required, provided to the executive director [~~commission~~] pursuant to §335.513 of this title [~~(relating to Documentation Required)~~].

(b) If the total concentration of the constituents demonstrates that individual analytes are not present in the waste, or that they are present but at such low concentrations that the appropriate maximum leachable concentrations could not possibly be exceeded, the TCLP extraction procedure discussed in §335.505(1) of this title [~~(relating to Class 1 Waste Determination)~~] need not be run. If an analysis of any one of the liquid fractions of the TCLP extract indicates that a regulated constituent is present at such high concentrations that, even after accounting for dilution from the other fractions of the extract, the concentration would be equal to or greater than the maximum leachable concentration for that constituent, then the waste is Class 1, and it is not necessary to analyze the remaining fractions of the extract.

§335.512. Executive Director Review.

(a) (No change.)

(b) A person who believes that the executive director [~~commission~~] staff has inappropriately classified a waste pursuant to this section may appeal that decision. The person shall file an appeal directly with the executive director requesting a review of the waste classification. If the person is not satisfied with the decision of the executive director on the appeal, the person may request an evidentiary hearing to determine the appropriateness of the classification by filing a request for hearing with the commission.

§335.513. Documentation Required.

(a) (No change.)

(b) The following documentation shall be submitted by the generator to the executive director [~~commission~~] prior to waste shipment or disposal and not later than 90 days of initial waste generation:

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

(c) The following documentation shall be maintained by the generator on site immediately upon waste generation and for a minimum of three [~~five~~] years after the waste is no longer generated or stored or until site closure:

(1) (No change.)

(2) all analytical data and/or process knowledge allowed under §335.511 of this title [~~(relating to Use of Process Knowledge)~~] used to characterize hazardous, Class 1, Class 2, and Class 3 wastes, including quality control data.

(d) The executive director may request that a generator submit all documentation listed in subsections (b) and (c) of this section for auditing the classification assigned. Documentation requested under this section shall be submitted within ten [~~10~~] working days of receipt of the request.

(e) - (f) (No change.)

§335.514. Variance from Waste Classification Provisions.

(a) The executive director may determine on a case-by-case basis the merits of the following types of variances:

[~~(1) compliance with timing requirements under §335.502 of this title (relating to Conversion to New Waste Notification and Classification System);~~]

(1) [~~(2)~~] appropriateness of a particular waste classification resulting from application of the classification criteria; and

(2) [~~(3)~~] other matters requiring special attention by the executive director [~~commission~~].

(b) (No change.)

(c) A person who feels that the executive director has inappropriately denied a request for variance may appeal that decision. The person shall file an appeal directly with the executive director requesting a review of the variance. If the person is not satisfied with the decision of the executive director, he or she may request an evidentiary hearing to determine the appropriateness of the variance, by filing a request for hearing with the commission [~~chief hearings examiner of the Texas Water Commission~~].

§335.521. Appendices.

(a) (No change.)

(b) Appendix 2.

Figure: 30 TAC §335.521(b)

(c) - (d) (No change.)

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

Filed with the Office of the Secretary of State, on June 8, 2001.

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Margaret Hoffman
Director, Environmental Law Division
Texas Natural Resource Conservation Commission
Proposed date of adoption: July 23, 2001
For further information, please call: (512) 239-4712

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SUBCHAPTER S. RISK REDUCTION STANDARDS

30 TAC §§335.559, 335.563, 335.569

STATUTORY AUTHORITY

The amendments are proposed under Texas Water Code (TWC), §5.103 and §5.105, which provide the commission with the authority to adopt any rules necessary to carry out its powers and duties under the provisions of the TWC or other laws of this state; and under Texas Health and Safety Code (THSC), Solid Waste Disposal Act, §361.017 and §361.024, which authorize the commission to regulate industrial solid waste and municipal hazardous waste and to adopt rules consistent with the general intent and purposes of the THSC.

The proposed amendments implement THSC, Chapter 361.

§335.559. Medium Specific Requirements and Adjustments for Risk Reduction Standard Number 2.

(a) - (b) (No change.)

(c) Air. In determining the necessity for remediation at the facility, persons shall observe limitations established by the National Ambient Air Quality Standards (NAAQS) and the National Emission Standards for Hazardous Air Pollutants (NESHAPS) as found in the 40 Code of Federal Regulations (CFR) Parts 50 and 61, respectively, and other applicable federal standards and guidelines of the EPA [~~United States Environmental Protection Agency~~]. Also, limitations established by the commission [~~Texas Air Control Board (TACB)~~] under the Texas Clean Air Act, the state implementation plan or other federal requirements must be observed. Permit requirements, limitations established by standard exemptions, or other requirements of the commission [~~TACB~~] relative to atmospheric emissions and/or air quality may also apply.

(d) Groundwater. The groundwater cleanup levels shall be determined by a consideration of the following.

(1) (No change.)

(2) For nonresidential exposure, the concentration of a contaminant dissolved in groundwater must not exceed the MCL if promulgated pursuant to the Federal Safe Drinking Water Act, §141. If no MCL has been promulgated, the groundwater concentration shall not exceed the water MSC for ingestion determined pursuant to §335.556 of this title [~~(relating to Determination of Cleanup Levels for Risk Reduction Standard Number 2)~~], which has been multiplied by a factor of 3.36 for carcinogens or 2.8 for systemic toxicants to account for lower ingestion rates associated with nonresidential worker exposure. Persons must be able to demonstrate that the quality of groundwater at the facility property boundary will be protective for residential exposure. Phase-separated non-aqueous liquids released from the unit that is undergoing closure or remediation must be removed or decontaminated to the extent practicable.

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

(e) Soil. For all situations, concentrations of contaminants in soils must be protective of surface water, air, and groundwater as specified in subsections (b) - (d) [~~(b), (c) and (d)~~] of this section. No soil remaining in place shall exhibit the hazardous waste characteristics of ignitability, corrosivity, or reactivity as defined in 40 CFR [~~Code of Federal Regulations~~] Part 261, Subpart C. The sum of concentrations of the volatile organic compounds in vapor phase in soil shall not exceed 1,000 parts per million by weight or volume, as measured by EPA Test Method 8015 or calculated by using soil concentrations and Henry's Law constants.

(f) - (h) (No change.)

§335.563. Media Cleanup Requirements for Risk Reduction Standard Number 3.

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

(e) Standard exposure factors. In determining media cleanup levels pursuant to subsections (b) and (c) of this section, persons shall use the standard exposure factors for residential use of the facility as set forward in Table 1 (located in §335.553 of this title [~~(relating to Required Information)~~]) unless the person documents to the satisfaction of the executive director that:

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

(f) Air. Media cleanup levels for air will be established to meet the lowest of the values determined by the requirements of paragraphs (1) - (3) of this subsection.

(1) Concentrations of contaminants in air that emanate from a facility, area of soil contamination, or plume of contaminated groundwater shall not exceed:

(A) (No change.)

(B) concentrations established by the commission [~~Texas Air Control Board (TACB)~~] under the Texas Clean Air Act, the state implementation plan, or other federal requirements. Permit requirements, limitations established by standard exemptions, or other requirements [~~of the TACB~~] relative to atmospheric emissions and/or air quality may also apply.

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

(g) (No change.)

(h) Groundwater. Media cleanup levels for groundwater that is a current or potential source of drinking water as defined in paragraph (1) of this subsection shall not exceed MCLs promulgated under the Safe Drinking Water Act or, if MCLs are not available, values calculated according to subsections (b) - (e) of this section based upon human ingestion of the water. Cleanup levels for groundwater may be subject to the modifications of paragraphs (2) - (4) of this subsection.

(1) (No change.)

(2) The cleanup levels shall be achieved throughout the plume of contaminated groundwater, with the exception of the circumstances described in subparagraphs (A) - (C) of this paragraph:

(A) - (B) (No change.)

(C) when the person documents to the executive director's satisfaction pursuant to subsection (e) of this section that a future land use other than residential is appropriate for the facility or area and further demonstrates that institutional or legal controls will effectively prevent use of the contaminated groundwater, the extent of plume remediation may be determined in a manner consistent with §335.160(b) of this title [~~(relating to Alternate Concentration Limits)~~].

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

(i) Soil. Concentrations of contaminants in soil shall not exceed the following values:

(1) (No change.)

(2) values which will allow the air, surface water, and groundwater cleanup levels specified in subsections (f) - (h) [~~(f), (g), and (h)~~] of this section, respectively, to be maintained over time taking into account the effects of engineering controls.

(A) - (B) (No change.)

(j) (No change.)

§335.569. Appendix III.

For the purposes of this subchapter, the following is the model deed certification language.
Figure: 30 TAC §335.569

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 June 8, 2001.

TRD-200103240
Margaret Hoffman
Director, Environmental Law Division
Texas Natural Resource Conservation Commission
Proposed date of adoption: July 23, 2001
For further information, please call: (512) 239-4712

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TITLE 34. PUBLIC FINANCE

PART 1. COMPTROLLER OF PUBLIC ACCOUNTS

CHAPTER 3. TAX ADMINISTRATION
SUBCHAPTER V. FRANCHISE TAX

34 TAC §3.578

The Comptroller of Public Accounts proposes a new §3.578, concerning economic development credits. This new section is the result of Tax Code, new Subchapter O, §§171.721 - 171.730, new Subchapter P, §§171.171.751 - 171.761, and new Subchapter Q, §§171.801 - 171.811. This section provides franchise tax guidelines for eligibility and calculation of three credits: research and development, job creation, and capital investment. The section is in accordance with Senate Bill 441 passed by the 76th Legislature, 1999. A corporation may claim a research and development credit, a jobs creation credit, and an investment credit only for expenses and payments incurred, qualified investments or expenditures made, or new jobs created in Texas on or after January 1, 2000.

James LeBas, Chief Revenue Estimator, has determined that for the first five-year period the rule will be in effect there will be no significant revenue impact on the state or local government.

Mr. LeBas also has determined that for each year of the first five years the rule is in effect the public benefit anticipated as a result of enforcing the rule will be in providing guidance to corporations desiring to claim economic development credit on franchise tax. This rule is adopted under the Tax Code, Title 2, and does not require a statement of fiscal implications for small businesses. There is no significant anticipated economic cost to individuals who are required to comply with the proposed rule.

Comments on the proposal may be submitted to Bryant K. Lomax, Manager, Tax Policy Division, P.O. Box 13528, Austin, Texas 78711.

This new section is proposed under Tax Code, §111.002, which provides the comptroller with the authority to prescribe, adopt, and enforce rules relating to the administration and enforcement of the provisions of Tax Code, Title 2.

The new section implements Tax Code, §§171.721 - 171.811.

§3.578. Economic Development Credits.

(a) Effective dates.

(1) A corporation may claim a research and development credit, a jobs creation credit, or an investment credit only for expenses and payments that the corporation has incurred, qualified investments or expenditures that the corporation made, or new jobs that the corporation has created in Texas on or after January 1, 2000.

(2) These credits expire on December 31, 2009. This expiration does not affect the carryforward or installment of a credit that was established on a report that was due before this expiration date.

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

(1) "Agricultural processing" means activities that are described in the 1987 Standard Industrial Classification Manual, categories 2011-2099, 2211, 2231, or 3111-3199, which the federal Office of Management and Budget publishes. Examples include manufacturing or processing foods and beverages for human consumption; weaving cotton and wool fabrics; and tanning, currying, or finishing leather and leather products.

(2) "Base amount," "basic research payment," and "qualified research expense" have the meanings that Internal Revenue Code, §41 assigns to those terms, except that all such payments and expenses must be for research that is conducted within this state. Qualified research expenses include expenses for research that the taxpayer performs, including wages for employees involved in the research activity, costs of supplies that are used in research, and payments to others for the use of computer time in qualified research. In addition, qualified research expenses include a portion of the expenses for research that other parties perform on behalf of the taxpayer. Basic research payments include payments to qualified university or scientific organizations for research to advance scientific knowledge that does not have a specific commercial objective.

(3) "Central administrative offices" means an establishment that is primarily engaged in the performance of management or support services for other establishments of the same enterprise. An enterprise consists of all establishments that have more than 50% common direct or indirect ownership.

(4) "County average weekly wage" means the average weekly wage for all covered employment in the county as computed based on quarterly data from the Texas Workforce Commission.

(5) "Data processing" means activities that are described in the 1987 Standard Industrial Classification Manual, categories 7371-7379, which the federal Office of Management and Budget publishes. Examples include computer programming, data processing, and other computer related services.

(6) "Distribution" means activities that are described in the 1987 Standard Industrial Classification Manual, categories 5012-5199, which the federal Office of Management and Budget publishes. Examples include the wholesale distribution of durable and nondurable goods, such as motor vehicles, furniture, lumber and other construction materials, professional and commercial equipment, electrical goods, hardware, plumbing and heating equipment, paper and paper products, apparel, and groceries.

(7) "Group health benefit plan" means:

(A) a health plan that a health maintenance organization that is established under the Texas Health Maintenance Organization Act (Tex. Ins. Code, Chapter 20A) provides;

(B) a health benefit plan that the commissioner of insurance has approved; or

(C) a self-funded or self-insured employee welfare benefit plan that provides health benefits and is established in accordance with the Employee Retirement Income Security Act of 1974 (29 U.S.C. §1001 et seq.), as amended.

(8) "Manufacturing" means activities that are described in the 1987 Standard Industrial Classification Manual, categories 2011-3999, which the federal Office of Management and Budget publishes.

(9) "Qualified business" means an establishment that is a central administrative office or that is primarily engaged in agricultural processing, distribution, data processing, manufacturing, research and development, or warehousing. An establishment is a single physical location at which business is conducted or services or industrial operations are performed.

(10) "Qualified capital investment" means tangible personal property that is: described in Internal Revenue Code, §1245(a), such as engines, machinery, tools, and implements that are used in a trade or business, or are held for investment and are subject to an allowance for depreciation, cost recovery under the accelerated cost recovery system, or amortization; and first placed in service in a strategic investment area, or in a Texas county that has a population of less than 50,000, by a corporation that is primarily engaged in agricultural processing. The term does not include real property or buildings and their structural components. Property that is leased under a capitalized lease is considered a "qualified capital investment," but property that is leased under an operating lease is not considered a "qualified capital investment." Property that is expensed under Internal Revenue Code, §179, is not considered a "qualified capital investment." "First placed in service" means the first use of the property by the taxpayer. The property may have been previously used by another taxpayer.

(11) "Qualifying job" means a new permanent full-time job that:

(A) is located in:

(i) a strategic investment area; or

(ii) a Texas county that has a population of less than 50,000, if a business that is primarily engaged in agricultural processing creates the job;

(B) requires at least 1,600 hours of work a year;

(C) pays at least 110% of the county average weekly wage for the county where the job is located;

(D) is covered by a group health benefit plan for which the business pays at least 80% of the premiums for basic coverage or other charges that are assessed under the plan for the employee;

(E) is not transferred from one area in Texas to another area in Texas; and

(F) is not created to replace a job that was previously held by another employee.

(12) "Research and development," for the purposes of determining whether an establishment constitutes a "qualified business" for the jobs creation credit and the investment credit, means activities that are described in the 1987 Standard Industrial Classification Manual, category 8731, which the federal Office of Management and Budget publishes. These activities are commercial physical and biological research and development activities that are provided on a contract or fee basis.

(13) "Strategic investment area" means an area that the comptroller has determined under Tax Code, §171.726, is:

(A) a Texas county that has above state average unemployment, but below state average per capita income; or

(B) an area in Texas that is a federally designated urban enterprise community or urban enhanced enterprise community.

(14) "Warehousing" means activities that are described in the 1987 Standard Industrial Classification Manual, categories 4221-4226, which the federal Office of Management and Budget publishes. Examples include public warehousing and storage.

(c) Strategic Investment Areas. The comptroller will determine areas that qualify as strategic investment areas not later than October 1 of each year and will publish a list and map of the designated areas. The designation is effective for the following calendar year for purposes of credits that are available under this section. If at the time that the expenditures were made, they were made in a strategic investment area, then the expenditures will be considered in computation of the credits that this section provides, even if the strategic investment area subsequently loses its designation as a strategic investment area.

(d) Information required. A corporation that claims a credit under this section must submit all information that the comptroller requires.

(e) Limitations.

(1) The total research and development, jobs creation, and investment credits that a corporation claims, including the amount of any credit that the corporation carries forward from previous reports, may not exceed the amount of franchise tax due for the report after any other applicable credits.

(2) A corporation that establishes its eligibility for a research and development credit is not eligible to establish a jobs creation credit for the same report.

(3) A corporation may not convey, assign, or transfer to another entity the credits that this section provides, unless all of the assets of the corporation are conveyed, assigned, or transferred to the entity in the same transaction.

(f) Period used. The corporation must use the period upon which earned surplus is based to determine which expenditure will be considered in computing the credits that this section provides, even if the tax that is due on taxable capital exceeds the tax that is due on net taxable earned surplus.

(g) Research and development credit.

(1) Calculation of credit.

(A) The credit for any report equals 5.0% (4.0% for reports that are originally due before January 1, 2002) of the sum of:

(i) the amount of qualified research expenses that a corporation incurs in Texas during the period upon which net taxable earned surplus is based in excess of the base amount for Texas (alternatively, 16% may be used as the Texas fixed base percentage); and

(ii) the basic research payments that are determined under Internal Revenue Code, §41(e)(1)(A), for Texas during the period upon which net taxable earned surplus is based.

(B) A corporation may elect to compute the credit for qualified research expenses that the corporation has incurred in Texas in a manner that is consistent with the alternative incremental credit that is described in Internal Revenue Code, §41(c)(4), but only if for the corresponding federal tax period:

(i) a federal election was made to compute the federal credit under Internal Revenue Code, §41(c)(4);

(ii) the corporation was a member of a consolidated group for which a federal election was made under Internal Revenue Code, §41(c)(4); or

(iii) the corporation did not claim the federal credit under Internal Revenue Code, §41(a)(1).

(C) For purposes of the alternate credit computation method in subparagraph (B) of this paragraph, the credit percentages that apply to qualified research expenses that are described in Internal Revenue Code, §41(c)(4)(A)(i), (ii), and (iii), are 0.41%, 0.55%, and 0.69%, respectively (or 0. 33%, 0.44%, and 0.55%, respectively, for reports that are due before January 1, 2002).

(D) In computing the credit under this subsection, a corporation may multiply by two (or by 1.5 for reports that are originally due before January 1, 2002) the amount of any qualified research expenses and basic research payments that are made in a strategic investment area.

(E) The corporation bears the burden of establishing entitlement to, and the value of, a credit.

(F) For the purposes of calculating the research and development credit, "gross receipts," as used in Internal Revenue Code, §41, means gross receipts as determined under Tax Code, §171.1032.

(2) Report limitation. The total research and development credit that a corporation may claim for a report, including the amount of any carryforward credit under paragraph (3) of this subsection, may not exceed 50% (or 25% for reports that are due before January 1, 2002) of the amount of franchise tax that is due for the report before any other tax credits are applied.

(3) Carryforward. If a corporation is eligible for a credit that exceeds the limitations that are stated in subsection (e)(1) of this section or paragraph (2) of this subsection, then the corporation may carry the unused credit forward for not more than 20 consecutive reports. A credit carryforward from a previous report must be used before the current year credit.

(h) Jobs creation credit.

(1) Eligibility. A corporation is eligible for a jobs creation credit if the corporation:

(A) is a qualified business;

(B) creates a minimum of 10 qualifying jobs during the period upon which net taxable earned surplus is based; and

(C) pays an average weekly wage of at least 110% of the county average weekly wage for the county where the qualifying jobs are located.

(2) Calculation of credit. A corporation may establish a credit that equals 25% of the total wages and salaries that the corporation has paid for qualifying jobs during the period upon which net taxable earned surplus is based.

(3) Length of credit. A corporation shall claim the credit established in five equal installments of one-fifth the credit amount over the five consecutive reports beginning with the report based upon, for determining net taxable earned surplus, the period during which the corporation created qualifying jobs.

(4) Report limitation. The total jobs creation credit that a corporation claims for a report, including the amount of any carryforward credit under paragraph (5) of this subsection, may not exceed 50%

of the amount of franchise tax that is due for the report before any other tax credits are applied.

(5) Carryforward. If a corporation is eligible for a credit from an installment that exceeds the limitations that are stated in subsection (e)(1) of this section or paragraph (4) of this subsection, then the corporation may carry the unused credit forward for not more than five consecutive reports. A carryforward is the remaining portion of an installment that cannot be claimed in the current year because of the limitations that are stated in subsection (e)(1) of this section or paragraph (4) of this subsection. A carryforward is added to the next year's installment of the credit in determination of the limitations for that year. A credit carryforward from a previous report must be used before the current year installment.

(6) Certification of eligibility. For the initial and each succeeding report in which a jobs creation credit is claimed, the corporation shall file with its report, on a form that the comptroller provides, information that sufficiently demonstrates that the corporation is eligible for the credit and is in compliance with paragraph (1) of this subsection. The corporation bears the burden of establishing entitlement to, and the value of, the credit. If during one of the five periods used to determine earned surplus for a report on which an installment could be claimed, the number of the corporation's full-time employees falls below the number of full-time employees the corporation had during the period in which the corporation qualified for the credit, then the credit expires and the corporation may not take any remaining installment of the credit. The corporation may, however, take the portion of an installment that accrued in a previous year and was carried forward, to the extent that paragraph (5) of this subsection permits. In application of the terms of this paragraph, for an employee to be considered a full-time employee, the employee must be in a job that requires at least 1,600 hours of work for the corporation each year, as subsection (b)(11)(B) of this section provides. The number of full-time employees whom the corporation had employed during the period in which the corporation qualified for the credit refers to the highest number of full-time employees whom the corporation had employed during the period in which the corporation qualified for the credit. A corporation has 90 days to refill a position after an employee has left employment with the corporation. For example, assume that a corporation with a calendar year accounting year end had employed 1,010 full-time employees in calendar year 2000, including 10 qualifying jobs that the corporation had created during the year, as subsection (b)(11)(B) of this section provides. The corporation may then claim the credit in five equal installments over the five consecutive reports beginning with its 2001 annual report, which report will be based upon the period during which the qualifying jobs were created (i.e., calendar year 2000). If, for example, during the calendar year 2002, the number of full-time employees whom the corporation employs falls below 1,010, the credit expires, and the corporation may not take the installments that would have been available for the annual reports due in 2003, 2004, and 2005.

(i) Investment credit.

(1) Eligibility. If a corporation does not have employees who are stationed full-time at the site of the qualified capital investment, then "location" means the site, within the same strategic investment area, from which the qualified capital investment is serviced. To qualify for the investment credit, a qualified business must:

(A) pay an average weekly wage, at the location for which the credit is claimed, that amounts to at least 110% of the county average weekly wage;

(B) offer coverage by a group health benefit plan to all full-time employees at the location for which the credit is claimed, for which the business pays at least 80% of the premiums for basic coverage or other charges that are assessed under the plan for the employees; and

(C) make a minimum $500,000 qualified capital investment during the period upon which net taxable earned surplus is based.

(2) Calculation of credit. A corporation may establish a credit that equals 7.5% of the qualified capital investment during the period upon which net taxable earned surplus is based.

(3) Length of credit. A corporation shall claim the credit established in five equal installments of one-fifth the credit amount over the five consecutive reports beginning with the report based upon, for determining net taxable earned surplus, the period during which the corporation made the qualified capital investment.

(4) Report limitation. The total investment credit that a corporation claims for a report, including the amount of any carryforward credit under paragraph (5) of this subsection may not exceed 50% of the amount of franchise tax that is due for the report before any other tax credits are applied.

(5) Carryforward. If a corporation is eligible for a credit from an installment that exceeds the limitations that are stated in subsection (e)(1) of this section or paragraph (4) of this subsection, then the corporation may carry the unused credit forward for not more than five consecutive reports. A carryforward is the remaining portion of an installment that cannot be claimed in the current year because of the limitations that are stated in subsection (e)(1) of this section or paragraph (4) of this subsection. A carryforward is added to the next year's installment of the credit in determination of the limitations for that year. A credit carryforward from a previous report must be used before the current year installment.

(6) Certification of eligibility. For the initial and each succeeding report in which an investment credit is claimed, the corporation shall file with its report, on a form that the comptroller provides, information that sufficiently demonstrates that the corporation is eligible for the credit and is in compliance with paragraph (1) of this subsection. The qualified business bears the burden of establishing entitlement to, and the value of, the credit.

(7) Ineligibility.

(A) An investment credit expires and the corporation may not take any remaining installment of the credit, (except the corporation is permitted to take the portion of an installment that accrued in a previous year and was carried forward pursuant to paragraph (5) of this subsection), if, during one of the five periods used to determine earned surplus for a report on which an installment could be claimed, the qualified business:

(i) disposes of the qualified capital investment;

(ii) takes the qualified capital investment out of service;

(iii) moves the qualified capital investment out of Texas; or

(iv) fails to pay an average weekly wage as subparagraph (1)(A) of this subsection provides.

(B) For purposes of subparagraph (A)(i) - (iii) of this paragraph, an installment may still be taken if the qualified capital investment is replaced at the same location within 90 days with a new qualified capital investment of equal or greater value. However, if the corporation chooses to take the installment from the original qualified capital investment, then the corporation would not be allowed to take

the investment credit on the new qualified capital investment. For example, assume in 2002 a calendar-year corporation made a $600,000 qualified capital investment and took the investment credit on its 2003 and 2004 annual franchise tax reports. Then, in late 2004, the corporation replaced an $80,000 machine, that was part of the original $600,000 qualified capital investment, with a better $130,000 machine. The corporation may continue to take the installments from the original $600,000 qualified capital investment, or, if the new $130,000 machine was part of at least $500,000 of qualified capital investments made in 2004, then the corporation may forego the installments from the original investment and begin taking a new investment credit based on the qualified capital investments made in 2004.

(8) Limitation. A corporation that establishes its eligibility for an investment credit is not eligible to claim a franchise tax reduction that is authorized under Tax Code, §171.1015.

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 June 8, 2001.

TRD-200103210
Martin Cherry
Deputy General Counsel for Tax Policy and Agency Affairs
Comptroller of Public Accounts
Earliest possible date of adoption: July 22, 2001
For further information, please call: (512) 463-4062

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TITLE 40. SOCIAL SERVICES AND ASSISTANCE

PART 3. TEXAS COMMISSION ON ALCOHOL AND DRUG ABUSE

CHAPTER 144. CONTRACT REQUIREMENTS

The Texas Commission on Alcohol and Drug Abuse proposes amendments to §§144.21, 144.108, 144.124, 144.131, 144.132, 144.321, 144.325, 144.326, 144.456, 144.525, 144.532, 144.541, 144.543, 144.552, and 144.553 to Chapter 144 concerning Contract Requirements. The Texas Commission on Alcohol and Drug Abuse also proposes to add a new §144.542 to this rule.

Amendments to §144.21 revise and clarify existing definitions, add new definitions for brief interventions, brief therapy, and motivational interviewing, and eliminate unnecessary definitions.

Amendments to §§144.108, 144.124, 144.131, and 144.132 update requirements for placing treatment programs on a cost reimbursement payment mechanism, allow for annual reviews, specify that start-up costs will only be awarded as a special contract provision with defined elements of cost and a timeline for expenditure, remove the option for providers to charge indirect costs by negotiating an indirect cost rate with the commission; specify that budget transfers between programs can only be initiated by the commission and remove the timeframe for conducting the annual equipment inventory.

Amendments to §§144.321, 144.325, and 144.326 update references to other sections of the rules, expand the list of incidents that must be reported to the commission, apply requirements for pre-employment drug screens to contract staff as well as employees and extend the timeframe for completing initial training.

Amendments to §144.456 clarify the purpose of outreach, require case management in conjunction with problem identification and referral, expand crisis intervention training, eliminate the assessment function, update language used to describe the screening and referral process and establishes a definition for successful referral to include placement.

Amendments to §§144.525, 144.532, 144.541, 144.542, 144.543, and 144.553 and new §144.542 require detoxification admissions to be authorized by a physician, update the reference provided for HIV risk assessments, require all adult treatment programs to provide enhanced services to pregnant women and women with dependent children, eliminate core program requirements and documentation requirements being moved to rules for licensed facilities, incorporate requirements for women and children's residential programs being removed from the rules for licensed facilities, eliminate the phased counseling system for pharmacotherapy programs, and revise the definition of referral rate to require successful placement after detoxification.

Jay Kimbrough, Executive Director, has determined that for the first five-year period the amended rules and new section are in effect there will be no fiscal implications for state or local government.

Mr. Kimbrough has also determined that for each year of the first five years the amendments and new section are in effect the anticipated public benefit will be a more effective contract administration process for commission funded providers. There will be no additional effect on small businesses. There is no anticipated economic cost to current providers.

Comments on the proposal may be submitted to Tamara Allen, Rules Coordinator, Texas Commission on Alcohol and Drug Abuse, P.O. Box 80529, Austin, Texas 78708-0529. Comments must be received no later than 30 days after the date the proposal is published in the *Texas Register.*

SUBCHAPTER A. GENERAL PROVISIONS

40 TAC §144.21

These amendments are proposed under the Texas Health and Safety Code, §461.012(a)(15) which provides the Texas Commission on Alcohol and Drug Abuse with the authority to adopt rules governing the functions of the commission, including rules that prescribe the policies and procedures followed by the commission when funding services and §461.0141 which provides the commission with authority to adopt rules regarding purchase of services.

The code affected by the proposed amendments is the Texas Health and Safety Code, Chapter 461.

§144.21. Definitions.

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

(1) Abuse--An intentional, knowing, or reckless act or omission by an employee, volunteer, or other individual working under the auspices of a provider that causes or may cause death, emotional harm or physical injury to a service recipient. Abuse [~~Any act or failure to act which is done knowingly, recklessly or intentionally, including incitement to act, which caused or may have caused injury to a client or participant. Injury may include, but is not limited to: physical injury, mental disorientation, or emotional harm, whether it~~

is caused by physical action or verbal statement. Client/participant abuse] includes:

(A) any sexual activity between provider [facility] personnel and a service recipient [client/participant];

(B) corporal punishment;

(C) nutritional or sleep deprivation;

(D) efforts to cause fear;

(E) the use of any form of communication to threaten, curse, shame, or degrade a service recipient [client/participant];

(F) restraint that does not conform with chapter 148 of this title (relating to Facility Licensure);

(G) coercive or restrictive actions taken in response to the service recipient's [client's/participant's] request for discharge or refusal of medication or treatment that are illegal or not justified by the service recipient's [client's/participant's] condition; and

(H) any other act or omission classified as abuse by the Texas Family Code, §261.001.

[(2) Admission--Formal documented acceptance of a prospective client to a treatment facility, based on specifically defined criteria.]

[(3) Access--Ability to obtain or make use of.]

(2) [(4)] Adolescent--An individual 13 through 17 years of age whose disabilities of minority have not been removed by marriage or judicial decree.

(3) [(5)] Adult--An individual 18 years of age or older, or an individual under the age of 18 whose disabilities of minority have been removed by marriage or judicial decree.

(4) [(6)] Aftercare--Structured services provided after a client completes treatment [discharge from a treatment facility] which are designed to strengthen and support the client's recovery and prevent relapse.

[(7) AIDS--Acquired Immune Deficiency Syndrome, the end stage of HIV infection. AIDS can only be diagnosed by a physician using criteria established by the National Centers for Disease Control and Prevention.]

(5) [(8)] Alternatives--A strategy that gives participants and their families the opportunity to take part in educational, cultural, recreational, and work-oriented substance-free activities. Activities under this strategy are designed to encourage and foster bonding with peers, family and community.

(6) [(9)] Approve--Authorize in writing.

(7) [(10)] Assessment--An ongoing process through which the counselor or prevention specialist collaborates with the service recipient and others to gather and interpret information necessary for developing and revising a treatment or service plan and evaluating the service recipient's progress toward achievement of goals, including identification of the individual's strengths and weaknesses (or risk and protective factors) and problems/needs. Assessments in treatment and HIV Early Intervention programs must be conducted by a counselor, but an appropriately trained prevention specialist may conduct assessments in a youth intervention program [A process which identifies problems, needs, strengths, and resources as they pertain to ATOD use or abuse and related behaviors or activities. Assessments are used to initiate, maintain, or update individualized plans to address the identified needs and problems. See Also Treatment Assesment].

(8) [(11)] Assets (individual)--A set of essential building blocks that help young people grow up healthy, caring, and responsible. External assets include support, empowerment, boundaries and expectations, and constructive use of time. Internal assets include commitment to learning, positive values, social competencies, and positive identity.

(9) [(12)] ATOD--Alcohol, tobacco and other drugs.

(10) Brief interventions--Short-term practices designed to investigate a potential problem and motivate an individual to begin to do something about his or her substance abuse, either by natural, client-directed means or by seeking additional treatment. Brief interventions are described in "Brief Interventions and Brief Therapies for Substance Abuse" (Treatment Improvement Protocol 34), published by the Center for Substance Abuse Treatment.

(11) Brief therapy--A systematic, focused process that relies on assessment, client engagement, and rapid implementation of change strategies. Brief therapies are described in "Brief Interventions and Brief Therapies for Substance Abuse" (Treatment Improvement Protocol 34), published by the Center for Substance Abuse Treatment.

[(13) Care coordination--Processes used to ensure and individual receives all needed substance abuse services through a seamless, organized delivery system.]

(12) [(14)] Case management--A systematic process to ensure clients receive all substance abuse, physical health, mental health, social, and other services needed to resolve identified problems and needs. Case management activities are provided by an accountable staff person and include:

(A) linking a client with needed services;

(B) helping a client develop skills to use basic community resources and services; and

(C) [communicating, monitoring and] coordinating services for a client through communication and monitoring.

(13) [(15)] Chemical dependency--Substance dependence or substance abuse as defined in the current edition of the Diagnostic and Statistical Manual of Mental Disorders.

(14) Chemical dependency counseling--A collaborative process between a counselor and one or more individuals who have been diagnosed with a substance use disorder, conducted face-to-face, that facilitates client progress toward mutually determined treatment goals and objectives.

[(16) Chemical dependency screening--A brief interview conducted in person or by phone to determine if there is a potential substance abuse problem. Screening may be performed by any trained staff person. If a potential problem is identified, the individual should be referred for a treatment assessment.]

(15) [(17)] Child--An individual under the age of 13.

(16) [(18)] Client--An individual who has been admitted to a chemical dependency treatment facility licensed or funded by the commission and is currently receiving services.

(17) [(19)] Client Data Systems (CDS) Forms--CDS forms include the Admission Report, Discharge Report, Follow-up Report, and CDS Facility Summary.

(18) [(20)] Cognizant agency--The federal or state agency responsible for reviewing, negotiating, and approving an organization's indirect cost rate. TCADA has not been designated as a cognizant agency.

(19) [~~(21)~~] Commission--The Texas Commission on Alcohol and Drug Abuse.

(20) [~~(22)~~] Community-based process--A strategy designed to enhance the ability of the community to provide effective prevention, intervention, and treatment services for ATOD problems and HIV infection through community mobilization and empowerment. Activities include multi-agency coordination and collaboration, networking, and development of written agreements among community organizations.

~~[(23) Community coalition--A diverse group of community organizations and individuals organized to reduce ATOD problems in the community.]~~

(21) [~~(24)~~] Consenter--The individual legally responsible for giving informed consent for a client. [~~This may be the client, parent, guardian, or conservator.~~] Unless otherwise provided by law, a legally competent adult is his or her own consenter, and the consenter for an adolescent or child is the parent, guardian, or conservator. [~~Consenters include adult clients, clients 16 or 17 years of age, and clients under 16 years of age admitting themselves for chemical dependency counseling under the provisions of the Texas Family Code, §32.004.~~]

~~[(25) Continuum of services--A planned, coordinated service system which includes prevention, intervention, outreach, screening, referral, treatment and aftercare. Continuity of care has two dimensions and goals: cross-sectional, so that the services provided to an individual at any given time are comprehensive and coordinated; and longitudinal, so that the system provides comprehensive, integrated services over time and is responsive to changes in the person's needs.]~~

(22) [~~(26)~~] Cost Reimbursement--A payment mechanism that provides reimbursement, at actual cost, to the contractor for performing at a certain level of effort regardless of the level of output achieved.

(23) [~~(27)~~] Counseling--A collaborative process conducted face-to-face that facilitates an individual's progress toward mutually determined treatment goals and objectives [~~Face-to-face interactions in which a counselor helps an individual, family or group identify, understand, and resolve issues and problems~~].

(24) [~~(28)~~] Counselor--A qualified credentialed counselor, counselor intern, or graduate.

(25) [~~(29)~~] Counselor intern (CI)--A person registered with the commission who is pursuing a course of training in chemical dependency counseling at an approved clinical training institution or a person enrolled at an accredited institution of higher education completing an internship at a treatment program as part of a degree or certificate program in chemical dependency counseling [~~pursuing a course of training in chemical dependency counseling at a regionally accredited institution of higher education, an approved practicum provider, or an approved clinical training institution who has been designated as a counselor intern by the institution. The activities of a counselor intern shall be performed under the direct supervision of a qualified credentialed counselor (QCC)~~].

(26) [~~(30)~~] Crisis intervention--Services designed to intervene in situations which may or may not involve alcohol and drug abuse, and which may escalate and result in a crisis if immediate attention is not provided. Services include face-to-face individual, family, or group interviews/interactions and/or telephone contacts to identify needs.

~~[(31) CSAP's six prevention strategies--The six strategies identified by the Center for Substance Abuse Prevention that are delivered in prevention and intervention programs. The six strategies are: prevention education and skills training, alternatives, problem identification and referral, information dissemination, community-based process, and environmental and social policy.]~~

(27) [~~(32)~~] Cultural competency training--Training to improve an individual's ability to understand and interact with persons of different cultures. Culture defines the lifestyle of a distinct population and includes values, behavioral norms, and patterns of interpersonal relationships. It may be based on race, ethnicity, religion, age, gender, sexual orientation, or disability.

(28) [~~(33)~~] Discharge--Formal, documented termination from a treatment facility. Discharge occurs when a client successfully completes treatment goals, is transferred to another facility, leaves against professional advice, or is terminated for other reasons.

(29) [~~(34)~~] Documentation--A written and/or electronic record that includes a date and a written or digital signature and provides authenticated evidence to substantiate compliance with standards, such as minutes of meetings, memoranda, schedules, notices, logs, records, policies, procedures, and announcements.

(30) [~~(35)~~] DSM-IV--The Diagnostic and Statistical Manual of Mental Disorders, Fourth Edition-Text Revision [~~Revised~~], published by the American Psychiatric Association. Any reference to DSM-IV is understood to mean the most recent edition of the Diagnostic and Statistical Manual of Mental Disorders.

(31) [~~(36)~~] Ensure--To take all reasonable and necessary steps to achieve results.

(32) [~~(37)~~] Environmental and social policy--A strategy designed to establish or change written and unwritten community standards, codes, and attitudes, thereby influencing incidence and prevalence of substance abuse in the general population. It includes activities that center on legal and regulatory initiatives and those that relate to the service and action-oriented initiatives.

(33) [~~(38)~~] Evaluation (program)--A formal process for collecting, analyzing, and interpreting information about a program's implementation and effectiveness.

~~[(39) Exit summary--Documentation of all referral and follow-up activities provided to individuals or family members receiving intervention counseling services.]~~

(34) [~~(40)~~] Exploitation--The illegal or improper use of a service recipient or a service recipient's resources for monetary or personal benefit, profit, or gain by an employee, volunteer, or other individual working under the auspices of a provider [~~An act or process to use, either directly or indirectly, the labor or resources of a client/participant for monetary or personal benefit, profit, or gain of another individual or organization~~].

(35) [~~(41)~~] Facility--A legal entity that provides one or more chemical dependency treatment programs.

(36) [~~(42)~~] Family--The children, parents, brothers, sisters, other relatives, foster parents, guardians, and/or significant others who perform the roles and functions of family members in the lives of service recipients [~~clients/participants~~].

(37) [~~(43)~~] Graduate--An individual who has successfully completed the 270 hours of education, 300 hour practicum, and 4,000 hours of supervised work experience but has neither received a license nor failed the examination the maximum number of [~~four~~] times allowed by law.

(38) [~~(44)~~] HIV--Human Immunodeficiency Virus, the virus that causes Acquired Immune Deficiency Syndrome (AIDS) [~~AIDS.~~]. Infection is determined through a testing and counseling

process overseen by the Texas Department of Health. Being infected with HIV is not necessarily equated with having a diagnosis of AIDS, which can only be diagnosed by a physician using criteria established by the National Centers for Disease Control and Prevention.

(39) [~~(45)~~] HIV Antibody Counseling and Testing--A structured counseling session performed by Prevention Counseling and Partner Elicitation (PCPE) counselors registered with the Texas Department of Health (TDH). It promotes risk reduction behavior for those at risk of infection with HIV and other sexually transmitted diseases and offers testing for HIV infection.

(40) [~~(46)~~] Indicated program--An intervention program designed to prevent the onset of substance abuse in individuals who [~~do not meet DSM-IV criteria for abuse or dependence, but~~] are showing early warning signs of substance abuse such as failing grades, dropping out of school, and/or use of alcohol and other gateway drugs.

(41) [~~(47)~~] Information dissemination--A strategy that provides awareness and knowledge of ATOD problems and/or HIV infection and their harmful effects on individuals, families, and communities. It also gives the general population information about available programs and services. Information dissemination is characterized by one-way communication from the source to the audience, with limited contact between the two. Information is disseminated through written communications and/or in-person community presentations.

(42) [~~(48)~~] Intervention--A process that utilizes multiple strategies designed to prevent or interrupt the use of alcohol, tobacco and other drugs by youth who are showing early warning signs of substance use or abuse and/or exhibiting other high risk problem behaviors, and to break the cycle of harmful use of legal substances and all use of illegal substances by adults in order to halt the progression and escalation of use, abuse, and related problems. Intervention strategies target indicated populations.

(43) [~~(49)~~] Intervention counseling--Face-to-face interactions to assist individuals, families, and groups to identify, understand, and resolve issues and problems related to ATOD use within a specific number of sessions or within a certain time frame. It is intended to intervene in problem situations and high risk behaviors which, if not addressed, may escalate to substance abuse or cause communicable disease.

(44) [~~(50)~~] Key performance measures--Measures that reflect the services that are critical to the program design and intended outcomes of the program. Key performance measures are specified for all commission funded programs.

(45) [~~(51)~~] Life skills training (treatment)--A structured program of training, based upon a written curriculum and provided by counselors, designed[~~,~~] to help clients with communication and social interaction, stress management, problem solving, decision making, and management of daily responsibilities [~~manage daily responsibilities effectively and become gainfully employed. It may include instruction in communication and social interaction, stress management, problem solving, daily living, and decision making~~].

(46) Motivational interviewing--A therapeutic style intended to help counselors work with clients to address their ambivalence and enhance motivation for positive change. Motivational interviewing is described in "Enhancing Motivation for Change in Substance Abuse Treatment" (Treatment Improvement Protocol 35), published by the Center for Substance Abuse Treatment.

(47) [~~(52)~~] Neglect--A negligent act or omission by an employee, volunteer, or other individual working under the auspices of a provider, that causes or may cause death, substantial emotional harm or physical injury to a service recipient [~~Actions resulting from inattention, disregard, carelessness, ignoring, or omission of reasonable consideration that caused, or might have caused, physical or emotional injury to a client/participant~~]. Examples of neglect include, but are not limited to, failure to provide adequate nutrition, clothing, or health care; failure to provide a safe environment free from abuse; failure to maintain adequate numbers of appropriately trained staff; failure to establish or carry out an appropriate individualized treatment plan; and any other act or omission classified as neglect by the Texas Family Code, §261.001.

[~~(53) Offer--To make available.~~]

[~~(54) Older adult--A person aged 55 or older.~~]

(48) [~~(55)~~] OMB--United States Office of Management and Budget.

(49) [~~(56)~~] Outcome--The impact on the system or service recipient [~~client/participant served~~].

(50) [~~(57)~~] Outreach--Activities directed toward finding individuals who might not use services due to lack of awareness or active avoidance, and who would otherwise be ignored or underserved.

(51) [~~(58)~~] Participant--An individual who is receiving prevention or intervention services.

[~~(59) Policy--A statement of direction or guiding principle issued by a governing body.~~]

(52) [~~(60)~~] Prevention--A process that utilizes multiple strategies designed to preclude the onset of the use of alcohol, tobacco and other drugs by youth. Prevention principles and strategies foster the development of social and physical environments that facilitate healthy, drug-free lifestyles. Prevention strategies target universal and selective populations.

(53) [~~(61)~~] Prevention education and skills training--A curriculum-based strategy designed to develop decision-making, problem solving, and other life skills. It also provides accurate information about the harmful effects of ATOD use, abuse and addiction pertinent to the needs of the target population. The basis of activities under this strategy is interaction between the educator/facilitator and the participants. These activities are aimed to increase protective factors, foster resiliency, decrease risk factors and affect critical life and social skills relative to substance abuse and/or HIV risk of the participant and/or family members.

(54) [~~(62)~~] Primary population--The individuals directly targeted to participate in and benefit from the program.

(55) [~~(63)~~] Problem identification and referral--A strategy that provides services designed to ensure access to appropriate levels and types of services needed by youth or adult participants. It includes identification of those individuals who have used or are at risk of using alcohol, tobacco, and other drugs. This strategy does not include assessments designed to determine if a person is in need of treatment.

[~~(64) Procedure--A step-by-step set of instructions.~~]

(56) [~~(65)~~] Program--A specific type of service delivered to a specific population, at a specific location.

(57) [~~(66)~~] Protective factors--Characteristics within individuals and social systems which may inoculate or protect persons against risk factors and strengthen their determination to reject or avoid substance abuse.

[~~(67) Provide--To perform or deliver.~~]

(58) [~~(68)~~] Provider--A distinct legal entity with an administrative and functional structure organized to deliver substance abuse services.

(59) [~~(69)~~] Qualified credentialed counselor (QCC)--A licensed chemical dependency counselor or one of the professionals listed below who is licensed and in good standing in the state of Texas and has at least 2000 hours of supervised experience treating substance use disorders:

(A) licensed professional counselor (LPC);

(B) licensed master social worker (LMSW);

(C) licensed marriage and family therapist (LMFT);

(D) licensed psychologist;

(E) licensed physician;

(F) certified addictions registered nurse (CARN); and

[~~(G) licensed psychological associate; and~~]

(G) [~~(H)~~] advanced [~~advance~~] practice nurse recognized by the Board of Nurse Examiners as a clinical nurse specialist or nurse practitioner with a specialty in psyche-mental health (APN-P/MH).

(60) [~~(70)~~] Referral--The process of identifying appropriate services and providing the information and assistance needed to access them.

(61) [~~(71)~~] Retaliate--Take adverse action to punish or discourage a person who reports a violation or cooperates with an investigation, inspection, or proceeding. Such actions include but are not limited to suspension or termination of employment, demotion, discharge, transfer, discipline, restriction of privileges, harassment, and discrimination.

(62) [~~(72)~~] Risk factor--A characteristic or attribute of an individual, group, or environment associated with an increased probability of certain disorders, addictive diseases, or behaviors.

(63) [~~(73)~~] Screening--The process through which the counselor, service recipient, and available significant others determine the most appropriate initial course of action, given the individual's needs and characteristics and the available resources within the community. In a treatment program, screening includes determining whether an individual is appropriate and eligible for admission to a particular program [~~See chemical dependency screening~~].

(64) [~~(74)~~] Secondary population--Family members and other individuals targeted to receive ancillary services because of their relationship to the service recipient [~~participant/client~~].

(65) [~~(75)~~] Selective program--A prevention program designed to target subsets of the total population that are deemed to be at higher risk for substance abuse by virtue of membership in a particular population segment. Risk groups may be identified on the basis of biological, psychological, social or environmental risk factors, and targeted groups may be defined by age, gender, family history, place of residence, or victimization by physical and/or sexual abuse. Selective prevention programs target the entire subgroup regardless of the degree of individual risk.

[~~(76) Service record--The required documentation for all participants receiving intervention counseling services.~~]

(66) [~~(77)~~] Staff--Individuals working for the provider [~~employed by a provider to provide services~~] in exchange for money or other compensation.

[~~(78) Standard Precautions--Infection control guidelines written by the National Centers for Disease Control and Prevention which are designed to prevent transmission of communicable diseases such as HIV, hepatitis, sexually transmitted diseases and TB within the healthcare setting. The commission's interpretation of those guidelines are found in TCADA Workplace and Education Guidelines for HIV and Other Communicable Diseases.~~]

(67) [~~(79)~~] STDs--Sexually transmitted diseases.

[~~(80) Strategy--A prevention or intervention approach implemented to support the overall design and goals of a program.~~]

(68) [~~(81)~~] Substance abuse--The use of one or more drugs, including alcohol, which significantly and negatively impacts one or more major areas of life functioning.

(69) [~~(82)~~] TCADA--Texas Commission on Alcohol and Drug Abuse.

(70) [~~(83)~~] Treatment (chemical dependency)--A planned, structured, and organized program designed to initiate and promote a person's chemical-free status or to maintain the person free of illegal drugs. It includes, but is not limited to, the application of planned procedures to identify and change patterns of behavior related to or resulting from chemical dependency that are maladaptive, destructive, or injurious to health, or to restore appropriate levels of physical, psychological, or social functioning lost due to chemical dependency.

[~~(84) Treatment assessment--An assessment to determine if an individual meets the DSM-IV criteria for substance abuse or dependence and is need of treatment. The assessment also determines the level of treatment most appropriate for the individual.~~]

(71) [~~(85)~~] Unethical conduct--Conduct prohibited by the ethical standards adopted by state or national professional organizations or by rules established by a profession's state licensing agency.

(72) [~~(86)~~] Unprofessional conduct--An act of omission that violates commonly accepted standards of behavior for individuals or organizations.

(73) [~~(87)~~] Unit rate--A payment mechanism in which a specified rate of payment is made in exchange for a specified unit of services.

(74) [~~(88)~~] Universal program--A prevention program designed to address an entire population with messages and programs aimed at preventing or delaying the use and abuse of alcohol, tobacco, and other drugs. Universal prevention programs are delivered to large groups without any prior screening for substance abuse risk.

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

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SUBCHAPTER B. CONTRACT ADMINISTRATION

40 TAC §§144.108, 144.124, 144.131, 144.132

These amendments are proposed under the Texas Health and Safety Code, §461.012(a)(15) which provides the Texas Commission on Alcohol and Drug Abuse with the authority to adopt rules governing the functions of the commission, including rules that prescribe the policies and procedures followed by the commission when funding services and §461.0141 which provides the commission with authority to adopt rules regarding purchase of services.

The code affected by the proposed amendments is the Texas Health and Safety Code, Chapter 461.

§144.108. Cost Reimbursement for Treatment Services.

(a) (No change.)

(b) The commission may place a treatment program on cost reimbursement if the provider meets criteria established by the commission. [~~does not have the resources to provide needed treatment services without start-up funding and meets at least one of the following criteria:~~]

[~~(1) has never before provided treatment or prevention services funded by the commission;~~]

[~~(2) will provide commission-funded services in a specific geographic area or to a specific population for the first time;~~]

[~~(3) will provide services at the commission's request to meet identified needs; or~~]

[~~(4) demonstrates other extenuating circumstances.~~]

(c) Cost reimbursement is granted for a [~~single~~] 12-month period and will be reviewed annually by the commission [~~unless the commission's executive director grants a waiver based on extenuating circumstances~~].

(d) Start-up costs will only be awarded as a special contract provision with defined elements of cost and a timeline for expenditure.

§144.124. Indirect Cost.

[~~(a) The commission reserves the right to require administrative expenses to be charged as direct costs.~~]

(a) [~~(b)~~] A provider may request approval to charge administrative expenses as indirect costs. Two [~~Three~~] mechanisms are available for charging shared administrative costs. The provider may:

(1) submit documentation of an indirect cost rate approved by the provider's cognizant agency; or

[~~(2) request a negotiated rate with the commission based on a cost allocation plan; or~~]

(2) [~~(3)~~] use an indirect cost rate not to exceed 10% as provided in the Uniform Grant Management Standards (UGMS). If requesting this option, the provider must provide supporting documentation that shows [~~to show~~] the direct salary and wage costs of providing the service (excluding overtime, shift premiums, and fringe benefits).

(b) [~~(c)~~] All providers receiving funds from other sources must maintain a cost allocation plan showing how administrative costs are distributed among funding sources.

(c) The commission reserves the right to require administrative expenses to be charged as direct costs.

§144.131. Expenditures Requiring Prior Approval.

For providers on a cost reimbursement payment mechanism, prior written approval is required for certain costs charged to the commission contract or reported as program income or match. Costs that are allowable only with prior written approval from the commission include:

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

(4) Transfers. Any transfer among program budget line items for direct costs when cumulative transfers exceed or are expected to exceed 10% of the total approved program budget. Transfers between programs may only be initiated by the commission.

(5) (No change.)

§144.132. Equipment and Supplies.

(a)-(b) (No change.)

(c) The provider shall conduct an annual physical inventory of all equipment and controlled items purchased with commission funds [~~no later than 60 days after the close of the provider's fiscal year~~].

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

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

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SUBCHAPTER D. ORGANIZATIONAL

40 TAC §§144.321, 144.325, 144.326

These amendments are proposed under the Texas Health and Safety Code, §461.012(a)(15) which provides the Texas Commission on Alcohol and Drug Abuse with the authority to adopt rules governing the functions of the commission, including rules that prescribe the policies and procedures followed by the commission when funding services and §461.0141 which provides the commission with authority to adopt rules regarding purchase of services.

The code affected by the proposed amendments is the Texas Health and Safety Code, Chapter 461.

§144.321. Policies and Procedures.

(a) (No change.)

(b) The policy and procedure manual must include the following policies and procedures, as applicable.

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

(7) All programs shall implement a policy and procedures to protect client and participant rights, as required in §144.415 of this title (relating to Participant Rights) and §148.301 [~~§148.142~~] of this title (relating to Client Bill of Rights).

(8) All programs shall implement a policy and, if applicable, procedures on the use of facility vehicles and/or staff to transport participants or clients, as required in §144.418 of this title (relating to Transportation) and §148.115 [~~§148.203~~] of this title (relating to Client Transportation).

(9) All prevention and intervention programs shall implement a tobacco policy as required in §144.416 of this title (relating

to Tobacco Products). Treatment providers shall also have a tobacco policy to implement the provisions found in §148.105 [~~§148.331~~] of this title (relating to General Environment) and §148.411 [~~§148.231~~] of this title (relating to Additional Requirements for Adolescent Programs [~~Adolescents~~]).

(10) All Outreach, Screening, and Referral (OSR) [~~OSAR~~] programs and treatment programs shall implement procedures for mental health referrals as required in §144.456 of this title (relating to OSR [~~OSAR~~] Services) and §144.525 of this title (relating to Admission Determination and Placement).

(11) All OSR [~~OSAR~~] programs shall implement policies and procedures for crisis intervention as required in §144.456 of this title (relating to OSR [~~OSAR~~] Services).

(12)-(19) (No change.)

(c)-(d) (No change.)

§144.325. Complaints and Reports.

(a) (No change.)

(b) The provider shall display a sign informing the public of the policy and procedures on complaints. The sign shall be prominently displayed at all times and shall provide notice of the commission's investigations [~~compliance~~] division and its current mailing address and toll-free phone number.

(c) The provider shall verbally report all allegations of participant or client abuse, neglect, and exploitation to the commission's investigations division [~~investigation department~~] at (800) 832-9623 within 24 hours, and submit documentation within two working days. The provider shall investigate the allegation, take appropriate action, and maintain documentation of the investigation and resulting actions.

(d) The chief executive officer or designee shall report the following incidents to the commission's investigations division [~~investigation department~~] at (800) 832-9623 within 72 [~~24~~] hours of discovery:

(1) all fires [~~and natural disasters~~];

(2) substantial disruption of program operation;

(3) death of an active client/participant (on or off the program site);

(4) suicide attempt by an active client or participant (on or off the program site);

(5) medical and psychiatric emergencies;

(6) violent behavior on the program site;

(7) illegal, unethical, or unprofessional conduct; and

[~~(4) violations of laws, rules, and professional and ethical codes of conduct; and~~]

(8) [~~(5)~~] legal, regulatory, or contractual action taken against the program.

(e) (No change.)

§144.326. Staffing.

(a)-(e) (No change.)

(f) The program shall require all prospective staff [~~employees~~] to pass a pre-employment drug test that meets criteria established by the commission.

(g) (No change.)

(h) All staff [~~Each employee~~] shall complete initial training during the first 30 [~~seven~~] calendar days of employment. The initial training shall be documented and shall include, as applicable:

(1)-(7) (No change.)

(i) (No change.)

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

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SUBCHAPTER E. PREVENTION AND INTERVENTION

40 TAC §144.456

These amendments are proposed under the Texas Health and Safety Code, §461.012(a)(15) which provides the Texas Commission on Alcohol and Drug Abuse with the authority to adopt rules governing the functions of the commission, including rules that prescribe the policies and procedures followed by the commission when funding services and §461.0141 which provides the commission with authority to adopt rules regarding purchase of services.

The code affected by the proposed amendments is the Texas Health and Safety Code, Chapter 461.

§144.456. Outreach, Screening, [~~Assessment,~~] and Referral Services.

(a) Outreach, Screening, [~~Assessment,~~] and Referral (OSR [~~OSAR~~]) service providers are community-based organizations that provide alcohol, tobacco and other drug prevention and intervention services to the community at large in their identified catchment area. OSR [~~OSAR~~] service providers conduct a variety of services aimed to reduce use and abuse of ATOD in the targeted community.

(b) OSR [~~OSAR~~] services programs shall offer universal, selective and indicated strategies to individuals, families, and communities within the service area defined in the contract.

(c) Information dissemination shall be provided for the purposes of education and awareness in the community. Information dissemination shall be focused on increasing access to services for the community, including the commission's priority populations described in §144.522 of this title (relating to Priority Populations), and ensuring the community is aware of the nature, location, and availability of commission-funded services.

(d) Problem identification and referral shall be provided for the purpose of the identification of appropriate service needs through screening, referral, placement and follow-up. The program shall provide case management to ensure individuals receive appropriate services and document when and where the person seeking services is admitted. Placement into services shall be the criterion for determining successful problem identification and referral.

(e) Crisis intervention services shall be provided for the purpose of responding to individuals and/or families in need of immediate services.

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

(3) Crisis intervention must be provided by a QCC, graduate, or [~~a~~] counselor intern working under direct supervision.

(4) The program shall establish an avenue for a person in crisis to speak with a trained counselor within one hour of the initial call [~~received~~] during and after normal business hours.

(5) The program shall provide training annually on crisis telephone call policies and procedures for all employees who answer (or may answer) the telephone during or after normal business hours. Training must include crisis intervention techniques and available community resources. Training for staff who provide crisis intervention shall also include motivational interviewing and brief interventions and therapies.

(f) The program shall provide screening and referral for individuals needing and/or seeking treatment services [~~treatment assessments and placements~~].

(1) The screening process [~~All assessments~~] shall be conducted in a confidential, face-to-face interview.

(2) The screening process [~~All assessments~~] shall be conducted by qualified credentialed counselors (QCCs), graduates, or counselor interns working under direct supervision.

(3) The depth and scope of the screening process shall be sufficient to determine the individual's needs and make an appropriate referral, if needed. The specific instruments and procedures used during the screening process will depend on the characteristics of the individual being screened. The program may administer all or part of an assessment instrument as needed to make an appropriate referral. Tools used during the screening process, including assessment instruments, shall be age-appropriate [~~The program shall use an assessment tool that is approved by the commission and appropriate for the target population~~].

(4) If an individual meets the DSM-IV criteria for substance abuse or dependence, the program shall refer the individual for appropriate treatment services. With written consent, the program shall forward a copy of the information obtained during the screening process [~~assessment~~] to the treatment provider. Admission into treatment shall be the criterion for determining successful referral.

(5) The OSAR shall maintain written agreements with [~~referral sources/~~]treatment providers outlining how individuals who go through the screening process are admitted to treatment [~~to identify assessment roles in order to minimize duplicate efforts in conducting treatment assessments~~].

(6) Documentation shall include:

(A) date of screening [~~assessment~~];

(B) zipcode of the individual screened [~~assessed~~];

(C) demographics of the individual screened [~~assessed~~];

(D) the completed instruments used during the screening [~~written assessment~~], including a diagnostic impression based on DSM-IV criteria;

(E) referrals [~~and placements~~] made, including when and where the service recipient is admitted to services; and

(F) all [~~any~~] follow-up contacts.

(g) The program may provide [~~brief~~] motivational interviewing and brief interventions and therapies [~~counseling~~] to motivate and prepare individuals [~~an individual~~] for treatment or self-directed change in behavior when [~~if~~] treatment is not indicated.

(h) Minors and tobacco activities shall be provided for the purpose of reducing minors' access to tobacco products throughout the catchment area served. The OSR [~~OSAR~~] shall submit a quarterly narrative report on minors and tobacco activities, including:

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

[~~(i) Community-based process shall be provided for the purpose of enhancing the ability of the community to more effectively provide substance abuse services.~~]

(i) [~~(j)~~] The program shall maintain a resource manual or file that contains current information about local referral resources, including location and contact information, services offered, and eligibility criteria. At a minimum, the resource manual or file shall include information about all prevention, intervention, and treatment programs in the OSR's [~~OSAR's~~] catchment area.

(j) [~~(k)~~] The program shall develop and implement written procedures to identify and provide appropriate referrals for individuals exhibiting conditions or behavior that may suggest unmet mental health needs. The program shall also provide at least three hours of annual training on mental health diagnoses [~~issues~~] to all staff members who conduct screenings or provide problem identification and referral [~~interact with service recipients~~].

(k) [~~(l)~~] OSR [~~OSAR~~] programs shall work with other organizations in the area to coordinate substance abuse and other services for the individual and/or family.

(l) [~~(m)~~] OSR [~~OSAR~~] providers may operate separate prevention, intervention, and/or treatment programs to meet the needs of the community. These services may not, however, be provided with resources allocated to the OSR [~~OSAR~~] function.

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

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SUBCHAPTER F. TREATMENT

40 TAC §§144.525, 144.532, 144.541 - 144.543, 144.552, 144.553

These amendments and new section are proposed under the Texas Health and Safety Code, §461.012(a)(15) which provides the Texas Commission on Alcohol and Drug Abuse with the authority to adopt rules governing the functions of the commission, including rules that prescribe the policies and procedures followed by the commission when funding services and §461.0141 which provides the commission with authority to adopt rules regarding purchase of services.

The code affected by the proposed amendments is the Texas Health and Safety Code, Chapter 461.

§144.525. Admission Determination and Placement.

(a) All admissions to Level II, III or IV treatment must be authorized or denied by a QCC. All admissions to Level I treatment must be authorized by a physician.

(1) For every applicant admitted to treatment, the client record must include documentation signed by the authorizing professional showing [~~a QCC~~] that the individual met all applicable admission criteria, including the DSM-IV diagnostic criteria. In Level I, the examining professional may document this information if authorization for admission is obtained by phone and signed by the physician within 48 hours.

(2) When an applicant is denied admission, the program shall maintain documentation signed by the professional who examined the applicant [~~a QCC~~] which explains why the admission was denied.

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

(d) As part of the assessment, the program shall assess each applicant's risk for HIV infection, tuberculosis, and other sexually transmitted diseases. Risk assessments shall follow guidelines described in the commission's Workplace and Education Guidelines for HIV and Other Communicable Diseases [~~as set by the National Institute on Drug Abuse's "Preventing HIV Among Substance Abusers: Risk Assessment/Risk Reduction."~~].

(e)-(f) (No change.)

(g) The program shall not automatically deny admission to a previous client based on prior treatment. If the applicant has been admitted to the facility three or more times in the past 12 months, the program [~~provider~~] may consider this information (including circumstances of prior discharges) in determining whether to admit the applicant. The program shall not deny admission based on prior treatment if the applicant has only one or two prior admissions or if the applicant is seeking admission to a detoxification program and is in need of detoxification.

(h)-(k) (No change.)

§144.532. Core Program Requirements.

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

[~~(d) The program shall have written descriptions of all educational and didactic sessions, including curricula, outlines, and activities.~~]

[~~(e) Group size shall be limited to a number that allows effective interaction between the group and facilitator and between group members.~~]

[~~(1) Group counseling sessions are limited to a maximum of clients.~~]

[~~(2) Group education sessions, didactic sessions, and other non-therapeutic groups are limited to a maximum of 32 clients. This limitation does not apply to seminars, outside speakers, or other events designed for a large audience.~~]

(d) [~~(f)~~] The program shall establish and demonstrate active use of cooperative agreements with available substance abuse and other mental health, health care, and social services to meet the needs of clients and family members. Agreements to coordinate services must be established in writing and renewed annually (through signature or other documented contact), and shall include:

(1) names of the organizations entering into the agreement;

(2) services or activities each organization will provide;

(3) signatures of authorized representatives; and

(4) dates of action and expiration.

(e) [~~(g)~~] The program shall develop and implement a written plan of operation explaining outreach efforts, including specific strategies to reach members of the priority populations listed in §144.522 of this title (relating to Priority Populations). The commission may waive this requirement if the program demonstrates high capacity utilization and adequate engagement of the priority population.

(f) [~~(h)~~] The program shall document active participation in collaborations to support community resource development.

[~~(i) Levels II, III, and IV residential programs shall schedule planned, structured activities during evenings and weekends. These hours are in addition to those required by licensure rules. The minimum number of additional hours for Levels II, III, and IV are 10 hours for adults and 15 hours for adolescents. The program shall maintain documentation that the activities were provided, including sign-in sheets. Client participation does not need to be individually recorded in client records.~~]

(g) [~~(j)~~] All counseling sessions and other activities counted toward the required hours of service must last at least 30 minutes.

(h) Adult treatment programs shall provide specialized services to pregnant women, women with dependent children, and women who are seeking to regain custody of their children. The following services shall be provided directly or through collaborative agreements with other service providers:

(1) primary medical care for women receiving treatment, including age-appropriate and specific reproductive health care and prenatal care;

(2) gender-specific substance abuse treatment and other therapeutic interventions for women that address issues of relationships, sexual and physical abuse and parenting;

(3) childcare while the women are receiving services;

(4) primary pediatric care for the clients' children, including immunizations;

(5) therapeutic and other structured interventions for the children; and

(6) documented sufficient case management and transportation services to ensure that women and their children have access to the services provided by paragraphs (1) - (5) of this subsection.

§144.541. Specialized Treatment Services for Females.

(a) Specialized female residential and outpatient programs shall serve the following priority populations:

(1) Adolescent or adult women who are pregnant;

(2) Adolescent or adult women with custodial, dependent children under the age of 18 [~~when the woman is not bringing the child(ren) into treatment with her~~]; and

(3) Adolescent or adult women who are seeking to regain custody of their child(ren).

[~~(3) Adolescent or adult women with dependent children under the custodianship of the Texas Department of Protective and Regulatory Services;~~]

[~~(4) Adolescent or adult women whose children participate in the mother's outpatient program.~~]

(b) The program shall provide all clients with the services listed in subsection (h) of §144.532 of this chapter (relating to Core Program Requirements) [~~priority population for women and children residential programs is adolescent or adult women with dependent children. Newborns and children aged 12 years or less may accompany the mother into a residential program for women and children~~].

(c) These programs shall treat the woman [~~female~~] and her dependent children as a unit and therefore admit both women [~~females~~] and their children into treatment, when appropriate and possible.

[~~(d) All programs offering specialized female services shall provide a comprehensive treatment program. The following services shall be provided directly or through collaborative agreements and case management arrangements with other service providers:~~]

[~~(1) primary medical care for females receiving treatment, including age-appropriate and specific reproductive health care and prenatal care;~~]

[~~(2) gender-specific substance abuse treatment and other therapeutic interventions for females that address issues of relationships, sexual and physical abuse and parenting;~~]

[~~(3) childcare while the females are receiving services;~~]

[~~(4) primary pediatric care for the clients' children, including immunizations;~~]

[~~(5) therapeutic and other structured interventions for the children; and~~]

[~~(6) documented sufficient case management and transportation services to ensure that female clients and their children have access to the services provided by paragraphs (1) through (5) of this subsection.~~]

(d) [~~(e)~~] Programs shall implement a coordinated outreach plan that targets services and organizations that regularly serve adult or adolescent women [~~females~~] with or without dependent children. Outreach to engage the target population shall include regular, documented contacts with:

(1) Temporary Aid for Needy Families (TANF) and Welfare to Work offices;

(2) Child Protective Services;

(3) Early Childhood Intervention programs;

(4) [~~(3)~~] Health clinics that serve low-income women, infants, and children;

(5) [~~(4)~~] Domestic violence programs;

(6) [~~(5)~~] STD clinics and HIV programs; and

(7) [~~(6)~~] Criminal Justice and Texas Youth Commission personnel.

(e) [~~(f)~~] Treatment programs serving women with dependent children shall report monthly measures for the women's children when the children receive prevention and/or intervention services.

(f) [~~(g)~~] Programs serving adult or adolescent women [~~females~~] shall, to the extent possible, provide an array of services including Levels II, III, and IV treatment and structured aftercare, either directly or through case management and service agreements. Level, intensity, and duration of services shall be clinically appropriate.

(g) [~~(h)~~] Programs shall have written referral and service coordination procedures with qualified providers to provide:

(1) assessments for children for Early Childhood Intervention services; and

(2) counseling or therapy to address the children's identified developmental, emotional, or psychosocial needs.

(h) Treatment services shall address:

(1) the effects of chemical dependency on a woman's health and pregnancy and on her child's mental and physical health;

(2) research-based parenting education, skills development, and support;

(3) child development, health, and nutrition; and

(4) basic child care.

(i) When children reside in the program or visit regularly, the program shall use a standardized tool to regularly assess parent-child interactions and address any identified needs in the client's treatment plan.

(j) [~~(i)~~] Specialized female programs and residential programs for women and children shall not admit women [~~females~~] who are not in the priority population unless they have documented contact with all community outreach contacts showing that no potential priority clients can be identified and admitted.

§144.542. Additional Requirements for Women and Children's Residential Programs.

(a) Newborns and children aged 12 years or less may accompany the mother into a residential program for women and children.

(b) The program shall protect the health, safety, and welfare of children admitted to treatment with their mothers.

(1) Emergency evacuation procedures shall include provisions for children.

(2) Each child shall have a health assessment from a physician, physician assistant, or registered nurse within 96 hours of admission. Copies of an assessment performed up to seven days before admission may be accepted.

(3) Children's medication shall be given according to the label by the parent, a licensed health professional, or an employee trained in self-administration of medication, and documented by a trained staff member. The facility shall not give medication to a child without written consent from the parent. If trained staff provide the medication, the facility shall document the circumstances that prevent the parent or licensed health professional from doing so.

(4) The program shall provide an adequate diet for childhood growth and development, including two snacks per day.

(5) Residential programs shall not accept dependents over the age of 12. Children over the age of six shall not share a bedroom with a member of the opposite sex who is not in the child's immediate family.

(6) The program shall protect children from access by unauthorized individuals.

(c) The program shall provide a safe, sanitary, and secure environment for children. The program site shall be free from child hazards.

(1) The program shall have indoor and outdoor play areas. Indoor play areas shall have natural light and two routes of exit. Outdoor play areas shall have a safe route of access and be enclosed by a fence at least four feet high if the play area serves more than six children or is located close to a road, pool, ditch, or other hazard.

(2) Rooms and buildings shall have at least 30 usable square feet of indoor activity space per child when occupied by children.

(3) Bedrooms shall have at least 40 usable square feet for each child 18 months and older. When infants less than 18 months old share the parent's bedroom, the room shall contain at least 30 usable square feet per infant.

(d) The program shall ensure that children are directly supervised by parents, staff, or qualified childcare providers at all times.

(1) The program shall provide oversight and guidance to ensure children receive appropriate care when they are supervised by clients

(2) When staff are responsible for children, the staff-to-child ratio shall not exceed 1:4 for infants (18 months and younger) and 1:6 for toddlers and children.

(3) At least one staff person trained in infant/child CPR shall be on duty at all times.

(4) All staff responsible for childcare shall have infant/child CPR and at least eight hours of training that includes information on:

(A) chemical dependency and its impact on the family;

(B) child development and age-appropriate activities;

(C) child health and safety;

(D) appropriate child supervision techniques; and

(E) signs of child abuse.

(5) Behavior management shall be fair, reasonable, consistent, and related to the child's behavior. Physical discipline is prohibited.

(e) The program shall provide a variety of structured services for children.

(1) Toys and activities shall be safe and age-appropriate.

(2) School age children shall have access to TEA-approved educational services.

(3) The program shall implement the Strengthening Families program for women and their children if the children are six to ten years of age.

(f) The children's program shall have a supervisor or consultant with at least 90 contact hours of education and training in child development and/or early childhood education and one year of documented, supervised experience providing services to children.

§144.543. Pharmacotherapy Services.

(a) All programs providing pharmacotherapy services shall maintain compliance with applicable statutes and regulations adopted by the:

(1) Texas Department of Health;

(2) Food and Drug Administration; and

(3) Drug Enforcement Agency.

[~~(b) Programs shall establish a phase/level system which is consistent with guidelines from the Substance Abuse and Mental Health Services Administration (SAMHSA) and includes the following phases:~~]

[~~(1) Phase I: During the first 45 days of treatment, the client shall receive four individual counseling sessions. If not, justification shall be documented in the client record.~~]

[~~(2) Phase II: After 45 days of continuous treatment, the client shall receive two individualized counseling sessions monthly. Justification shall be documented in the client record each month this standard is not met.~~]

[~~(3) Phase III: After two years of continuous treatment, the client shall receive at least one counseling session per month.~~]

(b) [~~(c)~~] All pharmacotherapy [~~Pharmacotherapy~~] programs must conduct the Methadone Annual Survey as directed by the commission [~~Commission~~].

(c) [~~(d)~~] All pharmacotherapy [~~Pharmacotherapy~~] programs shall adopt policies and procedures that conform with §144.523 of this title (relating to Waiting List and Interim Services) and §144.107 of this title (related to Reporting).

(d) [~~(e)~~] A pharmacotherapy program can bill for a client receiving methadone who has an excused or planned absence for up to two consecutive days. The frequency of approved absences shall be reasonable and appropriate. The provider shall not bill for more than eight days of excused/planned absences for a single client in a 30-day period.

(e) [~~(f)~~] All pharmacotherapy programs shall complete a client fee assessment on each commission-funded client every six months.

(f) [~~(g)~~] All direct care employees shall demonstrate knowledge or receive training that includes:

(1) symptoms of opiate withdrawal;

(2) drug urine screens;

(3) current standards of pharmacotherapy; and

(4) poly-drug addiction.

(g) [~~(h)~~] All pharmacotherapy programs shall develop and implement a plan to achieve accreditation as required by federal regulations.

§144.552. Select Performance Measure Definitions.

(a)-(b) (No change.)

(c) Referral Rate. This measure applies to Level I programs. Referral rate is the percentage of discharged clients who have completed Level I treatment and are [~~referred or~~] transferred for continuing *substance abuse* treatment as defined below.

(1) (No change.)

(2) Referral [~~or Transfer~~]. For a client to have been [~~referred or~~] transferred from Level I to continuing substance abuse treatment, the client record must indicate that one of the following criteria has been met.

(A) The client has been discharged from the program and referred and admitted to [~~A referral and an attempt to place the client in~~] a less intensive level of treatment in another facility [~~outside the program has been made~~]. This must be documented in the client record.

(B) The client has been transferred to a less intensive level of treatment within the organization [~~program~~]. The client record must include a transfer note to document the transfer.

(d)-(f) (No change.)

§144.553. Client Record Documentation.

(a) The provider shall maintain complete documentation for all services paid for by commission funds. Documentation shall comply with licensure rules and with the standards in this section.

~~[(b) The progress notes shall contain a record of all sessions attended by the client. The following information shall be included for each session:]~~

~~[(1) the date of the session and beginning and end times;]~~

~~[(2) the topic and/or goal of the session; and]~~

~~[(3) the level of the client's participation.]~~

~~[(c) In addition, a summary progress note shall be written at least weekly. The weekly progress note shall include a summary of observations made over the course of the week, including specific information about the client's progress toward or away from each treatment plan goal. Other significant information relating to the client's status shall also be recorded.]~~

(b) [~~(d)~~] Progress notes shall [~~also~~] include:

(1) documentation of the purpose, duration, justification, and approval of any approved absence from a residential program;

(2) a record of all case management, referral, linkage, and follow-up activities; and

(3) a progress note documenting the information gathered in the 60-day follow-up contact, including:

(A) the date and time of successful follow-up contact;

(B) the name of the person contacted and relationship to the client;

(C) the telephone number of the person contacted;

(D) documentation of any unsuccessful attempts at follow-up; and

(E) the signature of the person who conducted and documented the follow-up interview.

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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Karen Pettigrew
General Counsel
Texas Commission on Alcohol and Drug Abuse
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For further information, please call: (512) 349-6607

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CHAPTER 148. FACILITY LICENSURE

The Texas Commission on Alcohol and Drug Abuse proposes the repeal of §§148.1 - 148.4, 148.21 - 148.27, 148.41, 148.42, 148.61, 148.71 - 148.74, 148.91 - 148.93, 148.111 - 148.119, 148.141 - 148.148, 148.161 - 148.164, 148.171 - 148.173, 148.181 - 148.185, 148.201 - 148.203, 148.211 - 148.214, 148.231 - 148.234, 148.236 - 148.238, 148.251 - 148.254, 148.261 - 148.268, 148.281 - 148.284, 148.291 - 148.293, 148.301 - 148.304, 148.321 - 148.324, 148.331, 148.332, 148.341, 148.351 - 148.359, 148.372, and 148.373 of Chapter 148 concerning facility licensure.

Sections 148.1 - 148.4, 148.21 - 148.27, 148.41, 148.42, and 148.61 contain definitions as well as information on the purpose, license required, sites and services, variances, new licensure application, licensure renewal, changes in status, change in ownership, licensure fees, inactive status and closure, licensure review, sanctions, and injunctions.

Sections 148.71 - 148.74, 148.91 - 148.93, 148.111 - 148.119 pertain to governing body, chief executive officer, policies, procedures, and licensure rules, standards of conduct, compensation based on indicators of client revenue, advertising and billing, solicitation and referral, organizational structure, hiring practices, initial training, special training requirements, students and other volunteers, personnel files and training records, basic staffing requirements, training requirements relating to abuse, neglect, and unprofessional or unethical conduct, and clinical training institutions.

Sections 148.141 - 148.148, 148.161 - 148.164, 148.171 - 148.173, and 148.181 - 148.185 contain information on required postings, client bill of rights, voluntary clients--additional rights, rights of persons apprehended for emergency detention, order of protective custody--special rights, client grievance procedure, responding to client grievances, request for discharge, client abuse, neglect, and exploitation, behavior management, client labor, searches, client record security, general documentation requirements, release of confidential information, significant incident reports, responding to emergencies, special treatment procedures, documenting special treatment procedures and adolescents absent without permission.

Sections 148.201 - 148.203, 148.211 - 148.214, 148.231 - 148.234, 148.236 - 148.238, 148.251 - 148.254, and 148.261 - 148.268 contain general information as well as information on services required in all programs, client transportation, level I treatment (outpatient or residential detoxification), level II treatment (day treatment or intensive residential), level III treatment (residential or intensive outpatient), level IV treatment (transitional outpatient or transitional residential), adolescents, parents and their dependent children, structured therapeutic children's services, correctional facilities, extension services, small family living environments, court commitment services, meals in outpatient programs, meals in residential programs, meals prepared by clients, meals provided by a food service, general provisions for medication, medication storage, medication inventory, disposing of medication, staff qualifications and training, authorization for medication, administration of medication, and self-administration of medication.

Sections 148.281 - 148.284, 148.291 - 148.293, 148.301 - 148.304, and 148.321 - 148.324 provide information on admission criteria, screening, intake and consent to treatment, client orientation, detoxification history and assessment, detoxification plan, detoxification notes, client history and assessment, treatment plan, progress notes, treatment plan reviews, discharge criteria, discharge plan, discharge summary and discharge follow-up.

Sections 148.331, 148.332, 148.341, 148.351 - 148.359, 148.372, and 148.373 provide information about general environment, emergency evacuation, general physical plan, provisions, required inspections, space requirements, exits, fire systems, furniture and supplies, lighting, plumbing, sanitation, ventilation, physical plant requirements for children and physical plant requirements for small family living environments.

The repeal of Chapter 148 is proposed because of extensive changes to the existing rules. The proposed new rules will be published in the *Texas Register* for public comment.

Jay Kimbrough, Executive Director, has determined that there will be no fiscal implications for state or local government for the first five-year period the repeal is in effect.

Mr. Kimbrough has also determined that for each year of the first five years the repeal is in effect the anticipated public benefit will be elimination of unnecessary detail and redundant rules. There will be no effect on small businesses and there is no anticipated economic cost to current providers.

Comments on the proposal may be submitted to Tamara Allen, Rules Coordinator, Texas Commission on Alcohol and Drug Abuse, P.O. Box 80529, Austin, Texas 78708-0529. Comments must be received no later than 30 days from the date the proposal is published in the *Texas Register*.

SUBCHAPTER A. LICENSURE INFORMATION

40 TAC §§148.1 - 148.4, 148.21 - 148.27, 148.41, 148.42, 148.61

(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 Commission on Alcohol and Drug Abuse or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The repeal is proposed under the Texas Health and Safety Code, Chapter 464 which provides the Texas Commission on Alcohol and Drug Abuse with the authority to adopt rules licensing chemical dependency treatment facilities.

The code affected by the proposed repeals is the Texas Health and Safety Code, Chapter 464.

§148.1. Purpose.
§148.2. License Required.
§148.3. Sites and Services.
§148.4. Variances.
§148.21. New Licensure Application.
§148.22. Licensure Renewal.
§148.23. Changes in Status.
§148.24. Change in Ownership.
§148.25. Licensure Fees.
§148.26. Inactive Status and Closure.
§148.27. Licensure Review.
§148.41. Sanctions.
§148.42. Injunctions.
§148.61. Definitions.

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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Karen Pettigrew
General Counsel
Texas Commission on Alcohol and Drug Abuse
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For further information, please call: (512) 349-6607

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SUBCHAPTER B. FACILITY MANAGEMENT

40 TAC §§148.71 - 148.74, 148.91 - 148.93, 148.111 - 148.119

(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 Commission on Alcohol and Drug Abuse or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The repeal is proposed under the Texas Health and Safety Code, Chapter 464 which provides the Texas Commission on Alcohol and Drug Abuse with the authority to adopt rules licensing chemical dependency treatment facilities.

The code affected by the proposed repeals is the Texas Health and Safety Code, Chapter 464.

§148.71. Governing Body.
§148.72. Chief Executive Officer.
§148.73. Policies, Procedures, and Licensure Rules.
§148.74. Standards of Conduct.
§148.91. Compensation Based on Indicators of Client Revenue.
§148.92. Advertising and Billing.
§148.93. Solicitation and Referral.
§148.111. Organizational Structure.
§148.112. Hiring Practices.
§148.113. Initial Training.
§148.114. Special Training Requirements.
§148.115. Students and Other Volunteers.
§148.116. Personnel Files and Training Records.
§148.117. Basic Staffing Requirements.
§148.118. Training Requirements Relating to Abuse, Neglect, and Unprofessional or Unethical Conduct.
§148.119. Clinical Training Institutions.

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

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SUBCHAPTER C. CLIENT MANAGEMENT

40 TAC §§148.141 - 148.148, 148.161 - 148.164, 148.171 - 148.173, 148.181 - 148.185

(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 Commission on Alcohol and Drug Abuse or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The repeal is proposed under the Texas Health and Safety Code, Chapter 464 which provides the Texas Commission on Alcohol and Drug Abuse with the authority to adopt rules licensing chemical dependency treatment facilities.

The code affected by the proposed repeals is the Texas Health and Safety Code, Chapter 464.

§148.141. Required Postings.

§148.142. Client Bill of Rights.

§148.143. Voluntary Clients--Additional Rights.

§148.144. Rights of Persons Apprehended for Emergency Detention.

§148.145. Order of Protective Custody--Special Rights.

§148.146. Client Grievance Procedure.

§148.147. Responding to Client Grievances.

§148.148. Request for Discharge.

§148.161. Client Abuse, Neglect, and Exploitation.

§148.162. Behavior Management.

§148.163. Client Labor.

§148.164. Searches.

§148.171. Client Record Security.

§148.172. General Documentation Requirements.

§148.173. Release of Confidential Information.

§148.181. Significant Incident Reports.

§148.182. Responding to Emergencies.

§148.183. Special Treatment Procedures.

§148.184. Documenting Special Treatment Procedures.

§148.185. Adolescents Absent Without Permission.

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

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SUBCHAPTER D. PROGRAM SERVICES

40 TAC §§148.201 - 148.203, 148.211 - 148.214, 148.231 - 148.234, 148.236 - 148.238, 148.251 - 148.254, 148.261 - 148.268

(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 Commission on Alcohol and Drug Abuse or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The repeal is proposed under the Texas Health and Safety Code, Chapter 464 which provides the Texas Commission on Alcohol and Drug Abuse with the authority to adopt rules licensing chemical dependency treatment facilities.

The code affected by the proposed repeals is the Texas Health and Safety Code, Chapter 464.

§148.201. General Information.

§148.202. Services Required In All Programs.

§148.203. Client Transportation.

§148.211. Level I Treatment (Outpatient or Residential Detoxification).

§148.212. Level II Treatment (Day Treatment or Intensive Residential).

§148.213. Level III Treatment (Residential or Intensive Outpatient).

§148.214. Level IV Treatment (Transitional Outpatient or Transitional Residential).

§148.231. Adolescents.

§148.232. Parents and Their Dependent Children.

§148.233. Structured Therapeutic Children's Services.

§148.234. Correctional Facilities.

§148.236. Extension Services.

§148.237. Small Family Living Environments.

§148.238. Court Commitment Services.

§148.251. Meals in Outpatient Programs.

§148.252. Meals in Residential Programs.

§148.253. Meals Prepared by Clients.

§148.254. Meals Provided by a Food Service.

§148.261. General Provisions for Medication.

§148.262. Medication Storage.

§148.263. Medication Inventory.

§148.264. Disposing of Medication.

§148.265. Staff Qualifications and Training.

§148.266. Authorization for Medication.

§148.267. Administration of Prescription Medication.

§148.268. Self-Administration of Medication.

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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Karen Pettigrew
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SUBCHAPTER E. TREATMENT PROCESS

40 TAC §§148.281 - 148.284, 148.291 - 148.293, 148.301 - 148.304, 148.321 - 148.324

(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 Commission on Alcohol and Drug Abuse or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The repeal is proposed under the Texas Health and Safety Code, Chapter 464 which provides the Texas Commission on Alcohol and Drug Abuse with the authority to adopt rules licensing chemical dependency treatment facilities.

The code affected by the proposed repeals is the Texas Health and Safety Code, Chapter 464.

§148.281. Admission Criteria.

§148.282. Admission Determination.

§148.283. Intake and Consent to Treatment.
§148.284. Client Orientation.
§148.291. Detoxification History and Assessment.
§148.292. Detoxification Plan.
§148.293. Detoxification Notes.
§148.301. Client History and Assessment.
§148.302. Treatment Plan.
§148.303. Progress Notes.
§148.304. Treatment Plan Reviews.
§148.321. Discharge Criteria.
§148.322. Discharge Plan.
§148.323. Discharge Summary.
§148.324. Discharge Follow-Up.

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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Karen Pettigrew
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SUBCHAPTER F. PHYSICAL PLANT

40 TAC §§148.331, 148.332, 148.341, 148.351 - 148.359, 148.372, 148.373

(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 Commission on Alcohol and Drug Abuse or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The repeal is proposed under the Texas Health and Safety Code, Chapter 464 which provides the Texas Commission on Alcohol and Drug Abuse with the authority to adopt rules licensing chemical dependency treatment facilities.

The code affected by the proposed repeals is the Texas Health and Safety Code, Chapter 464.

§148.331. General Environment.
§148.332. Emergency Evacuation.
§148.341. General Physical Plant Provisions.
§148.351. Required Inspections.
§148.352. Space Requirements.
§148.353. Exits.
§148.354. Fire Systems.
§148.355. Furniture and Supplies.
§148.356. Lighting.
§148.357. Plumbing.
§148.358. Sanitation.
§148.359. Ventilation.
§148.372. Physical Plant Requirements for Children.
§148.373. Physical Plant Requirements for Small Family Living Environments.

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 148. FACILITY LICENSURE

The Texas Commission on Alcohol and Drug Abuse proposes new §§148.1, 148.11, 148.21 - 148.28, 148.31, 148.101 - 148.103, 148.105, 148.106, 148.111 - 148.113, 148.115, 148.201 - 148.203, 148.205, 148.301 - 148.303, 148.311 - 148.313, 148.315, 148.316, 148.401, 148.403, 148.405, 148.406, 148.411 - 148.413, 148.421 - 148.424, 148.426, 148.501 - 148.504, and 148.601 - 148.607 concerning Facility Licensure.

Sections 148.1, 148.11, 148.21 - 148.28, and 148.31 of the proposed new rules define terms, state the purpose of the chapter, requirements for licensure and list persons who are exempt; provide a process for variances; delineate procedures for new license application, license renewal, changes in status, and closures; list the schedule for licensure fees; and establish the grounds for taking action against a licensee.

Sections 148.101 - 148.103, 148.105, 148.106, 148.111 - 148.113, and 148.115 of the proposed new rules establish requirements for facility organization, policies and procedures, standards of conduct, the general environment, required posting, documentation, client records, significant incident reports, and client transportation.

Sections 148.201, 148.202, 148.203, and 148.205 of the proposed new rules establish requirements for hiring practices, use of students and volunteers, and staff training.

Sections 148.301 - 148.303, 148.311 - 148.313, 148.315, and 148.316 of the proposed new rules list clients' rights; delineate standards for a client grievance procedure; describe procedures to be applied in cases of suspected abuse, neglect, or exploitation; require programs to define consequences for violating program rules; establish standards for appropriate use of client labor, restraint and seclusion, and searches; and require programs to have emergency response procedures.

Sections 148.401, 148.403, 148.405, 148.406, 148.411 - 148.413, 148.421 - 148.424, and 148.426 of the proposed new rules establish requirements for program services and staffing, including special provisions applicable to adolescent programs, correctional facilities, court commitment services; and describe standards for providing and documenting individualized client treatment.

Sections 148.501 - 148.504 of the proposed new rules establish standards for storage, inventory, and administration of medication.

Sections 148.601 - 148.607 of the proposed new rules establish standards for the physical plant, including required inspections, fire systems, emergency evacuation procedures, exits, space, and other provisions.

Jay Kimbrough, Executive Director, has determined that there will not be fiscal implications for state or local government as a

result of enforcing the proposed new rules for the first five-year period the proposed new rules are in effect.

Some licensed facilities may have a cost of up to $25 for each staff person not subject to criminal background checks under previous rules and between $20 - $40 per new hire for pre-employment drug screens.

The new rules require all detoxification to be provided under medical supervision. Although the commission anticipates that most programs already meet these standards, those who do not will experience a significant increase in costs related to physician oversight and 24-hour nursing care. Additional cost estimate is $90,000 per year per facility.

The new rules establish a maximum of 10 clients per counseling group. Based on current rules for funded providers, the commission estimates that many programs have up to 16 clients in a single group. Using this figure, the cost for providing one hour of group counseling would increase 50%.

Individual counseling requirements for Level IV have increased from one session per month to one hour per week. Under the new rules, the cost of providing level IV services will increase by approximately $17 per patient per week. However, third party reimbursement would also increase by $31 per patient per week (under commission rates).

The costs associated with the new rules might be partially offset by larger caseload allowances and less stringent direct care staff-to-client ratios.

Mr. Kimbrough has also determined that for each year of the first five years the new rules are in effect the anticipated public benefit will be a clearer and more effective licensure process for facilities providing chemical dependency treatment services. There will be no additional effect on small businesses.

Comments on the proposal may be submitted to Tamara Allen, Rules Coordinator, Texas Commission on Alcohol and Drug Abuse, P.O. Box 80529, Austin, Texas 78708-0529. Comments must be received no later than 30 days after the date the proposal is published in the *Texas Register.*

SUBCHAPTER A. DEFINITIONS

40 TAC §148.1

This new rule is proposed under the Texas Health and Safety Code, Chapter 464, which provides the Texas Commission on Alcohol and Drug Abuse with the authority to adopt rules licensing chemical dependency treatment facilities.

The code affected by the proposed new rule is the Texas Health and Safety Code, Chapter 464.

§148.1. Definitions.

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

(1) Abuse--An intentional, knowing, or reckless act or omission by an employee, volunteer, or other individual working under the auspices of a facility that causes or may cause death, emotional harm or physical injury to a client. Client abuse includes:

(A) any sexual activity between facility personnel and a client;

(B) corporal punishment;

(C) nutritional or sleep deprivation;

(D) efforts to cause fear;

(E) the use of any form of communication to threaten, curse, shame, or degrade a client;

(F) restraint that does not conform with these rules;

(G) coercive or restrictive actions taken in response to the client's request for discharge or refusal of medication or treatment that are illegal or not justified by the client's condition; and

(H) any other act or omission classified as abuse by the Texas Family Code, §261.001.

(2) Adolescent--An individual 13 through 17 years of age whose disabilities of minority have not been removed by marriage or judicial decree.

(3) Adult--An individual 18 years of age or older, or an individual under the age of 18 whose disabilities of minority have been removed by marriage or judicial decree.

(4) Advanced practice nurse--A registered nurse currently licensed in Texas who is prepared for advanced practice and approved by the Texas State Board of Nurse Examiners.

(5) Aftercare--Structured services provided after a client completes treatment that are designed to strengthen and support the client's recovery and prevent relapse.

(6) Assessment--An ongoing process through which the counselor collaborates with the client and others to gather and interpret information necessary for developing and revising a treatment plan and evaluating client progress toward achievement of goals identified in the treatment plan, including identification of the client's strengths, weaknesses, and problems/needs.

(7) Brief interventions--Short-term practices that aim to investigate a potential problem and motivate an individual to begin to do something about his or her substance abuse, either by natural, client-directed means or by seeking additional treatment. Brief interventions are described in "Brief Interventions and Brief Therapies for Substance Abuse" (Treatment Improvement Protocol 34), published by the Center for Substance Abuse Treatment.

(8) Brief therapy--A systematic, focused process that relies on assessment, client engagement, and rapid implementation of change strategies. Brief therapies are described in "Brief Interventions and Brief Therapies for Substance Abuse" (Treatment Improvement Protocol 34), published by the Center for Substance Abuse Treatment.

(9) Chemical dependency--Substance abuse and substance dependence as defined in the current edition of the Diagnostic and Statistical Manual of Mental Disorders, published by the American Psychiatric Association.

(10) Chemical dependency counseling--A collaborative process conducted face-to-face that facilitates the client's progress toward mutually determined treatment goals and objectives as described in "Addiction Counseling Competencies: The Knowledge, Skills, and Attitudes of Professional Practice" published by the Center for Substance Abuse Treatment.

(11) Chemical dependency education--A planned, structured presentation of information related to chemical dependency that is provided by counselors and includes a discussion of the material presented and opportunities for questions. It includes, but is not limited to, information about physiological and psychological effects, emotional and social deterioration, rehabilitation and relapse, and related dysfunctional family relationships.

(12) Chemical dependency treatment--A planned, structured, and organized program designed to initiate and promote a

person's chemical-free status or to maintain the person free of illegal drugs. It includes, but is not limited to, the application of planned procedures to identify and change patterns of behavior related to or resulting from chemical dependency that are maladaptive, destructive, or injurious to health, or to restore appropriate levels of physical, psychological, or social functioning lost due to chemical dependency.

(13) Child abuse and neglect--Any act or omission that constitutes abuse or neglect of a child by a person responsible for a child's care, custody, or welfare as defined in the Texas Family Code §261.001.

(14) Client--An individual who has been admitted to a chemical dependency treatment program and is currently receiving services.

(15) Commission--The Texas Commission on Alcohol and Drug Abuse.

(16) Consenter--The individual legally responsible for giving informed consent for a client. Unless otherwise provided by law, a legally competent adult is his or her own consenter, and the consenter for an adolescent is the adolescent's parent, guardian, or conservator.

(17) Counselor--A qualified credentialed counselor, graduate, or counselor intern.

(18) Counselor intern (CI)--A person registered with the commission who is pursuing a course of training in chemical dependency counseling at an approved clinical training institution or a person enrolled at an accredited institution of higher education completing an internship at a treatment program as part of a degree or certificate program in chemical dependency counseling.

(19) Direct care staff--Staff responsible for providing treatment, care, supervision, or other direct client services that involve a significant amount of face-to-face contact.

(20) Discharge--Formal, documented termination from a treatment facility. Discharge occurs when a client successfully completes treatment goals, is transferred to another facility, leaves against professional advice, or is terminated for other reasons.

(21) DSM-IV--The Diagnostic and Statistical Manual of Mental Disorders, Fourth Edition-Text Revision, published by the American Psychiatric Association. Any reference to DSM-IV is understood to mean the most recent edition of the Diagnostic and Statistical Manual of Mental Disorders.

(22) Ensure--Take all reasonable and necessary steps to achieve results.

(23) Exploitation--The illegal or improper use of a client or a client's resources for monetary or personal benefit, profit, or gain by an employee, volunteer, or other individual working under the auspices of a facility.

(24) Facility--A legal entity with a single governing body, a single administration, and a single staff that provides chemical dependency treatment.

(25) Graduate--An individual who has successfully completed the 270 hours of education, 300 hour practicum, and 4,000 hours of supervised work experience required to become a licensed chemical dependency counselor in the state of Texas but has neither received a license nor failed the examination the maximum number of times allowed by law.

(26) HIV--Human Immunodeficiency Virus infection.

(27) Individual service day--A day on which a specific client receives services.

(28) Intake--The administrative process for gathering information about a prospective client and giving a prospective client information about the facility and its treatment and services.

(29) Licensed chemical dependency counselor--A counselor licensed by the Texas Commission on Alcohol and Drug Abuse.

(30) Licensed health professional--A physician, physician assistant, advance practice nurse, or registered nurse, or licensed vocational nurse authorized to practice in the state of Texas.

(31) Life skills training--A formalized program of training, based upon a written curriculum and provided by counselors, designed to help clients with communication and social interaction, stress management, problem solving, decision making, and managing daily responsibilities.

(32) Mechanical restraint--Use of a physical device to control or restrict a person's physical movement or actions.

(33) Medical emergency--A medical condition with acute symptoms of sufficient severity that a prudent layperson could reasonably expect the absence of immediate medical attention to result in death or serious harm.

(34) Medication error--Medication not given according to the written order by the prescribing professional or as recommended on the medication label. Medication errors include duplicate doses, missed doses, and doses of the wrong amount or drug.

(35) Motivational Interviewing--A therapeutic style intended to help counselors work with clients to address their ambivalence and enhance motivation for positive change. Motivational interviewing is described in "Enhancing Motivation for Change in Substance Abuse Treatment" (Treatment Improvement Protocol 35), published by the Center for Substance Abuse Treatment.

(36) Neglect--A negligent act or omission by an employee, volunteer, or other individual working under the auspices of a facility, that causes or may cause death or substantial emotional harm or physical injury to a client. Examples of neglect include, but are not limited to:

(A) failure to provide adequate nutrition, clothing, or health care;

(B) failure to provide a safe environment free from abuse;

(C) failure to maintain adequate numbers of appropriately trained staff;

(D) failure to establish or carry out an appropriate individualized treatment plan; and

(E) any other act or omission classified as neglect by the Texas Family Code, §261.001.

(37) Person--An individual, firm, partnership, corporation, association, or other business or professional entity.

(38) Personal restraint--Physical contact to control or restrict a person's physical movement or actions.

(39) Personnel--Members of the governing body, employees, contract providers, consultants, agents, representatives, volunteers, and other individuals working on behalf of the facility through a formal or informal agreement.

(40) Private practice--Unless otherwise defined by a licensing board, an individual's professional counseling practice in which the individual:

(A) provides all treatment services personally;

(B) does not report to a supervisor or utilize subordinate counseling staff;

(C) is a licensed chemical dependency counselor or exempt from licensure.

(41) Program--A specific level of chemical dependency treatment delivered to a specific client population at a specific location.

(42) Psychiatric emergency--A condition that requires immediate intervention and/or medical attention to prevent an individual from presenting an immediate danger to self or others, or which causes the individual to be incapable of controlling, knowing, or understanding the consequences of his or her actions.

(43) Qualified credentialed counselor (QCC)--A licensed chemical dependency counselor or one of the professionals listed below who is licensed and in good standing in the state of Texas and has at least 2000 hours of supervised experience treating substance use disorders:

(A) licensed professional counselor (LPC);

(B) licensed master social worker (LMSW);

(C) licensed marriage and family therapist (LMFT);

(D) licensed psychologist;

(E) licensed physician;

(F) registered nurse (RN) holding the credential of certified addictions registered nurse (CARN); and

(G) advance practice nurse recognized by the Board of Nurse Examiners as a clinical nurse specialist or nurse practitioner with a specialty in psyche-mental health (APN-P/MH).

(44) Refer--Identify appropriate services and provide information and assistance needed to access them.

(45) Residential site--A site owned, leased, or operated by the facility where clients who are receiving chemical dependency treatment or aftercare stay in a supervised 24-hour living environment.

(46) Retaliate--Adverse actions taken to punish or discourage a person who reports a violation or cooperates with an investigation, inspection, or proceeding. Such actions include but are not limited to suspension or termination of employment, demotion, discharge, transfer, discipline, restriction of privileges, harassment, and discrimination.

(47) Screening--The process by which a client is determined appropriate and eligible for admission to a particular program and through which the counselor, client, and available significant others determine the most appropriate initial course of action, given the client's needs and characteristics and the available resources within the community.

(48) Seclusion--Isolating a client in a room from which exit is prevented.

(49) Sexual exploitation--A pattern, practice, or scheme of conduct that can reasonably be construed as being for the purposes of sexual arousal or gratification or sexual abuse of any person. It may include sexual contact, a request for sexual contact, or a representation that sexual contact or exploitation is consistent with or part of treatment.

(50) Staff--Individuals working for the facility in exchange for money or other compensation.

(51) Unethical conduct--Conduct prohibited by the ethical standards adopted by state or national professional organizations or by rules established by a profession's state licensing agency.

(52) Unprofessional conduct--An act or omission that violates commonly accepted standards of behavior for individuals or organizations.

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

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SUBCHAPTER B. LICENSURE INFORMATION

40 TAC §§148.11, 148.21 - 148.28, 148.31

This new rule is proposed under the Texas Health and Safety Code, Chapter 464, which provides the Texas Commission on Alcohol and Drug Abuse with the authority to adopt rules licensing chemical dependency treatment facilities.

The code affected by the proposed new rule is the Texas Health and Safety Code, Chapter 464.

§148.11. Purpose.

The purpose of these rules is to protect the health, safety, and welfare of chemically dependent clients and to ensure they receive adequate and appropriate treatment.

§148.21. License Required.

(a) A facility providing chemical dependency treatment in Texas shall have a license issued by the commission unless it is:

(1) a facility maintained or operated by the federal government or its agencies;

(2) a facility directly operated by the state of Texas;

(3) a chemical dependency treatment program approved by the Texas Department of Health within a licensed general hospital, specialty hospital or private psychiatric facility;

(4) a pharmacotherapy program licensed by the Texas Department of Health;

(5) an educational program for intoxicated drivers;

(6) an individual who personally provides support services to chemically dependent persons but does not offer or purport to offer a chemical dependency treatment program;

(7) the private practice of a licensed health care practitioner or licensed chemical dependency counselor who personally renders individual or group services within the scope of the practitioner's license and in the practitioner's individual office;

(8) a religious organization registered under Chapter 145 of this title (relating to Faith-Based Chemical Dependency Treatment Programs); or

(9) a 12-step or similar self-help chemical dependency recovery program:

(A) that does not offer or purport to offer a chemical dependency treatment program;

(B) that does not charge program participants; and

(C) in which program participants may maintain anonymity.

(b) Facilities providing chemical dependency treatment for clients who are diagnosed with both a substance use disorder and a mental health disorder must be licensed by the commission unless exempt under subsection (a) of this section.

(c) The facility shall have written approval for each residential site it operates.

(d) A license is not transferable to a separate legal entity.

§148.22. Variances.

(a) The commission's executive director or designee may grant a temporary variance to a facility or group of facilities.

(b) To be eligible for a variance, a facility shall show:

(1) an alternative method is used to meet the intent of the rule; and

(2) the variance will not jeopardize the health, safety, or welfare of clients or compromise client treatment.

(c) The commission's Executive Director or designee will determine if an alternative is equivalent to the written rule and when it will be accepted during licensure reviews.

(d) A variance cannot be granted for a statutory requirement.

§148.23. New Licensure Application.

(a) An applicant for initial licensure shall submit a complete licensure application with an application fee.

(b) Within 45 days of receipt of the application, the commission shall notify the applicant that the application is complete or specify the additional information required.

(c) The applicant must submit all requested materials and correct any deficiencies identified by the commission within the specified time frames.

(d) If an on-site inspection is necessary, the commission will conduct the inspection within 45 days of receiving a satisfactory version of requested materials. The commission will notify the provider of any deficiencies identified during an on-site inspection within 30 days, and the provider must provide evidence of sufficient corrective action within the timeframe specified in the inspection report.

(e) The commission will issue the license within 45 days of receiving all required evidence of compliance and all required fees.

(f) If an applicant fails to provide evidence of compliance within six months from the date the application is received, the application will be denied. Six months after the date of denial, the applicant may reapply by submitting a new application and application fee.

(g) The applicant shall not provide chemical dependency treatment services before receiving written notice of licensure approval.

(h) The facility shall display the licensure certificate prominently at the headquarters location and each approved residential site.

§148.24. Licensure Renewal.

(a) A license issued by the commission expires at the end of two years.

(b) The licensee shall file an application update and pay the renewal fee before the license expires. Notice of less than 60 days may delay approval.

(c) The facility shall not provide services after the license expiration date unless it has submitted the application update and fee by the date of expiration.

§148.25. Changes in Status.

(a) A facility shall submit the appropriate application and fees and receive written approval before adding a new Level I service, adding a new residential site, moving to a new residential location, or increasing the number of beds in a residential program.

(b) If the facility fails to provide evidence of compliance within six months from the date the application for a change in status is received, the application will be denied. Six months after the date of denial, the facility may reapply by submitting a new application and application fee.

(c) The facility shall notify the commission in writing of each location where outpatient services will be provided and shall not provide services at a new outpatient location until it has received written acknowledgement that the commission has received the notice.

(d) The provider must also notify the commission's licensure department in writing before:

(1) adding a new Level II, III, or IV service;

(2) providing services to a new age group or gender;

(3) changing the organization's name; or

(4) increasing the number of outpatient slots.

(e) The provider must notify the commission in writing within 30 days if it:

(1) closes a residential site or outpatient location;

(2) decreases the number of residential beds or outpatient slots; or

(3) discontinues a level of service.

§148.26. Closure.

The facility shall notify the commission's licensure department in writing within 30 days when it closes a chemical dependency treatment program. The facility shall ensure that all clients are appropriately discharged or transferred before the program closes and make appropriate arrangements for properly maintaining client records in compliance with confidentiality regulations.

§148.27. Licensure Review.

The commission may conduct a scheduled or unannounced inspection or request materials for review at any time. The facility shall allow commission staff to access the facility's grounds, buildings, and records and to interview or survey members of the governing body, staff, and clients. The facility shall make all property, records, and documents related to the licensure application available for examination, copy, or reproduction during normal business hours, on or off premises.

§148.28. Licensure Fees.

(a) A facility shall pay the full licensure fee for any licensure period during which it provides chemical dependency treatment. Failure to notify the commission's licensure department of closure does not excuse a licensee from paying fees.

(b) Fees shall be paid in full by commercial or agency check, cashier's check, or money order.

(c) The schedule for licensure fees is:

(1) application fee--$100;

(2) base fee--$1000;

(3) fee per residential site--$100;

(4) fee per bed--$30;

(5) maximum fee per facility (excluding application fees)--$4,000.

(d) A $25 fee is charged for a printed list of licensed facilities, a set of mailing labels for licensed facilities, or a replacement certificate.

(e) Licensure fees are not refundable.

§148.31. Action Against a License.

(a) The commission shall deny, suspend, revoke, or refuse to renew a license, or place on probation a facility whose license has been suspended, impose an administrative penalty, or reprimand a facility if an applicant, licensee, owner, member of the governing body, administrator, or clinical staff member of the facility:

(1) has a documented history of client abuse or neglect;

(2) violates any provision of the Texas Health and Safety Code, Chapter 464, or any other applicable statute, or a commission rule; or

(3) owes the commission money.

(b) The commission will determine the length of probation or suspension. The commission may hold a hearing at any time and revoke probation or suspension.

(c) Surrender or expiration of a license does not interrupt an investigation or action taken against a license. The facility is not eligible to regain the license until all outstanding investigations, disciplinary proceedings, or hearings are resolved.

(d) A facility whose license has been revoked is not eligible to apply for licensure until two years have passed since the date of revocation.

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

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SUBCHAPTER C. FACILITY MANAGEMENT

40 TAC §§148.101 - 148.103, 148.105, 148.106, 148.111 - 148.113, 148.115

This new rule is proposed under the Texas Health and Safety Code, Chapter 464, which provides the Texas Commission on Alcohol and Drug Abuse with the authority to adopt rules licensing chemical dependency treatment facilities.

The code affected by the proposed new rule is the Texas Health and Safety Code, Chapter 464.

§148.101. Facility Organization.

(a) Governing body. The facility shall have a governing body with legal authority to operate in the state of Texas. If the organization is governed by a board of directors, the board shall meet at least quarterly and maintain minutes for each meeting.

(b) Organizational structure. The facility shall maintain current documentation of the organization's staffing structure, including lines of supervision and the number of full time equivalent staff members for each position.

(c) Job descriptions. The facility shall have a current job description for each position that specifies job duties and minimum qualifications.

§148.102. Policies, Procedures, and Licensure Rules.

(a) The facility shall adopt and implement written policies and procedures specified in this section. The policies and procedures shall contain sufficient detail to ensure compliance with the referenced commission rules.

(b) All programs must have policies and/or procedures related to the following rules:

(1) Section 148.103 of this title (relating to Standards of Conduct);

(2) Section 148.112 of this title (relating to Client Records);

(3) Section 148.113 of this title (relating to Significant Incident Reports);

(4) Section 148.115 of this title (relating to Client Transportation);

(5) Section 148.302 of this title (relating to Client Grievances);

(6) Section 148.303 of this title (relating to Client Abuse, Neglect, and Exploitation); and

(7) Section 148.313 of this title (relating to Restraint and Seclusion).

(c) Residential programs must also have procedures related to the following rules:

(1) Section 148.315 of this title (relating to Responding to Emergencies);

(2) Section 148.316 of this title (relating to Searches);

(3) Section 148.411 of this title (relating to Additional Requirements for Adolescent Programs), subsection (l), if applicable;

(4) Sections 148.501 - 148.504 of this title (relating to General Provisions for Medication; Medication Storage; Medication Inventory and Disposal; and Administration of Medication); and

(5) Section 148.603 of this title (relating to Emergency Evacuation).

(d) The policy and procedure manual shall be current, in compliance with current licensure rules, individualized to the program, and easily accessible to all staff at all times.

§148.103. Standards of Conduct.

(a) The facility and all of its personnel shall protect clients' rights and provide adequate and appropriate treatment.

(b) Neither the facility nor any of its personnel shall:

(1) provide services while under the influence of alcohol or illegal drugs;

(2) commit an illegal, unprofessional or unethical act (including client abuse, neglect, or exploitation);

(3) assist or knowingly allow another person to commit an illegal, unprofessional, or unethical act;

(4) knowingly provide false or misleading information;

(5) falsify, alter, destroy, or omit significant information from required reports and records or interfere with their preservation;

(6) retaliate against anyone who reports a violation or cooperates during a review, inspection, investigation, hearing, or other related activity; or

(7) interfere with commission reviews, inspections, investigations, hearings, or related activities. This includes taking action to discourage or prevent someone else from cooperating with the activity.

(c) Any person associated with the facility who receives an allegation or has reason to suspect that a person associated with the facility has been, is, or will be engaged in illegal, unethical, or unprofessional conduct shall immediately inform the commission's investigations division and the facility's chief executive officer or designee. If the allegation involves the chief executive officer, it shall be reported to the commission and the facility's governing body.

(d) Neither the facility nor any of its personnel shall enter into a personal or business relationship with a person who receives services from the facility until at least two years after the service recipient's discharge.

(e) The facility and its personnel shall comply with Chapter 164 of the Texas Health and Safety Code (relating to Treatment Facilities Marketing and Admission Practices).

(f) The facility shall have written policies on staff conduct that comply with this section.

§148.105. General Environment.

(a) The facility shall comply with the Americans with Disabilities Act. The facility shall maintain documentation that it has conducted a self-inspection to evaluate compliance and implemented a corrective action plan within reasonable time frames to address identified deficiencies.

(b) The facility shall provide a safe, clean, and well-maintained environment.

(c) The facility shall have adequate space, furniture, and supplies.

(d) The facility shall have private space for confidential interactions.

(e) The facility shall prohibit smoking inside facility buildings and vehicles and during structured program activities. Staff shall not provide or facilitate client access to tobacco products.

(f) The facility shall prohibit firearms and other weapons, alcohol, illegal drugs, illegal activities, and violence on the program site.

§148.106. Required Postings.

(a) The facility shall post a legible copy of the following documents in a prominent public location that is readily available to clients, visitors, and staff:

(1) the Client Bill of Rights;

(2) the commission's current poster on reporting complaints and violations; and

(3) the client grievance procedure.

(b) These documents shall be displayed in English and in a second language at every location where services are provided.

§148.111. General Documentation Requirements.

(a) The facility shall keep complete, current documentation.

(b) All documents shall be factual and accurate.

(c) All documents and entries shall be dated and authenticated by the person responsible for the content.

(1) Authentication of paper records shall be an original signature that includes at least the first initial, last name and credentials, if applicable. Initials may be used if the client record includes a document that identifies all individuals initialing entries, including the full printed name, signature, credentials, and initials.

(2) Authentication of electronic records shall be a cryptography-based digital signature.

(d) Documentation shall be permanent and legible.

(e) When it is necessary to correct a client record, incident report, or other legal document, the error shall be marked through with a single line, dated, and initialed by the writer.

(f) Records shall contain only those abbreviations included on the facility's list of approved abbreviations.

§148.112. Client Records.

(a) The facility shall establish and maintain a single record for every client at the time of admission. The content of client records shall be complete, current, and well organized.

(b) The facility shall protect all client records and other client-identifying information from destruction, loss, tampering, and unauthorized access, use or disclosure.

(1) All active client records shall be stored at the facility and inactive records in off-site storage shall be fully protected.

(2) Information that identifies applicants shall be protected to the same degree as information that identifies clients.

(3) Electronic client information shall be protected to the same degree as paper records and shall have a reliable backup system.

(c) The facility shall limit access to the records to staff with job duties requiring their use.

(d) Staff shall keep records locked at all times unless an authorized person is continuously present in the immediate area.

(e) The facility shall ensure that all client records can be located and retrieved promptly at all times.

(f) The facility shall comply with federal and state confidentiality laws and regulations, including 42 CFR Part 2 (the federal regulations on the Confidentiality of Alcohol and Drug Abuse Client Records) and Texas Health and Safety Code, Chapter 611 (relating to Mental Health Records). The facility shall also protect the confidentiality of HIV information as required in Texas Health and Safety Code §81.103 (relating to Confidentiality; Criminal Penalty).

(g) The facility shall not deny clients access to the content of their records except as provided by the Texas Health and Safety Code, §611.0045.

(h) Client records shall be kept for at least five years. Records of adolescent clients shall be kept for at least five years after the client turns 18.

(i) If client records are microfilmed, scanned, or destroyed, the facility shall take steps to protect confidentiality. The facility shall maintain a record of all client records destroyed on or after September 1, 1999, including the client's name, record number, birthdate, and dates of admission and discharge.

§148.113. Significant Incident Reports.

(a) Staff shall complete an incident report for all significant client incidents, including:

(1) incidents of actual or suspected abuse, neglect, exploitation, or other violation of client rights;

(2) accidents and injuries;

(3) medical emergencies;

(4) psychiatric emergencies;

(5) medication errors;

(6) illegal or violent behavior;

(7) loss of a client record;

(8) personal or mechanical restraint or seclusion;

(9) release of confidential information without client consent;

(10) fire or significant disruption of program operation (including disruption due to insufficient staffing);

(11) death of an active outpatient or residential client (on or off the program site); and

(12) clients absent without permission from a residential program.

(b) The incident report shall be completed within 24 hours and shall provide a detailed description of the event, including the date, time, location, individuals involved, and action taken.

(c) The person writing the report shall sign it and record the date and time it was completed.

(d) Incident reports shall be stored in a central file.

(e) The facility shall have a designated individual responsible for reviewing incident reports. When indicated, the facility shall implement corrective action to prevent similar incidents from occurring.

(f) Alleged client abuse, neglect, and exploitation shall be reported to the commission's investigations division as described in §148.303 of this title (relating to Client Abuse, Neglect, and Exploitation).

(g) The following incidents must be reported to the commission's investigations division within 72 hours:

(1) all fires;

(2) substantial disruption of program operation;

(3) death of an active client (on or off the program site);

(4) suicide attempt by an active client (on or off the program site);

(5) medical and psychiatric emergencies;

(6) illegal or violent behavior on the program site; and

(7) use of personal or mechanical restraint or seclusion.

(h) The facility shall report all illegal drugs and other contraband found on the facility site to law enforcement authorities.

§148.115. Client Transportation.

The facility shall have a written policy on the use of facility vehicles and/or staff to transport clients and shall ensure that vehicles used to transport clients are maintained and operated safely.

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

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SUBCHAPTER D. PERSONNEL AND STAFF DEVELOPMENT

40 TAC §§148.201 - 148.203, 148.205

This new rule is proposed under the Texas Health and Safety Code, Chapter 464, which provides the Texas Commission on Alcohol and Drug Abuse with the authority to adopt rules licensing chemical dependency treatment facilities.

The code affected by the proposed new rule is the Texas Health and Safety Code, Chapter 464.

§148.201. Hiring Practices.

(a) A facility using counselor interns shall be registered with the commission as a clinical training institution and comply with all applicable requirements.

(b) The facility shall verify the current status of all required credentials with the credentialing authority by phone or letter.

(c) The facility shall comply with all applicable laws, including the Texas Civil Practice and Remedies Code, §81.003, which relates to employment reference checks.

(d) The facility shall obtain the results of a statewide criminal background check from the Department of Public Safety on all staff within two weeks of the date of hire. The facility shall use the criteria listed in the Texas Occupations Code, §53.022 and §53.023 to evaluate criminal history reports and make related employment decisions.

(e) The facility shall require all prospective staff to pass a pre-employment drug test that meets criteria established by the commission.

(f) The facility shall maintain a personnel file for each staff member with documentation demonstrating compliance with this section.

§148.202. Students and Other Volunteers.

(a) The facility shall ensure that students and other volunteers comply with standards of performance and conduct.

(b) Volunteers shall be appropriate and qualified to perform assigned duties.

(c) Volunteers shall receive orientation and training appropriate to their qualifications and responsibilities and shall be appropriately supervised by staff.

§148.203. Staff Training.

(a) Each staff person shall complete initial training during the first 30 calendar days of employment. The initial training shall include discussion of licensure rules relating to:

(1) client rights;

(2) client grievance procedures;

(3) confidentiality of client-identifying information;

(4) client abuse, neglect, and exploitation;

(5) requirements for reporting abuse, neglect, and other serious incidents;

(6) standards of conduct; and

(7) emergency and evacuation procedures.

(b) The facility shall provide training in issues relating to abuse, neglect, and exploitation and illegal, unprofessional, and unethical conduct to all staff who have any client contact.

(1) This training shall comply with the interagency memorandum of understanding on abuse training (see §148.205 of this title (relating to Training Requirements Relating to Abuse, Neglect, and Unprofessional or Unethical Conduct)).

(2) Full time staff in residential programs must receive at least eight hours every year, and full time staff in outpatient programs must receive at least two hours every year. Hours of training for part time staff may be determined by the facility based on the number of hours worked and the amount of direct client contact.

(c) All direct care staff shall complete four hours of training related to tuberculosis, HIV, Hepatitis C, and sexually transmitted diseases during the first 90 days of employment.

(1) The training must be based on the Texas Commission on Alcohol and Drug Abuse Workplace and Education Guidelines for HIV and Other Communicable Diseases.

(2) The facility shall provide all staff with updated information about these diseases every two years.

(d) All direct care staff in residential programs shall have current certification in CPR within 90 days of hire. Licensed health professionals are exempt, and personnel in licensed medical facilities are exempt if emergency resuscitation equipment and trained response teams are available 24 hours a day.

(e) All direct care staff in residential programs and in Level I, II, and III outpatient programs shall have at least four hours of face-to-face training in nonviolent crisis intervention during the first 90 days of employment.

(1) The instructor shall have successfully completed a course for crisis intervention instructors or have equivalent training and experience.

(2) The training shall teach staff how to use verbal and other non-physical methods for prevention, early intervention, and crisis management.

(f) All direct care staff working in programs that use restraint or seclusion shall have face-to-face training and competency in the safe methods of the specific procedures used within 90 days of hire. This includes all direct care staff working in adolescent residential programs, detoxification programs, or programs that accept emergency detentions. The training must last approximately four hours and must include hands-on practice under the supervision of a qualified instructor.

(g) Each staff member who conducts intakes or screens applicants for admission shall complete eight hours of training in the program's intake and screening procedures annually.

(1) The first eight hours must be completed during the first 90 days of employment and before a staff member conducts intakes or screens applicants for admission.

(2) The training shall cover the DSM-IV diagnostic criteria for substance-related disorders, and shall also include at least two hours annually on other mental health diagnoses.

(h) All staff members responsible for supervising clients in self-administration of medication who are not credentialed to administer medication shall complete at least two hours of documented training from a physician, pharmacist, physician assistant, or registered nurse before performing this task. The training is required one time and must be completed during the first 90 days of employment. It shall include:

(1) prescription labels;

(2) medical abbreviations;

(3) routes of administration;

(4) use of drug reference materials;

(5) storage, maintenance, handling, and destruction of medication;

(6) documentation requirements; and

(7) procedures for medication errors, adverse reactions, and side effects.

(i) All counselors working in adolescent programs shall have or receive at least eight hours of specialized education or training in emotional, mental health and chemical dependency problems specific to adolescents and appropriate adolescent treatment strategies. This training must be completed within the first 90 days of employment.

(j) The amount and type of training for contract personnel shall be based on the amount of time spent at the facility, degree of client contact, and individual qualifications and responsibilities.

(k) Unless otherwise specified, video, manual, or computer-based training is acceptable if the supervisor discusses the material with the staff person in a face-to-face session to highlight key issues and answer questions.

(l) The facility may accept documented training from another organization completed during the year prior to employment if it meets commission requirements.

(m) The facility shall maintain documentation of all required training for each staff person.

§148.205. Training Requirements Relating to Abuse, Neglect, and Unprofessional or Unethical Conduct.

(a) Introduction. The commission is a party to a joint memorandum of understanding (MOU) with the Texas Department of Health and the Texas Department of Mental Health and Mental Retardation concerning training requirements for identifying abuse, neglect, and unprofessional or unethical conduct in health care facilities.

(b) Memorandum of understanding (MOU). The purpose of the MOU is to implement certain requirements enacted by Acts 1993, 73rd Legislature, Regular Session, Chapter 573 (Senate Bill

210), which amends the Texas Health and Safety Code, Chapter 161, by adding Subchapter K, relating to, "abuse, neglect, and unprofessional or unethical conduct in health care facilities." Section 161.133 requires the Texas Board of Mental Health and Mental Retardation (TXMHMR), the Texas Board of Health (TDH) and the Texas Commission on Alcohol and Drug Abuse (TCADA) to adopt by rule a joint MOU, as set out below, detailing the health facility inservice training requirement for identifying patient abuse or neglect and illegal, unprofessional, or unethical conduct by or in the health care facility. In accordance with the referenced legislation, each health care facility is required to annually provide, as a condition of continued licensure, a minimum of eight hours of inservice training designed to assist employees and health care professionals associated with the facility in identifying patient abuse or neglect and illegal, unprofessional, or unethical conduct by or in the facility, as such terms are defined in Health and Safety Code, Subchapter K, Chapter 161. Accordingly, TXMHMR, TDH, and TCADA agree as follows.

(c) Application. If a health care facility provides inpatient mental health, chemical dependency, or comprehensive medical rehabilitation services in a separate and distinct unit of the hospital, the requirements of this MOU shall apply to all employees and associated health care professionals who are assigned to, or who provide services on such units.

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

(1) Health care facility--An inpatient mental health facility, inpatient treatment facility, or hospital that provides comprehensive medical rehabilitation services.

(2) Hospital that provides comprehensive medical rehabilitation services--Includes a general hospital and a special hospital.

(3) Illegal conduct--Conduct prohibited by law.

(4) Inpatient mental health facility--As defined in Texas Health and Safety Code Chapter §571.003, a mental health facility that can provide 24-hour residential and psychiatric services and that is:

(A) a facility operated by the TXMHMR;

(B) a private mental hospital licensed by the TDH;

(C) a community center;

(D) a facility operated by a community center or other entity designated by the TXMHMR to provide mental health services;

(E) an identifiable part of a general hospital in which diagnosis, treatment, and care for persons with mental illness is provided and that is licensed by the TDH; or

(F) a hospital operated by a federal agency.

(5) Inpatient treatment facility--A treatment facility that can provide 24-hour residential and chemical dependency services and that is:

(A) a public or private hospital;

(B) a detoxification facility;

(C) a primary care facility;

(D) an intensive care facility;

(E) a long-term care facility;

(F) a community mental health center;

(G) a recovery center;

(H) a halfway house;

(I) an ambulatory care facility; or

(J) any other facility that offers or purports to offer chemical dependency treatment.

(6) Unethical conduct--Conduct prohibited by the ethical standards adopted by state or national professional organizations for their respective professions or by rules established by the state licensing agency for the respective profession.

(7) Unprofessional conduct--Conduct prohibited under rules adopted by the state licensing agency for the respective profession.

(e) Minimum standards of training program.

(1) The inservice training program shall address, at a minimum, the following elements:

(A) Applicable laws and regulations governing patient abuse and neglect, as well as policies and procedures adopted by the governing board of the facility with regard to patient abuse and neglect.

(B) Applicable laws and regulations governing illegal, unprofessional, and unethical conduct, as well as policies and procedures adopted by the governing board of the facility with regard to illegal, unprofessional, and unethical conduct.

(C) Applicable laws and regulations governing patient rights, as well as policies and procedures adopted by the governing board of the facility with respect to patient rights.

(D) Specific types of patient abuse and neglect and how to identify when abuse or neglect is occurring or has occurred.

(E) Specific types of illegal, unprofessional, and unethical conduct and how to identify when illegal, unprofessional, or unethical conduct is occurring or has occurred.

(F) Requirements and procedures for reporting an incident of patient abuse and neglect, together with the applicable penalties for non-reporting.

(G) Requirements and procedures for reporting illegal, unprofessional, and unethical conduct, together with the applicable penalties for non-reporting.

(H) The legal protection afforded to employees and associated health care professionals who report patient abuse and neglect and illegal, unprofessional, and unethical conduct.

(2) In addition, the training program may include training designed to improve patient care or to prevent abuse or neglect and illegal, unprofessional, and unethical conduct from occurring. This additional training may be customized according to the type of tasks performed by the various employees and health care professionals, their amount of direct patient contact, and the likelihood of their being exposed to patient abuse or neglect and illegal, unprofessional, or unethical conduct. Courses related to improving patient care may include things such as the "Prevention and Management of Aggressive Behavior" (PMAB) or other programs designed to deal with aggressive behavior and crisis intervention, some aspects of existing employee orientation courses, and continuing education courses (continuing medical education, continuing nursing education, continuing education unit) related to improving patient care.

(3) Each full-time employee or associated health care professional shall receive a minimum of eight hours inservice training on

identifying patient abuse or neglect and illegal, unprofessional, or unethical conduct. The inservice training program shall include the topics outlined in paragraph (1) of this subsection; in addition, the training may include other topics as outlined in paragraph (2) of this subsection.

(4) Although each part-time employee or associated health care professional must receive training as outlined in paragraphs (1) and (2) of this subsection, the amount and type of training provided to each part-time employee or associated health care professional may be determined based on a number of factors, including, but not limited to:

(A) the amount of direct contact the employee or associated health care professional has with patients;

(B) the amount of time the employee or associated health care professional spends at the health care facility (for example, a consultant who is at the hospital 20 hours a week versus a consultant who works at the health care facility once a month).

(5) An interim training program that does not meet the minimum requirements set forth in paragraph (1), of this subsection is acceptable until June 1, 1994, to allow for development of a training program that meets the minimum standards of this MOU.

(f) Means of reporting compliance with requirements.

(1) Each facility subject to the inservice training requirement shall keep a record of the exact content of training provided.

(2) Each facility subject to the inservice training requirement shall furnish documentation to show that each employee has completed the required training. Documentation shall include:

(A) course title;

(B) instructor's name;

(C) date(s) of course(s);

(D) employee or associate health professional's social security number;

(E) signature block for employee or associated health care professional to verify that training was received and that he/she is aware of the training objectives; and

(F) length of program presented.

(3) The health care facility shall keep the records required in paragraphs (1) and (2) of this subsection for five years.

(4) A health care facility that utilized an independent contracting agency that supplies health care professionals and/or contract personnel to serve on a full or part time basis in a health care facility may rely on written representations by the independent contracting agency that such health care professionals and/or contract personnel have received inservice training on identifying patient abuse or neglect and illegal, unprofessional or unethical conduct. An independent contracting agency shall meet all other requirements of this MOU and shall supply evidence documenting each healthcare professional's and/or contract personnel's compliance with such requirements.

(5) Employees and associated health care professionals may fulfill all or some of the training requirement by attending a continuing education program on patient abuse or neglect or illegal, unprofessional, or unethical conduct, provided such program meets the minimum requirements set forth in subsection (e)(1) of this section. In addition, briefings regarding the Code of Ethics for the appropriate discipline provided by the discipline head or other individual may be used to fulfill a portion of the requirement.

(6) Each health care facility shall be in compliance with the annual requirement if it can demonstrate that each employee or associated health care professional received the required training over a twelve month period, and that the health care facility provided the required eight hours of inservice training over the 12-month period.

(g) Miscellaneous provisions.

(1) This memorandum of understanding shall be jointly adopted as a rule by the Texas Board of Mental Health and Mental Retardation, the Texas Board of Health, and the Texas Commission on Alcohol and Drug Abuse and shall be effective upon final joint adoption of the rules by the signatory agencies.

(2) This memorandum may be amended at any time upon the mutual agreement of the agencies and such amendments shall also be made to the jointly adopted rules.

(3) Each agency shall review and modify the memorandum as necessary not later than the last month of each state fiscal year.

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 June 8, 2001.

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Karen Pettigrew
General Counsel
Texas Commission on Alcohol and Drug Abuse
Earliest possible date of adoption: July 22, 2001
For further information, please call: (512) 349-6607

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SUBCHAPTER E. CLIENT RIGHTS

40 TAC §§148.301 - 148.303, 148.311 - 148.313, 148.315, 148.316

This new rule is proposed under the Texas Health and Safety Code, Chapter 464, which provides the Texas Commission on Alcohol and Drug Abuse with the authority to adopt rules licensing chemical dependency treatment facilities.

The code affected by the proposed new rule is the Texas Health and Safety Code, Chapter 464.

§148.301. Client Bill of Rights.

(a) The facility shall respect and protect clients' rights. The Bill of Rights shall include:

(1) You have the right to a humane environment that provides reasonable protection from harm and appropriate privacy for your personal needs.

(2) You have the right to be free from abuse, neglect, and exploitation.

(3) You have the right to be treated with dignity and respect.

(4) You have the right to appropriate treatment in the least restrictive setting available that meets your needs.

(5) You have the right to be told about the program's rules and regulations before you are admitted.

(6) You have the right to be told before admission:

(A) the condition to be treated;

(B) the proposed treatment;

(C) the risks, benefits, and side effects of all proposed treatment and medication;

(D) the probable health and mental health consequences of refusing treatment; and

(E) other treatments that are available and which ones, if any, might be appropriate for you.

(7) You have the right to accept or refuse treatment after receiving this explanation.

(8) If you agree to treatment or medication, you have the right to change your mind at any time (unless specifically restricted by law).

(9) You have the right to a treatment plan designed to meet your needs, and you have the right to take part in developing that plan.

(10) You have the right to meet with staff to review and update the plan on a regular basis.

(11) You have the right to refuse to take part in research without affecting your regular care.

(12) You have the right not to receive unnecessary or excessive medication.

(13) You have the right not to be restrained or placed in a locked room by yourself unless you are a danger to yourself or others.

(14) You have the right to have information about you kept private and to be told about the times when the information can be released without your permission.

(15) You have the right to communicate with people outside the facility. This includes the right to have visitors, to make telephone calls, and to send and receive sealed mail. This right may be restricted on an individual basis by your doctor or the person in charge of the program if it is necessary for your treatment or for security, but even then you may contact an attorney or the Texas Commission on Alcohol and Drug Abuse at any reasonable time.

(16) You have the right to be told in advance of all estimated charges and any limitations on the length of services that the facility is aware of.

(17) You have the right to receive an explanation of your treatment or your rights if you have questions while you are in treatment.

(18) If you consented to treatment, you have the right to leave the facility within four hours of requesting release unless a physician determines that you pose a threat of harm to yourself and others.

(19) You have the right to make a complaint and receive a fair response from the facility within a reasonable amount of time.

(20) You have the right to complain directly to the Texas Commission on Alcohol and Drug Abuse at any reasonable time.

(21) You have the right to get a copy of these rights before you are admitted, including the address and phone number of the Texas Commission on Alcohol and Drug Abuse.

(22) You have the right to have your rights explained to you in simple terms, in a way you can understand, within 24 hours of being admitted.

(b) If a client's right to free communication is restricted under the provisions of (a)(15) of this section, the physician or program director shall document the clinical reasons for the restriction and the duration of the restriction in the client record. The physician or program director shall also inform the client, and, if appropriate, the client's consenter of the clinical reasons for the restriction and the duration of the restriction.

§148.302. Client Grievances.

(a) The facility shall have a written client grievance procedure.

(b) Staff shall give each client and consenter a copy of the grievance procedure within 24 hours of admission and explain it in clear, simple terms that the client understands.

(c) The grievance procedure shall tell clients that they can:

(1) file a grievance about any violation of client rights or commission rules;

(2) submit a grievance in writing and get help writing it if they are unable to read or write;

(3) request writing materials, postage, and access to a telephone for the purpose of filing a grievance.

(d) The procedure shall also inform clients that they can submit a complaint directly to the commission at any time and include the current mailing address and toll-free telephone number of the Texas Commission on Alcohol and Drug Abuse.

(e) The facility shall have a written procedure for staff to follow when responding to client grievances. The facility shall:

(1) evaluate the grievance thoroughly and objectively, obtaining additional information as needed;

(2) provide a written response to the client within seven calendar days of receiving the grievance;

(3) take action to resolve all grievances promptly and fairly; and

(4) document all grievances, including the final disposition, and keep the documentation in a central file.

(f) The facility shall not:

(1) discourage, intimidate, harass, or seek retribution against clients who try to exercise their rights or file a grievance; or

(2) restrict, discourage, or interfere with client communication with an attorney or with the commission for the purposes of filing a grievance.

§148.303. Client Abuse, Neglect, and Exploitation.

(a) The facility shall implement a written policy to protect clients from abuse, neglect, and exploitation.

(b) Any person who receives an allegation or has reason to suspect that a client has been, is, or will be abused, neglected, or exploited by any person shall immediately inform the commission's investigations division and the facility's chief executive officer or designee. If the allegation involves the chief executive officer, it shall be reported directly to the facility's governing body.

(1) The person shall also report allegations of child abuse or neglect to the Texas Department of Protective and Regulatory Services as required by the Texas Family Code, §261.101.

(2) The person shall also report allegations of abuse or neglect of an elderly or disabled individual to the Texas Department of Protective and Regulatory Services as required by the Texas as required by the Texas Human Resources Code, §48.051.

(c) If the allegation involves sexual exploitation, the chief executive officer shall comply with reporting requirements listed in the Civil Practice and Remedies Code, §81.006.

(d) The chief executive officer shall take immediate action to prevent or stop the abuse, neglect, or exploitation and provide appropriate care and treatment.

(e) The chief executive officer or designee shall ensure that a verbal report has been or is made to the commission's investigations division as required in subsection (a) of this section.

(f) The person who reported the incident shall submit a written incident report to the chief executive officer within 24 hours.

(g) The chief executive officer shall send a written report to the commission's investigations division within two working days after receiving notification of the incident. This report shall include:

(1) the name of the client and the person the allegations are against;

(2) the information required in the incident report or a copy of the incident report;

(3) other individuals, organizations, and law enforcement notified.

(h) The chief executive officer or designee shall also notify the legal consenter. If the client is the legal consenter, family members and significant others may be notified only if the client gives written consent.

(i) The facility shall investigate the complaint and take appropriate action unless otherwise directed by the commission's investigations division. The investigation and the results shall be documented.

(j) The governing body or its designee shall take action needed to prevent any confirmed incident from recurring.

(k) The facility shall:

(1) document all investigations and resulting actions and keep the documentation in a central file;

(2) have a written policy that clearly prohibits the abuse, neglect, and exploitation of clients;

(3) enforce the policy and provide appropriate sanctions for confirmed violations.

§148.311. Program Rules.

(a) The facility shall establish appropriate written rules to protect the health, safety, and welfare of all clients.

(b) The consequences for violating program rules shall be defined in writing and shall include clear identification of violations that may result in discharge. The consequences shall be reasonable, appropriate and shall not include:

(1) physical discipline or measures involving the use of food, water, sleep, or bathroom privileges; or

(2) discipline that is authorized, supervised, or carried out by clients.

(c) Every client shall be informed verbally and in writing of the program rules and consequences for violating the rules at the time of admission.

(d) The facility shall enforce the rules fairly and objectively and shall not implement consequences for the convenience of staff.

§148.312. Client Labor.

(a) The facility shall not hire clients to fill staff positions. Former clients are not eligible for employment at the facility until at least two years after documented discharge from active treatment from the facility.

(b) Clients shall be required or allowed to work for the facility only when the following conditions are met.

(1) Work responsibilities (and compensation, if applicable) are defined in writing.

(2) Staff explain mandatory work requirements before admission.

(3) The client gives voluntary written consent to the work.

(4) Work does not interfere or conflict with treatment.

(5) Work does not endanger client safety or well-being.

(6) Work does not involve access to client records.

(7) Work arrangements do not violate client confidentiality.

(8) The facility provides appropriate equipment, supplies, instruction, and assistance.

(c) The facility shall not require clients to participate in any fund raising or publicity for the facility.

(d) The facility and its staff members shall not enter into a business relationship with any client, give a personal gift to a client, or accept a personal gift of value from a client until at least two years after documented discharge.

§148.313. Use of Restraint and Seclusion.

(a) The governing body shall adopt a policy to either authorize or prohibit the use of personal restraint, mechanical restraint, and seclusion. All adolescent residential programs, detoxification programs, and programs accepting emergency detentions shall authorize use of personal restraint. Any facility authorizing use of restraint or seclusion shall have a written procedure that ensures compliance with this section.

(b) In programs authorized to use of restraint or seclusion, direct care staff shall be trained as described in §148.203 of this title (relating to Staff Training).

(c) Staff shall not use restraint or seclusion unless a client's behavior endangers the client or others and less restrictive methods have been tried and failed.

(d) Staff shall not use more force than is reasonable and necessary to prevent imminent harm and shall ensure the safety, well-being, and dignity of clients who are restrained or secluded, including attention for personal needs.

(e) Staff shall obtain authorization from the supervising qualified credentialed counselor before starting restraint or seclusion or as soon as possible after implementation.

(1) The facility shall not use standing authorizations for restraint or seclusion.

(2) Authorization for mechanical restraint or seclusion shall be based on a face-to-face evaluation.

(3) Each authorization shall include a specific time limit, not to exceed 12 hours.

(f) When the client has been safely restrained or secluded, staff shall tell the client what behavior and timeframes are required for release when and shall release the client as soon as the criteria are met.

(g) Clinical staff shall review and document alternative strategies for dealing with behaviors necessitating the use of restraint or seclusion two or more times in any 30-day period.

(h) The chief executive officer or designee shall review all incident reports involving restraint or seclusion and take action to address unwarranted use of these measures.

(i) A client held in restraint shall be under continuous direct observation. The facility shall ensure adequate circulation during mechanical restraint and shall only use devices designed for therapeutic restraint.

(j) Seclusion rooms shall be set up to prevent clients from harming themselves and shall allow staff to observe clients easily in all parts of the room. When a client is in seclusion, staff shall conduct a visual check every 15 minutes.

(k) The facility shall have a written procedure that ensures compliance with this section.

(l) Staff shall record the following information in the client record within 24 hours:

(1) the circumstances leading to the client's loss of control;

(2) the specific behavior necessitating the restraint or seclusion and the behavior required for release;

(3) less restrictive interventions that were tried before restraint or seclusion began;

(4) the signed authorization of the supervising qualified credentialed counselor;

(5) the names of the staff members who implemented the restraint or seclusion;

(6) the date and time the procedure began and ended;

(7) the behavior and timeframes required for release;

(8) the client's response;

(9) observations made, including the 15 minute checks; and

(10) attention given for personal needs.

§148.315. Responding to Emergencies.

(a) The facility shall ensure that staff have the training and resources necessary to protect the health and safety of clients and other individuals during medical and psychiatric emergencies.

(b) The facility shall have written procedures for responding to medical and psychiatric emergencies.

(c) Emergency numbers shall be posted by all phones.

(d) The facility shall have adequate first aid supplies that are visible or well labeled and easy to access at all times.

§148.316. Searches.

(a) All residential facilities shall adopt a written policy on searches. If searches are allowed, the facility shall adopt a search procedure that ensures the protection of client rights.

(b) Searches may only be conducted to protect the health, safety, and welfare of clients, including detection of drugs and weapons.

(c) Searches must be conducted in a professional manner that maintains respect and dignity for the client.

(d) A witness shall be present during all searches.

(e) Staff and witnesses involved in a personal search must be the same gender as the client.

(f) All searches must be documented in the client record, including the reason for the search, the result of the search, and the signatures of the individual conducting the search and the witness.

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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Karen Pettigrew
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Texas Commission on Alcohol and Drug Abuse
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SUBCHAPTER F. PROGRAM SERVICES

40 TAC §§148.401, 148.403, 148.405, 148.406, 148.411 - 148.113, 148.421 - 148.424, 148.426

The new rules are proposed under the Texas Health and Safety Code, Chapter 464, which provides the Texas Commission on Alcohol and Drug Abuse with the authority to adopt rules licensing chemical dependency treatment facilities.

The code affected by the proposed new rule is the Texas Health and Safety Code, Chapter 464.

§148.401. Requirements Applicable to All Programs.

(a) Facilities shall, to the greatest extent possible, provide clients access to a full continuum of care within the facility or establish agreements with other service providers to give clients access to treatment settings and levels it does not provide.

(b) The level of care received by clients shall be modified as needed during the course of treatment to meet individual client needs.

(c) The facility shall provide the minimum services required for each licensed level of care.

(1) Level I shall provide medication and nursing care to manage the client's withdrawal symptoms. The program shall also provide motivational interviewing and brief interventions and therapies to enhance the client's understanding of addiction, address immediate needs, motivate the client to participate in on-going treatment, and prepare the client for discharge or transfer. The number of hours and content of the services for each client shall be based on the individual's condition and needs identified during assessment.

(2) Level II shall provide at least 20 hours of services per week comprised of individual and/or group counseling, life skills training, and chemical dependency education. Clients must receive at least six hours of group counseling and at least one hour of individual counseling per week, and no more than four hours of chemical dependency education per week may be counted toward the required hours.

(3) Level III shall provide at least 10 hours of services per week comprised of individual and/or group counseling, life skills training, and chemical dependency education. Clients must receive at least four hours of group counseling per week and one hour of individual counseling every other week, and no more than two hours of chemical dependency education week may be counted toward the required hours.

(4) Level IV shall provide at least two hours of counseling per week including at least one hour of individual counseling per week. Additional hours of service may include counseling, education, or life skills training.

(d) Group size shall be limited to a number that allows effective interaction between the group and counselor and between group members.

(1) Group counseling sessions are limited to a maximum of 10 clients.

(2) Group education and life skills training sessions are limited to a maximum of 35 clients. This limit does not apply to multi-family educational groups, seminars, outside speakers, or other events designed for a large audience.

(e) Chemical dependency education and life skills training shall follow a curriculum. All educational sessions shall include client participation and discussion of the material presented and how it relates to the clients' individual treatment goals.

(f) The program shall provide education about tuberculosis, HIV, Hepatitis B and C, and sexually transmitted diseases based on the Texas Commission on Alcohol and Drug Abuse Workplace and Education Guidelines for HIV and Other Communicable Diseases.

(g) The program shall provide education about the health risks of tobacco products and nicotine addiction and shall encourage abstinence from tobacco products.

(h) The program shall provide access to screening for tuberculosis and testing for HIV antibody, Hepatitis C, and sexually transmitted diseases.

(1) HIV antibody testing must be carried out by an entity approved by the Texas Department of Health.

(2) If a client tests positive, the program shall refer the client to an appropriate health care provider.

(i) The program shall refer clients to physical health, mental health, and ancillary services if those services are not available through the program and are necessary to meet treatment goals and shall conduct follow-up. Residential programs shall ensure clients have access to appropriate physical and mental health services.

(j) Individuals shall not be denied admission or discharged from treatment because they are taking prescribed medication.

§148.403. General Staffing Requirements.

(a) The facility shall maintain an adequate number of qualified staff to comply with licensure rules, provide appropriate and individualized treatment, and protect the health, safety, and welfare of clients.

(b) Direct care staff shall be awake and on site during all hours of program operation.

(c) Counselor caseloads shall not exceed 15 clients per counselor in Level II and 30 clients per counselor in Levels III and IV.

(d) All personnel shall receive the training and supervision necessary to ensure compliance with commission rules, provision of appropriate and individualized treatment, and protection of client health, safety and welfare.

(e) Individuals responsible for planning, implementing, or supervising Level II, III, and IV treatment shall be qualified credentialed counselors (QCCs). The clinical program director must have at least two years of post-licensure experience providing chemical dependency treatment.

(f) Chemical dependency counseling, education, and life skills training shall be provided only by counselors.

(g) All counselor interns shall work under the direct supervision of a qualified credential counselor as required in Chapter 150 of this title (relating to Counselor Licensure).

(h) Mental health services shall be provided by appropriately licensed professionals.

(i) Counselors shall not provide group or individual counseling focused on trauma, abuse, or sexual issues unless they are licensed and have specialized education/training and supervised experience in the subject.

(j) One or more direct care staff trained in non-violent crisis intervention shall be on duty and on site at all times that the program is in operation. In residential programs, one or more direct care staff certified in CPR must also be on duty and on site at all times that the program is in operation.

(k) The facility shall not allow its clients to serve as staff. Former clients shall not be hired until at least two years after discharge from active treatment at the facility.

§148.405. Additional Requirements for Level I (Outpatient or Residential Detoxification).

(a) The program shall have a medical director who is a licensed physician. The medical director shall be responsible for admission, diagnosis, medication management and client care.

(b) The medical director shall approve all medical policies, procedures, guidelines, tools, and forms, which shall include:

(1) screening instruments and procedures;

(2) treatment protocol or standing orders for each major drug category; and

(3) emergency procedures.

(c) In residential programs, direct care staff shall be awake and on duty where the clients are located 24 hours a day.

(1) During day and evening hours, at least two awake staff shall be on duty for the first 12 clients, with one more person on duty for each additional one to 16 clients.

(2) At night, at least one awake staff member shall be on duty for the first 12 clients, with one more person on duty for each additional one to 16 clients. Night staff shall conduct and document at least three checks while clients are sleeping.

(d) In outpatient programs, direct care staff shall be awake and on site whenever a client is on site. Clients shall have access to an on-call health care professional with detoxification experience 24 hours a day.

(e) The program shall have:

(1) a licensed vocational nurse or registered nurse with detoxification experience on duty and on site during all hours of operation; and

(2) a physician on call 24 hours a day.

(f) The program shall ensure continuous access to emergency medical care.

(g) Direct care staff shall complete training in restraint and/or seclusion as described in §148.313 of this title (relating to Restraint and Seclusion).

§148.406. Additional Requirements for Level II, III, and IV Residential Services.

(a) In adult Level II residential programs, the direct care staff-to-client ratio shall be at least 1:16 when clients are awake and 1:32 during sleeping hours.

(b) In adult Level III and IV residential programs, the direct care staff-to-client ratio shall be at least 1:20 when clients are awake and 1:50 during sleeping hours.

(c) The program shall have counseling staff on duty at least 12 hours per day.

(d) The program shall provide planned, structured activities during evenings and weekends in addition to the required treatment services. The minimum number of additional hours is 10 for adults and 15 for adolescents.

(e) Clients in residential programs shall have an opportunity for eight continuous hours of sleep each night. Staff shall conduct and document at least three checks while clients are sleeping.

(f) Every residential program shall adopt medication procedures so that clients can take medication during treatment.

(g) Residential programs shall provide three meals for every client. Meals must provide a balanced and nutritious diet. Records of menus as served must be filed and maintained for 30 days after the date of the serving.

(1) The program shall provide modified diets to residents who medically require them as determined by a licensed health professional. Special diets shall be prepared in consultation with a licensed dietitian.

(2) All food shall be selected, stored, prepared, and served in a safe, healthy manner.

(3) When meals are provided by a contracted food service, a written contract shall require the food service to pass an annual kitchen health inspection by the local health authority or the Texas Department of Health.

§148.411. Additional Requirements for Adolescent Programs.

(a) The facility shall maintain separation between adults and adolescents except during family-based treatment activities. Residential facilities shall have separate sleeping areas, bedrooms, and bathrooms for adults and adolescents and for males and females.

(b) Residential and Level II outpatient programs shall provide access to education approved by the Texas Education Agency within three school days of admission when treatment is expected to last more than 14 days.

(c) The program's treatment services, lectures, and written materials shall be age-appropriate and easily understood by clients.

(d) The facility shall allow regular communication between an adolescent client and the client's family and shall not arbitrarily restrict any communications without clear individualized clinical justification documented in the client record.

(e) The facility shall ensure that staff who plan, supervise, or provide adolescent treatment have specialized education or training as required in §148.203 of this title (relating to Staff Training).

(f) In residential programs, the direct care staff-to-client ratio shall be at least 1:8 during waking hours (including program-sponsored activities away from the facility) and 1:16 during sleeping hours. In Level II outpatient programs, the direct care staff-to-client ratio shall be at least 1:8. Direct care staff included in staff-to-client ratios shall not have job duties that prevent ongoing and consistent client supervision.

(g) Clients shall be under direct supervision at all times.

(h) The treatment plan shall address adolescent needs and issues and family relationships.

(i) The program shall involve the adolescent's family or an alternate support system in the treatment process or document why this is not happening.

(j) The program shall prohibit adolescent clients from using tobacco products on the program site. Staff and other adults (volunteers, clients, and visitors) shall not use tobacco products in the presence of adolescent clients on site.

(k) The facility shall have written procedures that staff use when an adolescent leaves a program without permission.

§148.412. Correctional Facilities.

(a) Programs located in correctional facilities are not required to meet commission standards in areas under the control of the correctional facility. Areas under the control of the correctional facility do not include program services or staffing. Correctional mandates shall take precedence when correctional requirements conflict with commission requirements.

(b) A correctional facility is an institution operated under the jurisdiction of federal, state or local government used to confine individuals who have been convicted of a crime and sentenced to a period of incarceration. Correctional facilities include prisons, jails, and youth detention centers but exclude community-based organizations serving individuals mandated treatment by the judicial or correctional system.

(c) The commission may grant variances to community-based treatment facilities that contract with correctional authorities when correctional requirements conflict with commission requirements.

§148.413. Court Commitment Services.

(a) Facilities accepting court commitments shall be licensed to provide the appropriate level of service:

(1) emergency detention: Level I or Level II residential services;

(2) adult inpatient involuntary commitments: Level II or Level III residential services for adults;

(3) adult outpatient involuntary commitments: Level II or Level III outpatient services;

(4) juvenile inpatient commitments: Level II residential services for adolescents;

(5) juvenile outpatient commitments: Level II or Level III outpatient services for adolescents.

(b) The facility's court commitment program shall comply with the Texas Health and Safety Code, Chapter 462.

(c) The facility shall report unauthorized departures to the referring courts. Verbal report shall be made immediately, with written confirmation within 24 hours.

(d) The program shall provide the judiciary with sufficient written information about its program design, treatment methods, admission processes, lengths of stay and continuum of care to assist the judiciary in committing appropriate clients to the facility.

(e) The program shall accept all chemical dependency clients brought to the facility under an emergency detention warrant, order of protective custody, or civil court order for treatment. A formal screening and assessment is not required before admission.

(f) A program that accepts emergency detentions shall adopt a written policy authorizing use of restraint and/or seclusion and implement procedures that conform with §148.313 of this title (relating to Restraint and Seclusion)

(g) The client record shall contain documentation of the conditions and/or behaviors that caused the client's entry into the civil court commitment process.

(h) The client record shall also contain copies of the legal documents required for civil court commitment as specified by Texas Health and Safety Code, Chapter 462.

(i) The facility shall provide training for at least two designated staff to ensure they understand and comply with court commitment statutes, regulations, and procedures.

§148.421. Screening and Admission Authorization.

(a) Every individual admitted to a Level I treatment program shall meet the DSM-IV criteria for substance intoxication or withdrawal.

(b) Every person admitted to a Level II, III, or IV treatment program shall meet the DSM-IV criteria for substance abuse or dependence.

(c) Adults and adolescents shall be treated in separate programs.

(1) Adolescent programs serve youth 13 to 17 years of age. However, children aged 10-12 and young adults aged 18 - 21 may be admitted to an adolescent program when the screening process indicates the individual's needs, experiences, and behavior are similar to those of adolescent clients.

(2) Adult programs serve individuals 18 years of age or older. However, adolescents aged 16 or 17 may be admitted to an adult program when they are referred by the adult criminal justice system or when the screening process indicates the individual's needs, experiences, and behavior indicate that treatment in an adult program is clinically appropriate.

(3) Every exception to the general age requirements must be clinically justified and documented and approved in writing by the program director.

(d) The facility shall use the Texas Department of Insurance criteria to place applicants in the most appropriate level of care accessible to them at the facility or through referral. Exceptions shall be clinically justified in writing and approved by the program director.

(e) A qualified professional shall conduct a face-to-face examination of each applicant to establish the Axis I diagnosis, assess withdrawal potential, and determine the need for treatment and the type of treatment to be provided. The examination shall identify potential mental health problems that warrant further assessment by a qualified mental health professional.

(1) In programs providing Level I residential treatment, the examination shall be conducted by a physician, physician assistant, advanced nurse practitioner, or registered nurse. Non-physicians shall have at least one year of detoxification treatment experience.

(2) In programs providing Level II, III, or IV treatment, a QCC shall conduct the examination.

(f) A qualified professional shall authorize each admission in writing and specify the type of care to be provided. The client record shall contain sufficient documentation to support the diagnosis and the placement decision.

(1) In programs providing Level I treatment, a licensed physician shall authorize the admission. If the admitting physician does not conduct the face-to-face examination, the client record shall contain documentation that the physician has consulted with the examining professional, agreed with the assessment and the diagnosis, and authorized the admission. The physician shall sign the admission authorization within 48 hours.

(2) In programs providing Level II, III or IV treatment, the QCC shall authorize the admission.

(g) If an individual is not admitted, the program shall refer and assist the applicant to obtain appropriate services.

(h) When an applicant is denied admission, the facility shall maintain documentation signed by the examining professional which includes the reason for the denial and all referrals made.

§148.422. Intake and Consent to Treatment.

(a) Before admission, a trained staff member shall collect and document information about the client's financial resources and insurance benefits.

(b) The facility shall obtain written authorization from the consenter before providing any treatment or medication. The consent form shall be dated and signed by the client, the consenter, and the staff person providing the information, and shall document that the client and consenter have received and understood the following information:

(1) the specific condition to be treated;

(2) the recommended course of treatment;

(3) the expected benefits of the treatment;

(4) the probable health and mental health consequences of not consenting;

(5) the side effects and risks associated with the treatment;

(6) any generally accepted alternatives and whether an alternative might be appropriate;

(c) Before admission, the facility shall also provide the client and consenter with the following information in writing:

(1) the estimated average daily charge, including an explanation of any services that may be billed separately;

(2) the qualifications of the staff who will provide the treatment;

(3) the name of the primary counselor;

(4) the Client Bill of Rights as specified in §148.301 of this title (relating to Client Bill of Rights);

(5) the client grievance procedure;

(6) the program rules, including rules about visits, telephone calls, mail, and gifts, as applicable;

(7) violations that can lead to disciplinary action or discharge;

(8) any consequences or searches used to enforce program rules;

(9) the facility's services and treatment process; and

(10) opportunities for family or significant others to be involved in treatment.

(d) This information shall be explained to the client and consenter in simple, non-technical terms within 24 hours of admission. If an emergency or the client's physical or mental condition prevent the explanation from being given within 24 hours, staff shall document the circumstances in the client record and present the explanation as soon as possible. Documentation of the explanation shall be dated and signed by the client, the consenter, and the staff person providing the explanation.

(e) The client record shall include a copy of the Client Bill of Rights dated and signed by the client and consenter.

(f) If possible, all information shall be provided in the consenter's primary language.

§148.423. Initial Assessment.

(a) A counselor shall conduct and document a comprehensive assessment of each client admitted to the facility. The assessment shall provide comprehensive information about the client's past and present status that provides a thorough understanding of the following areas:

(1) presenting problems and circumstances leading to admission;

(2) substance use;

(3) previous behavioral health services;

(4) physical health;

(5) mental health;

(6) emotional and behavioral functioning;

(7) childhood history;

(8) education and employment, as applicable;

(9) legal involvement;

(10) family circumstances;

(11) social and environmental situation;

(12) spiritual orientation; and

(13) strengths and weaknesses.

(b) If the screening identifies a potential mental health problem, the facility shall obtain a comprehensive mental health assessment performed by a qualified mental health professional.

(c) The assessment shall result in a comprehensive diagnostic impression. The diagnostic impression must include DSM-IV Axes I, IV, and V and may include Axes II and III.

(d) The assessment shall result in a comprehensive listing of the client's problems and needs.

(e) The program may accept an assessment from an outside source if:

(1) it meets the commission's criteria;

(2) it was completed during the 30 days preceding admission or is received directly from a facility that is transferring the client; and

(3) a counselor reviews the information with the client and documents an update.

(f) The assessment must be signed by a QCC and filed in the client record within three individual service days of admission.

(g) For residential clients in Levels II, III, and IV, a licensed health professional shall conduct an assessment of the client's physical health status within 96 hours of admission. If the client has any physical complaints or indications of medical problems, the client shall be referred to a physician, physician assistant, or advanced nurse practitioner for a medical history and examination. The medical examination, if needed, shall be completed within a reasonable time frame and the results filed in the client record.

(h) Each Level I client shall have a medical history and physical examination signed by a physician, physician assistant, or advanced nurse practitioner.

(1) Residential clients shall have the medical history and physical completed and filed within 24 hours of admission. The program may accept a medical history and physical examination completed during the 24 hours preceding admission if it is approved by the program's physician, physician assistant, or advanced practice nurse.

(2) Outpatient clients shall have the medical history and physical completed and available for review by program staff before admission.

§148.424. Treatment Planning and Implementation.

(a) The counselor and client shall work together to develop an individualized, written treatment plan that addresses problems and needs identified in the assessment. When appropriate, family and/or significant others shall also be involved.

(1) When the client needs services not offered by the facility, appropriate referrals shall be made and documented in the client record.

(2) The client record shall contain justification when identified needs are temporarily deferred or not addressed during treatment.

(b) The treatment plan shall include goals, objectives, and strategies.

(1) Goals shall be based on the client's problems/needs, strengths, and preferences.

(2) Objectives shall be individualized, realistic, measurable, time specific, appropriate to the level of treatment, and clearly stated in behavioral terms.

(3) Strategies shall describe the type and frequency of the specific services and interventions needed to help the client achieve the identified goals.

(c) The treatment plan shall include the conditions for discharging or transferring the client to another level of care. The Texas Department of Insurance criteria shall be used as a general guideline for determining when clients are appropriate for transfer or discharge, but individualized criteria shall be specifically developed for each client.

(d) The treatment plan shall include initial plans for discharge. The discharge plans shall be updated as the client progresses through treatment.

(e) The treatment plan shall identify the client's primary counselor, and shall be dated and signed by the client, and the counselor. When the counselor is an intern or graduate, a QCC shall review and sign the treatment plan.

(f) The program shall implement the treatment plan. The progress notes shall reflect that every goal and objective is addressed regularly or as needed during the course of treatment and shall document when a goal or objective is completed.

(g) Program staff shall document all services and interventions in the client record within 24 hours, including:

(1) the date, nature, and duration of the contact;

(2) the topic of the session and the goals and/or objectives addressed;

(3) the client's response; and

(4) the signature and credentials of the person providing the service.

(h) In addition to the items in subsection (g) of this section, individual and group counseling notes shall include:

(1) clinical observations made during the session, including the client's mental status; and

(2) changes in client circumstances and new issues or needs identified during the session.

(i) All residential programs and Level II outpatient programs shall write a weekly summary note describing the client's response to treatment over the course of the week. Information documented in other progress notes does not need to be repeated in the weekly summary. The weekly summary shall be completed within 24 hours of the end of the treatment week and shall include:

(1) significant events and changes in the client's circumstances;

(2) clinical observations, including the client's mental status;

(3) progress towards specific goals and objectives; and

(4) new issues or needs identified.

(j) The treatment plan shall be evaluated on a regular basis and revised as needed to reflect the ongoing reassessment of the client's problems, needs, and response to treatment.

(k) The primary counselor shall meet with the client to evaluate the treatment plan at appropriate intervals defined in writing by the program. At a minimum, treatment plans shall be reviewed midway through the projected duration of treatment. The treatment plan shall also be reviewed and revised when there is a significant change in the client's status.

(l) The treatment plan review shall include:

(1) an evaluation of the client's progress toward each goal;

(2) revision of the goals and discharge plans as needed; and

(3) an assessment of the continued appropriateness of the current treatment level.

(m) Treatment plan reviews shall be dated and signed by the client, the counselor and the supervising QCC, if applicable.

(n) When a client is transferred to a new level of care, the client record shall contain:

(1) clear documentation of the decision signed by QCC, including the rationale and the effective date; and

(2) a revised treatment plan.

§148.426. Discharges.

(a) The program shall plan all discharges with clients and consenters to provide reasonable protection and continuity of services to the client.

(b) The program shall involve the client's family or an alternate support system in the discharge planning process when appropriate.

(c) Discharge planning shall be completed before the client's scheduled discharge.

(d) A written discharge plan shall be developed to address ongoing client needs, including:

(1) individual goals or activities to sustain recovery;

(2) referrals; and

(3) aftercare services, if applicable.

(e) The completed discharge plan shall be dated and signed by the counselor, the client, and the consenter (if applicable).

(f) The program shall give the client and consenter a copy of the plan, and file the original signed plan in the client record.

(g) The program shall complete a discharge summary for each client within 30 days of discharge. The discharge summary shall be signed by a QCC and shall include:

(1) dates of admission and discharge;

(2) needs and problems identified at the time of admission, during treatment, and at discharge;

(3) services provided;

(4) assessment of the client's progress towards goals;

(5) reason for discharge; and

(6) referrals and recommendations, including arrangements for aftercare.

(h) The facility shall contact each client no later than 90 days after discharge from the facility and document the individual's current status or the reason the contact was unsuccessful.

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 June 8, 2001.

TRD-200103259
Karen Pettigrew
General Counsel
Texas Commission on Alcohol and Drug Abuse
Earliest possible date of adoption: July 22, 2001
For further information, please call: (512) 349-6607

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SUBCHAPTER G. MEDICATION

40 TAC §§148.501 - 148.504

This new rule is proposed under the Texas Health and Safety Code, Chapter 464, which provides the Texas Commission on Alcohol and Drug Abuse with the authority to adopt rules licensing chemical dependency treatment facilities.

The code affected by the proposed new rule is the Texas Health and Safety Code, Chapter 464.

§148.501. General Provisions for Medication.

(a) All facilities that provide medication shall implement written procedures for medication storage, administration, documentation, inventory, and disposal.

(b) Prescription medication shall be used only for therapeutic and medical purposes and shall be administered as prescribed by an appropriately licensed professional.

(c) Single doses of prescription medication shall be prepared and packaged by a licensed pharmacist or physician.

(d) The facility shall ensure that staff who provide medication are properly credentialed and trained.

(e) The program shall have the phone number of a pharmacy and a comprehensive drug reference manual easily accessible to staff.

§148.502. Medication Storage.

(a) Prescription and over-the-counter medications, syringes, and needles shall be kept in locked storage and accessible only to staff who are authorized to provide medication.

(b) Clients may keep prescription or over-the-counter medication in their personal possession on site with written authorization from the program director. Staff shall ensure that authorized clients keep medication on their persons or safely stored and inaccessible to other clients.

(c) The program shall store all medications, syringes, and needles in their original containers under appropriate conditions.

(d) The facility shall ensure that stock prescription medications are stored in a licensed pharmacy or physician's office and dispensed by a pharmacist or physician as required by the Texas Occupations Code, Subtitle J.

(e) The facility shall ensure that prescription medication is in a container labeled by the pharmacy.

§148.503. Medication Inventory and Disposal.

(a) The program shall use an effective system to track and account for all prescription medication.

(b) Staff shall inventory and inspect all stored prescription medication at least daily using a centralized medication inventory form.

(c) The staff member conducting the inventory shall sign and date the inventory sheet. When a discrepancy exists between the administration record and the inventory count form, a note explaining the reason for the discrepancy or action taken to reconcile/correct the discrepancy shall be signed by the staff member conducting the inventory and kept with the medication inventory forms.

(d) Staff shall separate unused and outdated medication immediately and dispose of it within 30 days.

(e) Methods used for disposal shall prevent medication from being retrieved, salvaged, or used. Two staff members shall witness and document disposal, including amount of medication disposed and method used.

§148.504. Administration of Medication.

(a) Staff shall provide and discontinue medication exactly as prescribed.

(b) Prescription medication shall be administered only by nurses and other staff who are legally authorized to administer medication.

(c) Clients may self-administer medication under the supervision of staff who are trained as described in §148.203 of this title (relating to Staff Training).

(d) Each dose of prescription and over-the-counter medication taken by the client shall be documented in the client's medication record.

(e) The medication record shall include:

(1) the client's name;

(2) drug allergies (or the absence of known allergies);

(3) the name and dose of each medication;

(4) the frequency and route of each medication;

(5) the date and time of each dose; and

(6) the signature of the staff person who administered or supervised each dose.

(f) The facility shall document the circumstances and reason for any missed doses.

(g) When a client appears to have an adverse reaction to medication, a staff member shall:

(1) notify the prescribing professional or another physician, dentist, podiatrist, physician assistant or advanced practice nurse (preferably the prescribing professional);

(2) complete an incident report; and

(3) document the facts in the client record, including the date and time of notification and any other action taken.

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 June 8, 2001.

TRD-200103260
Karen Pettigrew
General Counsel
Texas Commission on Alcohol and Drug Abuse
Earliest possible date of adoption: July 22, 2001
For further information, please call: (512) 349-6607

SUBCHAPTER H. RESIDENTIAL PHYSICAL PLANT REQUIREMENTS

40 TAC §§148.601 - 148.607

This new rule is proposed under the Texas Health and Safety Code, Chapter 464, which provides the Texas Commission on Alcohol and Drug Abuse with the authority to adopt rules licensing chemical dependency treatment facilities.

The code affected by the proposed new rule is the Texas Health and Safety Code, Chapter 464.

§148.601. General Physical Plant Provisions.

(a) Physical plant requirements apply only to residential programs.

(b) The residential program shall have a certificate of occupancy from the local authority that reflects the current use by the occupant.

(c) The entire residential site, including grounds, buildings, electrical and mechanical systems, appliances, equipment, and furniture shall be structurally sound, in good repair, clean, and free from health and safety hazards.

(d) The water supply must be of safe, sanitary quality, suitable for use, and adequate in quantity and pressure. The water must be obtained from a water supply system approved by the Texas Natural Resource Conservation Commission (TNRCC).

(e) Sewage must be discharged into a state-approved sewage system or septic system; otherwise, the sewage must be collected, treated, and disposed of in a manner which is approved by TNRCC.

(f) Mobile homes, recreational vehicles and campers shall not be used for client sleeping areas.

§148.602. Required Inspections.

The residential site shall pass all required inspections and keep a current file of reports and other documentation needed to demonstrate compliance with applicable laws and regulations. The inspections must be

signed, dated, and free of any outstanding corrective actions. The following inspections are required:

(1) annual inspection by the local certified fire inspector or the state fire marshal;

(2) annual inspection of the alarm system by the fire marshal or an inspector authorized to install and inspect such systems;

(3) quarterly fire alarm system test by facility staff;

(4) annual kitchen inspection by the local health authority or the Texas Department of Health;

(5) gas pipe pressure test once every three years by the local gas company or a licensed plumber;

(6) annual inspection and maintenance of fire extinguishers by personnel licensed or certified to perform those duties; and

(7) annual inspection of liquefied petroleum gas systems by an inspector certified by the Texas Railroad Commission.

§148.603. Emergency Evacuation.
Every residential program shall:

(1) have emergency evacuation procedures that include provisions for individuals with disabilities;

(2) hold fire drills on each shift at least quarterly and correct identified problems promptly;

(3) post exit diagrams conspicuously throughout the program site (except in small one-story buildings where all exits are obvious); and

(4) be able to clear the building safely and in a timely manner at all times.

§148.604. Exits.
(a) Every building shall have at least two well-separated exits on each story.

(b) Every route of exit shall be free of hazards and obstructions, well-lit, and marked clearly with illuminated exit signs at all times.

(c) Rooms for 50 or more people shall have exit doors that swing out.

(d) No door may require a key for emergency exit. Locked facilities shall have emergency exit door releases as described in the Life Safety Code and approved by the fire marshal.

§148.605. Space, Furniture and Supplies.
(a) The facility shall have areas for leisure and dining with adequate space for the number of residents.

(b) Sleeping areas shall have at least:

(1) 80 usable square feet per person in single-occupancy rooms; and

(2) 60 usable square feet per person in multiple-occupancy rooms (or 50 square feet per person if bunk beds are used). Bunk beds shall not be used in Level I programs.

(c) The facility shall provide adequate personal storage space for each client, including space for hanging clothes.

(d) The program shall make at least one phone available to clients.

(e) Each client shall have a separate bed of solid construction with a mattress. Clean bed linen, towels, and soap shall be available at all times and in quantity sufficient to meet the needs of the residents.

(f) All clients shall have access to laundry services or properly maintained laundry facilities equivalent to one washer and dryer per 25 clients.

§148.606. Fire Systems.

(a) A fire detection, alarm, and communication system required for life safety shall be installed, tested, and maintained in accordance with the facility's occupancy and capacity classifications.

(b) Electrical fire alarm systems shall be installed by agents registered with the State Fire Marshal's office. The facility shall maintain a copy of the fire alarm installation certificate.

(c) Alarms shall be loud enough to be heard above normal noise levels throughout the building.

(d) Fire extinguishers shall be mounted throughout the facility as required by code and approved by the fire marshal.

(1) Each laundry and walk-in mechanical room shall have at least one portable A:B:C extinguisher, and each kitchen shall have at least one B:C fire extinguisher.

(2) Each extinguisher shall have the required maintenance service tag attached.

(e) Staff shall conduct quarterly inspections of fire extinguishers for proper location, obvious physical damage, and a full charge on the gauge.

§148.607. Other Physical Plant Requirements.

(a) Occupied parts of the building shall be kept between 65 degrees and 85 degrees Fahrenheit, including kitchens and laundry areas. Cooling and heating shall be provided, as necessary, for resident comfort.

(b) Portable electric heaters and open-flame heating devices are prohibited. All fuel-burning devices shall be vented.

(c) The facility shall be well ventilated through the use of windows, mechanical ventilation, or a combination. Windows used regularly for ventilation shall be screened.

(d) Bedrooms shall have windows with appropriate coverings for privacy. Bathrooms with windows shall have appropriate coverings for privacy.

(e) The facility shall have adequate internal and external lighting to provide a safe environment and meet user needs.

(f) There shall be at least one sink, one tub or shower, and one toilet for every eight residents. All of the fixtures must be in good working order and have the appropriate drain and drain trap to prevent sewage gas escape back into the facility.

(g) The facility shall provide an adequate supply of hot water for the number of residents and the program schedule.

(h) Showers and tubs shall have no-slip surfaces and curtains or other safe enclosures.

(i) Clean drinking water shall be readily available to all residents.

(j) Food and waste shall be stored, handled, and removed in a way that will not spread disease, cause odors, or provide a breeding place for pests.

(k) The facility shall be kept free of insects, rodents, and vermin.

(l) Poisonous, toxic, and flammable materials shall be labeled, stored, and used safely.

(m) Domestic animals shall be properly vaccinated and managed.

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 June 8, 2001.

TRD-200103261

Karen Pettigrew
General Counsel
Texas Commission on Alcohol and Drug Abuse
Earliest possible date of adoption: July 22, 2001
For further information, please call: (512) 349-6607

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WITHDRAWN RULES

An agency may withdraw a proposed action or the remaining effectiveness of an emergency action by filing a notice of withdrawal with the ***Texas Register***. The notice is effective immediately upon filling or 20 days after filing as specified by the agency withdrawing the action. If a proposal is not adopted or withdrawn within six months of the date of publication in the ***Texas Register***, it will automatically be withdrawn by the office of the Texas Register and a notice of the withdrawal will appear in the ***Texas Register.***

TITLE 37. PUBLIC SAFETY AND CORRECTIONS

PART 3. TEXAS YOUTH COMMISSION

CHAPTER 91. PROGRAM SERVICES

SUBCHAPTER D. HEALTH CARE SERVICES

37 TAC §91.85

The Texas Youth Commission has withdrawn from consideration proposed amendment to §91.85 which appeared in the April 20, 2001, issue of the *Texas Register* (26 TexReg 2948).

Filed with the Office of the Secretary of State on June 5, 2001.

TRD-200103148
Steve Robinson
Executive Director
Texas Youth Commission
Effective date: June 5, 2001
For further information, please call: (512) 424-6301

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ADOPTED RULES

An agency may take final action on a section 30 days after a proposal has been published in the ***Texas Register***. The section becomes effective 20 days after the agency files the correct document with the ***Texas Register***, unless a later date is specified or unless a federal statute or regulation requires implementation of the action on shorter notice.

If an agency adopts the section without any changes to the proposed text, only the preamble of the notice and statement of legal authority will be published. If an agency adopts the section with changes to the proposed text, the proposal will be republished with the changes.

TITLE 1. ADMINISTRATION

PART 10. DEPARTMENT OF INFORMATION RESOURCES

CHAPTER 201. PLANNING AND MANAGEMENT OF INFORMATION RESOURCES TECHNOLOGIES

1 TAC §201.6

The Department of Information Resources (department) adopts new §201.6 concerning geographic information standards. The rule is adopted with changes to the proposed text as published in the February 23, 2001, issue of the *Texas Register* (26 TexReg 1620).

Section 201.6 concerns geographic information standards applicable to state agencies and institutions of higher education. Institutions of higher education that acquire geographic information systems or develop geospatial data solely for research or instructional purposes are exempt from the rule. The rule addresses applicability, the implementation timeframe for new and existing datasets and maintenance, references additional technical information that may be provided by the Texas Geographic Information Council to aid implementation, provides a waiver process, and contains standards for geospatial data acquisition and development, geospatial data exchange, geospatial data documentation, mapping datum and the statewide mapping system.

No comments were received in response to proposed new §201.6.

The new rule is adopted in accordance with Texas Government Code §2054.052(a), which provides the department may adopt rules as necessary to implement its responsibilities, and Water Code §16.021(b), which requires the department to develop rules related to statewide geo-spatial data and technology standards.

The rule affects Water Code §16.021(b).

§201.6. Geographic Information Standards.

(a) Applicability. All users and developers of digital geospatial data and geographic information systems in state agencies and state-supported universities must comply with the technical standards specified in this section. Institutions of higher education, as defined by the Education Code, §61.003, are exempt from these standards when geographic information systems are acquired, or digital geospatial data developed, solely for research or instructional purposes. Activities conducted by a registered professional land surveyor while engaged in the practice of professional surveying, as defined in the Professional Land Surveying Practices Act (Art. 5282c, VTCS) are exempt from these standards.

(b) Implementation timeframe.

(1) New datasets and dataset enhancement. These standards go into effect immediately for activities involving the acquisition or development of new digital geospatial data, or the enhancement of existing digital geospatial data.

(2) Existing datasets and dataset maintenance. These standards go into effect one year from the date of adoption for digital geospatial datasets, including related maintenance and field data collection procedures, that were in existence prior to adoption.

(c) Implementation guidance. Pursuant to Water Code §16.021(b), the Texas Geographic Information Council provides guidance to the executive administrator of the Texas Water Development Board and to the Department of Information Resources (the department). The guidance provided by the Texas Geographic Information Council to the department relates to rules developed by the department for geospatial data and technology standards. In fulfilling its duties under Water Code §16.021(b), the Texas Geographic Information Council publishes and maintains guidance information relating to the implementation of geographic information standards at www.tgic.state.tx.us. State agencies and institutions of higher education are encouraged to utilize the Texas Geographic Information Council guidance in implementing the standards set forth in this rule. However, only the department may modify, or grant waivers from, these standards.

(d) Waivers. The information resource manager of an agency or institution of higher education that wants to obtain a waiver from the department shall submit a written waiver request to the executive director of the department, 300 West 15th Street, Suite 1300, Austin, Texas 78701. Within ten days of receipt of the request, the department shall notify the requesting agency of any additional information that may be needed to act on the waiver request. The department shall grant or deny the waiver request within the later of thirty days of receipt of the request or thirty days of receipt of the additional information requested by the department in order to act on the waiver request. The department may request that the Texas Geographic Information Council review and comment on the waiver request. The decision of the department regarding the granting or denial of a waiver is final and may not be appealed.

(e) Standards.

(1) Geospatial data acquisition and development.

(A) Standard. An agency planning to acquire, develop, or enhance a digital geospatial dataset that corresponds to a current or planned Texas framework layer shall coordinate such activity with the Texas Geographic Information Council. Texas framework layers are defined as digital orthoimagery, digital elevation models, elevation contours, soil surveys, water features, political boundaries, and transportation.

(B) Exclusions. This standard excludes geospatial dataset acquisition, development or improvement projects that involve an expenditure of $100,000 or less, or which are performed under contract for an external entity.

(2) Geospatial data exchange.

(A) Data format. An agency that originates or adds data content to a digital geospatial dataset and distributes the dataset to other agencies or the public must make the dataset available in at least one digital format which is readily usable by a variety of geographic information system software packages. This requirement does not preclude the agency from offering the dataset in other data formats. Readily usable formats are defined as: Spatial Data Transfer Standard, Digital Line Graph, Digital Elevation Model, Environmental Systems Research Institute ArcInfo Export File, Environmental Systems Research Institute Shape File (and associated files), Bentley MicroStation Design File, AutoDesk AutoCAD Drawing Exchange File, MapInfo, GeoTIFF, TIFF World File, JPEG World File, Lizard Tech Multi-Resolution Seamless Image Database, and ER Mapper Encapsulated Wavelet.

(B) Purchase of public domain datasets. An agency that purchases a copy of a federal or other public domain geospatial dataset shall make the dataset available to the Texas Natural Resources Information System. Such datasets shall be made available to other agencies and the public via the Texas Natural Resources Information System and/or by the acquiring agency following Texas Natural Resources Information System guidelines.

(3) Geospatial data documentation.

(A) Preparation. An agency shall prepare standardized documentation for each digital geospatial dataset that it both:

(i) originates and/or adds data content to; and

(ii) distributes as a standard product to other governmental entities or the public.

(B) Format. This standardized documentation shall be in compliance with the Federal Geographic Data Committee's Content Standard for Digital Geospatial Metadata, Version 2 (FGDC-STD-001-1998) or later.

(C) Delivery. In responding to a request for a digital geospatial dataset, an agency shall provide the requestor a copy of the corresponding metadata documentation.

(D) Purpose of dataset. Documentation shall include a statement of the purpose or intended use of the dataset and a disclaimer warning against unintended uses of the dataset. If an agency is aware of specific inappropriate uses of the dataset which some users may be inclined to make, the dataset disclaimer shall specifically warn against those uses.

(E) Geographic information system map product disclaimer. Any map product, in paper or electronic format, produced using geographic information system technology and intended for official use and/or distribution outside the agency, shall include a disclaimer statement advising against inappropriate use. If the nature of the map product is such that a user could incorrectly consider it to be a survey product, the disclaimer shall clearly state that the map is not a survey product.

(4) Mapping Datum.

(A) Horizontal datum. All horizontal positional data obtained by an agency or its contractor using on-site measurement techniques shall be referenced to the North American Datum of 1983 (NAD83).

(B) Vertical datum. All vertical elevation data obtained by an agency or its contractor using on-site measurement techniques shall be referenced to the North American Vertical Datum of 1988 (NAVD88).

(C) Horizontal datum transformation. Coordinates obtained in a specific horizontal datum may be transformed to another datum for the purposes of compatibility with existing data. The horizontal datum transformation method shall directly use, or be directly traceable to the North American Datum Conversion (NADCON) algorithm. A horizontal datum transformation shall not be performed on positions obtained through high accuracy survey techniques unless the transformation method employs a closed mathematical formula.

(D) Vertical datum transformation. Coordinates obtained in a specific vertical datum may be transformed to another datum for the purposes of compatibility with existing data. The vertical datum transformation method shall directly use, or be directly traceable to the North American Vertical Datum Conversion (VERTCON) algorithm.

(5) Statewide mapping system.

(A) Usage. No existing mapping system has been generally recognized as a standard for minimum-distortion mapping of the entire State of Texas. This section defines such a mapping system, in both a conformal and an equal area version. Either version of this mapping system may be employed for a single geospatial dataset that covers all of, or a large portion of, the State of Texas. Usage of this mapping system is not required. Existing standard mapping systems such as Universal Transverse Mercator and State Plane Coordinate System may be more appropriate for geospatial datasets that cover smaller regions of the State.

(B) Conformal version. A mapping system named "Texas Centric Mapping System/Lambert Conformal" is hereby defined, and the terms "Texas Centric Mapping System/Lambert Conformal" and its abbreviated form "TCMS/LC" shall be used only in strict accord with this definition:

(i) Mapping System Name: Texas Centric Mapping System/Lambert Conformal

(ii) Abbreviation: TCMS/LC

(iii) Projection: Lambert Conformal Conic

(iv) Longitude of Origin: 100 degrees West (-100)

(v) Latitude of Origin: 18 degrees North (18)

(vi) Lower Standard Parallel: 27 degrees, 30 minutes (27.5)

(vii) Upper Standard Parallel: 35 degrees (35.0)

(viii) False Easting: 1,500,000 meters

(ix) False Northing: 5,000,000 meters

(x) Datum: North American Datum of 1983 (NAD83)

(xi) Unit of Measure: meter

(C) Equal area version. A mapping system named "Texas Centric Mapping System/Albers Equal Area" is hereby defined, and the terms "Texas Centric Mapping System/Albers Equal Area" and its abbreviated form "TCMS/AEA" shall be used only in strict accord with this definition:

(i) Mapping System Name: Texas Centric Mapping System/Albers Equal Area

(ii) Abbreviation: TCMS/AEA

(iii) Projection: Albers Equal Area Conic

(iv) Longitude of Origin: 100 degrees West (-100)

(v) Latitude of Origin: 18 degrees North (18)

(vi) Lower Standard Parallel: 27 degrees, 30 minutes (27.5)

(vii) Upper Standard Parallel: 35 degrees (35.0)

(viii) False Easting: 1,500,000 meters

(ix) False Northing: 6,000,000 meters

(x) Datum: North American Datum of 1983 (NAD83)

(xi) Unit of Measure: meter

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 June 5, 2001.

TRD-200103122
Renee Mauzy
General Counsel
Department of Information Resources
Effective date: June 25, 2001
Proposal publication date: February 23, 2001
For further information, please call: (512) 475-2153

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1 TAC §201.13

The Department of Information Resources (department) adopts the amendments §201.13 concerning geographic information system standards. The amended rule is adopted without changes to the proposed text as published in the March 2, 2001, issue of the *Texas Register* (26 TexReg 1809).

The amendment deletes subsection (a) of §201.13 concerning geographic information system standards so that the rule relating to geographic information standards is a separate rule rather than a part of §201.13, which is already a lengthy rule dealing with information resource standards. Due to extensive revisions to the content of subsection (a), the department will adopt new §201.6 concerning geographic information standards.

The amendment deletes subsection (a) of the rule and renumbers existing subsections (b), (c) and (d) as subsections (a), (b) and (c), respectively.

No comments were received in response to the proposed amendment to §201.13.

The amendment is adopted in accordance with Texas Government Code §2054.052(a), which provides the department may adopt rules as necessary to implement its responsibilities, and Water Code §16.021(b), which requires the department to develop rules related to statewide geo-spatial data and technology standards.

The amended rule affects Water Code §16.021(b).

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 June 5, 2001.

TRD-200103123
Renee Mauzy
General Counsel
Department of Information Resources
Effective date: June 25, 2001
Proposal publication date: March 2, 2001
For further information, please call: (512) 475-2153

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TITLE 16. ECONOMIC REGULATION

PART 1. RAILROAD COMMISSION OF TEXAS

CHAPTER 20. ADMINISTRATION

SUBCHAPTER A. CONTRACTS AND PURCHASES

16 TAC §20.5

The Railroad Commission of Texas (Commission) adopts amendments to §20.5, relating to historically underutilized businesses, with one change to the version published in the April 27, 2001, issue of the *Texas Register* (26 TexReg 3106). The rule adopts by reference the rules of the Texas General Services Commission (GSC) in 1 Texas Administrative Code, §§111.11-111.28, relating to historically underutilized business certification program, and promotes full and equal business opportunity for all businesses in state contracting. Section 20.5, originally adopted effective October 8, 1996, was adopted as required by the General Appropriations Act, House Bill 1, 74th Legislature, 1995, Section 111, titled "Contracting with Historically Underutilized Businesses."

The Commission amends subsection (a) to update the General Services Commission sections adopted by reference, as well as their effective dates; delete subsection (b) because it is no longer required; and amend subsection (c) to redesignate it as subsection (b).

The adopted change is in subsection (a)(13) and reflects GSC's recent amendment to §111.23 effective May 16, 2001.

The Commission concurrently adopts the rule review of §20.5, as amended, in accordance with Tex. Gov't Code §2001.039 (*as added by Acts 1999, 76th Leg., ch. 1499, §1.11(a)*).

The Commission received no comments on the proposed amendments or the rule review.

The Commission adopts the amendments under Texas Government Code, §2161.003 which requires the Commission to adopt the General Services Commission's rules under §2161.002 as the agency's own rules, and Texas Government Code, Chapters 2155, 2158, 2161, 2162, 2166, 2252, and 2254, and Texas Civil

Statutes, Article 6447, which authorizes the commissioners to make all rules necessary for their government.

Tex. Gov't Code, §2161.003, and Chapters 2155, 2158, 2161, 2162, 2166, 2252, and 2254, and Texas Civil Statutes, Article 6447, are affected by the adopted amendments.

Issued in Austin, Texas, on June 5, 2001.

§20.5. Historically Underutilized Businesses.

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

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

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

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

(4) §111.14 adopted effective April 19, 2000;

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

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

(7) §111.17 amended effective February 16, 2000;

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

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

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

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

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

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

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

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

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

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

(18) §111.28 adopted effective June 13, 2000.

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

This agency hereby certifies that the 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 June 5, 2001.

TRD-200103136
Mary Ross McDonald
Deputy General Counsel
Railroad Commission of Texas
Effective date: June 25, 2001
Proposal publication date: April 27, 2001
For further information, please call: (512) 475-1295

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TITLE 25. HEALTH SERVICES

PART 2. TEXAS DEPARTMENT OF MENTAL HEALTH AND MENTAL RETARDATION

CHAPTER 401. SYSTEM ADMINISTRATION
SUBCHAPTER E. CONTRACTS MANAGEMENT

25 TAC §§401.371 - 401.380, 401.387 - 401.399

The Texas Department of Mental Health and Mental Retardation (TDMHMR) adopts the repeals of §§401.371 - 401.380 and §§401.387 - 401.399 of Chapter 401, Subchapter E, concerning contracts management, without changes to the proposal as published in the December 29, 2000, issue of the *Texas Register* (25 TexReg 12896-12897). New §§417.51 - 417.65 of Chapter 417, Subchapter B, concerning contracts management for TDMHMR facilities and Central Office, which replace the repealed sections, are contemporaneously adopted in this issue of the *Texas Register*.

The repeals allow for the adoption of new and more current rules governing the same matters.

No comment on the proposal was received.

These sections are repealed under the Texas Health and Safety Code, §532.015, which provides the Texas Board of Mental Health and Mental Retardation (board) with broad rulemaking authority; §533.016, which allows TDMHMR to adopt rules relating to certain procurements of goods and services; §533.034, which provides TDMHMR with the authority to contract for community-based services; and §534.059(b), which requires TDMHMR's contract rules to provide for sanctions if TDMHMR intends to sanction a local mental health or mental retardation authority's for failing to comply with its performance contract.

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 June 8, 2001.

TRD-200103217
Andrew Hardin
Chairman, Texas MHMR Board
Texas Department of Mental Health and Mental Retardation
Effective date: July 1, 2001
Proposal publication date: December 29, 2000
For further information, please call: (512) 206-5216

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CHAPTER 404. PROTECTION OF CLIENTS AND STAFF
SUBCHAPTER B. ABUSE, NEGLECT, AND EXPLOITATION OF PEOPLE SERVED BY PROVIDERS OF LOCAL AUTHORITIES

25 TAC §§404.41 - 404.55

The Texas Department of Mental Health and Mental Retardation (TDMHMR) adopts the repeals of §§404.41 - 404.55 of Chapter 404, Subchapter B, concerning abuse, neglect, and exploitation of people served by providers of local authorities, without changes to the proposal as published in the February 9, 2001, issue of the *Texas Register* (26TexReg1233). New §§414.551 - 414.564 of Chapter 414, Subchapter L, concerning abuse, neglect, and exploitation in local authorities and community centers, which replace the repealed sections, are contemporaneously adopted in this issue of the *Texas Register*.

The repeals allow for the adoption of new sections governing the same matters.

The subchapter is repealed as part of the reorganization of the TDMHMR rule base to reflect current operational and organizational relationships. The contemporaneous repeal and adoption of these subchapters would fulfill the requirements of the Texas Government Code, §2001.039, concerning the periodic review of agency rules.

No comment was received on the proposed repeals.

These sections are repealed under the Texas Health and Safety Code, §532.015, which provides the Texas Mental Health and Mental Retardation Board with broad rulemaking authority; the Texas Human Resources Code, Chapter 48, which requires the reporting and investigations of abuse, neglect, and exploitation of elderly and disabled persons; §48.255(c), which requires TDMHMR and TDPRS to develop joint rules to facilitate the investigations in community centers and local authorities; the Texas Family Code, Chapter 261, which requires the reporting and investigations of abuse and neglect of a child; and the Texas Civil Practice and Remedies Code, §81.006, which requires the reporting of alleged sexual exploitation by a mental health services provider to the county prosecuting attorney.

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 June 8, 2001.

TRD-200103215
Andrew Hardin
Chairman, Texas MHMR Board
Texas Department of Mental Health and Mental Retardation
Effective date: July 1, 2001
Proposal publication date: February 9, 2001
For further information, please call: (512) 206-5216

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CHAPTER 405. CLIENT (PATIENT) CARE
SUBCHAPTER P. RESEARCH IN DEPARTMENT FACILITIES

25 TAC §§405.401 - 405.411, 405.414 - 405.417

The Texas Department of Mental Health and Mental Retardation (TDMHMR) adopts the repeals of §§405.401 - 405.411 and 405.414 - 405.417 of Chapter 405, Subchapter P, concerning research in department facilities, without changes to the proposal as published in the March 30, 2001, issue of the *Texas Register* (26TexReg2478). New §§414.751 - 414.764 of Chapter 414, Subchapter P, concerning research in TDMHMR facilities, which replace the repealed sections, are contemporaneously adopted in this issue of the *Texas Register*.

The repeals allow for the adoption of new sections governing the same matters.

The subchapter is repealed as part of the reorganization of the TDMHMR rule base to reflect current operational and organizational relationships. The contemporaneous repeal and adoption of these subchapters would fulfill the requirements of the Texas Government Code, §2001.039, concerning the periodic review of agency rules.

No comment on the proposal was received.

These sections are repealed under the Texas Health and Safety Code, §532.015, which provides the Texas MHMR Board (board) with broad rulemaking authority, and §576.021, which states that a patient receiving mental health services under the Texas Mental Health Code (Texas Health and Safety Code, Title 7, Subtitle C) has the right to refuse to participate in a research 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 June 8, 2001.

TRD-200103213
Andrew Hardin
Chairman, Texas MHMR Board
Texas Department of Mental Health and Mental Retardation
Effective date: July 1, 2001
Proposal publication date: March 30, 2001
For further information, please call: (512) 206-5216

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CHAPTER 407. INTERNAL FACILITIES MANAGEMENT
SUBCHAPTER B. CONSTRUCTION BIDDING PROCEDURES

25 TAC §§407.51 - 407.58

The Texas Department of Mental Health and Mental Retardation (TDMHMR) adopts the repeals of §§407.51 - 407.58 of Chapter 407, Subchapter B, concerning construction bidding procedures, without changes to the proposal as published in the December 29, 2000, issue of the *Texas Register* (25 TexReg12897-12898). New §§417.51 - 417.65 of Chapter 417, Subchapter B, concerning contracts management for TDMHMR facilities and Central Office, which replace the repealed sections, are contemporaneously adopted in this issue of the *Texas Register*.

The repeals allow for the adoption of new and more current rules governing the same matters.

No comment on the proposal was received.

These sections are repealed under the Texas Health and Safety Code, §551.007(c), which requires TDMHMR to adopt rules relating to awarding contracts for the construction of buildings and improvements.

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 June 8, 2001.

TRD-200103218
Andrew Hardin
Chairman, Texas MHMR Board
Texas Department of Mental Health and Mental Retardation
Effective date: July 1, 2001
Proposal publication date: December 29, 2000
For further information, please call: (512) 206-5216

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CHAPTER 414. PROTECTION OF CONSUMERS AND CONSUMER RIGHTS SUBCHAPTER L. ABUSE, NEGLECT, AND EXPLOITATION IN LOCAL AUTHORITIES AND COMMUNITY CENTERS

25 TAC §§414.551 - 414.564

The Texas Department of Mental Health and Mental Retardation (TDMHMR) adopts new §§414.551 - 414.564 of Chapter 414, Subchapter L, concerning abuse, neglect, and exploitation in local authorities and community centers. Sections 414.553, 414.555, 414.559, 414.562, and 414.563 are adopted with changes to the proposed text as published in the February 9, 2001, issue of the *Texas Register* (26 TexReg 1233). Sections 414.551, 414.552, 414.554, 414.556 - 414.558, 414.560, 414.561, and 414.564 are adopted without changes. The repeals of §§404.41 - 404.55 of Chapter 404, Subchapter B, concerning abuse, neglect, and exploitation of people served by providers of local authorities, which the new sections replace, are contemporaneously adopted in this issue of the *Texas Register*.

The subchapter describes the requirements for reporting allegations of abuse, neglect, and exploitation of persons served in community centers, local authorities, and their contractors; ensuring the safety and protections of persons served involved in allegations; facilitating investigations; and ensuring proper disciplinary or other action is taken when abuse, neglect, or exploitation is confirmed.

The new subchapter is adopted as part of the reorganization of the TDMHMR rule base to reflect current operational and organizational relationships. The contemporaneous adoption and repeal of these subchapters fulfill the requirements of the Texas Government Code, §2001.039, concerning the periodic review of agency rules.

The definition of "investigatory agency" has been modified to clarify that the Texas Department of Protective and Regulatory Services (TDPRS) investigates allegations in intermediate care facilities for the mentally retarded or persons with a related condition (ICF/MR or ICF/MR/RC) operated by a local authority or community center. Language has also been added to the examples in the definition to state that the Texas Commission on Alcohol and Drug Abuse (TCADA) investigates allegations in TCADA-funded programs operated by a local authority or community center pursuant to a contract with TCADA. The definition of "person served" has been modified to be consistent with TDPRS companion rules, which were contemporaneously proposed and recently adopted.

The phrase "(if appropriate)" has been deleted in §414.555(b) to eliminate confusion regarding whether it is appropriate to notify the alleged victim of an allegation. Language has been added to §414.559(c) to reference a new exhibit, which is a copy of the federal statute cited in the subsection. The exhibits and references sections have been modified to reflect changes made to the subchapter upon adoption.

Written comment on the proposal was received from the Heart of Texas Region Mental Health and Mental Retardation Center, Waco; the Parent Association for the Retarded of Texas (PART), Austin; Life Management Center for MHMR, El Paso; the parent of a state school resident, Garland; and two private citizens, El Paso and Houston.

One commenter requested that the rules address the perpetrator's right to appeal the investigatory agency's finding and the perpetrator's right to review the investigative report. TDMHMR responds that it cannot adopt rules governing matters in another agency's purview. Each investigatory agency is responsible for determining whether it will provide a process for the perpetrator to appeal its finding and review its investigative report.

Two commenters expressed concern that physicians, nurses, dentists, and pharmacists are the only licensed staff to go through a peer review process. The commenter stated that all licensed staff, including licensed professional counselors (LPCs) and social workers (ACPs), should undergo peer review. TDMHMR responds that pursuant to 25 TAC §412.312(e) (relating to Competency and Credentialing), local mental health authorities are required to have a peer review process for all licensed staff that promotes sound clinical practice and professional growth. The section also directs the peer review process to comply with applicable state laws. Currently state law requires *investigative* peer review for physicians, nurses, dentists, and pharmacists. Neither TDMHMR rules nor TDPRS companion rules preclude a local authority or community center from having an investigative peer review process for its licensed staff who are not physicians, nurses, dentists, and pharmacists.

Regarding the definition of "investigatory agency" in §414.553(11), two commenters suggested adding clarification that TDHS is the investigating agency for ICFs/MR in the community and that TDPRS is the investigating agency for state schools, which are also ICFs/MR. TDMHMR responds that TDHS investigates allegations in all ICFs/MR that are not operated by TDMHMR, a local authority, or community center. Language has been added to clarify that TDPRS investigates allegations in ICFs/MR operated by a local authority or community center.

Regarding the definition of "person served" in §414.553(15), two commenters suggested adding language to clarify that a person served has a disability of mental retardation (or related condition) or mental illness. The commenters expressed concern that no one outside of the TDMHMR service system would know which persons are registered or assigned in the Client Assignment and Registration (CARE) system. TDMHMR responds by adding language that responds to the commenters' concerns.

Regarding notification of the victim or alleged victim in §414.555(b) and (c), two commenters supported the use of "if appropriate" in subsection (b) to reflect that it is not always appropriate to notify the victim or alleged victim. The commenters also recommended adding "if appropriate" to subsection (c) as well. TDMHMR responds that when an allegation of abuse, neglect, or exploitation is made, alleged victims, as well as their guardians, should be notified that the situation has been reported and will be investigated. They also should be informed

of the outcome of the investigation. TDMHMR supports open communication between consumers and staff regardless of an alleged victim's perceived level of functioning or understanding. In absence of evidence that such notification is a harmful practice, TDMHMR declines to add language as recommended. Additionally, the phrase "(if appropriate)" has been deleted in §414.555(b) to eliminate confusion regarding the matter.

Regarding Advocacy, Inc. having access to the records of persons served in §414.559(c), two commenters objected to the rule's language because it does not articulate the conditions under which Advocacy, Inc. could have access to such records without consent from the person served or the person's legally authorized representative (LAR). The commenters suggested TDMHMR use the language proposed by TDPRS in 40 TAC, Part 19, §711.1201 relating to Advocacy, Inc.'s access to records. TDMHMR responds that language proposed by TDPRS does not address in enough detail all of the statutory conditions under which Advocacy, Inc. could have access to records. To address the commenters' concern, TDMHMR has added language to reference a new exhibit, which is a copy of the federal statute cited that sets out all of the statutory conditions under which Advocacy, Inc. could have access to records.

One commenter recommended a seamless complaint process instead of a process involving two or more state agencies, Advocacy, Inc., local police departments, and in some places, local investigations by the provider. The commenter noted that with so many alternatives to pursuing a complaint, and with so many different entities potentially involved, consumers are often confused. Given the respective roles and procedures of local providers and the state, consumers are also dispirited because they feel that nothing will be done. The commenter recommended a central agency to accept every complaint and be responsible for tracking its resolution. TDMHMR responds that allegations or complaints by consumers may be reported to TDPRS, the rights protection officer, or both. TDPRS was created to serve as the central agency for receiving and investigating allegations and complaints that involve abuse, neglect, or exploitation in TDMHMR-operated and-contracted programs. Complaints of a general nature that don't explicitly involve abuse, neglect, or exploitation are received and investigated by the rights protection officer. If TDPRS receives a complaint that does not involve abuse, neglect, or exploitation, then TDPRS will instruct the caller to report the complaint to the rights protection officer or will accept the report and refer it to the administrator for resolution. If the rights protection officer receives a complaint or allegation that involves abuse, neglect, or exploitation, then the officer will refer the allegation to TDPRS.

A commenter made remarks concerning the inability of the alleged perpetrator to have full access to information concerning allegations of abuse including, but not limited to, the name of the accuser. The commenter stated that reports that have been de-identified are meaningless. The commenter noted that an allegation of abuse could result in criminal prosecution and that under the United States Constitution, the alleged perpetrator should have the right to know his or her accuser. TDMHMR responds that the commenter's concern relates to the rules of the investigatory agency as limited by state statute. The confidentiality of information related to TDPRS investigations is governed by the Human Resources Code, §48.101, and recently adopted TDPRS rules. Although §48.101(a)(2) protects the identity of persons who report an allegation, presumably because of the potential for retaliation, §48.101(c) permits a court to order the disclosure of any confidential information under certain conditions.

The new sections are adopted under the Texas Health and Safety Code, §532.015, which provides the Texas Mental Health and Mental Retardation Board with broad rulemaking authority; the Texas Human Resources Code, Chapter 48, which requires the reporting and investigations of abuse, neglect, and exploitation of elderly and disabled persons; §48.255(c), which requires TDMHMR and TDPRS to develop joint rules to facilitate the investigations in community centers and local authorities; the Texas Family Code, Chapter 261, which requires the reporting and investigations of abuse and neglect of a child; and the Texas Civil Practice and Remedies Code, §81.006, which requires the reporting of alleged sexual exploitation by a mental health services provider to the county prosecuting attorney.

§414.553. Definitions.

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

(1) Abuse--For purposes of reporting allegations, the term is defined by the investigatory agency. For purposes of classifying allegations as part of the TDMHMR Client Abuse and Neglect Reporting System (CANRS), the term is defined in CANRS Definitions, which is referenced as Exhibit A of §414.562 of this title (relating to Exhibits).

(2) Administrator--The individual in charge of a local authority or community center, or designee.

(3) Agent--Any individual not employed by a local authority, community center, or contractor, but working under the auspices of the local authority, community center, or contractor (e.g., student, volunteer).

(4) Allegation--A report by an individual suspecting or having knowledge that a person served has been or is in a state of abuse, neglect, or exploitation as defined by the investigatory agency or in CANRS Definitions, which is referenced as Exhibit A in §414.562 of this title.

(5) Clinical practice--Relates to the demonstration of professional competence by a licensed professional.

(6) Community center--A community mental health center, community mental retardation center, or community mental health and mental retardation center, established under the Texas Health and Safety Code, Title 7, Chapter 534, Subchapter A.

(7) Confirmed--The finding of an investigation if there is a preponderance of credible evidence to support that abuse, neglect, or exploitation occurred.

(8) Contractor--Any organization, entity, or individual who contracts with a local authority or community center to provide mental health or mental retardation services to a person served. The term includes a local independent school district with which a local authority or community centers has a memorandum of understanding (MOU) for educational services.

(9) Contractor CEO--The individual in charge of a contractor that has one or more employees excluding the CEO.

(10) Exploitation--For purposes of reporting allegations, the term is defined by the investigatory agency. For purposes of classifying allegations as part of the TDMHMR CANRS, the term is defined in CANRS Definitions, which is referenced as Exhibit A in §414.562 of this title.

(11) Investigatory agency--An agency with statutory authority to investigate abuse, neglect, and exploitation of a person served

by a local authority, community center, or contractor. For example, the Texas Department of Protective and Regulatory Services investigates allegations in local authorities and community centers (including intermediate care facilities for the mentally retarded or persons with a related condition (ICF/MR or ICF/MR/RC) operated by a local authority or community center) and all contractors of local authorities and community centers except psychiatric hospitals; the Texas Department of Health (TDH) investigates allegations in psychiatric hospitals; and the Texas Commission on Alcohol and Drug Abuse (TCADA) investigates allegations in TCADA-funded programs operated by a local authority or community center pursuant to a contract with TCADA.

(12) Local authority--An entity designated by the TDMHMR commissioner in accordance with the Texas Health and Safety Code, §533.035(a).

(13) Neglect--For purposes of reporting allegations, the term is defined by the investigatory agency. For purposes of classifying allegations as part of the TDMHMR CANRS, the term is defined in CANRS Definitions, which is referenced as Exhibit A in §414.562 of this title.

(14) Perpetrator--An individual who has committed an act of abuse, neglect, or exploitation.

(15) Person served--

(A) Any person with mental illness or mental retardation receiving services from a local authority or community center or through a contract with a local authority or community center who is registered or assigned in the Client Assignment and Registration (CARE) system; or

(B) any child or disabled person as defined in the Human Resources Code, Chapter 48, who is otherwise receiving services from a local authority or community center or through a contract with a local authority or community center.

(16) Professional review--A review of clinical and/or professional practice(s) by peer professionals.

(17) Retaliatory action--Any action intended to inflict emotional or physical harm or inconvenience on an employee, agent, or person served that is taken because he or she has reported abuse, neglect, or exploitation. Retaliatory action includes, but is not limited to, harassment, disciplinary measures, discrimination, reprimand, threat, and criticism.

§414.555. Information To Be Provided to Victim or Alleged Victim and Others.

(a) Each local authority and community center shall promulgate and implement policies and procedures that meet the requirements of this section.

(b) As soon as possible, but no later than 24 hours following notification of an allegation by the investigatory agency, the administrator or contractor CEO shall notify the alleged victim and the alleged victim's guardian or parent (if the alleged victim is a minor) of the allegation.

(c) The administrator or contractor CEO shall ensure that the victim or alleged victim, guardian, or parent (if the victim or alleged victim is a minor) is notified of:

(1) the finding and any decisions made after review and/or appeal of the finding;

(2) the method to appeal the finding, if any;

(3) how to receive a copy of the investigative report; and

(4) if the allegation is confirmed, the disciplinary or other action taken against the perpetrator.

§414.559. Confidentiality of Investigative Process and Report.

(a) The reports, records, and working papers used by or developed in the investigative process by an investigatory agency, and the investigatory agency's resulting investigative report, are confidential and may be disclosed only as allowed by law or rule.

(b) Upon request, the administrator or contractor CEO will provide a copy of the investigative report to the victim or alleged victim or guardian with the identities of other persons served and any information determined confidential by law concealed. The administrator or contractor CEO may charge a reasonable fee for providing a copy of the investigative report.

(c) Advocacy, Inc. is entitled to access the records of persons served in accordance with 42 USC §10805 and §10806 or §6042(a)(2)(I) (Protection and Advocacy of Individuals with Mental Illness and Protection and Advocacy of Individuals with Developmental Disabilities). A copy of 42 USC §10805, §10806, and §6042(a)(2)(I) are referenced as Exhibit F in §414.562 of this title (relating to Exhibits).

§414.562. Exhibits.

The following exhibits are referenced in this subchapter:

(1) Exhibit A--CANRS Definitions;

(2) Exhibit B--"Guidelines for Securing Evidence";

(3) Exhibit C--a copy of the Texas Civil Practice and Remedies Code, §81.001 and §81.006;

(4) Exhibit D--CANRS Classifications;

(5) Exhibit E--Client Abuse and Neglect Report form (AN-1-A); and

(6) Exhibit F--a copy of 42 USC §10805, §10806, and §6042(a)(2)(I).

§414.563. References.

Reference is made to the following statutes and rules:

(1) Texas Health and Safety Code, Chapter 534, Subchapter A, and §533.035(a);

(2) Texas Civil Practices and Remedies Code, Chapter 81;

(3) Human Resources Code, §48.255(c);

(4) 42 USC §10805, §10806, and §6042(a)(2)(I); and

(5) Texas Administrative Code, Title 40, Chapter 711 (relating to Investigations in TDMHMR Facilities and Related Programs).

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 June 8, 2001.

TRD-200103214
Andrew Hardin
Chairman, Texas MHMR Board
Texas Department of Mental Health and Mental Retardation
Effective date: July 1, 2001
Proposal publication date: February 9, 2001
For further information, please call: (512) 206-4516

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SUBCHAPTER P. RESEARCH IN TDMHMR FACILITIES

25 TAC §§414.751 - 414.764

The Texas Department of Mental Health and Mental Retardation (TDMHMR) adopts new §§414.751 - 414.764 of Chapter 414, Subchapter P, concerning research in TDMHMR facilities. Sections 414.755, 414.757, 414.758, 414.760, and 414.761 are adopted with changes to the proposed text as published in the March 30, 2001, issue of the *Texas Register* (26TexReg2480-2487). Sections 414.751 - 414.754, 414.756, 414.759, 414.762 - 414.764 are adopted without changes. The repeals of §§405.401 - 405.411 and 405.414 - 405.417 of Chapter 405, Subchapter P, concerning Research in Department Facilities, which the new sections replace, are contemporaneously adopted in this issue of the *Texas Register*.

The new sections establish uniform guidelines for the review, approval, conduct, and oversight of research in TDMHMR facilities. The sections describe TDMHMR's general principles for research in its facilities; describe four options under which a facility may choose an institutional review board (IRB) as its designated IRB; describe the functions and operations of a designated IRB, including the responsibilities and requirements for reviewing, approving, and monitoring research; and describe the requirements for procedures for obtaining informed consent from prospective human subjects. The new subchapter adopts by reference Title 45, Code of Federal Regulations, Part 46 (Protection of Human Subjects), to ensure the protection of human subjects involved in research; adopts by reference "The Belmont Report: Ethical Principles and Guidelines for the Protection of Human Subjects of Research, Report of the National Commission for the Protection of Human Subjects of Biomedical and Behavioral Research" (April 18, 1979), to ensure ethical principles are maintained when research involving human subjects is conducted; and adopts by reference Title 42, Code of Federal Regulations, Part 50, Subpart A (Responsibility of PHS Awardee and Applicant Institutions for Dealing With and Reporting Possible Misconduct in Science).

The new subchapter is adopted as part of the reorganization of the TDMHMR rule base to reflect current operational and organizational relationships. The contemporaneous adoption and repeal of these subchapters fulfill the requirements of the Texas Government Code, §2001.039, concerning the periodic review of agency rules.

Language has been modified in §414.755(d)(1)(B)(iii), (2)(B)(iii), and (3)(B)(i)-(ii) to broaden the possible scope of the advocate's representation on the IRB. Language has been added to §414.757(a) requiring research proposals that extend human subjects' use of an investigational medication or device as the primary treatment after discharge from the facility to contain assurances that subjects receive appropriate continuity of care. Language in §414.757(f) was modified to clarify that any research proposal described in paragraphs (1)-(3) required approval by the TDMHMR medical director. The proposed phrase "from prospective human subjects" in §414.758(a)(1) and (2) has been deleted because it wrongly implied that informed consent could not be obtained from the LAR. Language has been added to §414.758(b)(1) clarifying that, before approaching potential subjects who have previously objected to participating in a research protocol, the key researcher must obtain approval of the subjects' LARs, if applicable. Language has been modified in §414.760(b)(3) requiring the ORA to ensure that the agency funding the research is notified of confirmed misconduct in science, rather than allegations of misconduct in science. Language has been added to the same paragraph requiring the ORA to ensure that the IRB that approved the research protocol is notified of confirmed misconduct in science in the research study. Language has been added to §414.761(5) requiring the ORA to report misconduct in science information in accordance with 42 CFR 50, Subpart A.

Written comment on the proposal was received from Advocacy, Inc., Austin; a private citizen, Heath; a professor and vice chair for research at the University of Texas Medical School, Houston; a parent of a state school resident, Garland; and Lubbock Regional MHMR Center, Lubbock.

One commenter stated that the proposed rules provide a fair compromise between protecting the rights of the individual, including the right to informed consent and freedom from coercion, without making the research environment so cumbersome that it would impede much needed and valued research. TDMHMR appreciates the commenter's support of the proposed rules.

One commenter expressed full agreement with the proposed rules. TDMHMR appreciates the commenter's agreement.

Two commenters disagreed with the prohibition of research protocols that extend a human subject's use of placebos into the community in §414.754(j)(3). One of the commenters stated that situations exist in which an outpatient placebo-controlled study is necessary in order to determine efficacy of a maintenance treatment. The other commenter, who is an active clinical researcher, stated that studies done in the community with a placebo do not always carry high risk. The commenter noted that "the benefits of a subject's close supervision, free medical care, and early withdrawal from such trials in the early phase (to minimize distress) can often outweigh the small theoretical risk" and "patients with stable psychotic conditions with no prior history of self-harm or violence can safely be monitored in such a scenario." The commenter suggested that the rules provide for a "second opinion from an outside consultant (who is a practicing clinical or academic psychiatrist)" in cases in which Central Office denies approval for the research study. TDMHMR responds that the rules' prohibition of research protocols that extend a human subject's use of placebos into the community is consistent with the rules' applicability and scope, which are limited to research conducted in TDMHMR facilities. Although TDMHMR agrees with the commenters that studies conducted in the community with a placebo have value and do not always carry high risk, TDMHMR must consider the effects that such studies would have on facility resources and the facility's designated IRB, which is responsible for monitoring all research protocols that it approves. Regarding a second opinion from an outside consultant when Central Office denies approval for the research study, TDMHMR responds that Central Office does not approve or deny research proposals; a facility's designated IRB and the facility CEO are responsible for approving and denying research proposals. If the commenter is referring to §414.757(f), in which certain research proposals require additional approval from the TDMHMR medical director in Central Office, then TDMHMR responds that, although the rules do not preclude the medical director from seeking a second opinion, it declines to require that a second opinion be obtained because the medical director is ultimately responsible for making the final decision. TDMHMR notes that an outside consultant

would be unable to consider the varied issues that may be a consideration in approval or disapproval by the medical director.

Regarding the definition of "assent" in §414.753(1), one commenter asked how an individual who does not have capacity or legal authority to consent could make an affirmative agreement to participate in research. The commenter requested that the definition be deleted because "TDMHMR must have 'informed consent' to allow individuals to participate in research." TDMHMR responds that the subchapter's use of the term "assent" in §414.758 does not negate the requirement to obtain informed consent. It merely requires that procedures be in place to attempt, to the extent possible given the prospective subject's capacity, to obtain the subject's assent to participation after the subject's LAR has provided consent. TDMHMR declines to delete the definition.

Regarding TDMHMR's assurances of protection for human subjects in §414.754(e), (m), and (n), one commenter stated that she did not trust TDMHMR to comply with its rules because "the same people who allowed the QLS (Quality of Life Study) violations to happen are the ones who are suppose(d) to see this protection is done." The commenter stated she identified three violations related to confidentiality and informed consent in the 1995-1996 research study. TDMHMR responds that concerns raised by the Quality of Life Study were given major consideration in the previous revision of the department's research rules. The new rules governing research in facilities became effective in November 1996 after the QLS concluded. The new rules articulated TDMHMR's policy that the guiding principle for all research involving human subjects is the safety, well-being, and dignity of the subject. The rules also were revised to contain additional safeguards and procedures that provided a higher level of scrutiny of research proposals and greater protection for human subjects. The provisions of this subchapter continue to provide for that high level of scrutiny of research proposals and protection for human subjects.

Regarding membership of the facility IRB and the university IRB in §414.755(d)(1)(B)(ii) and (iii) and §414.755(d)(2)(B)(ii) and (iii), one commenter requested that references to family member and advocate be changed to LAR (legally authorized representative). The commenter objected to "an advocate like Advocacy, Inc." being a member of a designated IRB. TDMHMR responds that the role of the "family member" or "advocate" as an IRB member is to provide input and perspectives related to the mental disorders/conditions and concerns of the population(s) served by the facility. TDMHMR declines to change the language as requested because it would unnecessarily eliminate qualified persons from serving on an IRB. TDMHMR notes that the rule requirement does not preclude an LAR from being an IRB member, if the LAR were also a family member or advocate.

Regarding a description of the research protocol in §414.757(a)(1), one commenter suggested adding two subparagraphs requiring the research protocol description to include a process to protect confidentiality and a process to obtain and document informed consent. TDMHMR responds that adding language as suggested by the commenter is unnecessary because federal regulations, specifically 45 CFR 46, §46.111 (which are adopted by reference), require IRB approval to be dependent on the protocol meeting the regulations' criteria for obtaining and documenting informed consent and for protection of confidentiality.

Regarding the research review and documentation process for the university IRB and the Central Office IRB in §414.757(e)(2)-(4), one commenter objected to the facility CEO having "all the control and approval." The commenter requested that language be added requiring the facility IRB to review and approve the research proposal in addition to the facility CEO. TDMHMR declines to add language requiring the facility IRB to review and approve the research proposal because the processes described in paragraphs (2)-(4) indicate that the facility does not have a *facility IRB*. (The process described in paragraph (1) indicates that the facility has a facility IRB.) TDMHMR notes that §414.755(b) requires each facility that participates in research to have a *designated IRB*, which can be a facility IRB, another facility's IRB, a university IRB, or the Central Office IRB. Additionally, TDMHMR does not agree that the facility CEO has "all the control and approval" and notes that a facility CEO cannot approve a research protocol that has been disapproved by the facility's designated IRB. TDMHMR also notes that an IRB reviews research proposals using established criteria related to ethical principles and protection of human subjects, while a facility CEO reviews research proposals for their potential impact on the facility's operations and resources.

Regarding informed consent in §414.758(a)(1)-(2), one commenter suggested adding "or LAR" after the phrase "obtaining and documenting informed consent from prospective human subjects." TDMHMR responds that, although the definition of "informed consent" provides for an LAR's approval, it agrees with the commenter's perception that the phrase "from prospective human subjects" in §414.758 seems to imply that informed consent cannot be obtained from the LAR. Rather than adding "or LAR," TDMHMR has deleted the phrase "from prospective human subjects" from §414.758(a)(1) and (2).

Regarding minors and informed consent in §414.758(a)(3), one commenter requested that the requirement apply to individuals with LARs as well as minors. TDMHMR declines to add language as requested by the commenter because the paragraph requires compliance with 45 CFR 46, §46.408, which concerns only minor children. TDMHMR notes that the specifically cited federal regulations (i.e., 45 CFR 46, §46.408) do not provide additional protections for minors as human subjects. The regulations mainly ensure that parents of minor children are afforded their full rights and responsibilities, which are substantially broader than the rights and responsibilities of parents of adult children and for an LAR of an adult.

Regarding approaching individuals who previously objected or who have not given actual consent in §414.758(b)(1), one commenter suggested adding a sentence to state, "These approaches will only be attempted after obtaining the consent of the individual's LAR." TDMHMR responds by modifying language which addresses the commenter's concern.

Regarding assessing comprehension and capacity throughout the course of the research protocol in §414.758(b)(2), one commenter stated that the paragraph should be deleted because "it is already covered under (1)." TDMHMR disagrees that paragraph (1) covers the same issues contained in paragraph (2), and declines to delete paragraph (2). The circumstance in paragraph (2), which concerns consumers who are participating in a research protocol, requires action by key researchers to assess subjects' capacity and provide information on an ongoing basis to assure maximum comprehension of the various aspects of the research protocol that affect the subject.

Regarding the Office of Research Administration's (ORA's) actions when it receives a report of alleged misconduct in science in §414.760(b), one commenter recommended adding a requirement for the ORA to notify the human subjects or their LARs of the allegation and the disposition. TDMHMR declines to add a requirement as suggested because misconduct in science is generally related to the integrity of research data. Notifying human subjects or their LARs of alleged or confirmed misconduct in science that does not affect the health, welfare, or rights of human subjects would serve no useful purpose. TDMHMR supports the exchange of vital information between key researchers and human subjects or their LARs that is related to the health, welfare, and rights of human subjects and notes that federal regulations require such exchange of information. Section 46.109(b) of 45 CFR 46 addresses the IRB's responsibility for ensuring the provision of information to subjects and LARs that the IRB determines would meaningfully add to the protection of their rights and welfare. To ensure the IRB has access to information in which to make a determination, language has been added to §414.760(b)(3) requiring the IRB that approved the research protocol to be notified of confirmed cases of misconduct in science. Additionally, §46.116(b)(5) of 45 CFR 46 requires that each subject or LAR be notified of "significant new findings developed during the course of the research which may relate to the subject's willingness to continue participation."

Regarding the ORA in §414.761, one commenter asked "Did this exist in 1995-1996?" The commenter mentioned the Quality of Life Study conducted in 1995-1996 and three violations she identified. TDMHMR responds that the ORA did not exist in 1995-1996. TDMHMR notes that the adoption of the previous subchapter governing research (Chapter 405, Subchapter P), which became effective November 1, 1996, contained additional safeguards and procedures that provided a higher level of scrutiny of research proposals and greater protection for human subjects. The provisions of this subchapter continue to provide for that high level of scrutiny of research proposals and protection for human subjects.

The new rules are adopted under the Texas Health and Safety Code, §532.015, which provides the Texas MHMR Board (board) with broad rulemaking authority, and §576.021, which states that a patient receiving mental health services under the Texas Mental Health Code (Texas Health and Safety Code, Title 7, Subtitle C) has the right to refuse to participate in a research program.

§414.751. Purpose.

The purpose of this subchapter is to establish uniform guidelines for the review, approval, conduct, and oversight of research in facilities that:

(1) ensure the protection of the rights and welfare of human subjects involved in research;

(2) provide for the creation and utilization of a designated Institutional Review Board (IRB) for each facility electing to be involved in the conduct of research;

(3) provide for the investigation of allegations of misconduct in science related to research conducted at a facility;

(4) conform with the requirements of Title 45, Code of Federal Regulations, Part 46 (Protection of Human Subjects), which is adopted by reference and referenced as Exhibit A in §414.762 of this title (relating to Exhibits).

§414.752. Application.

This subchapter applies to all research involving:

(1) individuals receiving services from a facility; or

(2) facility resources (e.g., employees, property, and non-public information).

§414.753. Definitions.

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

(1) Assent - Affirmative agreement of a prospective human subject to participate in research, which is obtained when the subject does not have capacity or legal authority to consent.

(2) Central Office - TDMHMR's administrative offices in Austin.

(3) Designated institutional review board (IRB) - The IRB, chosen by the facility and approved by the Office of Research Administration in accordance with this subchapter, that will review, approve, and monitor all research to be conducted at the facility.

(4) Facility - Any state hospital, state school, state center, or any other entity which is now or hereafter made a part of TDMHMR.

(5) Facility rights officer - An employee appointed by a facility CEO to protect and advocate for the rights of persons receiving services from the facility.

(6) Human subject - Consistent with §46.102(f) of 45 CFR 46, referenced as Exhibit A in §414.762 of this title (relating to Exhibits), a living individual about whom a key researcher conducting research obtains:

(A) data through intervention or interaction with the individual; or

(B) identifiable private information.

(7) Individual - A person who has received or is receiving mental health or mental retardation services from a facility.

(8) Informed consent - The knowing approval of an individual or an individual's legally authorized representative (LAR) to participate in a research study, given under the individual's or LAR's ability to exercise free power of choice without undue inducement or any element of force, fraud, deceit, duress, or other form of constraint or coercion.

(9) Institutional review board (IRB) - A board whose membership meets the requirements of §414.755(d) of this title (relating to Designated Institutional Review Board (IRB)), and whose purpose is to review and approve proposed research as well as oversee the conduct of approved research.

(10) Investigation (of misconduct in science) - The formal examination and evaluation of all relevant facts to determine if misconduct in science has occurred.

(11) Investigational medication or device - Any drug, biological product, or medical device under investigation for human use that is not currently approved by the Food and Drug Administration for the indication being studied.

(12) Key researcher - A principal investigator, a co-investigator, or a person who has direct and ongoing contact with human subjects participating in a research study or with prospective human subjects.

(13) Legally authorized representative (LAR) - A person or judicial or other body authorized under applicable law to consent on behalf of a prospective human subject to the subject's participation in a research study.

(14) Mental health priority population - Persons with mental illness, including severe emotional disturbance, identified in TDMHMR's current strategic plan as being most in need of mental health services.

(15) Mental retardation priority population - Persons with mental retardation identified in TDMHMR's current strategic plan as being most in need of mental retardation services.

(16) Minimal risk - The probability and magnitude of harm or discomfort anticipated in the research are not greater in and of themselves than those ordinarily encountered in daily life or during the performance of routine psychical or psychological examination or tests.

(17) Misconduct in science - The fabrication, falsification, plagiarism, or other practices that seriously deviate from those that are commonly accepted within the scientific community for proposing, conducting, or reporting research. It does not include honest error or honest differences in interpretations or judgments of data.

(18) Office of Research Administration (ORA) - The Central Office department that is responsible for the duties described in §414.761 of this title (relating to Responsibilities of the Office of Research Administration (ORA)).

(19) Principal investigator - The person identified as responsible for conducting a research study.

(20) Research - A systematic investigation, including research development, testing and evaluation, designed to develop or contribute to generalizable knowledge. Activities that meet this definition constitute research for purposes of this subchapter whether or not they are conducted or supported under a program which is considered research for other purposes. For example, certain demonstration and service programs may include research activities.

(21) TDMHMR - The Texas Department of Mental Health and Mental Retardation.

§414.754. General Principles.

(a) Participation in research that can advance scientific knowledge of mental disorders is integral to the mission of TDMHMR. TDMHMR recognizes and accepts its obligation to protect the rights of human subjects involved in research and supports, as a minimum standard, the preservation of those rights that are constitutionally and legally guaranteed and protected, and adopts the policy that the guiding principle for all research involving human subjects is the safety, well-being, and dignity of the subject.

(b) To ensure the protection of human subjects involved in research at its facilities, TDMHMR promulgates this subchapter and adopts by reference Title 45, Code of Federal Regulations, Part 46 (Protection of Human Subjects), referenced as Exhibit A in §414.762 of this title (relating to Exhibits).

(c) To ensure ethical principles are maintained when research involving human subjects is conducted at its facilities, TDMHMR adopts by reference "The Belmont Report: Ethical Principles and Guidelines for the Protection of Human Subjects of Research, Report of the National Commission for the Protection of Human Subjects of Biomedical and Behavioral Research" (April 18, 1979), referenced as Exhibit B in §414.762 of this title (relating to Exhibits).

(d) Unless scientifically justified, individuals may not be excluded from participating in research on the basis of personal characteristics, such as race, color, ethnicity, national origin, religion, sex, age, disability, sexual orientation, or political affiliation.

(e) TDMHMR recognizes and expresses a commitment to conducting research in a manner that is consistent with the best interests and protection of confidentiality and the personal rights of human subjects involved in the research. This includes conducting research in a manner that protects individuals from participating in research activities that conflict with their individual treatment goals.

(f) Individuals receiving mental health services under an order of protective custody pursuant to the Texas Health and Safety Code, Chapter 574, may not be approached about participation in a research study involving an investigational medication or device prior to the entry of an order for temporary or extended mental health services.

(g) No research involving human subjects may be conducted unless the risks to human subjects are minimized and are reasonable in relation to the anticipated benefits.

(h) No undue inducement or coercion may be used to encourage human subjects to participate in a research study.

(i) Research may not be conducted with human subjects who are involuntarily committed if the research involves:

(1) placebos as the primary medication therapy;

(2) medication or doses of medication as the primary medication therapy which are known to be ineffective for the targeted disorder or condition; or

(3) an investigational medication or device that is proposed to be undertaken when previous research on the medication or device with 100 human subjects or fewer has provided minimal or no documentation of the efficacy and safety of the medication or device for the population with the targeted disorder or condition.

(j) Research may not be conducted at a facility if the protocol:

(1) extends the use of a placebo or washout period unreasonably;

(2) deprives the human subject of reasonable relief; or

(3) extends a human subject's use of placebos as the primary medication therapy after the subject is discharged from the facility.

(k) Research conducted at a facility may not hinder the facility's ability to accomplish its primary purpose.

(l) Unless otherwise provided for in this subchapter, research involving human subjects may not be conducted at a facility unless:

(1) the research has been reviewed and approved by the facility's designated IRB in accordance with §414.757 of this title (relating to Review and Approval of Proposed Research);

(2) the facility CEO has agreed to have the research conducted at the facility; and

(3) if required, the necessary assurance and certification has been submitted to the appropriate federal agency, (e.g., Health and Human Services, Food and Drug Administration) and the agency has indicated its approval.

(m) A human subject involved in research or his/her LAR is entitled to file a complaint about alleged mistreatment or other concerns relating to the research with the facility's rights officer or with any other applicable complaint mechanism in place.

(n) All research undertaken at facilities must be conducted with a fundamental commitment to high ethical standards regarding the conduct of scientific research. Any evidence of allegations of misconduct in science shall be reviewed and investigated promptly and thoroughly in accordance with 42 CFR 50, Subpart A, (Responsibility of PHS Awardee and Applicant Institutions for Dealing With and

Reporting Possible Misconduct in Science), which is adopted by reference and referenced as Exhibit C in §414.762 of this title (relating to Exhibits), and §414.760 of this title (relating to Investigation of Allegations of Misconduct in Science).

§414.755. Designated Institutional Review Board (IRB).

(a) Each facility electing to participate in research must have a designated IRB for the purpose of reviewing, approving, and monitoring all research conducted at that facility, with the exception of research involving multiple facilities as provided by subsection (c) of this section.

(b) A facility may choose one of the following options for its designated IRB, which must be approved by the ORA as outlined in subsection (f) of this section.

(1) Facility IRB. An IRB, established and operated by a facility, whose membership meets the requirements described in subsection (d) of this section.

(2) Another facility's IRB. A facility IRB as described in paragraph (1) of this subsection.

(3) University IRB. An IRB, established and operated by a university and whose membership meets the requirements described in subsection (d) of this section.

(4) Central Office IRB. An IRB, established and operated by Central Office, whose membership meets the requirements described in subsection (d) of this section.

(c) A facility's CEO or a facility's designated IRB may request that the Central Office IRB act as the facility's designated IRB for a research study that involves multiple facilities.

(d) The membership of the IRB must comply with the requirements in §46.107 of 45 CFR 46, referenced as Exhibit A in §414.762 of this title (relating to Exhibits) and this subsection.

(1) Facility IRB. Membership of a facility IRB must include at least three members who are familiar with the mental disorders/conditions and concerns of the population(s) served by the facility or facilities.

(A) At least one of the three members described in paragraph (1) of this subsection must be a professional in the field of mental health or mental retardation, as appropriate to the facility or facilities.

(B) At least two of the three members described in paragraph (1) of this subsection must be:

(i) a person who is or has been in the mental health priority population or mental retardation priority population, as appropriate to the facility or facilities;

(ii) a family member of a person who is or has been in the mental health priority population or mental retardation priority population, as appropriate to the facility or facilities; or

(iii) an advocate for persons who are or have been in the mental health priority population or mental retardation priority population, as appropriate to the facility or facilities.

(2) University IRB. Membership of a university IRB must include at least three members or ad hoc members who are familiar with the mental disorders/conditions and concerns of the population(s) served by the facility or facilities.

(A) At least one of the three members described in paragraph (2) of this subsection must be a professional in the field of mental health or mental retardation, as appropriate to the facility or facilities.

(B) At least two of the three members described in paragraph (2) of this subsection must be:

(i) a person who is or has been in the mental health priority population or mental retardation priority population, as appropriate to the facility or facilities;

(ii) a family member of a person who is or has been in the mental health priority population or mental retardation priority population, as appropriate to the facility or facilities; or

(iii) an advocate for persons who are or have been in the mental health priority population or mental retardation priority population, as appropriate to the facility or facilities.

(3) Central Office IRB. Membership of the Central Office IRB must include local representation from various regions of the state and at least three members who are familiar with the mental disorders/conditions and concerns of the population(s) served by TDMHMR.

(A) At least one of the three members described in paragraph (3) of this subsection must be a professional in the field of mental health and mental retardation.

(B) At least two of the three members described in paragraph (3) of this subsection must be:

(i) a person who is or has been in the mental health priority population, a family member of a person who is or has been in the mental health priority population, or an advocate for persons who are or have been in the mental health priority population; and

(ii) a person who is or has been in the mental retardation priority population, a family member of a person who is or has been in the mental retardation priority population, or an advocate for persons who are or have been in the mental retardation priority population.

(e) Each IRB must have written policies and procedures that are consistent with this subchapter and TDMHMR's rules governing the care and protection of individuals as described in §414.763(4) of this title (relating to References) and that address:

(1) the functions and operations of the IRB as required by §46.103(b)(4) and (b)(5) of 45 CFR 46 (Exhibit A);

(2) the review or screening process to determine whether proposed research is exempt from the requirements of federal regulations made in accordance with §46.101(b) of 45 CFR 46 (Exhibit A), including required documentation, and any necessary approvals;

(3) the process for ensuring that each IRB member and key researcher involved in an approved research study receives documented training in applicable ethics, laws, and regulations governing research involving human subjects; and

(4) the process for disclosing and considering potential conflicts of interest, financial or otherwise, by IRB members and key researchers.

(f) ORA approval of a designated IRB.

(1) A facility seeking approval for its own facility IRB, another facility's IRB, or a university IRB as its designated IRB, as described in subsection (b)(1), (b)(2), or (b)(3) of this section, must submit the following to the ORA:

(A) IRB membership information in sufficient detail to determine compliance with subsection (d) of this section and which describes each member's chief anticipated contribution to IRB deliberations, and any employment or other relationship between each member and the facility, university, or Central Office, as appropriate;

(B) the written policies and procedures described in subsection (e) of this section;

(C) the written policy for the communication of IRB deliberations, recommendations, and decisions to the facility CEO and the ORA; and

(D) if approval is for a university IRB or another facility's IRB, a copy of the written agreement in which the university IRB or other facility IRB accepts responsibility for reviewing, approving, and monitoring all research to be conducted at the facility seeking approval.

(2) A facility seeking approval for the Central Office IRB as its designated IRB, as described in subsection (b)(4) of this section, must submit a written request from the facility CEO to the ORA.

(g) The ORA shall review the information submitted by the facility and will approve, disapprove, or enter into negotiations to attain approval for the IRB as the facility's designated IRB. The ORA will provide written notice of approval or disapproval to the requesting facility.

(h) Any change in a designated IRB's membership, policies, or procedures must be reported to and approved by the ORA.

(i) The ORA may require that a designated IRB comply with additional requirements related to documentation and approval if the ORA determines that such requirements are necessary to ensure the protection of human subjects.

(j) The ORA may revoke approval of a designated IRB at any time the ORA determines the IRB fails to maintain standards in accordance with federal regulations and this subchapter.

§414.756. IRB Functions and Operations.

(a) Each designated IRB shall:

(1) follow its written policies and procedures as described in §414.755(e) of this title (relating to Designated Institutional Review Board (IRB));

(2) function in accordance with §46.108 of 45 CFR 46 (Exhibit A);

(3) ensure proposed research is reviewed and approved in accordance with this subchapter;

(4) except when an expedited review is used as described in §46.108(b) of 45 CFR 46 (Exhibit A), ensure proposed research is reviewed and approved only at meetings in which at least one of each of the following members are present, participating, and voting:

(A) a member who satisfies the requirements of §414.755(d)(1)(A), (d)(2)(A), or (d)(3)(A) of this title (relating to Designated Institutional Review Board (IRB)), as appropriate to the IRB; and

(B) a member who satisfies the requirements of §414.755(d)(1)(B), (d)(2)(B), or (d)(3)(B) of this title (relating to Designated Institutional Review Board (IRB)), as appropriate to the IRB, and in the case of the Central Office IRB, as appropriate to the facility or facilities for which the research is proposed.

(5) exercise appropriate oversight to ensure that:

(A) its policies and procedures designed for protecting the rights and welfare of human subjects are being effectively applied; and

(B) research is being conducted at the facility or facilities in accordance with the approved protocol;

(6) maintain records of its operations in accordance with §46.115 of 45 CFR 46 (Exhibit A);

(7) submit to the ORA documentation of its continuing review of all approved and active research protocols; and

(8) immediately notify the ORA of any unanticipated serious problems or events involving risks to the human subjects or others.

(b) Each designated IRB has the authority to suspend or terminate research that is not being conducted in accordance with the IRB's requirements or that has been associated with significant unexpected harm to human subjects. Any suspension or termination of research shall be in writing and include a statement of the reasons for the IRB's actions and shall be reported promptly to the principal investigator, appropriate facility or facilities officials, and the ORA.

§414.757. Review and Approval of Proposed Research.

(a) All proposed research must be submitted to the facility's designated IRB and contain adequate written information for the IRB to determine whether the requirements described in §46.111 of 45 CFR 46, referenced as Exhibit A in §414.762 of this title (relating to Exhibits), are satisfied, including the following:

(1) A complete description of how the research protocol will be implemented at the facility or facilities, including;

(A) the process for recruiting and screening human subjects;

(B) how many subjects are required at the facility or facilities; and

(C) the process for and level of clinical monitoring of human subjects throughout the research period.

(2) A thorough justification of the research protocol and proposed analyses, including;

(A) a description of the procedures designed to minimize risks to subjects; and

(B) the scientific rationale for targeting the proposed population(s) as human subjects.

(3) If the proposed research would extend human subjects' use of an investigational medication or device as the primary treatment after the subjects are discharged from the facility, then the research proposal must also contain a memorandum of agreement between the principal investigator and each local authority responsible for subjects' continuity of care that delineates responsibility for each continuity of care activity, as required by TDMHMR rules, including how these activities will be coordinated and communicated. The delineated responsibilities must ensure subjects receive appropriate care after their discharge from the facility and following the conclusion of their participation in the research study.

(b) Each designated IRB shall review all proposed research at the facility in accordance with §46.109 of 45 CFR 46 (Exhibit A) and §414.758 of this title (relating to Informed Consent).

(c) Each designated IRB has the authority to approve, require modifications to, or disapprove any proposed research. Approval of proposed research shall be based on:

(1) the requirements described in §46.111 of 45 CFR 46 (Exhibit A), concerning criteria for IRB approval of research;

(2) the requirements described in §414.758 of this title (relating to Informed Consent);

(3) the requirements described in §414.759 of this title (relating to Human Subject Selection); and

(4) consideration of the information described in subsection (a)(1)-(2) of this section.

(d) The designated IRB may take into consideration deliberations and reviews from another IRB that has approved the protocol for a specific research proposal, but the designated IRB is ultimately responsible for approval of the proposed research.

(e) Research review and documentation process.

(1) Facility IRB as the designated IRB. The research review and documentation process for a facility IRB, as described in §414.755(b)(1) and (2) of this title (relating to Designated Institutional Review Board (IRB)), is generally as follows.

(A) The research proposal is reviewed by the facility IRB and, if approved, forwarded to the CEO of the facility where the research is to be conducted.

(B) The facility CEO is informed of the facility IRB's approval or disapproval and recommendations, if any.

(C) If the research proposal is approved by the facility IRB, the facility CEO considers the facility IRB's recommendations, if any, and either approves or disapproves the research proposal for implementation at the facility.

(D) If the research proposal is approved, the ORA is notified in writing of the CEO's and IRB's approval including copies of the IRB's meeting minutes concerning the review of the proposal, the proposal itself, and the CEO's and IRB's documentation of approval.

(2) University IRB as the designated IRB. The research review and documentation process for a facility using a university IRB is generally as follows.

(A) the research proposal is screened by the facility CEO and, if determined appropriate for implementation at the facility, forwarded to the university IRB for review.

(B) The research proposal is reviewed by the university IRB.

(C) The facility CEO is informed of the university IRB's approval or disapproval and recommendations, if any.

(D) If the research proposal is approved by the university IRB, the facility CEO considers the university IRB's recommendations, if any, and either approves or disapproves the research proposal for implementation at the facility.

(E) If the research proposal is approved, the ORA is notified in writing of the CEO's and IRB's approval including copies of the IRB's meeting minutes concerning the review of the proposal, the proposal itself, and the CEO's and IRB's documentation of approval.

(3) Central Office IRB as the designated IRB. The research review and documentation process for a facility using the Central Office IRB is generally as follows.

(A) The research proposal is screened by the facility CEO and, if determined appropriate for implementation at the facility, forwarded to the Central Office IRB.

(B) The research proposal is reviewed by the Central Office IRB.

(C) The facility CEO is informed of the Central Office IRB's approval or disapproval and recommendations, if any.

(D) If the research proposal is approved by the Central Office IRB, the facility CEO considers the Central Office IRB's recommendations, if any, and either approves or disapproves the research proposal for implementation at the facility.

(E) If the research proposal is approved, the ORA is notified in writing of the CEO's and IRB's approval including copies of the IRB's meeting minutes concerning the review of the proposal, the proposal itself, and the CEO's and IRB's documentation of approval.

(4) Central Office IRB as a facility's designated IRB for research studies involving multiple facilities. When a facility's designated IRB or CEO requests that the Central Office IRB act as its designated IRB for a research study involving multiple facilities, pursuant to §414.755(c) of this title (relating to Designated Institutional Review Board (IRB)), then the research review and documentation process is generally as follows.

(A) The research proposal is reviewed and approved by:

(i) each facility CEO;

(ii) the Central Office IRB; and

(iii) the appropriate Central Office director(s), (i.e., director of state mental health facilities or director of state mental retardation facilities).

(B) If the research proposal is approved by the facility CEOs, the Central Office IRB, and the appropriate Central Office director(s), the ORA is notified in writing of the approval, including copies of the IRB's meeting minutes concerning the review of the proposal, the proposal itself, and documentation of approval of the CEOs and the Central Office IRB.

(f) In addition to approval by the designated IRB and facility CEO, review and approval by the TDMHMR medical director is required for any research proposal involving:

(1) a placebo as the primary medication therapy;

(2) medication or doses of medication as the primary medication therapy which are known to be ineffective for the targeted disorder or condition; or

(3) an investigational medication or device.

(g) The review process for proposed research may require additional steps as necessary, (e.g., in the event a proposal is initially rejected).

(h) The facility CEO or designee is responsible for ensuring that all key researchers are qualified to perform any clinical duties assigned to them and are knowledgeable of TDMHMR's rules governing the care and protection of individuals as described in §414.763(4) of this title (relating to References).

§414.758. Informed Consent.

(a) Designated IRB's review of proposed research.

(1) The designated IRB's review must verify that procedures for obtaining and documenting informed consent meet the requirements in §46.116 and §46.117 of 45 CFR 46, referenced as Exhibit A in §414.762 of this title (relating to Exhibits). Additionally, informed consent must also address:

(A) any extension of the subject's length of stay at the facility as a result of participation in the research;

(B) if the research involves an investigational medication or device, the subject's ability to receive the medication or device after the research has concluded;

(C) whether the research involves the use of a placebo and the likelihood of assignment to the placebo condition;

(D) whether the research involves medication or doses of medication which are known to be ineffective for the targeted disorder or condition and the likelihood of assignment to such medication or doses of medication; and

(E) any risk of deterioration in the subject's condition and the potential consequences for such deterioration (e.g., an extension in the length of stay, the use of interventions such as restraint, seclusion, or emergency medications).

(2) For research protocols that present greater than minimal risk, the designated IRB's review must verify that the procedures for obtaining and documenting informed consent:

(A) provide for a qualified professional, who is independent of the research study, to assess prospective human subjects for capacity to consent;

(B) describe who will conduct the assessments; and

(C) describe the nature of the assessment and justification if less formal procedures to assess capacity will be used.

(3) If minors are the proposed human subjects, the designated IRB's review must verify that the requirements in §46.408 (concerning Requirements for Permission by Parents or Guardians and for Assent by Children) of 45 CFR 46 (Exhibit A) have been met.

(4) The designated IRB's review must determine that there are adequate procedures to ensure that each prospective human subject understands the information provided before obtaining consent and if the subject cannot understand the information that there are provisions for obtaining informed consent from the subject's LAR. If consent is obtained from the subject's LAR then procedures must be in place to attempt, to the extent possible given the prospective subject's capacity, to obtain the subject's assent to participation.

(5) The designated IRB's review must determine whether there are safeguards to minimize the possibility of coercion or undue influence. The research proposal may be approved only if the possible advantages of the subject's participation in the research do not impair the subject's ability to weigh the risks of the research against the value of those advantages. Possible advantages within the limited choice environment of a facility may include enhancement of general living conditions, medical care, quality of food, or amenities; opportunity for earnings; or change in commitment status.

(b) Obtaining informed consent.

(1) A prospective human subject's objection to enrollment in research or a human subject's objection to continued participation in a research protocol must be heeded in all circumstances, regardless of whether the subject or the subject's LAR has given consent. Objection may be conveyed verbally, in writing, behaviorally, or by other indications or means. This does not preclude a key researcher, with approval of LARs, if appropriate, and acting with a level of sensitivity that avoids the possibility or the appearance of coercion, from approaching individuals who previously objected to ascertain whether they have changed their minds or approaching individuals who have not given actual consent to ascertain whether they want to enroll in the research protocol.

(2) Because informed consent is an ongoing process, each human subject's comprehension and capacity must be assessed and enhanced throughout the course of the research protocol.

§414.759. Human Subject Selection.

The designated IRB's review of proposed research shall ensure that the human subject selection process is equitable and that measures are taken to ensure the research sample is adequately representative of the population of interest. Subject selection procedures must offer equitable opportunity for access to participation in research and access to potential benefits of participation.

§414.760. Investigation of Allegations of Misconduct in Science.

(a) All research undertaken at facilities shall be conducted with a fundamental commitment to high ethical standards regarding the conduct of scientific research.

(b) Reports of alleged misconduct in science are made to the ORA, who shall ensure that:

(1) each allegation is reviewed and investigated by an appropriate entity in accordance with 42 CFR 50, Subpart A, referenced as Exhibit C in §414.762 of this title (relating to Exhibits);

(2) the investigating entity submits to the ORA information documenting the disposition of each allegation; and

(3) the following are notified of confirmed incidents of misconduct in science:

(A) the IRB that approved the research protocol; and

(B) the agency funding the research.

§414.761. Responsibilities of the Office of Research Administration (ORA).

The ORA is responsible for:

(1) approving the establishment or utilization of an IRB by a facility as the facility's designated IRB;

(2) providing staff support to the Central Office IRB;

(3) reviewing and developing TDMHMR rules and policies governing the conduct of research at facilities;

(4) maintaining all documentation regarding a designated IRB's review of research for a facility;

(5) receiving reports of misconduct in science, ensuring each allegation of misconduct in science is reviewed and investigated, and maintaining and reporting information regarding misconduct in science as required by the Office of Research Integrity in accordance with 42 CFR 50, Subpart A, referenced as Exhibit C in §414.762 of this title (relating to Exhibits); and

(6) providing technical assistance and interpretation of policies, procedures, TDMHMR rules, and regulations concerning the conduct of research involving human subjects at facilities.

§414.762. Exhibits.

The following exhibits are referenced in this subchapter, copies of which are available by contacting TDMHMR, Office of Policy Development, P.O. Box 12668, Austin, TX 78711-2668:

(1) Exhibit A - Title 45, Code of Federal Regulations, Part 46 (Protection of Human Subjects);

(2) Exhibit B - "The Belmont Report: Ethical Principles and Guidelines for the Protection of Human Subjects of Research, Report of the National Commission for the Protection of Human Subjects of Biomedical and Behavioral Research" (April 18, 1979); and

(3) Exhibit C - Title 42, Code of Federal Regulations, Part 50, Subpart A (Responsibility of PHS Awardee and Applicant Institutions for Dealing With and Reporting Possible Misconduct in Science).

§414.763. References.

The following statutes and TDMHMR rules are referenced in this subchapter:

(1) Title 45, Code of Federal Regulations, Part 46 (Protection of Human Subjects);

(2) Title 42, Code of Federal Regulations, Part 50, Subpart A (Responsibility of PHS Awardee and Applicant Institutions for Dealing With and Reporting Possible Misconduct in Science);

(3) Texas Health and Safety Code, Chapter 574 and §533.035; and

(4) TDMHMR rules governing the care and protection of individuals, which address:

(A) rights and confidentiality of persons receiving services in TDMHMR facilities;

(B) consent to treatment with psychoactive or psychotropic medication;

(C) voluntary and involuntary interventions involving persons receiving services in TDMHMR facilities; and

(D) abuse, neglect, and exploitation of persons receiving services in TDMHMR facilities.

§414.764. Distribution.

This subchapter is distributed to:

(1) all members of the Texas Mental Health and Mental Retardation Board;

(2) executive, management, and program staff of Central Office;

(3) CEOs of all facilities;

(4) advocacy organizations; and

(5) upon request, to any interested person.

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 June 8, 2001.

TRD-200103212
Andrew Hardin
Chairman, Texas MHMR Board
Texas Department of Mental Health and Mental Retardation
Effective date: July 1, 2001
Proposal publication date: March 30, 2001
For further information, please call: (512) 206-5216

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CHAPTER 417. AGENCY AND FACILITY RESPONSIBILITIES
SUBCHAPTER B. CONTRACTS MANAGEMENT FOR TDMHMR FACILITIES AND CENTRAL OFFICE

25 TAC §§417.51 - 417.65

The Texas Department of Mental Health and Mental Retardation (TDMHMR) adopts new §§417.51 - 417.65 of new Chapter 417, Subchapter B, concerning contracts management for TDMHMR facilities and Central Office. Sections 417.53 - 417.59, 417.61, and 417.64 are adopted with changes to the proposed text as published in the December 29, 2000, issue of the *Texas Register* (25 TexReg 12898-12904). Sections 417.51, 417.52, 417.60, 417.62, 417.63, and 417.65 are adopted without changes. The repeals of §§401.371 - 401.380 and §§401.387 - 401.390 of Chapter 401, Subchapter E, concerning contracts management, the repeals of §§407.51 - 407.58 of Chapter 407, Subchapter B, concerning construction bidding procedures, and the repeal of §417.201 of Chapter 417, Subchapter E, concerning TDMHMR Historically Underutilized Business Program, which the new sections would replace, are contemporaneously adopted in this issue of the *Texas Register*.

The new sections describe TDMHMR's policies for acquisition of all goods and services by TDMHMR facilities and Central Office with the exception of Medicaid provider contracts and leases or contracts for sale of real property. The main difference between the proposed new subchapter and the subchapters proposed for repeal is that the new subchapter would require compliance with procurement rules adopted by the Health and Human Services Commission, which ensures best value for the agency awarding the contract. Other differences are the new subchapter's application to construction contracts and the inclusion of protest and appeal procedures, monitoring requirements, and remedies and sanctions that TDMHMR may impose for a contractor's default.

Minor language modifications have been made throughout the subchapter to correct grammatical errors and to provide clarifying language. Language has been added to the definition of "consultant contract" to be consistent with state statute. The definition of "contractor" has been modified to be consistent with the definition of "contract." A definition of "consumer services contract" has been added to describe those contracts that are for the provision of services delivered to a consumer or consumers. Language in §417.54(f) has been modified to clarify that all procurement *opportunities* over $25,000 must be posted on the Texas Marketplace/Electronic State Business Daily. Language has been added to §417.55(f) which prohibits TDMHMR from contracting with a business entity that, pursuant to the Texas Family Code, §231.006, is ineligible to receive a contract.

The provision proposed as §417.56(b)(8) has been moved to §417.56(a) because it applies to all contracts. Language requiring conformity with the rules and regulations of the Texas Department of Information Resources and the Legislative Budget Board has been added to §417.57(d) because such rules and regulations are applicable to automated information systems contracts. A subsection has been added to §417.57 to clarify requirements for performance contracts that require a local authority to acquire a good through a subcontract or to subcontract with a business entity to develop or create intellectual property. Language has been added to §417.58(a) stating that before a contract may be extended or renewed the contractor must have satisfied all eligibility and compliance requirements of state law as of the date of extension or renewal. The word "contract" has been added to the title of §417.61, and the section has been modified to address monitoring requirements specific to performance contracts. The references in §417.64 have been modified to reflect the changes made to the subchapter upon adoption.

Written comment on the proposal was received from the Parent Association for the Retarded of Texas (PART), Austin, and the parent of a state school resident, Garland.

Regarding obtaining best value to TDMHMR in §417.54(a), two commenters stated that TDMHMR's top priority should be best value to the individuals it serves and their legally authorized representatives (LARs) and recommended adding language to specify such. TDMHMR responds that adding such language is unnecessary because the definition of "best value" requires the achievement of "health and human services procurement objectives as described in §391.21 of Title 1." TDMHMR notes that the objective in §391.21(4) is to "support the delivery of services and benefits that *best meets the needs of clients* and programs administered by health and human services agencies."

Regarding contracting with former and retired employees in §417.55(c), two commenters requested that the rule include the statutory requirements rather than the statutory cites. The commenters referred to TDMHMR's proposed rules governing contracts management for local authorities (Chapter 412, Subchapter B), which contains descriptive language relating to contracting with former employees and officers of a local authority. TDMHMR declines to include the specific statutory requirements contained in the referenced cites because the requirements are lengthy and subject to revision by the legislature every two years. TDMHMR notes that descriptive language was included in its proposed rules governing contracts management for local authorities because the requirement is not based in statute.

Regarding unrestricted access to contractors' facilities, records, and data for monitoring purposes in proposed §417.56(b)(8), two commenters suggested that language be added to include access to the individuals being served under the contract. The commenters stated that monitors needed "access to individuals to monitor more than just 'paperwork' concerning their individual programs and services." The commenters also requested that language be added to allow access to individuals *without reasonable notice.* Additionally, the commenters recommended adding language to state "that any violation of consumer's or LAR's rights will be reported to TDMHMR Hotline 800-252-8154 and LAR, if needed." TDMHMR responds that the rule's provision mirrors the language in the Texas Health and Safety Code, §534.061(c), as it applies to certain community services contracts. The absence of language specific to access to individuals as a contract provision does not mean that TDMHMR would not have access to the individuals served by the contractor. TDMHMR could not comply with the monitoring requirements contained in proposed §417.61(f)-(g) of this subchapter if it did not have access to individuals. Regarding access to individuals *without reasonable notice*, TDMHMR responds that permitting access to individuals without reasonable notice could result in violations of individuals' right to privacy. TDMHMR notes that the proposed provision has been moved to §417.56(a) because it applies to all contracts. Regarding adding language requiring the reporting of rights violations, TDMHMR responds that rules governing rights of individuals receiving services address allegations of rights violations. TDMHMR notes that §417.56(b)(7) requires contractors providing services to consumers to comply with relevant TDMHMR rules, which include those rules governing rights of individuals receiving services.

Regarding risk assessment factors in proposed §412.61(f)(2), two commenters recommended adding "Level of ICAP or level of ABL of the consumers." The commenters also requested that Level III monitoring be required for all consumer services and programs. TDMHMR declines to add the requirement because TDMHMR facilities do not generally contract for consumer services on the basis of consumers' functioning levels. Facilities contract for consumer services that facilities are unable to provide themselves, such as surgical or dental services. In the case of a facility's contract with a local general hospital, the facility may not even know which of its consumers would require the contractor's services. TDMHMR notes that proposed language doesn't preclude including as a risk assessment factor the functioning levels of consumers who may be served by the contract. Regarding requiring Level III monitoring for all contracts for consumer services and programs, TDMHMR declines to add the requirement because Level III monitoring would not be appropriate for all contracts for consumer services. Again, in the case of a facility's contract with a local general hospital, it's possible that in the first six months of the contract no consumer would receive services from the contracted hospital. Requiring Level III monitoring for such a contract would not be a wise use of resources; however, Level III monitoring may be appropriate in the case of a facility's contract with a local dentist who is new to the area. TDMHMR notes that monitoring requirements must allow for flexibility because of the wide variety of contracts that are governed by this subchapter.

Two commenters requested that the reference to §417.56(b)(1) made in proposed §417.61(g)(2) be changed to refer to §417.56(b)(1)-(11) instead. TDMHMR declines to change the reference because it properly references the provision in §417.56(b)(1) for a consumer services contract to have *clearly defined performance expectations.* All of the other paragraphs in §417.56(b) do not pertain to such performance expectations.

The new sections are adopted under the Texas Health and Safety Code, §532.015, which provides the Texas Board of Mental Health and Mental Retardation (board) with broad rulemaking authority; §533.016, which allows TDMHMR to adopt rules relating to certain procurements of goods and services; §533.034, which provides TDMHMR with the authority to contract for community-based services; §534.059(b), which requires TDMHMR's contract rules to provide for sanctions if TDMHMR intends to sanction a local mental health or mental retardation authority for failing to comply with its performance contract; §551.007(c), which requires TDMHMR to adopt rules relating to awarding contracts for the construction of buildings and improvements; and the 1999 Appropriations Act, Article II, Section 2, Rider 13, which states that no funds appropriated to a health and human service agency may be utilized for contracts for the purchase of program-related client services unless such contracts include clearly defined goals, outputs, and measurable outcomes which directly relate to program objectives, include clearly defined sanctions or penalties for non compliance with contract terms and conditions, and specify the accounting, reporting, and auditing requirements applicable to funds received under the contract.

§417.53. Definitions.

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

(1) Best value--The optimum combination of economy and quality that is the result of fair, efficient, and practical procurement decision-making and that achieves health and human services procurement objectives as described in §391.21 of Title 1 (relating to Health and Human Services Procurement Objectives).

(2) Business entity--A sole proprietorship, including an individual, partnership, firm, corporation, holding company, joint-stock company, receivership, trust, or any other entity recognized by law.

(3) CC&PS--The Central Contracting and Procurement Support division at Central Office.

(4) Central Office--TDMHMR's administrative offices in Austin.

(5) Consultant contract--A contract to retain the services of a business entity that does not involve the traditional relationship of employer and employee to study an existing or proposed operation or project, or to provide advice with regard to the operation or project consistent with Texas Government Code, Chapter 2254, Subchapter B, to exclude:

(A) practitioners of professional services (as defined in this section);

(B) private legal counsel;

(C) investment counselors;

(D) actuaries; or

(E) medical or dental services providers.

(6) Consumer--A person with mental illness or mental retardation receiving services funded by TDMHMR.

(7) Consumer services contract--A contract for the provision of services delivered to a consumer or consumers.

(8) Contract--A written agreement, including a purchase order, between a facility or Central Office and a business entity that obligates the entity to provide goods or services in exchange for money or other valuable consideration.

(9) Contract director--The TDMHMR employee who is responsible for contracts management as follows:

(A) at a facility--the director of Contract and Materials Management section.

(B) at Central Office--

(i) the director of CC&PS or

(ii) the director of the Maintenance and Construction section.

(10) Contract management--Developing specifications or scope of work or contractor qualifications, evaluating responses, and procuring, negotiating, drafting, awarding, executing, monitoring, and enforcing a contract.

(11) Contractor--A business entity that provides goods or services in exchange for money or other valuable consideration pursuant to a contract.

(12) Facility--Any state hospital, state school, or state center operated by the Texas Department of Mental Health and Mental Retardation.

(13) Higher authority--The TDMHMR employee to whom the contract director reports, as follows:

(A) at a facility--the superintendent, director, or executive director.

(B) at Central Office--

(i) the deputy commissioner for finance and administration; or

(ii) the director of the Support Services division.

(14) Local authority--An entity designated by the TDMHMR commissioner in accordance with the Texas Health and Safety Code, §533.035(a).

(15) Performance contract--A written agreement between TDMHMR and a local authority for the provision of one or more functions as described in the Texas Health and Safety Code, §533.035(a).

(16) Professional services--As specified in the Texas Government Code, §2254.002, those services:

(A) within the scope of the practice, as defined by state law, of:

(i) accounting;

(ii) architecture;

(iii) landscape architecture;

(iv) land surveying;

(v) medicine;

(vi) optometry;

(vii) professional engineering;

(viii) real estate appraising; or

(ix) professional nursing; or

(B) provided in connection with the professional employment or practice of a person who is licensed or registered as:

(i) a certified public accountant;

(ii) an architect;

(iii) a landscape architect;

(iv) a land surveyor;

(v) a physician, including a surgeon;

(vi) an optometrist;

(vii) a professional engineer;

(viii) a state certified or state licensed real estate appraiser; or

(ix) a registered nurse.

(17) Respondent--A business entity that submits an oral, written, or electronic response to a solicitation. The term is intended to include "bidder," "offeror," "proposer," and other similar terminology to describe the business entity that responds to a solicitation.

(18) Response--A respondent's oral, written, or electronic "bid," "offer," "proposal," "quote," "application," or other applicable expression of interest to a solicitation.

(19) Solicitation--A written or electronic notification of TDMHMR's intent to purchase goods or services, such as a request for proposals (RFP) or an invitation for bids (IFB).

(20) TDMHMR--The Texas Department of Mental Health and Mental Retardation.

(21) *TDMHMR Contracts Manual*--A publication of TDMHMR's internal policies and procedures relating to contracting.

§417.54. Procurement.

(a) With the exception of construction contracts, TDMHMR must acquire goods and services by a method approved by the Health and Human Services Commission (HHSC) that provides the best value

to TDMHMR. Acquisition of goods and services must be in accordance with:

(1) the Texas Government Code, §2155.144;

(2) Health and Human Services Commission rules, 1 TAC, Part 15, Chapter 391, governing Purchase of Goods and Services by Health and Human Services Agencies; and

(3) this subchapter.

(b) Pursuant to §391.109(13) of Title 1 (relating to Exceptions to Competitive Procurement Methods), TDMHMR may waive competitive procurement requirements for purchases of less than $100,000 if there is a demand of such urgency for the goods or services that a delay in purchasing would cause operational or financial harm.

(c) As required in §391.165(b) of Title 1 (relating to Streamlined Purchasing Standards), TDMHMR's threshold for streamlined purchases is $10,000.

(d) TDMHMR must comply with the Uniform Grant Management Standards, promulgated by the Governor's Office of Budget and Planning, pursuant to the Texas Government Code, Chapter 783, and 1 TAC, Part 1, Chapter 5, Subchapter A, Division 4, when providing financial assistance to a unit of local government or when providing block grants to a business entity.

(e) To increase purchases and contract awards to historically underutilized businesses, TDMHMR adopts by reference rules of the General Services Commission (GSC) contained in 1 TAC, Part 5, Chapter 111, §§111.11 - 111.27 (relating to Historically Underutilized Business Program).

(f) Pursuant to the Texas Government Code, §2155.083, all procurement opportunities over $25,000 must be posted on the Texas Marketplace/Electronic State Business Daily.

(g) TDMHMR may reject any or all responses or any part of a response. TDMHMR reserves the right to cancel a solicitation without award for any reason or for no reason.

(h) Upon written request by an unsuccessful respondent, TDMHMR will provide an explanation of the reason(s) why the respondent's response was not selected for award.

§417.55. Accountability.

(a) Conflicts of interests and standards of conduct for TDMHMR employees and officers.

(1) Conflicts of interest. TDMHMR employees and officers may not have a conflict of interest in contracts management. An employee or officer has a conflict of interest when the employee, officer, or a person related within the second degree of consanguinity or affinity to the employee or officer, intends to have or has:

(A) actual employment with a respondent or contractor;

(B) paid consultation with a respondent or contractor;

(C) membership on a respondent's or contractor's board of directors;

(D) ownership of 10% or more of the voting stock of shares of a respondent or contractor;

(E) ownership of 10% or more or $5,000 or more of the fair market value of a respondent or contractor; or

(F) received funds from a respondent or contractor in excess of 10% of the employee's, officer's, or related person's gross income for the previous year.

(2) Standards of conduct.

(A) TDMHMR employees and officers who participate in contracts management may not:

(i) accept or solicit any gift, favor, service, or benefit from a respondent or contractor that might reasonably tend to influence the officer or employee in the discharge of official duties relating to contract management, or that the officer or employee knows or should know is being offered with the intent to influence the officer's or employee's official duties; or

(ii) intentionally or knowingly solicit, accept, or agree to accept any benefit for having exercised official powers or for having performed official duties in favor of another respondent or contractor.

(B) TDMHMR employees who participate in contracts management shall comply with additional standards of ethical conduct contained in the TDMHMR Ethics Operating Instruction (417-16) and applicable state law.

(b) Conflicts of interests and standards of conduct for a respondent and its officers and employees.

(1) Conflict of interest. A respondent and its officers and employees may not have a conflict of interest in the solicitation for which the respondent submits a response. A person has a conflict of interest when that person is related within the second degree of consanguinity or affinity to a TDMHMR employee or officer participating in the contract management for that contract.

(2) Standards of conduct.

(A) A respondent may not attempt to induce any business entity to submit or not submit a response.

(B) A respondent must arrive at its response independently and without consultation, communication, or agreement for the purposes of restricting competition.

(C) A respondent and its officers and employees may not have a relationship with any person, at the time of submitting the response or during the contract term, that may interfere with fair competition.

(D) A respondent and its officers and employees may not participate in the development of specific criteria for award of the contract, nor participate in the selection of the business entity to be awarded the contract.

(c) When contracting with former and retired employees and officers, TDMHMR must ensure compliance with applicable state law, including the Texas Government Code, §572.054, §659.0115, and §2252.901.

(d) Except for the contracts management of construction contracts and performance contracts, all contracts management must be conducted in accordance with the requirements of the *TDMHMR Contracts Manual*.

(e) All contracts must contain standard terms and conditions as described in the *TDMHMR Contracts Manual* unless an exception is granted by CC&PS.

(f) TDMHMR is prohibited from contracting with a business entity that:

(1) is held in abeyance or barred from the award of a federal or state contract;

(2) is not in good standing for state tax, pursuant to the Texas Business Corporation Act, Texas Civil Statutes, Article 2.45;

(3) is not residing or located in Texas unless the business entity has a Texas sales tax permit or certifies that the entity does not sell taxable goods or services within Texas, pursuant to the Texas Government Code, §2155.004;

(4) is on warrant hold status, pursuant to the Texas Government Code, §403.055; or

(5) is ineligible to receive a contract, pursuant to the Texas Family Code, §231.006.

(g) TDMHMR must ensure that its contractors comply with all contract provisions regardless of whether a contractor subcontracts a portion of the contract.

(h) TDMHMR may make advance payments to a contractor provided the payments meet a public purpose, ensure adequate consideration, and are accompanied by sufficient controls to ensure accomplishment of the public purpose. With the exception of contracts paid on a capitated basis, at the end of each contract period the contractor must return to TDMHMR any state or federal funds received from or through TDMHMR that have not been expended or encumbered within the term of the contract.

(i) TDMHMR may recoup improper payments when it is verified that a contractor has been overpaid because of improper billing or accounting practices or failure to comply with the contract terms. The determination of impropriety is based on federal, state, and local laws and rules; TDMHMR procedures; contract provisions; or statistical data on program use compiled from paid claims and other sources of data. TDMHMR will recoup payments for contracted services not received by TDMHMR.

(j) TDMHMR shall ensure quality services are provided to consumers, including during the transition from one contractor to another.

(k) All purchases of goods and services may be made only pursuant to a contract.

§417.56. Provisions for All Contracts.

(a) Unless an exception is granted by CC&PS, all contracts governed by this subchapter must include the following standards and conditions:

(1) the beginning and ending dates of the contract;

(2) identification of the service(s) or good(s) to be purchased;

(3) identification of all parties;

(4) total allowable payment or, if the contract is for services provided solely on a referral basis or on a capitated basis, the rates of payment;

(5) the method of payment;

(6) documentation retention requirements;

(7) the requirement that the contractor must comply with all applicable federal and state laws, rules, and regulations, including Title VI of the Civil Rights Act of 1964; Section 504 of the Rehabilitation Act of 1973; the Americans with Disabilities Act of 1990 (ADA); and the Age Discrimination in Employment Act of 1967;

(8) sanctions and remedies TDMHMR may take in response to the contractor's default;

(9) a statement that the contractor is not currently held in abeyance or barred from the award of a federal or state contract, and that the contractor will provide immediate written notification to TDMHMR if the contractor becomes held in abeyance or barred from the award of a federal or state contract during the term of the contract; and

(10) that TDMHMR and its designees, including independent financial auditors, shall have, with reasonable notice, unrestricted access to all facilities, records, data, and other information under the control of the contractor as necessary to enable TDMHMR to audit, monitor, and review all financial and programmatic activities and services associated with the contract.

(b) All consumer services contracts must include the standards and conditions that are described in subsection (a) of this section and provisions stating:

(1) the clearly defined performance expectations which directly relate to the community service's objectives, including goals, outputs, and measurable outcomes, and that the contractor must provide services in accordance with such expectations;

(2) that no consumer will be excluded from participation in, denied the benefits of, or unlawfully discriminated against, in any program or activity funded by the contract on the grounds of race, color, national origin, religion, sex, age, disability, or political affiliation in accordance with applicable law;

(3) that all consumer-identifying information will be maintained by the contractor as confidential, in accordance with applicable law and Chapter 414, Subchapter A of this title (relating to Client-Identifying Information);

(4) that the contractor, its licensed staff, and other appropriate staff (as identified in the contract) will be credentialed before services are delivered to consumers by such contractor and staff;

(5) that any allegation of abuse, neglect, or exploitation of consumers under the contract will be reported in accordance with applicable law, TDMHMR rules, and Texas Department of Protective and Regulatory Services rules;

(6) that AIDS/HIV workplace guidelines, similar to those adopted by TDMHMR and AIDS/HIV confidentiality guidelines and consistent with state and federal law, will be adopted and implemented by the contractor;

(7) that the contractor will comply with relevant TDMHMR rules, certifications, accreditations, and licenses, as specified in the contract;

(8) that any allegation involving the clinical practice of a physician, dentist, registered nurse, or licensed vocational nurse, be referred to the contractor's medical, dental, or nursing director (as appropriate to the discipline involved) for review for possible peer review and reporting to disciplinary boards; and

(9) the accounting, reporting, and auditing requirements with which the contractor must comply.

(c) All contracts for residential services must include the standards and conditions that are described in subsections (a) and (b) of this section and provisions stating:

(1) that services will be provided in accordance with consumers' treatment plans; and

(2) that the contractor must comply with Chapter 414, Subchapter K of this title (relating to Criminal History Clearances) regarding conducting criminal history clearances of its applicants, employees, and volunteers, and that if an applicant, employee, or volunteer of the contractor has a criminal history relevant to his or her employment as described in Chapter 414, Subchapter K of this title (relating to Criminal History Clearances), then the contractor will take appropriate action

with respect to the applicant, employee, or volunteer, including terminating or removing the employee or volunteer from direct contact with consumers served by the contractor.

§417.57. Additional Requirements for Specific Contracts.

(a) Consultant contracts. All consultant contracts must conform with the requirements of the Texas Government Code, Chapter 2254, Subchapter B.

(b) Professional services contracts. All professional services contracts must conform with the requirements of the Texas Government Code, Chapter 2254, Subchapter A.

(c) Grant contracts. All grant contracts must conform with the requirements of all terms and conditions of the grant and the Texas Health and Safety Code, §533.001(d). Block grant contracts must also conform with the requirements of:

(1) the Texas Government Code, Chapter 2105; and

(2) the Uniform Grant Management Standards, promulgated by the Governor's Office of Budget and Planning, pursuant to the Texas Government Code, Chapter 783, and 1 TAC, Part 1, Chapter 5, Subchapter A, Division 4.

(d) Automated information systems (i.e., information services) contracts. Automated information systems contracts must conform with the requirements of the Texas Government Code, Chapters 2054 and 2157, and applicable rules and requirements of the Texas Department of Information Resources, the General Services Commission, and the Legislative Budget Board.

(e) Construction contracts. All construction contracts must conform with the requirements of the Texas Health and Safety Code, §551.007, the Uniform General Conditions for Construction Contracts, promulgated by the General Services Commission, pursuant to the Texas Government Code, Chapter 2166, and TDMHMR's Supplementary General Conditions for Construction Contracts.

(f) Interagency contracts. All interagency contracts must conform with the requirements of the Texas Government Code, Chapter 771.

(g) Interlocal contracts. All interlocal contracts must conform with the requirements of the Texas Government Code, Chapter 791.

(h) Employee education and training contracts. All employee education and training contracts must conform with the requirements of the Texas Government Code, Chapter 656, Subchapter C.

(i) Performance contracts.

(1) If a performance contract provision requires the local authority to acquire a good through a subcontract, then the performance contract provision must identify the local authority or TDMHMR as the owner of the good.

(2) If a performance contract provision requires the local authority to subcontract with a business entity to develop or create intellectual property (e.g., computer software), then the performance contract provision must state the requirements to be included in the subcontract that relate to:

(A) ownership of the intellectual property;

(B) TDMHMR's and/or the local authority's right to use, modify, reproduce, or disseminate the intellectual property to others; and

(C) indemnity of the local authority and TDMHMR should the subcontractor violate the intellectual property rights of a third party.

§417.58. Contract Extension or Renewal.

(a) All contracts governed by this subchapter may be extended or renewed only if:

(1) the solicitation or contract allows for extension or renewal;

(2) funding is available for the extension or renewal;

(3) extension or renewal is in the best interest of TDMHMR;

(4) the contractor has demonstrated satisfactory performance; and

(5) the contractor satisfied all eligibility and compliance requirements of state law as of the date of the extension or renewal.

(b) The determination of whether to renew a block grant contract or reduce the funding of a block grant contract must include the consideration of factors described in the Texas Government Code, §2105.202(b).

§417.59. Award of Construction Contracts.

(a) This section describes TDMHMR's procedures for awarding construction contracts, as required by the Texas Health and Safety Code, §551.007(c).

(b) TDMHMR shall make a reasonable effort to give notice of its intent to award a construction contract by publishing an Invitation for Bids (IFB) notice twice in two newspapers of general circulation in the locality of the construction project. TDMHMR may send the IFB notice to plan rooms (i.e., a clearinghouse established by independent organizations in which private companies and government agencies may file plans and specifications for construction proposals). The IFB notice shall include:

(1) a description of the construction project;

(2) the project location;

(3) the procedures for obtaining bidding documents (i.e., plans and specifications of the construction project and other related documentation); and

(4) the place and time of the bid opening.

(c) Each bid must be written on the form that is included with the bidding documents and submitted in a sealed envelope to the announced place on or before the bids are scheduled to be opened.

(d) At the announced place and promptly at the announced time, a representative of TDMHMR's Maintenance and Construction Section shall open each bid envelope and read aloud all bid amounts contained in the bid. Any bid arriving later than the announced time will not be accepted, and will be returned unopened to the bidder. Bid openings are open to the public.

(e) After all bids have been opened TDMHMR shall determine which, of all the responsive bids received, is the lowest and best bid. In determining the lowest and best bid and a bidder's ability to comply with the contract, TDMHMR may require a bidder to submit a qualifications form showing the bidder's capabilities.

§417.61. Contract Monitoring.

All contracts must be monitored for compliance.

(1) Construction contracts. The monitoring activities for all construction contracts must include performing desk reviews of invoices and reports and conducting on-site reviews.

(2) Certain professional services contracts. The monitoring activities for all professional services contracts for architects, engineers, and land surveyors must include periodic reviews of work product.

(3) Interagency and interlocal contracts. The monitoring activities for all interagency and interlocal contracts must include performing desk reviews of invoices and reports; evaluating the contractor's performance upon completion of the contract; and, if appropriate, requiring prior approvals for expenditures.

(4) Certain contracts for goods and non-consumer services. The monitoring activities for all contracts for goods and non-consumer services that do not exceed $25,000 must include performing desk reviews of invoices and reports.

(5) Performance contracts.

(A) To determine necessary financial monitoring activities:

(i) staff must assess each local authority's financial risk through ratio analysis of the authority's liquidity, ongoing operations, and capital structure, which is based on annual and quarterly financial information submitted by the authority; and

(ii) staff must conduct a desk review of each local authority's annual audit to determine audit quality and to identify findings and questioned costs. Staff must ensure that a local authority submits a corrective actin plan that addresses all findings and questioned costs.

(B) To determine necessary performance monitoring activities staff must conduct a review of each local authority's performance reports and assess the authority's performance risk by analyzing data regarding at least the following information:

(i) the local authority's ability to provide services to the required (or target) number of consumers;

(ii) the local authority's performance outcomes (e.g., state hospital bed-day usage);

(iii) allegations and confirmations of abuse, neglect, and exploitation at the local authority; and

(iv) number and type of complaints about the local authority.

(C) Financial and performance monitoring activities of performance contracts shall be in proportion to the risk assessed in accordance with subparagraphs (5)(A) and (5)(B) of this paragraph. Monitoring activities include:

(i) regular or periodic communication between TDMHMR staff and local authority staff;

(ii) regular or periodic reviews of detailed reports required to be submitted by the local authority;

(iii) providing training or technical assistance; and

(iv) conducting on-site reviews.

(6) All other contracts. Contract monitoring requirements for all contracts not described in paragraphs (1)-(5) of this section are as follows.

(A) Contract monitoring levels and examples of monitoring activities are as follows:

(i) Level I - TDMHMR performs desk reviews of invoices and reports, and evaluates the contractor's performance upon completion of the contract.

(ii) Level II - TDMHMR performs desk reviews of invoices and reports; requires prior approvals for services and/or expenditures; and evaluates the contractor's performance every six months or upon completion of the contract if the term is less than one year.

(iii) Level III - TDMHMR performs desk reviews of invoices and reports; requires prior approvals for services and/or expenditures; conducts on-site reviews to ensure specific performance and service levels (as defined in the contract) are met; and evaluates the contractor's performance quarterly and upon completion of the contract.

(B) Each contract must be assigned a monitoring level based on staff's risk assessment of the contract. Risk assessment factors must include at least the following:

(i) licensing or regulatory oversight of the contractor;

(ii) geographic dispersion;

(iii) contract term;

(iv) number of consumers to be served;

(v) service mix and complexity of service or complexity of specifications;

(vi) degree of competition;

(vii) historical performance of contractor; and

(viii) the contract amount.

(C) TDMHMR shall monitor contracts at the level that corresponds with the assigned risk assessment.

(7) Consumer services contracts. In addition to the monitoring requirements and activities described in paragraph (6) of this section, for consumer services contracts TDMHMR must evaluate:

(A) the safety of the environment in which services are provided;

(B) the contractor's compliance with the contract, including the clearly defined performance expectations (as referenced in §417.56 (b)(1) of this title (relating to Provisions for All Contracts)); and

(C) satisfaction of consumers and family members with services provided.

§417.64. References.

The following laws and rules are referenced in this subchapter:

(1) Texas Government Code, Chapters 656, Subchapter C; 783; 771; 791; 2054; 2105; 2157; 2166; and 2254, Subchapters A and B; §403.055; §411.115; §572.054; §659.0115; §2155.004; ; 2155.083; §2155.144; §2252.901; and §2260.051(c);

(2) Texas Health and Safety Code, Chapter 250; §533.001(d); §533.007; §533.035(a); and §551.007;

(3) Texas Civil Statutes, Article 2.45;

(4) 1 TAC, Part 1, Chapter 5, Subchapter A, Division 4;

(5) 1 TAC, Part 5, Chapter 111, §§111.11 - 111.27 (relating to Historically Underutilized Business Program);

(6) 1 TAC, Part 15, Chapter 391, governing Purchase of Goods and Services by Health and Human Services Agencies;

(7) Chapter 417, Subchapter S of this title (relating to Negotiation and Mediation of Certain Contract Claims Against TDMHMR);

(8) Chapter 414, Subchapter A of this title (relating to Client-Identifying Information);

(9) Chapter 414, Subchapter K of this title (relating to Criminal History Clearances);

(10) TDMHMR Operating Instruction for Ethics (417-16); and

(11) Texas Family Code, §231.006.

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 June 8, 2001.

TRD-200103216
Andrew Hardin
Chairman, Texas MHMR Board
Texas Department of Mental Health and Mental Retardation
Effective date: July 1, 2001
Proposal publication date: December 29, 2000
For further information, please call: (512) 206-5216

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SUBCHAPTER E. TDMHMR HISTORICALLY UNDERUTILIZED BUSINESS PROGRAM

25 TAC §417.201

The Texas Department of Mental Health and Mental Retardation (TDMHMR) adopts the repeal of §417.201 of Chapter 417, Subchapter E, concerning TDMHMR Historically Underutilized Business Program, without changes to the proposal as published in the March 2, 2001, issue of the *Texas Register* (26 TexReg 1825).

The section, which adopted by reference rules of the General Services Commission (GSC) contained in 1 TAC §§111.11-111.27 (relating to Historically Underutilized Business Certification Program), has been duplicated in 25 TAC §417.54(e) of rules governing contracts management for TDMHMR facilities and Central Office, which are contemporaneously adopted in this issue of the *Texas Register*. The repeal eliminates the duplicative provision.

No comment on the proposal was received.

This section is repealed under the Texas Health and Safety Code, §532.015, which provides the Texas Mental Health and Mental Retardation Board with broad rulemaking authority, and the Texas Government Code, §2161.003, which requires state agencies to adopt rules of the General Services Commission governing historically underutilized businesses.

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 June 8, 2001.

TRD-200103219
Andrew Hardin
Chairman, Texas MHMR Board
Texas Department of Mental Health and Mental Retardation
Effective date: July 1, 2001
Proposal publication date: March 2, 2001
For further information, please call: (512) 206-4516

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TITLE 31. NATURAL RESOURCES AND CONSERVATION

PART 1. GENERAL LAND OFFICE

CHAPTER 15. COASTAL AREA PLANNING

SUBCHAPTER A. MANAGEMENT OF THE BEACH/DUNE SYSTEM

31 TAC §15.11

The Texas General Land Office adopts the amendment to §15.11, Certification of Local Government Dune Protection and Beach Access Plans as published in the February 23, 2001, edition of the *Texas Register* (26 TexReg 1661). The amendment is adopted with changes to correct a publication error in the numbering of (a)(12) and (a)(13). A correction of error was published in the March 23, 2001, edition of the *Texas Register* (26 TexReg 2425).

The amendment as adopted certifies the dune protection and beach access plan of the Village of Surfside Beach, adopted as Ordinance No. 2000-18 (Plan), as consistent with state law. The adopted amendment also corrects minor grammatical changes by deleting several obsolete and unnecessary conjunctions.

Pursuant to the Open Beaches Act (Texas Natural Resources Code, Chapter 61), the Dune Protection Act (Texas Natural Resources Code, Chapter 63), and the Beach/Dune Rules (31 TAC §§15.1 through 15.11), a local government with jurisdiction over public beaches fronting the Gulf of Mexico must submit a plan to the Texas General Land Office. The General Land Office is required to review such plans and certify by rule those plans which are consistent with the Open Beaches Act, the Dune Protection Act, and the Beach/Dune Rules.

The Village of Surfside Beach (Village) received a conditional certification of its plan (adopted December 3, 1993) with the requirement that it modify its plan to comply with state law. On December 12, 2000, the city council of the Village adopted as Ordinance No. 2000-18, the Dune Protection and Beach Access Plan of the Village of Surfside Beach. The Village modified its plan in response to comments from the General Land Office and in accordance with state law.

The justification for adoption of the amendment is that the approved plan provides for preservation and enhancement of public beach use and increases availability of resources dedicated to beach related services and facilities. In addition, the plan is organized better and is easier for the members of the public owning beach front property to understand. Denial of certification would prohibit construction within the Village impacting critical dune areas.

No comments were received regarding the proposed amendment and there were no requests for the Takings Impact Assessment prepared by the General Land Office.

The amendment is adopted under the Texas Natural Resources Code, §§61.011, 61.015(b), and 61.022(c) which provide the Land Office with the authority to adopt rules to preserve and enhance the public's right to use and have access to and from the public beaches of Texas; and Texas Natural Resources Code, §63.121 which provides the Land Office with authority to adopt rules for the identification and protection of critical dune areas.

Texas Natural Resources Code, §§61.011, 61.015(b), 61.022(c), and 63.121 are affected by the adopted amendment.

§15.11. Certification of Local Government Dune Protection and Beach Access Plans.

(a) Certification of local government plans. The following local governments have submitted plans to the General Land Office which are certified as consistent with state law:

(1) Brazoria County (adopted August 9, 1993, amended September 27, 1993);

(2) Chambers County (adopted August 9, 1993);

(3) City of Port Aransas (adopted February 15, 1995);

(4) City of Port Arthur (adopted April 12, 1993);

(5) Jefferson County (adopted August 16, 1993, amended March 7, 1994);

(6) Matagorda County (adopted February 13, 1995). The General Land Office certifies that the Beach User Fees section of the Matagorda County plan adopted by the Matagorda County Commission Court on March 15, 1999, is consistent with state law.

(7) Town of Quintana (adopted August 11, 1993);

(8) Village of Jamaica Beach (adopted August 16, 1993, amended December 6, 1993);

(9) Town of South Padre Island (adopted October 5, 1994);

(10) City of Corpus Christi (adopted August 10, 1993);

(11) Cameron County:

(A) Plan (adopted September 20, 1994). The 440-foot building line established in the Cameron County plan, Section III.I, shall not be operative unless it is landward of the line of vegetation. The line of vegetation shall be established as required in the Open Beaches Act, Texas Natural Resources Code, §61.017.

(B) Padre Shore Ltd. Final Master Plan Amendment (adopted November 5, 1996).

(12) Nueces County

(A) Plan (adopted March 25, 1992, amended October 23, 1996).

(B) La Concha master plan. The General Land Office certifies that the dune protection portion of the La Concha master plan adopted by the Nueces County commissioners court on March 20, 1996, is consistent with state law.

(C) Palms at Waters Edge master plan: The General Land Office certifies that the dune protection portion of the Palms at Waters Edge master plan adopted by the Nueces County commissioners court on December 27, 1996, is consistent with state law.

(D) Mustang Island Episcopal Conference Center master plan. The General Land Office certifies that the dune protection section of the Mustang Island Episcopal Conference Center master plan adopted by the Nueces County Commissioners Court on January 31, 2000, is consistent with state law.

(13) Village of Surfside Beach (adopted December 12, 2000).

(b) Conditional certification of local government plans. The following local governments have submitted plans to the General Land Office which are conditionally certified as consistent with state law.

(1) City of Galveston (adopted August 12, 1993, amended February 9, 1995, and amended June 19, 1997.).

(A) This certification is valid for 180 days, during which time the City of Galveston will modify its plan consistent with the General Land Office comments submitted to the City of Galveston (October 14, 1993).

(B) This certification includes a variance from §§15.4(c)(8), 15.5(b)(3), and 15.6(f)(3) of this title, (relating to Dune Protection Standards, Beachfront Construction Standards, and Concurrent Dune Protection and Beachfront Construction Standards). The City of Galveston's plan:

(i) provides that paving or altering the ground below the lowest habitable floor is prohibited in the area between the line of vegetation and 25 feet landward of the north toe of the dune;

(ii) provides that paving used under the habitable structure and for a driveway connecting the habitable structure and the street is limited to the use of unreinforced fibercrete in 4 feet by 4 feet sections, which shall be a maximum of four inches thick with sections separated by expansion joists, or pervious materials approved by the City Department of Planning and Transportation, in that area 25 feet landward of the north toe of the dune to 200 feet landward of the line of vegetation;

(iii) assesses a "Fibercrete Maintenance Fee" of $200.00 to be used to pay for the clean-up of fibercrete from the public beaches, should the need arise; and

(iv) allows the use of reinforced concrete in that area landward of 200 feet from the line of vegetation.

(2) Galveston County (adopted August 16, 1993). This certification is valid for 180 days, during which time Galveston County will modify its plan consistent with the General Land Office comments submitted to Galveston County (October 18, 1993).

(c) Implementation of conditionally certified plans. Local governments are required to implement conditionally certified plans consistent with the Texas Natural Resources Code, Chapters 61 and 63, and the General Land Office rules for management of the beach/dune system, §§15.1-15.10 of this title (relating to Management of the Beach/Dune System).

(d) Removal of conditions of certification.

(1) Local governments shall submit their modified plans on or before the expiration of the 180-day time period. The General Land Office shall provide to the pertinent local government a determination as to the sufficiency of the modification(s) within 60 days of receipt of the plan. The General Land Office will remove all conditions of the plan's certification by amending this subsection. Such amendments will list the name of the pertinent local government in subsection (a) of this section, and delete the same from subsection (b) of this section. If the General Land Office determines that modifications of plans are insufficient, the General Land Office shall provide specific exceptions to the modifications. If those portions of the plan to which the General Land Office has noted exceptions can be addressed through further comment, plan revision and review, conditional certification will be reissued pursuant to a General Land Office amendment to this subsection, subject to further plan modification.

(2) In the event that a local government chooses not to modify its plan as requested in the General Land Office comments, the local government shall provide in writing the scientific or legal justification as to why such modifications are not feasible. The justification shall be submitted to the General Land Office on or before the due date of the revised plan. The justification will be reviewed by the General Land Office, and a determination as to the sufficiency of the justification will be provided to the local government within 60 days of receipt by the General Land Office. Local government plans shall continue in effect under conditional certification until the sufficiency of the justification is resolved or this section is amended.

(e) Withdrawal of conditional certification. Conditional certification of a local government plan shall be withdrawn by the General Land Office after the 180-day time period if the pertinent local government does not submit to the General Land Office either a formally adopted plan which has been modified consistent with General Land Office comments or the written scientific or legal justification as to why such modification is not feasible. In any event, withdrawal of conditional certification shall only occur after the General Land Office adopts an amendment to this subsection withdrawing conditional certification, with accompanying specific reasons, and the General Land Office has given the pertinent local government written notice of the withdrawal of the conditional certification.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on June 8, 2001.

TRD-200103211
Larry Soward
Chief Clerk
General Land Office
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For further information, please call: (512) 305-9129

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TITLE 37. PUBLIC SAFETY AND CORRECTIONS

PART 3. TEXAS YOUTH COMMISSION

CHAPTER 91. PROGRAM SERVICES

SUBCHAPTER D. HEALTH CARE SERVICES

37 TAC §91.91

The Texas Youth Commission (TYC) adopts an amendment to §91.91, concerning Psychopharmacotherapy, without changes to the proposed text as published in the April 20, 2001 issue of the *Texas Register* (26 TexReg 2948).

The justification for amending the rule ensures appropriate psychiatric intervention will be used in the administering of psychotropic medications.

The amendment will comply with state regulations in the use of standing orders for psychotropic drugs and standing orders will not be utilized for psychotropic drugs, except where psychiatric mid-level practitioners are used to provide services under a supervising psychiatrist.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Human Resources Code, §61.076, which provides the Texas Youth Commission with the authority to provide any medical of psychiatric treatment that is necessary.

The adopted rule implements the Human Resource Code, §61.034.

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 June 5, 2001.

TRD-200103147
Steve Robinson
Executive Director
Texas Youth Commission
Effective date: July 31, 2001
Proposal publication date: April 20, 2001
For further information, please call: (512) 424-6301

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CHAPTER 93. YOUTH RIGHTS AND REMEDIES

37 TAC §93.53

The Texas Youth Commission (TYC) adopts an amendment to §93.53, concerning Appeal to Executive Director, without changes to the proposed text as published in the April 20, 2001, issue of the *Texas Register* (26 TexReg 2950).

The justification for amending the section is to enhance due process for youth.

The amendment will increase the matters by which a youth may file an appeal to the executive director.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Human Resources Code, §61.045, which provides the Texas Youth Commission with the authority to operate programs that take into consideration the welfare, and rehabilitation of the youth under its care.

The adopted rule implements the Human Resource Code, §61.034.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Steve Robinson
Executive Director
Texas Youth Commission
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For further information, please call: (512) 424-6301

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CHAPTER 95. YOUTH DISCIPLINE
SUBCHAPTER B. DUE PROCESS HEARINGS PROCEDURES

37 TAC §§95.51, 95.55, 95.57, 95.59

The Texas Youth Commission (TYC) adopts an amendment to §95.51, concerning Level I Hearing Procedure and §95.57, concerning Level III Hearing Procedure, without changes to the proposed text as published in the April 14, 2001 issue of the *Texas Register* (26 TexReg 2951). Adopts an amendment to §95.55, concerning Level II Hearing Procedure and §95.59, concerning Level IV Hearing Procedure, with changes to the proposed text as published in the April 14, 2001 issue of the *Texas Register* (26 TexReg 2951). Changes to the proposed text in §95.55 Level II Hearing Procedure consists of a minor sentence structure change by making a specific procedure a paragraph of its own and deleting this procedure from another paragraph. Changes to the proposed text in §95.59 Level IV Hearing Procedure consist of minor grammatical changes in the language to be consistent throughout the policy and adding specific requirements for notification of appeals.

The justification for amending the section is to align all of TYC's due process hearings and appeal procedures to coincide with the new segregation policies.

The amendment will create a fair and equitable system of imposing sanctions and ensuring the youth is afforded due process in assigning any form of disciplinary action.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Human Resources Code, §61.075, which provides the Texas Youth Commission with the authority to determine the appropriate types of treatment and sanctions for youth committed to the care custody and control of Texas Youth Commission.

The adopted rule implements the Human Resource Code, §61.034.

§95.55. Level II Hearing Procedure.

(a) Purpose. The purpose of this rule is to establish a procedure to be followed when the second highest level of due process is afforded a youth. The level II hearing procedure is appropriate due process in the following instances:

(1) disciplinary transfer;

(2) disciplinary extension in length of stay;

(3) admission to a behavior management program (BMP);

(4) admission to the aggression management program (AMP);

(5) with a few exceptions in procedure:

(A) admission to the Corsicana Stabilization Unit, Corsicana Residential Treatment Center; and

(B) extension of time to treat a psychiatric disorder in connection with a Corsicana Stabilization Unit placement at the Corsicana Residential Treatment Center (as appropriate).

(b) Applicability.

(1) For the highest level of due process, see (GAP) §95.51 of this title (relating to Level I Hearing Procedure).

(2) See (GAP) §95.11 of this title (relating to Disciplinary Transfer/Assigned Minimum Length of Stay Consequence).

(3) See (GAP) §95.17 of this title (relating to Behavior Management Program).

(4) See (GAP) §95.21 of this title (relating to Aggression Management Program).

(5) See (GAP) §87.67 of this title (relating to Corsicana Stabilization Unit).

(6) For exceptions in procedures used for admission to Corsicana Stabilization Unit, Corsicana Residential Treatment Center, and extension of time to treat the psychiatric disorder, see (GAP) §95.71 of this title (relating to Mental Health Status Review Hearing Procedure).

(c) Explanation of Terms Used. Preponderance of the evidence - a standard of proof meaning the greater weight and degree of credible evidence admitted at the hearing, e.g., whether the credible evidence makes it more likely than not that a particular proposition is true.

(d) Procedure.

(1) The designated primary service worker (PSW) or the administrative duty officer (ADO), shall request permission to schedule a hearing from the appropriate supervisor, institutional superintendent, halfway house superintendent, parole supervisor, or quality assurance administrator. The hearing must be scheduled as soon as practical but not later than seven days, excluding weekends and holidays, after the alleged violation. A delay of more than seven days in scheduling the hearing must be justified by documentation of circumstances, which made it impossible, impractical, or inappropriate to schedule the hearing.

(2) Failure to document circumstances making it impossible, impractical, or inappropriate to schedule the hearing may result in a dismissal or reversal of the decision of the hearing manager.

(3) If the youth is admitted to Institution Detention Program (IDP) pending a level II hearing, the hearing shall be conducted within ten days from date of admission to detention. A delay of more than ten days in conducting the hearing must be justified by documentation of circumstances, which made it impossible, impractical, or inappropriate to conduct the hearing earlier.

(4) The appropriate supervisor, institutional superintendent, halfway house superintendent, parole supervisor, or quality assurance administrator will appoint an impartial staff member to act as hearing manager.

(5) The hearing manager shall be a Texas Youth Commission (TYC) staff member who is trained to function as a hearing.

(A) If the youth is currently assigned to an institution, the hearing manager shall be someone not directly responsible for supervising the youth.

(B) If the youth is currently assigned to a halfway house, the hearing manager shall not be a member of the halfway house staff.

(C) If the youth is currently assigned to a contract program, the hearing manager shall not be the TYC quality assurance specialist assigned to that youth.

(D) If the youth is currently assigned to his or her home, the hearing manager shall not be the parole officer assigned to the youth's case.

(6) The youth's PSW shall be responsible for assembling all evidence and giving all notices required for the hearing.

(7) The youth shall be given written notice of his rights not less than 24 hours prior to the hearing. The youth's rights are:

(A) the right to remain silent;

(B) the right to be assisted by an advocate at the hearing;

(C) the right to confront and cross-examine adverse witnesses who testify at the hearing;

(D) the right to contest adverse evidence admitted at the hearing;

(E) the right to call readily available witnesses and present readily available evidence on his own behalf at the hearing; and

(F) the right to appeal the results of the hearing. The youth's right to appeal cannot be waived.

(8) The youth and the youth's advocate shall be given written notice of the reasons for calling the hearing, the proposed action to be taken, and the evidence to be relied upon not less than 24 hours prior to the hearing. After receipt of the written notice and consultation with the advocate, the youth may waive the 24-hour notice period by agreeing, in writing, to an earlier hearing time.

(9) Reasonable efforts shall be made to inform the youth's parent(s) of the time and place of the hearing not less than 24 hours prior to the hearing.

(10) The hearing shall consist of two parts: fact-finding and disposition, and shall be held where the youth resides unless the hearing manager determines that some other site is more appropriate. During the fact-finding portion of the hearing, only evidence concerning the alleged misconduct may be considered; the youth's prior behavior shall not be considered unless disposition is reached.

(11) The youth shall be assisted by an informed and responsible advocate appointed by the hearing manager. In cases where the youth is not proficient in the English language, the appointed advocate shall be proficient in English as well as the primary language of the youth or an interpreter shall be used.

(12) The hearing shall be tape recorded and the recording shall be the official record of the hearing. The tape recording and the hearing packet shall be preserved for six months following the hearing.

(13) The youth shall be present during the hearing unless he waives his presence or his behavior prevents the hearing from proceeding in an orderly and expeditious fashion.

(A) A waiver of the youth's presence shall be in writing and signed by the youth and his advocate. If the youth does not sign the waiver for any reason, his presence is not waived.

(B) If the youth waives his presence, the hearing may be conducted by teleconference.

(C) If a youth is excluded for behavioral reasons, those reasons shall be documented in the hearing record.

(D) A true plea cannot be entered on behalf of a youth who has waived his presence at the hearing.

(14) A victim who appears as a witness should be provided a waiting area where he is not likely to come in contact with the youth except during the hearing.

(15) Witnesses shall take an oath prior to testifying.

(16) The hearing manager, PSW , and advocate may question each witness in turn. The primary service worker and advocate may offer summation statements.

(17) To protect the confidential nature of the hearing, persons other than the youth, the youth's advocate, staff representative, and the youth's parent(s) may be excluded from the hearing room at the discretion of the hearings manager, however any person except the youth's advocate may be excluded from the hearing room if their presence causes undue disruption or delay of the hearing. The reason(s) for the exclusions are stated on the record.

(18) With the exception of the youth, any person designated as a witness may be excluded from the hearing room during the testimony of other witnesses and may be instructed to refrain from discussing their testimony with anyone until all the witnesses have been dismissed.

(19) The hearings manager may permit a witness to testify outside the presence of the youth if such appears reasonable and necessary to secure the testimony of the witness. If the youth is excluded from the hearing room during testimony, the advocate for the youth shall be present during the testimony and shall have the opportunity to review the testimony with the youth before questioning the witness.

(20) The youth shall not be called as a witness unless, after consulting with the advocate, he or she waives his right to remain silent on the record. Neither the hearing manager or the PSW may question the youth unless he/she waives the right to remain silent.

(A) The youth's failure to testify shall not create a presumption against him.

(B) A youth who waives his right to remain silent may only be questioned concerning those issues addressed by his testimony.

(21) All credible evidence may be considered, irrespective of its form.

(22) The standard of proof for all disputed issues is a preponderance of the evidence.

(23) The hearings manager may, for good cause, recess or continue the hearing for such period(s) of time as may be necessary to insure an informed and accurate fact-finding.

(24) The hearing manager will announce his findings of fact.

(25) If there is finding of true, the hearing manager shall proceed to disposition and order the disposition recommended by the staff representative unless the hearing manager finds extenuating circumstances.

(A) A hearing manager's decision that a youth be transferred is final.

(B) A hearing manager's decision to assign a disciplinary minimum length of stay (with or without a transfer) is final subject to approval by the appropriate director of juvenile corrections or designee. If, subsequent to the assignment of a disciplinary minimum length of stay, the appropriate director of juvenile corrections disapproves the assignment, neither the assignment nor a transfer may then occur.

(C) A hearing manager's decision that a youth will be transferred and/or an assigned a length of stay in a disciplinary segregation program is final subject to an appeal by the youth.

(26) The hearing manager shall prepare the Hearing Manager's Report of a Level II Hearing form, CCF-170, of his findings

which includes grounds for the hearing and evidence relied upon and the decision.

(27) The youth is informed of his/her right to appeal to the executive director at the close of the hearing. The pendency of an appeal shall not preclude implementation of the hearing manager's dispositional decision.

(28) A copy of the report (CCF-170) is given to the youth immediately following the close of the hearing.

§95.59. Level IV Hearing Procedure.

(a) Purpose. The purpose of this rule is to establish a procedure to determine whether justification exists to warrant holding a youth in detention pending charges or a hearing or trial.

(b) Applicability.

(1) The level I due process procedures referred to herein are found in (GAP) §95.51 of this title (relating to Level I Hearing Procedure).

(2) The level II due process procedures referred to herein are found in (GAP) §95.55 of this title (relating to Level II Hearing Procedure).

(c) A detention review hearing procedure (level IV hearing) shall be held to determine whether justification exists to warrant holding a youth in detention pending a hearing or trial when a level I or II hearing or a trial is not held and continued detention is necessary and appropriate based stated criteria in (GAP) §97.41 of this title (relating to Community Detention) or (GAP) §97.43 of this title (relating to Institution Detention Program). The timing of the required due process level IV hearing is related to the facility in which the youth is detained. A detention review hearing will be conducted by Texas Youth Commission (TYC) staff:

(1) for youth held in the institution detention program (IDP):

(A) on or before 72 hours from admission to the IDP, or the next working day; and

(B) within ten working days of the previous detention review hearing.

(2) for a youth held in a community detention facility the detention hearing will be held on or before the tenth working day of detention if;

(A) a detention hearing is not waived or conducted by the community for a TYC youth;

(B) the level I or II hearing or trial cannot be held within ten working days; and

(C) further detention is necessary and appropriate.

(d) Procedure.

(1) Decision Maker.

(A) A parole supervisor, quality assurance administrator, halfway house superintendent, or an institution superintendent shall appoint a decision-maker, who will schedule the hearing.

(B) The decision-maker shall be impartial and shall not have been the person who requested or admitted the youth to the security intake, or the institution detention program, or community detention.

(2) Detention Review Hearings.

(A) The youth has a right and shall be informed of his/her right to be represented:

(i) in a level I hearing, a youth shall be represented by counsel. Counsel is:

(I) an attorney obtained by the youth; or

(II) the attorney appointed to represent the youth.

(ii) in a level II hearing or pending a trial, a youth shall be represented by a youth advocate. If the trial attorney chooses to be the youth's advocate in a level IV hearing, the attorney may represent the youth but is not required to do so.

(B) The youth may waive the level IV hearing after being advised by an attorney (for a level I hearing) or an advocate (for a level II hearing or trial).

(C) The hearing shall be tape-recorded and the recording shall be the official record of the hearing. Tape recordings shall be preserved for six months following the hearing.

(D) When a detention review is necessary due to the adjournment of a level I telephone hearing under (GAP) §95.53 of this title (relating to Level I Hearing by Telephone), the hearings examiner may conduct a level IV hearing following adjournment of the telephone hearing.

(E) The staff responsible for calling for the level I or II hearing, or the Primary Service Worker (PSW) of the youth being held for trial must show cause to detain the youth pending the hearing or trial. The attorney or advocate may present evidence as to why the youth should not be detained.

(3) The Decision.

(A) The decision-maker shall base his/her decision on criteria for detention. See criteria in (GAP) §97.41 of this (relating to Community Detention) and (GAP) §97.43 of this title (relating to Institution Detention Program).

(B) If criteria are not met, the youth must be released to his/her assigned location.

(C) If a level IV hearing is not timely held or is not properly waived, the youth shall be released to his/her assigned location.

(4) Appeal.

(A) The youth is notified in writing of his/her right to appeal.

(i) For youth held in IDP, the appeal of the first level IV hearing will be to the superintendent. Appeal of the second level IV hearing will be to the executive director pursuant to (GAP) §93.53 of this title (relating to Appeal to Executive Director). An automatic appeal to the executive director will be filed on the third and subsequent level IV hearing to determine if the institution detention criteria have been proven, even if the youth waives the level IV hearing. The PSW will initiate the automatic appeal.

(ii) For all other youth in alternative detention facilities level IV hearing appeals will be to the executive director pursuant to (GAP) §93.53 of this title (relating to Appeal to Executive Director).

(B) The pendency of an appeal shall not preclude implementation of the decision-maker's dispositional decision. The PSW shall expedite the appeal by immediately faxing the record and evidence to the complaint coordinator in the office of general counsel to review the appeal.

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 June 5, 2001.

TRD-200103146
Steve Robinson
Executive Director
Texas Youth Commission
Effective date: July 31, 2001
Proposal publication date: April 20, 2001
For further information, please call: (512) 424-6301

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CHAPTER 97. SECURITY AND CONTROL
SUBCHAPTER A. SECURITY AND CONTROL

37 TAC §97.37, §97.40

The Texas Youth Commission (TYC) adopts an amendment to §97.37, concerning Security Intake and §97.40, concerning Security Program, without changes to the proposed text as published in the April 20, 2001, issue of the *Texas Register* (26 TexReg 2957).

The justification for amending the rules are to establish guidelines by which the security program operates.

The amendment will afford youth more due process by establishing a system of reviewing procedures.

No comments were received regarding adoption of the amendments.

The amendments are adopted under the Human Resources Code, §61.045, which provides the Texas Youth Commission with the authority to operate programs and facilities.

The adopted rule implements the Human Resource Code, §61.034.

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 June 5, 2001.

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Steve Robinson
Executive Director
Texas Youth Commission
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Proposal publication date: April 20, 2001
For further information, please call: (512) 424-6301

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37 TAC §97.41

The Texas Youth Commission (TYC) adopts an amendment to §97.41, concerning Community Detention, without changes to the proposed text as published in the April 20, 2001, issue of the *Texas Register* (26 TexReg 2961).

The justification for amending the section is to ensure that TYC staff in the community conduct a detention hearing for youth being detained by the community, either county jail/facility or local juvenile detention.

The amendment will allow to schedule a hearing as soon as practical but not later than seven days from the date of the alleged violation. A due process hearing is considered scheduled when a date and time has been set. The amendment will also provide a greater accountability for staff to ensure due process is followed for youth being detained by the community, either county jail/facility or local juvenile detention.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Human Resources Code, §61.091, which provides the Texas Youth Commission with the authority to cooperate with other agencies consistent with their proper function.

The adopted rule implements the Human Resource Code, §61.034.

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 June 5, 2001.

TRD-200103144
Steve Robinson
Executive Director
Texas Youth Commission
Effective date: July 31, 2001
Proposal publication date: April 20, 2001
For further information, please call: (512) 424-6301

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37 TAC §97.43

The Texas Youth Commission (TYC) adopts an amendment to §97.43, concerning Institution Detention Program, with changes to the proposed text as published in the April 20, 2001 issue of the *Texas Register* (26 TexReg 2962). Changes to the proposed text consist of a minor edit to subsection (e)(7) to change the word from notify to notified and minor grammar changes.

The justification for amending the section is to increase accountability for staff and youth and better define and implement program guidelines.

The amendment will define specific programs to help discipline negative behavior.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Human Resources Code, §61.045, which provides the Texas Youth Commission with the authority to operate programs in facilities that are charged with custody and rehabilitation of youth.

The adopted rule implements the Human Resource Code, §61.034.

§97.43. Institution Detention Program.

(a) Purpose. The purpose of this rule is to establish criteria and procedures for detaining appropriate Texas Youth Commission (TYC) youth in an Institution Detention Program (IDP) operated within each TYC institution or secure contract program, who have charges against them pending or filed, or are awaiting a due process hearing or trial, or awaiting transportation subsequent to a due process hearing or trial.

(b) Applicability.

(1) This rule applies to TYC youth detained in TYC operated institutions or secure contract programs for pre-hearing or post-hearing pending transportation.

(2) This rule does not apply to:

(A) TYC youth detained in community detention facilities. See (GAP) §97.41 of this title (relating to Community Detention);

(B) the use of the same or adjacent space when used specifically as security intake. See (GAP) §97.37 of this title (relating to Security Intake);

(C) the use of the same or adjacent space when used specifically as a security program. See (GAP) §97.40 of this title (relating to Security Program);

(D) the use of the same or adjacent space when used specifically as disciplinary segregation. See (GAP) §95.17 of this title (relating to Behavior Management Program);

(E) the use of the same or adjacent space when used specifically as temporary admission. See (GAP) §85.41 of this title (relating to Temporary Admission Awaiting Transportation); and

(F) the aggression management program (AMP). See (GAP) §95.21 of this title (relating to Aggression Management Program).

(c) Explanation of Terms Used. Detention Review Hearing - the TYC level IV hearing required by this policy.

(d) Criteria for Placement in an Institution Detention Program.

(1) Designated staff will conduct a review to determine whether admission criteria have been met.

(2) Admission Criteria for Detention Up To 72 Hours.

(A) A youth assigned to a TYC operated institution may be admitted to the IDP program (for up to 72 hours):

(i) if the youth is awaiting transportation subsequent to a due process hearing or trial; or

(ii) if a due process hearing or trial has been requested in writing or charges are pending or have been filed; and

(iii) there are reasonable grounds to believe the youth has committed a violation; and

(iv) one of the following applies:

(I) suitable alternative placement within the facility is unavailable due to on-going behavior of the youth that creates disruption of the routine of the youth's current program; or

(II) the youth is likely to interfere with the hearing or trial process; or

(III) the youth represents a danger to himself/herself or others; or

(IV) the youth has escaped or attempted escape as defined in (GAP) §97.29 of this title (relating to Escape/Abscondence and Apprehension).

(B) A youth who is assigned to a placement other than a TYC operated institution or secure contract program may be detained in a TYC operated IDP (up to 72 hours):

(i) if a due process hearing or trial has been requested in writing; and

(ii) based on current behavior or circumstances, and all detention criteria must have been met as defined in (GAP) §97.41 of this title (relating to Community Detention).

(C) A youth may appeal the admission decision to the IDP through the youth complaint system as defined in (GAP) §93.31 of this title (relating to Complaint Resolution System).

(3) Admission Criteria for Detention Beyond 72 Hours.

(A) A youth who is assigned to a TYC operated institution may be detained in the IDP beyond 72 hours based on current behavior or circumstances, and all other criteria in paragraph (2) of this subsection have been met.

(B) A youth who is assigned to a placement other than a TYC operated institution may be detained in a TYC operated IDP beyond 72 hours based on current behavior or circumstances and all detention criteria in (GAP) §97.41 of this title (relating to Community Detention) have been met.

(4) A hearing will be scheduled as soon as practical but no later than seven days, excluding weekends and holidays, from the date of the alleged violation.

(A) A due process hearing or trial is considered to be scheduled if a due process hearing date and time has been set or trial is pending.

(B) A youth whose due process hearing or trial has been held may be detained without a level IV hearing when the youth is waiting for transportation:

(i) to TDCJ, ID following a transfer hearing; or

(ii) to a different placement following a level I or II hearing.

(C) Transportation should be arranged immediately to take place within 72 hours and anything past that must have superintendent's approval.

(e) Detention Hearings Required for Any Youth Held in an Institution Detention Program.

(1) A youth, who meets admission criteria, may be detained in an IDP for up to 72 hours.

(2) For extensions beyond 72 hours an initial detention review hearing (level IV hearing) must be held on or before 72 hours from admission to the IDP, or the next working day.

(3) Subsequent detention review hearings must be held within ten working days from the previous detention review hearing when a due process hearing or trial is not held and continued detention is necessary and appropriate based upon current behavior or circumstances that meet criteria unless youth is under indictment pending trial. See (GAP) §95.59 of this title (relating to Level IV Hearing Procedure).

(4) A detention review hearing is not required for youth detained pending transportation pursuant to subsection (d)(3)(D) of this section.

(5) Institution or a designated community staff will hold the required level IV detention review hearings. The primary service worker (PSW) for youth not assigned to an institution, will coordinate with institution staff to ensure that hearings are timely held or waived properly.

(6) If a level IV hearing is not timely held or is not properly waived, the youth shall be released from the IDP.

(7) The youth is notified in writing of his/her right to appeal the level IV hearing.

(f) Release from institution detention is determined by the outcome of a hearing or trial or upon the decision not to hold a hearing. If the youth is pending transportation, the youth is released from detention upon transport.

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 June 5, 2001.

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Steve Robinson
Executive Director
Texas Youth Commission
Effective date: July 31, 2001
Proposal publication date: April 20, 2001
For further information, please call: (512) 424-6301

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PART 13. TEXAS COMMISSION ON FIRE PROTECTION

CHAPTER 421. STANDARDS FOR CERTIFICATION

37 TAC §421.5

The Texas Commission on Fire Protection adopts amendments to §421.5, concerning definitions regarding training officers without changes to text published in the *Texas Register* on March 2, 2001 (26 TexReg 1829).

The justification for this section is that training officers will ensure the certified facilities will be compliant with commission standards in content and delivery of programs.

The amendments change the definition of training officer to specify that the individual must be in charge of a commission "certified training facility."

There were no comments received on the proposed amendments.

The amendments are adopted under Texas Government Code, §419.008, which provides the commission with authority to adopt rules for the administration of its powers and duties; and Texas Government Code, §419.028, which provides the commission with authority to approve or revoke the approval of a training facility and to certify or revoke the certification of fire protection personnel instructors.

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 June 6, 2001.

TRD-200103186
Gary L. Warren Sr.
Executive Director
Texas Commission on Fire Protection
Effective date: June 26, 2001
Proposal publication date: March 2, 2001
For further information, please call: (512) 239-4921

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CHAPTER 441. CONTINUING EDUCATION

37 TAC §441.5

The Texas Commission on Fire Protection adopts an amendment to §441.5, concerning requirements for continuing education without changes to the text published in the *Texas Register* on March 2, 2001 (26 TexReg 1830).

The justification for this section is the result of a clearer understanding of the commission's intent with regard to the four- hour limitation on subject matter taken for continuing education credit.

The amendment changes the continuing education requirement for Track A so that no more than four hours in any one subject can be counted toward meeting the 20-hour continuing education requirement per year.

There were no comments received on the proposed amendment.

The amendment is adopted under Texas Government Code, §419.008, which provides the commission with authority to adopt rules for the administration of its powers and duties; and Texas Government Code §419.032, which provides the commission with authority to adopt rules relating to continuing education for fire protection personnel.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on June 6, 2001.

TRD-200103187
Gary L. Warren Sr.
Executive Director
Texas Commission on Fire Protection
Effective date: June 26, 2001
Proposal publication date: March 2, 2001
For further information, please call: (512) 239-4921

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TITLE 40. SOCIAL SERVICES AND ASSISTANCE

PART 1. TEXAS DEPARTMENT OF HUMAN SERVICES

CHAPTER 79. LEGAL SERVICES

SUBCHAPTER E. ADVISORY COMMITTEES

40 TAC §79.403

The Texas Department of Human Services (DHS) adopts an amendment to §79.403 without changes to the proposed text published in the April 13, 2001, issue of the *Texas Register* (26 TexReg 2820) and will not be republished.

Justification of the amendment is to move the specifications for the Home and Community Support Services Advisory Council and the Texas Board of Human Services/Board of Nurse Examiners Memorandum of Understanding Advisory Committee, previously under Chapter 97 (relating to HCSSAs) to Chapter 79, which includes the department's rules on advisory committees.

The department received no comments concerning the proposal.

The amendment is adopted under the Health and Safety Code, Chapter 142, which provides the department with the authority to adopt rules that govern the HCSSA Advisory Council and the Texas Board of Human Services/Board of Nurse Examiners Memorandum of Understanding Advisory Committee.

The amendment implements the Health and Safety Code, Chapter 142.001-142.030.

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 June 8, 2001.

TRD-200103221
Paul Leche
General Counsel, Legal Services
Texas Department of Human Services
Effective date: July 1, 2001
Proposal publication date: April 13, 2001
For further information, please call: (512) 438-3108

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PART 3. TEXAS COMMISSION ON ALCOHOL AND DRUG ABUSE

CHAPTER 141. GENERAL PROVISIONS

40 TAC §§141.61, 141.62, 141.71

The Texas Commission on Alcohol and Drug Abuse adopts new §§141.61, 141.62 and 141.71 of Chapter 141 concerning General Provisions. The sections are adopted without changes to the proposed text as published in the April 20, 2001, issue of the *Texas Register* (26 TexReg 2974).

Information regarding procurement procedures, procurement protest processes, and training and education for commission employees is provided in the new sections.

The new rules ensure commission procurements will comply with state law, provide applicants with information about protest procedures for procurements, and ensure appropriate use of training benefits by commission staff.

No comments were received regarding the adoption of the sections.

The new sections are adopted under the Texas Health and Safety Code, §461.012(a)(15) which provides the Texas Commission on Alcohol and Drug Abuse with the authority to adopt rules governing the functions of the commission, including rules that prescribe the policies and procedures followed by the commission when funding services and §461.0141 which provides the commission with authority to adopt rules regarding purchase of services.

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 June 6, 2001.

TRD-200103188
Karen Pettigrew
General Counsel
Texas Commission on Alcohol and Drug Abuse
Effective date: September 1, 2001
Proposal publication date: April 20, 2001
For further information, please call: (512) 349-6607

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PART 11. TEXAS COMMISSION ON HUMAN RIGHTS

CHAPTER 321. GENERAL PROVISIONS

40 TAC §321.1

The Commissioners of the Texas Commission on Human Rights adopt amended §321.1 concerning Definitions without changes to the text published in the May 4, 2001, issue of the *Texas Register* (26 TexReg 3385).

The amendments 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.

No comments were received in response to the proposed amendments.

The amendments are adopted 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.

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 June 8, 2001.

TRD-200103209
Katherine A. Antwi
Interim Executive Director
Texas Commission on Human Rights
Effective date: June 28, 2001
Proposal publication date: May 4, 2001
For further information, please call: (512) 437-3458

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CHAPTER 323. COMMISSION

40 TAC §323.1, §323.2

The Commissioners of the Texas Commission on Human Rights adopt amended §323.1, concerning General Description and §323.2, concerning Term of Office without changes to the text published in the May 4, 2001, issue of the *Texas Register* (26 TexReg 3386).

The amendments 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.

No comments were received in response to the proposed amendments.

The amendments are adopted under the Texas Labor Code, Chapter 21, §21.556 and §21.003 and Texas Administrative Code, Chapter 321, §321.4 and Chapter 323, §323.5. The Texas Labor Code, §21.556, provides that the Commission shall promulgate rules as are necessary and proper to execute its duties and functions. The Texas Labor Code, §21.003 and the Texas Administrative Code, §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.

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 June 7, 2001.

TRD-200103191
Katherine A. Antwi
Interim Executive Director
Texas Commission on Human Rights
Effective date: June 27, 2001
Proposal publication date: May 4, 2001
For further information, please call: (512) 437-3458

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CHAPTER 325. LOCAL COMMISSIONS

40 TAC §§325.1 - 325.3, 325.5

The Commissioners of the Texas Commission on Human Rights adopt amended §§325.1 concerning Deferral Authority, 325.2, concerning Deferral Procedures, 325.3, concerning Final Determination of a Local Commission, and 325.5, concerning Eligibility without changes to the text published in the May 4, 2001, issue of the *Texas Register* (26 TexReg 3386).

The amendments 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.

No comments were received in response to the proposed amendments.

The amendments are adopted 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.

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 June 7, 2001.

TRD-200103192
Katherine A. Antwi
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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 adopt 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 without changes to the text published in the May 4, 2001, issue of the *Texas Register* (26 TexReg 3387).

The amendments 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.

No comments were received in response to the proposed amendments.

The amendments are adopted 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.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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For further information, please call: (512) 437-3458

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CHAPTER 329. JUDICIAL ACTION

40 TAC §329.1

The Commissioners of the Texas Commission on Human Rights adopt amended §329.1 concerning Enforcement without changes to the text published in the May 4, 2001, issue of the *Texas Register* (26 TexReg 3389).

The amendment 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.

No comments were received in response to the proposed amendment.

The amendment is adopted 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.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Interim Executive Director
Texas Commission on Human Rights
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For further information, please call: (512) 437-3458

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CHAPTER 331. REPORTS AND RECORD KEEPING

40 TAC §331.1

The Commissioners of the Texas Commission on Human Rights adopt amended §331.1 concerning Preservation and Use without changes to the text published in the May 4, 2001, issue of the *Texas Register* (26 TexReg 3389).

The amendment 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.

No comments were received in response to the proposed amendment.

The amendment is adopted 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.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Katherine A. Antwi
Interim Executive Director
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For further information, please call: (512) 437-3458

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CHAPTER 333. CONFORMITY

40 TAC §333.1

The Commissioners of the Texas Commission on Human Rights adopt amended § 333.1 concerning Conformity without changes to the text published in the May 4, 2001, issue of the *Texas Register* (26 TexReg 3390).

The amendments 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.

No comments were received in response to the proposed amendments.

The amendments are adopted 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.

The 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.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Katherine A. Antwi
Interim Executive Director
Texas Commission on Human Rights
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For further information, please call: (512) 437-3458

TEXAS DEPARTMENT OF INSURANCE

Notification Pursuant to the Insurance Code, Chapter 5, Subchapter L

As required by the Insurance Code, Article 5.96 and 5.97, the ***Texas Register*** publishes notice of proposed actions by the Texas Board of Insurance. Notice of action proposed under Article 5.96 must be published in the ***Texas Register*** not later than the 30th day before the board adopts the proposal. Notice of action proposed under Article 5.97 must be published in the ***Texas Register*** not later than the 10th day before the Board of Insurance adopts the proposal. The Administrative Procedure Act, the Government Code, Chapters 2001 and 2002, does not apply to board action under Articles 5.96 and 5.97.

The complete text of the proposal summarized here may be examined in the offices of the Texas Department of Insurance, 333 Guadalupe Street, Austin, Texas 78714-9104.)

This notification is made pursuant to the Insurance Code, Article 5.96, which exempts it from the requirements of the Administrative Procedure Act.

Texas Department of Insurance

Proposed Action on Rules

The Commissioner of Insurance, at a public hearing under Docket Number 2488 on July 24, 2001 at 9:30 a.m., in Room 100 of the William P. Hobby Jr. State Office Building, 333 Guadalupe Street in Austin, Texas, will consider a petition filed by State Farm Fire and Casualty Company, State Farm General Insurance Company, and State Farm Lloyds (collectively referred to as State Farm) that requests the adoption of three new residential property policy forms which include form number FP-7955 TX (homeowners policy), form number FP-7954 (renters policy), and form number FP-7956 TX (condominium unitowners policy) and further requests the adoption of thirty-three new endorsements (as listed in Exhibit D) for use in the State of Texas.

These filings were made pursuant to the Insurance Code Article 5.35(b), which provides that the Commissioner may adopt policy forms and endorsements of national insurers. State Farm conforms to the definition of a national insurer and is, therefore, authorized to file its policies and endorsements with the Department to be considered by the Commissioner for adoption.

State Farm's original petition on this matter, filed on January 21, 1997, requested the adoption of a proposed new Texas homeowners policy. Since the filing of the original petition, State Farm and Department staff have engaged in extensive discussions and dialogue relating to the proposed form and endorsements. State Farm has made several modifications to the homeowners policy, as originally filed, as a result of its discussions with Department staff. On March 15, 2001, State Farm filed an amended petition in which it refiled its proposed new homeowners policy with the modifications that have been agreed upon by State Farm and staff and it also filed a proposed new renters policy, condominium unitowners policy, and thirty-three endorsements as additional items to be considered by the Commissioner. On June 12, 2001, State Farm amended its petition by withdrawing endorsement number FE-7421.1 and substituting in its place endorsement number FE-8716.

I. State Farm Homeowners Policy. The following is a general description of the coverage provided by the proposed State Farm homeowners policy that has been filed for adoption by the Commissioner pursuant to Article 5.35(b). A copy of the policy is attached as Exhibit A.

A. Section 1-Property Coverage.

1. The policy covers the dwelling and other private structures on the premises against the risk of direct physical loss, with certain exceptions.

2. It covers personal property on and away from the premises against losses by fire or lightning, windstorm or hail, explosion, riot or civil commotion, aircraft, vehicular impact, smoke, vandalism or malicious mischief, and theft.

3. It provides loss of use which covers additional living expenses when the residence becomes uninhabitable and fair rental value when part of the premises is rented to others.

B. Section 2-Liability Coverages.

1. Coverage L-Personal Liability. The policy covers payment on behalf of the insured of all sums, up to the stipulated limit, which the insured is legally liable to pay as damages because of bodily injury or property damage arising out of the residence premises or personal activities.

2. Coverage M-Medical Payments to Others. The policy covers medical and related expenses, subject to the stipulated limit, arising out of accidents to persons other than the insured and residents of the premises.

3. Additional Coverages. Additional coverage is provided for claim expenses, first aid expenses, and damage to property of others.

II. State Farm Condominium Unitowners Policy. This policy for condominium unitowners covers items of real property which are the insured's responsibility under the governing rules of a condominium association. This policy covers personal property on and away from the premises against losses by fire or lightning, windstorm or hail, explosion, riot or civil commotion, aircraft, vehicular impact, smoke, vandalism or malicious mischief, and theft. This policy also contains loss of use, additional coverages, and liability coverage provisions that are the same as those described for the State Farm homeowners policy. A copy of this policy is attached as Exhibit B.

III. State Farm Renters Policy. This is a tenants policy that covers personal property on and away from the premises against losses by fire or lightning, windstorm or hail, explosion, riot or civil commotion, aircraft, vehicular impact, smoke, vandalism or malicious mischief, and theft. This policy also contains loss of use, additional coverages, and

liability coverage provisions that are the same as those described for the State Farm homeowners policy. A copy of this policy is attached as Exhibit C.

IV. Comparison of the Proposed State Farm Policies to the Currently Prescribed Texas Homeowners Policy-Form B (HO-B). The HO-B is the predominant policy form issued in Texas for owner occupied dwellings. In the course of staff's review of State Farm's proposed homeowners, renters, and condominium unitowners policies, staff has noted several differences in the coverage provided in the HO-B and that provided in the proposed State Farm policy forms. Since the proposed renters policy contains the same coverages as the proposed homeowners policy (except that the renters policy does not provide the dwelling coverage) and the proposed condominium unitowners policy also contains the same coverages as the homeowners policy (except that the dwelling coverage is much more limited) the restrictions and enhancements in coverage will be discussed in terms of a comparison between the State Farm homeowners policy and the HO-B. However, it should be noted that most of the comparisons of coverage also apply to the renters and condominium unitowners policies.

V. Restrictions In Coverage. The following is a list of some of the restrictions in coverage that are contained in the proposed homeowners policy as compared to the existing HO-B. This list is not intended to cover every restriction in coverage that is contained in the proposed State Farm policy forms. If more detailed coverage information is desired, a side by side comparison of the State Farm homeowners policy and the HO-B is available from the Department upon request.

A. Coverage for Boats, Boat Trailers, and Other Trailers.

The State Farm policy provides up to $1,000 in coverage for boats, boat trailers, and other trailers not used with watercraft for losses that occur on and off premises for all losses insured. (See Section 1-Coverages, Coverage B-Personal Property, Special Limits of Liability, paragraphs d. and e.) The State Farm policy provides theft coverage for boats, boat trailers, and other trailers if the theft occurs on the residence premises; however, if the theft occurs off of the residence premises, theft coverage is excluded. (See Section 1-Losses Insured, Coverage B-Personal Property, paragraphs 9.c.(2) and (3)) The State Farm policy provides windstorm and hail coverage for boats and their trailers only if they are inside a fully enclosed building. (See Section 1-Losses Insured, Coverage B-Personal Property, paragraph 2.) The HO-B provides coverage up to the limits of liability that apply to Coverage B (Personal Property) for boats and boat trailers while located on land on the residence premises for all perils insured against. Additionally, the HO-B provides coverage up to the limits of liability that apply to Coverage B (Personal Property) for trailers designed for use principally off public roads (e.g., travel trailers) whether on or off premises. (See Section 1-Property Coverage, Coverage B (Personal Property), Property Not Covered, paragraphs 4. and 6.)

B. Coverage for Firearms.

The State Farm policy limits the coverage for firearms to losses by the peril of theft with a maximum limit of liability of $2,500. (See Section 1-Coverages, Coverage B-Personal Property, 1. Property Covered, paragraph g.) The HO-B provides coverage for firearms to the extent described under the Perils Insured Against section of the policy, including the peril of theft, up to the limits of liability that apply to Coverage B (Personal Property.)

C. Coverage for Goldware and Silverware.

The State Farm policy limits the coverage for goldware and silverware to losses by the peril of theft with a maximum limit of liability of $2,500. (See Section 1-Coverages, Coverage B-Personal Property, 1. Property Covered, paragraph h.) The HO-B provides coverage for goldware and silverware to the extent described under the Perils Insured Against section of the policy, including the peril of theft, up to the limits of liability that apply to Coverage B (Personal Property.)

D. Coverage for Golf Carts.

The State Farm policy only covers golf carts if they are used to service the residence premises or while used for golfing purposes. (See Section 1-Coverages, Coverage B-Personal Property, 2. Property Not Covered, paragraph c.) The HO-B provides coverage for golf carts up to the limits of liability that apply to Coverage B (Personal Property) to the extent described under the Perils Insured Against section of the policy. The golf cart coverage provided in the HO-B is not limited to golf carts that are used to service the residence or while used for golfing purposes, (See Section 1-Property Coverage, Coverage B (Personal Property) Property Not Covered, paragraph 3.c.)

E. Coverage for Tree Debris Removal.

The State Farm policy limits the coverage for the removal of debris from a fallen tree to $500. (See Section 1-Coverages, Section 1-Additional Coverages, paragraph 1.) The HO-B provides coverage for removal of debris from a fallen tree to the extent described under the Extensions of Coverage section of the policy up to the limits of liability that apply to the damaged property. (See Extensions of Coverage, paragraph 1.)

F. Coverage for Water Damage.

1. The State Farm policy specifies that an accidental discharge or overflow of water from a plumbing system, heating or air conditioning system, or household appliance must be "sudden" before there is water damage coverage under the policy. (See Section 1-Losses Insured, paragraph 12.) The HO-B also provides coverage for water damage from repeated and continuous seepage or leakage of water or steam from a plumbing system, heating or air conditioning system, or household appliance which occurs over a period of time. (See Section 1-Perils Insured Against, paragraph 9.)

2. The State Farm policy does not cover a loss caused by water or sewage from outside the residence premises that backs up or overflows from a sewer, drain, or sump pump. (See Section 1-Losses Insured, paragraph 12.) The HO-B does not exclude damage to property covered under Coverage A-Dwelling for a loss caused by back up or overflow from a sewer, drain, or sump pump of sewage or water even if it is from outside the residence premises. Property covered under Coverage B-Personal Property is specifically insured for loss caused by accidental discharge, leakage, or overflow of water or steam from within a plumbing system, heating or air conditioning system, or household appliance which may include a loss caused by water or sewage from outside the residence premises that backs up or overflows from a sewer, drain, or sump pump. (See Section 1-Perils Insured Against, Coverage B-Personal Property, paragraph 9.)

G. State Farm Policy Exclusions.

1. The State Farm policy excludes loss from freezing, thawing, pressure or weight of water or ice to a swimming pool, hot tub or spa. (See Section 1-Losses Not Insured, paragraph 1.c.) The HO-B does not contain this exclusion.

2. The State Farm policy excludes loss from vandalism or malicious mischief or breakage of glass if the dwelling is vacant for more than 30 days immediately before the loss. (See Section 1-Losses Not Insured, paragraph 1.e.) The HO-B provides coverage for all perils insured against for up to 60 days of vacancy. (See Section 1-Conditions, paragraph 13.)

3. The State Farm policy restates under "Losses Not Insured" that a loss resulting from continuous or repeated seepage or leakage of water

or steam is excluded. (See Section 1-Losses Not Insured, paragraph 1.f.) The HO-B does not contain this exclusion.

4 The State Farm policy excludes losses resulting from pressure or presence of tree, shrub or plant roots. (See Section 1-Losses Not Insured, paragraph 1.n.) The HO-B does not contain this exclusion.

5. The State Farm policy restates under "Losses Not Insured" that a loss resulting from backup or overflow from a sewer, drain, or sump pump of water or sewage from outside the residence is excluded. (See Section 1-Losses Not Insured, paragraph 2.c.(2)) The HO-B does not contain this exclusion.

6. The State Farm policy excludes losses consisting of defect, weakness, inadequacy, fault or unsoundness in planning, zoning, development, surveying, siting, design, specifications, workmanship, construction, grading, compaction, materials used in construction or repair, or maintenance of any property whether on or off the residence premises. However, any resulting loss from the items specified above is insured unless the resulting loss is itself a loss not insured. (See Section 1-Losses Not Insured, paragraph 3.b.) The HO-B does not contain this exclusion.

7. The State Farm policy excludes coverage for settling, cracking, shrinking, bulging, or expansion of pavements, patios, walls, floors, roofs, ceilings, or foundations of the dwelling. (See Section 1-Losses Not Insured, paragraphs 1.l.) The HO-B provides foundation coverage caused by seepage or leakage of water or steam from within a plumbing, heating, air conditioning, or automatic fire protective sprinkler system. (See Section 1-Perils Insured Against, paragraph 9. and Section 1-Exclusions paragraph 1.h.)

VI. Coverage Enhancements. The following is a list of some of the areas where the proposed State Farm homeowners policy provides coverage that is broader than the coverage provided in the HO-B.

A. Coverage of Personal Property Off Premises.

The State Farm policy provides coverage for personal property away from the residence premises up to the full limit of Coverage B. There is an exception to this coverage that limits personal property coverage to the greater of $1000 or 10% of Coverage B, if the property is usually situated at an insured's residence, other than the residence premises. (See Section 1-Coverages, Coverage B-Personal Property, paragraph 1.) The HO-B limits coverage on losses to personal property located away from the residence premises to the greater of $1000 or 10% of Coverage B. (See Section 1-Property Coverage, Coverage B (Personal Property), paragraph 2.) The HO-B excludes theft loss if the personal property is at any other residence owned by, rented to, or occupied by an insured, except while an insured is temporarily living there. (See Section 1-Exclusions, paragraph 1.d.(1))

B. Special Limits of Liability.

1. The State Farm policy provides a $200 limit of liability for losses of money. (See Section 1-Coverages, Coverage B-Personal Property, Special Limits of Liability, paragraph a.) The HO-B provides a $100 limit of liability for losses of money. (See Section 1-Property Coverage, Coverage B (Personal Property), Special Limits of Liability, paragraph 1.)

2. The State Farm policy provides a $1000 limit of liability for loss of securities, checks, money orders, accounts, deeds, passports, tickets, etc. (See Section 1-Coverages, Coverage B-Personal Property, Special Limits of Liability, paragraph c.) The HO-B provides a $500 limit of liability for "Bullion/Valuable Papers". (See Section 1-Property Coverage, Coverage B (Personal Property), Special Limits of Liability, paragraph 2.)

3. The State Farm policy provides a $1000 limit of liability for boats, boat trailers, and other trailers while away from the residence premises, except for the peril of theft. (See Section 1-Coverages, Coverage B-Personal Property, Special Limits of Liability, paragraphs d. and e.) The HO-B excludes coverage for boats and boat trailers while away from the residence premises. (See Section 1-Property Coverage, Property Not Covered, paragraphs 4.b. and 6.)

4. The State Farm policy provides $2,500 coverage for stamps, trading cards, and comic books. (See Section 1-Coverages, Coverage B-Personal Property, Special Limits of Liability, paragraph f.) The HO-B provides a $500 limit of liability for "Bullion/Valuable Papers". (See Section 1-Property Coverage, Coverage B (Personal Property), Special Limits of Liability, paragraph 2.)

C. Service Vehicle Coverage.

The State Farm policy covers any vehicle not licensed and used solely to service the residence premises or designed to assist the handicapped. (See Section 1-Coverages, Coverage B-Personal Property, 2. Property Not Covered, paragraph c.) The HO-B only covers vehicles which are not subject to motor vehicle registration and are devices and equipment to assist the handicapped, power mowers, golf carts, vehicles used for recreational purposes while on the residence premises, and farm equipment not designed for use principally on public roads. (See Section 1-Property Coverage, Coverage B (Personal Property) Property Not Covered, paragraph 3.)

D. Additional Coverages.

1. The State Farm policy provides an additional 5% of the limit of the damaged property for debris removal if the property damage and debris removal exceeds the limit for the damaged property. (See Section 1-Coverages, Section 1-Additional Coverages, paragraph 1.) The HO-B's debris removal coverage is included in the limit of liability for the damaged property and does not add additional coverage. (See Section 1-Property Coverage, Coverage B (Personal Property), Extensions of Coverage, paragraph 1.)

2. The State Farm policy provides up to $500 for covered damage to any one tree, shrub or plant. (See Section 1-Coverages, Section 1-Additional Coverages, paragraph 3.) The HO-B provides up to $250 for covered damage to any one tree, shrub or plant. (See Section 1-Property Coverage, Coverage B (Personal Property), Extensions Of Coverage, paragraph 4.)

3. The State Farm policy pays up to $1000 for unauthorized use of credit cards and bank fund transfer cards. There is no deductible for this coverage. (See Section 1-Coverages, Section 1-Additional Coverages, paragraph 5.) The HO-B provides a $100 limit of liability (subject to a deductible) for loss by theft or unauthorized use of bank fund transfer cards. (See Section 1-Property Coverage, Coverage B (Personal Property), Special Limits of Liability, paragraph 1.)

4. The State Farm policy extends Coverage B to the contents of a deep freeze or refrigerated units on the residential premises for loss due to power failure or mechanical failure whether the power failure is on or off premises. (See Section 1-Coverages, Section 1-Additional Coverages, paragraph 7.) The HO-B limits consequential loss to $500 if the power failure is a result of damage to any power, heating, or cooling equipment off of the residence premises that is caused by an HO-B peril. The HO-B provides coverage to property contained in a building on the residence premises due to a temperature change resulting from damage to the dwelling or equipment in the dwelling that is caused by a peril insured against. (See Section 1-Property Coverage, Coverage B (Personal Property), Extensions Of Coverage, paragraph 6.)

5. The State Farm policy provides an arson reward of $1000 for information leading to an arson conviction. (See Section 1-Coverages,

Section 1-Additional Coverages, paragraph 8.) The HO-B does not provide arson reward coverage.

6. The State Farm policy provides coverage for reasonable expenses incurred to rekey exterior doors to the residence premises if the keys are stolen as part of a covered theft loss. (See Section 1-Coverages, Section 1-Additional Coverages, paragraph 11.) The HO-B does not provide similar coverage.

E. Windstorm or Hail Coverage.

The State Farm policy does not exclude windstorm or hail coverage to structures wholly or partially over water. (See Section 1-Losses Insured, Coverage B-Personal Property, paragraph 2.) The HO-B excludes loss from windstorm, hurricane and hail to structures wholly or partially over water and their contents. (See Section 1-Exclusions, paragraph 1.c.(1))

F. Policy Exclusions.

The State Farm policy pays for a loss not otherwise excluded that results from destruction of property by order of a governmental authority. (See Section I - Losses Not Insured, paragraph 3.a.) The HO-B excludes losses caused by the destruction of property by order of a governmental authority. However, the HO-B will cover loss caused by order of destruction ordered by a governmental authority taken at the time of a fire to prevent its spread. (See Section 1-Exclusions, paragraph 2.)

G. Conditions.

The State Farm policy excludes losses only from the perils of vandalism, malicious mischief, or breakage of glass after 30 days of vacancy. (See Section 1-Losses Not Insured, paragraph 1.e.) The HO-B suspends dwelling coverages for all perils insured against after 60 days of vacancy. (See Section 1-Conditions, paragraph 13.)

H. Loss Settlement Provisions.

The State Farm policy pays replacement cost coverage on the dwelling and other structures on the residence premises without depreciation. (See Section 1-Loss Settlement, Coverage A-Dwelling, paragraphs 1. and 2.) The HO-B's loss settlement provisions allow initial loss payment of actual cash value with the difference between actual cash value and replacement cost paid upon replacement or repair of the damaged property, if the repair or replacement is done within 365 days of the loss. An additional 180 days may be requested by the insured. (See Section 1-Conditions, paragraph 4.)

VII. State Farm Homeowners Endorsements. In addition to the three proposed policy forms filed for adoption, State Farm has filed thirty-three endorsements for adoption pursuant to Article 5.35(b). A copy of each of these proposed endorsements is attached as Exhibit D. Additionally, since the proposed State Farm policies contain notable restrictions in both the water damage coverage and dwelling foundation coverage as compared to the coverage contained in the HO-B, a general description of the coverage that will be provided by the proposed State Farm Dwelling Foundation endorsement and Water Damage endorsement is provided.

A. Dwelling Foundation Endorsement.

The proposed endorsement provides coverage for settling, cracking, shrinking, bulging, or expansion of foundations, floor slab or footings that support the dwelling caused by seepage or leakage of water or steam from within a plumbing, heating, air conditioning or automatic fire protective sprinkler system. The coverage includes the cost of tearing out and replacing any part of the building necessary to repair the system from which the water or steam escaped. The loss to the system from which the water or steam escaped is not covered. The endorsement limits coverage to 15% of the amount of insurance for Coverage A - Dwelling on the date of the loss. In contrast, the HO-B provides dwelling foundation coverage limits up to the total amount of insurance for Coverage A - Dwelling.

B. Water Damage Endorsement.

The proposed endorsement provides coverage for deterioration, wet rot, or dry rot to Coverage A - Dwelling and Coverage B - Personal Property caused by continuous or repeated seepage or leakage of water or steam from heating, air conditioning systems or automatic fire sprinkler systems, household appliances, or plumbing systems. The coverage includes the cost of tearing out and replacing any part of the building necessary to repair the system or appliance from which the water or steam escaped, but does not include the loss to the system or appliance from which the water or steam escaped. Mold or fungus that results from a continuous or repeated seepage or leakage of water or steam from a heating, air conditioning or automatic fire sprinkler system; household appliance; or plumbing systems is excluded; however, mold or fungus that results from a sudden discharge of water from these systems or appliances is not excluded. In contrast, the HO-B provides coverage for mold or fungus resulting from both sudden and/or continuous or repeated seepage or leakage of water.

VIII. State Farm's Plan to Phase In the Proposed Policy Forms. State Farm has informed the Department that when its proposed policy forms have been adopted, the proposed policy forms will be phased in for use with State Farm policyholders while the policy forms promulgated by TDI will be discontinued for use with State Farm policyholders. State Farm has outlined the details of its plan to phase-in the proposed policy forms as follows:

A. New Business.

Once the proposed policy forms are adopted, State Farm will write all new business on the proposed policy forms. The proposed policy forms exclude coverage for dwelling foundation losses and limit coverage for water damage losses. At the time each new residential property policy is written, the applicant will be offered a separate dwelling foundation coverage endorsement and a separate water damage coverage endorsement subject to State Farm's current underwriting guidelines. If the applicant declines the dwelling foundation coverage endorsement or the water damage coverage endorsement at the inception of the policy, these endorsements will not be available to be added to a policy in the future. If a policyholder desires to continue the dwelling foundation coverage (subject to the 15% cap) and water damage coverage that the policyholder essentially has under the HO-B, both the dwelling foundation coverage and water damage coverage endorsements must be purchased for an additional premium.

B. Existing Business.

Six months after the date that State Farm begins to offer the new policies to its new business customers, State Farm will begin to convert the in-force HO-A's and HO-B's to the new policy forms.

1. Homeowners-Form A (HO-A). The HO-A's that are in-force will be converted to the State Farm homeowners policy form without water damage or dwelling foundation coverage endorsements. Since this form does not cover water damage, there will be no offer made to these HO-A policyholders allowing them to purchase the water damage or dwelling foundation coverage endorsements. Furthermore, the water damage and dwelling foundation damage endorsements will not be available to be added to the State Farm policy in the future.

2. Homeowners-Form B (HO-B) and Homeowners-Form C (HO-C). The HO-B's and HO-C's that are in force at the time of the conversion will be converted to the State Farm policy with the water damage and dwelling foundation damage coverage endorsements attached. State Farm will offer each consumer the opportunity to delete either

or both of these endorsements in exchange for a premium credit. If a policyholder chooses the option of deleting these endorsements, they will not be available to be added in the future. The water damage and dwelling foundation endorsements will be available to the policyholder who originally receives the new State Farm policy for as long as that policyholder owns the dwelling insured under the new policy. Water damage and dwelling foundation endorsements that are deleted from this policy at any time will not be available to be added at a later date to this policy or any other policy that may be issued to cover the dwelling originally insured under the new policy. The water damage and dwelling foundation endorsements will not be available to be added to any other policy written for a policyholder to cover a replacement of their currently insured dwelling or any additional dwelling.

3. Homeowners Tenant-Form B (HO-BT), Homeowners Tenant-Form C (HO-CT), Homeowners Condo-Form B (HO-CON-B), and Homeowners Condo-Form C (HO-CON-C). The HO-BT's and HO-CT's that are in force at the time of the conversion will be converted to the State Farm renters policy and the HO-CON-B's and HO-CON-C's that are in force at the time of the conversion will be converted to the State Farm condominium unitowners policy with the water damage coverage endorsement attached. State Farm will offer each consumer the opportunity to delete this endorsement in exchange for a premium credit. If a policyholder chooses the option of deleting this endorsement, it will not be available to be added in the future. The water damage endorsement will be available to the policyholder who originally receives the new State Farm policy for as long as that policyholder owns the condominium insured under the new policy or as long as that tenant occupies the dwelling, apartment or townhouse insured under the new policy. A water damage endorsement that is deleted from these policies at any time will not be available to be added at a later date to these policies or any other policy that may be issued to cover a condominium or tenant occupied dwelling, apartment, or townhouse originally insured under the new policy. The water damage endorsement will not be available to be added to any other policy written for a policyholder to cover a replacement of their currently insured condominium or tenant occupied dwelling, apartment, or townhouse or any additional condominium or tenant occupied dwelling, apartment, or townhouse.

4. Consumer Disclosures. State Farm agrees to provide an explanatory letter and a summary of coverages expressly noting where there is less coverage in the State Farm policies than in the currently prescribed policies to the policyholders who are being converted from the currently prescribed Texas forms to the new State Farm forms. This notice letter will be sent to the policyholders ninety days in advance of the policy conversion date. This notice letter will be provided to the Department for its review prior to State Farm's use of this letter. State Farm has indicated in a letter to the Commissioner dated June 14, 2000, that policyholders who convert to the new State Farm policy forms and who purchase both the dwelling foundation and water damage endorsements will continue to have essentially the same comprehensive foundation and/or water damage coverage that they have under the currently prescribed policies.

C. Rating Information.

State Farm agrees to file its initial rates and any rate changes for policies written through State Farm Lloyds with the Department on an informational basis for a period of two years to allow the Department to monitor the rates on the new State Farm policies. State Farm also agrees to provide the Department with a copy of its loss cost analyses during the time period it is providing the rating information.

The Commissioner has jurisdiction of this matter pursuant to the Insurance Code, Articles 5.35 and 5.96.

A copy of the petition, including the exhibits with the full text of the proposed policy forms and endorsements and a side by side comparison of the proposed State Farm homeowners policy and the HO-B, and a copy of the exempt filing notice are available for review in the office of the Chief Clerk of the Texas Department of Insurance, 333 Guadalupe Street, Austin, Texas. For further information or to request copies of the petition, side by side comparison, and the exempt filing notice, please contact Angie Arizpe at (512) 463-6326; refer to (Reference Number P-0301-04).

Comments on the proposed changes must be submitted in writing within 45 days after publication of the proposal in the Texas Register, to the Office of the Chief Clerk, Texas Department of Insurance, P.O. Box 149104, MC 113-2A, Austin, Texas 78714-9104. An additional copy of the comments is to be submitted to Marilyn Hamilton, Associate Commissioner, Personal and Commercial Lines Division, Texas Department of Insurance, P.O. Box 149104, MC 104-PC, Austin, Texas 78714-9104.

This notification is made pursuant to the Insurance Code, Article 5.96, which exempts it from the requirements of the Government Code, Chapter 2001 (Administrative Procedure Act).

TRD-200103337
Lynda Nesenholtz
General Counsel and Chief Clerk
Texas Department of Insurance
Filed: June 13, 2001

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REVIEW OF AGENCY RULES

This Section contains notices of state agency rules review as directed by Texas Government Code, §2001.039. Included here are (1) notices of *plan to review;* (2) notices of *intention to review*, which invite public comment to specified rules; and (3) notices of *readoption*, which summarize public comment to specified rules. The complete text of an agency's *plan to review* is available after it is filed with the Secretary of State on the Secretary of State's web site (http://www.sos.state.tx.us/texreg). The complete text of an agency's rule being reviewed and considered for *readoption* is available in the ***Texas Administrative Code*** on the web site (http://www.sos.state.tx.us/tac).

For questions about the content and subject matter of rules, please contact the state agency that is reviewing the rules. Questions about the web site and printed copies of these notices may be directed to the ***Texas Register*** office.

Proposed Rule Reviews

Office of the Attorney General

Title 1, Part 3

Chapter 53

The Office of the Attorney General (OAG) files this Notice of Intention to Review Texas Administrative Code, Title 1 Administration, Part 3 Office of the Attorney General, Chapter 53 Municipal Securities. The review is in accordance with the requirements of Texas Government Code § 2001.039, the General Appropriations Act, Article IX, §167 (1997) and the General Appropriations Act, Article IX, §9.10.13 (1999) which require state agencies to review and consider for readoption their administrative rules every four years. The review shall assess whether the reasons for the rules continue to exist.

The OAG proposes to review Chapter 53 Municipal Securities, Subchapter A Approval of Municipal Securities by Attorney General: Subchapter B Approval of City and County General Obligation Bonds; Subchapter C Approval of City Revenue Bonds, Notes, and Warrants; Subchapter D Approval of School District Bonds; Subchapter E Approval of Issues of Certificates of Obligations; Subchapter F Approval of Municipal Utility District Bonds; Subchapter G Approval of Pollution Control Bonds and Bonds Issued Pursuant to River Authority Supply Contracts; Subchapter H Approval of Bonds issued by Institutions of Higher Education; Subchapter I Approval of Bonds to be issued by Local Government for the Construction of Sports Centers; Subchapter J Requirements of the Approval of Securities with Respect to Criminal Justice Facilities; Subchapter K Approval of San Antonio River Authority and Pollution Control District Bonds; Subchapter L General Requirements for Nonprofit Corporation Bonds; Subchapter M Development Corporation Bonds; Subchapter N Health Facilities Development Corporation Bonds; Subchapter O Housing Finance Corporation Bonds; and Subchapter P Other Corporation Bonds.

For 30 days following the publication of this notice the OAG will accept public comments concerning whether the reasons for adopting this chapter continue to exist.

Any questions or written comments pertaining to this notice of intention to review this chapter should be directed to Beth Page, Assistant Attorney General, Office of the Attorney General, P. O. Box 12548, Austin, TX 78711-2548, (512) 463-0286, www.beth.page@oag.state.tx.us.

TRD-200103200
Susan D. Gusky
Assistant Attorney General
Office of the Attorney General
Filed: June 7, 2001

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Chapter 55

The Office of the Attorney General (OAG) files this Notice of Intention to Review Texas Administrative Code, Title 1 Administration, Part 3 Office of the Attorney General, Chapter 55 Child Support Enforcement. The review is in accordance with the requirements of Texas Government Code §2001.039, the General Appropriations Act, Article IX, §167 (1997) and the General Appropriations Act, Article IX, §9.10.13 (1999) which require state agencies to review and consider for readoption their administrative rules every four years. The review shall assess whether the reasons for the rules continue to exist.

The OAG proposes to review Chapter 55 Child Support Enforcement, Subchapter A General Guideline; Subchapter B Locate Services; Subchapter C Administrative Review; Subchapter D Forms of Child Support Enforcement; Subchapter F Collections and Distributions; Subchapter G Contracts and Audits; Subchapter H License Suspension; Subchapter I State directory of New Hires; Subchapter J Voluntary Paternity Acknowledgement Process; and Subchapter K Release of Information.

For 30 days following the publication of this notice the OAG will accept public comments concerning whether the reasons for adopting this chapter continue to exist.

Any questions or written comments pertaining to this notice of intention to review this chapter should be directed to Beth Page, Assistant Attorney General, Office of the Attorney General, P. O. Box 12548, Austin, TX 78711-2548, (512) 463-0286, www.beth.page@oag.state.tx.us.

TRD-200103201

Susan D. Gusky
Assistant Attorney General
Office of the Attorney General
Filed: June 7, 2001

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Chapter 57

The Office of the Attorney General (OAG) files this Notice of Intention to Review Texas Administrative Code, Title 1 Administration, Part 3 Office of the Attorney General, Chapter 57 Rental-Purchase Act Compliance. The review is in accordance with the requirements of Texas Government Code §2001.039, the General Appropriations Act, Article IX, §167 (1997) and the General Appropriations Act, Article IX, §9.10.13 (1999) which require state agencies to review and consider for readoption their administrative rules every four years. The review shall assess whether the reasons for the rule continues to exist. The OAG proposes to review Chapter 57 Rental-Purchase Act Compliance, Section §57.1 Rental-Purchase Form Agreement.

For 30 days following the publication of this notice the OAG will accept public comments concerning whether the reasons for adopting this chapter continue to exist.

Any questions or written comments pertaining to this notice of intention to review this chapter should be directed to Beth Page, Assistant Attorney General, Office of the Attorney General, P. O. Box 12548, Austin, TX 78711-2548, (512) 463-0286, www.beth.page@oag.state.tx.us.

TRD-200103202
Susan D. Gusky
Assistant Attorney General
Office of the Attorney General
Filed: June 7, 2001

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Chapter 59

The Office of the Attorney General (OAG) files this Notice of Intention to Review Texas Administrative Code, Title 1 Administration, Part 3 Office of the Attorney General, Chapter 59 Collections §§59.1 - 59.3. The review is in accordance with the requirements of Texas Government Code §2001.039, the General Appropriations Act, Article IX, §167 (1997) and the General Appropriations Act, Article IX, §9.10.13 (1999) which require state agencies to review and consider for readoption their administrative rules every four years. The review shall assess whether the reasons for the rules continue to exist.

The OAG proposes to review Chapter 59 Collections §§59.1, 59.2, and 59.3.

For 30 days following the publication of this notice the OAG will accept public comments concerning whether the reasons for adopting this chapter continue to exist.

Any questions or written comments pertaining to this notice of intention to review this chapter should be directed to Beth Page, Assistant Attorney General, Office of the Attorney General, P. O. Box 12548, Austin, TX 78711-2548, (512) 463-0286, www.beth.page@oag.state.tx.us.

TRD-200103206
Susan D. Gusky
Assistant Attorney General
Office of the Attorney General
Filed: June 7, 2001

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Chapter 61

The Office of the Attorney General (OAG) files this Notice of Intention to Review Texas Administrative Code, Title 1 Administration, Part 3 Office of the Attorney General, Chapter 61 Crime Victims Compensation §§61.1, 61.2, 61.3, 61.4, 61.5, 61.6, 61.7, 61.8, 61.9, 61.10, 61.11, 61.12, 61.13, 61.14, 61.15, 61.16, 61.17, 61.18, 61.19, 61.20, 61.21, 61.22, 61.23, 61.24, 61.25, 61.26, 61.27, 61.28, 61.29, 61.30, 61.31, 61.32, 61.33, 61.34, 61.35, 61.36, 61.37, 61.38, 61.39. The review is in accordance with the requirements of Texas Government Code §2001.039, the General Appropriations Act, Article IX, §167 (1997) and the General Appropriations Act, Article IX, §9.10.13 (1999) which require state agencies to review and consider for readoption their administrative rules every four years. The review shall assess whether the reasons for the rules continue to exist.

The OAG proposes to review Chapter 61 Crime Victims Compensation §§61.1, 61.2, 61.3, 61.4, 61.5, 61.6, 61.7, 61.8, 61.9, 61.10, 61.11, 61.12, 61.13, 61.14, 61.15, 61.16, 61.17, 61.18, 61.19, 61.20, 61.21, 61.22, 61.23, 61.24, 61.25, 61.26, 61.27, 61.28, 61.29, 61.30, 61.31, 61.32, 61.33, 61.34, 61.35, 61.36, 61.37, 61.38, 61.39.

For 30 days following the publication of this notice the OAG will accept public comments concerning whether the reasons for adopting this chapter continue to exist.

Any questions or written comments pertaining to this notice of intention to review this chapter should be directed to Beth Page, Assistant Attorney General, Office of the Attorney General, P. O. Box 12548, Austin, TX 78711-2548, (512) 463-0286, www.beth.page@oag.state.tx.us

TRD-200103203
Susan D. Gusky
Assistant Attorney General
Office of the Attorney General
Filed: June 7, 2001

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Chapter 62

The Office of the Attorney General (OAG) files this Notice of Intention to Review Texas Administrative Code, Title 1 Administration, Part 3 Office of the Attorney General, Chapter 62 Sexual Assault Prevention and Crisis Services, §§62.1, 62.2, 62.3, 62.4, 62.5, 62.6, 62.7, 62.8, 62.9, 62.10, 62.11, 62.12, 62.13, 62.14, 62.15, 62.16, 62.17, 62.18, 62.19, 62.20, 62.21, 62.22, 62.23, 62.24, 62.25, 62.26, 62.27, 62.28, 62.29, 62.30, 62.31, 62.32. The review is in accordance with the requirements of Texas Government Code §2001.039, the General Appropriations Act, Article IX, §167 (1997) and the General Appropriations Act, Article IX, §9.10.13 (1999) which require state agencies to review and consider for readoption their administrative rules every four years. The review shall assess whether the reasons for the rules continue to exist.

The OAG proposes to review Chapter 62 Sexual Assault Prevention and Crisis Services §§62.1, 62.2, 62.3, 62.4, 62.5, 62.6, 62.7, 62.8, 62.9, 62.10, 62.11, 62.12, 62.13, 62.14, 62.15, 62.16, 62.17, 62.18, 62.19, 62.20, 62.21, 62.22, 62.23, 62.24, 62.25, 62.26, 62.27, 62.28, 62.29, 62.30, 62.31, 62.32.

For 30 days following the publication of this notice the OAG will accept public comments concerning whether the reasons for adopting this chapter continue to exist.

Any questions or written comments pertaining to this notice of intention to review this chapter should be directed to Beth

Page, Assistant Attorney General, Office of the Attorney General, P. O. Box 12548, Austin, TX 78711-2548, (512) 463-0286, www.beth.page@oag.state.tx.us.

TRD-200103204
Susan D. Gusky
Assistant Attorney General
Office of the Attorney General
Filed: June 7, 2001

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Texas Department of Banking

Title 7, Part 2

The Finance Commission of Texas ("commission"), on behalf of the Texas Department of Banking ("department"), files this notice of intention to review Texas Administrative Code, Title 7, Chapter 15, Subchapter F, comprised of §§15.101-15.117, regarding Applications for Merger, Conversion and Purchase or Sale of Assets. This review is undertaken pursuant to the Appropriations Act of 1997, House Bill 1, Article IX, §167, and Government Code, §2001.039, which require an agency to review each of its rules within four years of the effective date and each four years thereafter. The department, which administers Subchapter F, believes that the reasons for the adoption of the sections under review continue to exist and will accept public comment regarding the continued existence of those reasons for 30 days following the publication of this notice in the *Texas Register*. Final consideration of this rules review is tentatively scheduled for the commission meeting on August 17, 2001.

Any questions or written comments pertaining to this notice of intention to review should be directed to Everette D. Jobe, General Counsel, Texas Department of Banking, 2601 North Lamar Boulevard, Austin, Texas 78705, or by e-mail to everette.jobe@banking.state.tx.us. Any proposed changes to rules as a result of the review will be published in the Proposed Rules Section of the *Texas Register* and will be open for an additional 30 day public comment period prior to final adoption or repeal by the commission.

TRD-200103295
Everette D. Jobe
Certifying Official
Texas Department of Banking
Filed: June 12, 2001

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Texas Youth Commission

Title 37, Part 3

In accordance with the General Appropriation Act, Article IX, Section 167, 75th Legislature, the Texas Youth Commission proposes the review of chapters 111, 117, 119, and 125.

The Commission has conducted the rule review in chapter's 111, 117, 119, and 125. The Commission proposes no amendments, repeals, or withdraws to chapter's 111, 117, 119, and 125.

The Commission will consider whether the reasons for adopting all other rules continue to exist.

Comments or questions pertaining to this Notice of Intent to Review should be directed to Sherma Cragg, Policy and Manuals Manager, Texas Youth Commission, 4900 North Lamar, P.O. Box 4260, Austin, Texas 78765 or e-mail sherma.cragg@tyc.state.tx.us.

TRD-200103323
Steve Robinson
Executive Director
Texas Youth Commission
Filed: June 12, 2001

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Adopted Rule Reviews

Texas Ethics Commission

Title 1, Part 2

In accordance with the General Appropriations Act, Article IX, Section 167, 75th Legislature, 1997, the Texas Ethics Commission adopts the review of Title 1, Texas Administrative Code, chapters 6 (Organization and Administration), 8 (Advisory Opinions), 10 (Ethics Training Programs), 12 (Sworn Complaints), 18 (General Rules Concerning Reports), 20 (Reporting Political Contributions and Expenditures), 22 (Restrictions on Contributions and Expenditures), 24 (Restrictions on Contributions and Expenditures Applicable to Corporations and Labor Organizations), 26 (Political and Legislative Advertising), 28 (Reports by a Candidate for Speaker of the House of Representatives), 34 (Regulation of Lobbyists), and 40 (Financial Disclosure for Public Officials).

The Texas Ethics Commission proposed the review of chapter 6 in the January 29,1999, issue of the *Texas Register* (24 TexReg 607); the review of chapter 8 in the January 29,1999, issue of the *Texas Register* (24 TexReg 607); the review of chapter 10 in the January 29,1999, issue of the *Texas Register* (24 TexReg 607); the review of chapter 12 in the April 28, 2000, issue of the *Texas Register* (25 TexReg 3799); the review of chapter 18 in the October 9, 1998, issue of the *Texas Register* (23 TexReg 10503); the review of chapter 20 in the October 9, 1998, issue of the *Texas Register* (23 TexReg 10503); the review of chapter 22 in the October 9, 1998, issue of the *Texas Register* (23 TexReg 10503); the review of chapter 24 in the October 9, 1998, issue of the *Texas Register* (23 TexReg 10503); the review of chapter 26 in the December 17, 1999, issue of the *Texas Register* (24 TexReg 11541); the review of chapter 28 in the March 24, 2000, issue of the *Texas Register* (25 TexReg 2663); the review of chapter 34 in the July 7, 2000, issue of the *Texas Register* (25 TexReg 6561); and the review of chapter 40 in the April 28, 2000, issue of the *Texas Register* (25 TexReg 3799).

The reason for adopting these chapters continues to exist. The Texas Ethics Commission received no comments related to the review of these chapters. As part of the review, the Texas Ethics Commission has proposed amendments to chapters 6 (Organization and Administration), 8 (Advisory Opinions), 12 (Sworn Complaints), 20 (Reporting Political Contributions and Expenditures), 22 (Restrictions on Contributions and Expenditures), and 26 (Political and Legislative Advertising) submitted concurrently with this notice of readoption.

TRD-200103291
Tom Harrison
Executive Director
Texas Ethics Commission
Filed: June 12, 2001

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Texas Natural Resource Conservation Commission

Title 30, Part 1

The Texas Natural Resource Conservation Commission (commission) adopts the rules review and readopts Chapter 106, Permits by Rule, 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 readoption each

of their rules every four years. The review must include an assessment of whether the reasons for the rules continue to exist. The proposed notice of intention to review was published in the January 19, 2001 issue of the *Texas Register* (26 TexReg 781).

CHAPTER SUMMARY

Chapter 106 provides a mechanism to authorize the construction and/or modification of insignificant sources of air contaminants in lieu of requiring a permit under Chapter 116, Control of Air Pollution by Permits for New Construction or Modification. Chapter 106 contains the rules authorized by Texas Health and Safety Code, Texas Clean Air Act (TCAA), §382.057, Exemption, and §382.05196, Permits by Rule, enacted by the 62nd and 76th Texas Legislature respectively. The types of facilities subject to this chapter are listed in Chapter 106, Subchapters C - X.

In 1996, Chapter 106, Exemptions from Permitting, was created. The sections organized to create the chapter were originally contained in the Standard Exemption List. This list was created May 8, 1972, was later incorporated into Chapter 116 by reference, and was replaced by the creation of Chapter 106. Chapter 106 has been modified ten times since its creation in 1996, and the Exemption List was modified 18 times prior to its incorporation into Chapter 106. This chapter continues to be an evolving chapter, and as new permits by rule have been added, they have been technically reviewed to ensure protection of public health and welfare.

Chapter 106 is used to authorize emissions from insignificant sources which would otherwise require a permit under Chapter 116. As codified in §106.4, emissions from some sources of air contaminants may be considered insignificant, and thus qualify for an exemption from permitting, if the following general conditions are met: 1.) total actual emissions from a facility cannot exceed 250 tons per year (tpy) of carbon monoxide or nitrogen oxides; 2.) total actual emissions from a facility cannot exceed 25 tpy of volatile organic compounds sulfur dioxide inhalable particulate matter or any other air contaminant except carbon dioxide, water, nitrogen, methane, ethane, hydrogen, and oxygen; and 3.) no facility or group of facilities may constitute a new major stationary source or major modification. In addition, all other state and federal rules and regulations must be met, along with the conditions of the individual section under which authorization is sought. Permits by Rule may include emission control requirements or operational parameters designed to reduce or minimize emissions.

The 76th Legislature, 1999, passed Senate Bill 766, which contained a new §382.05196, Permits by Rule. On August 9, 2000, implementing this legislation, the commission amended Chapter 106, Exemptions from Permitting, renaming it Permits by Rule. This name accurately reflects the fact that sources seeking authorization under the individual sections of Chapter 106 are not exempt from regulation and must meet specific controls or evaluation criteria prior to obtaining authorization. Permits by rule may be used to authorize new construction and/or modifications or changes at the types of facilities listed in Chapter 106, Subchapters C - X.

ASSESSMENT OF WHETHER THE REASONS FOR THE RULES CONTINUE TO EXIST

The commission determined that the reasons for the rules in Chapter 106 continue to exist. These rules are needed to implement provisions of state law, including TCAA, §382.057, Exemption, and in TCAA, §382.05196, Permits by Rule. The use of permits by rule ensures efficient regulation of facilities which do not make a significant contribution to air quality and do not justify case-by-case permitting. Permits by rule may include emission control requirements or operational parameters designed to minimize or reduce emissions. Thus, Chapter 106 increases the commission's efficiency in authorizing insignificant sources of air contaminants and streamlines the permitting process for external stakeholders.

PUBLIC COMMENT

The public comment period closed on February 20, 2001. No comments on whether the reasons for the rules continue to exist were received.

TRD-200103265
Margaret Hoffman
Director, Environmental Law Division
Texas Natural Resource Conservation Commission
Filed: June 11, 2001

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The Texas Natural Resource Conservation Commission (commission) adopts the rules review and readopts Chapter 327, Spill Prevention and Control, 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 readoption each of their rules every four years. The review must include an assessment of whether the reasons for the rules continue to exist. The proposed notice of intention to review was published in the March 9, 2001, issue of the *Texas Register* (26 TexReg 2058).

CHAPTER SUMMARY

Chapter 327 was adopted by the commission on April 24, 1996, to clarify the reporting requirements in Texas Water Code (TWC), Subchapter B, §26.039, and to achieve the policy stated in Texas Hazardous Substances Spill Prevention and Control Act, TWC, Subchapter G, including §26.262, which is to prevent the spill or discharge of oil, hazardous substances, or other substances into the waters in the state and to cause the removal of such spills and discharges without undue delay. The chapter establishes clear reporting and response action guidelines, intended to improve the timeliness, adequacy, coordination, efficiency, and effectiveness of responses to discharges or spills subject to the commission's regulatory jurisdiction. At the time of its adoption, Chapter 327 incorporated the rules in Chapter 343, Oil and Hazardous Substances, and updated them to conform with Texas Hazardous Substances Spill Prevention and Control Act which superseded Texas Oil and Hazardous Substances Spill Prevention and Control Act of 1977.

ASSESSMENT OF WHETHER THE REASONS FOR THE RULES CONTINUE TO EXIST

The commission determined that the reasons for the rules in Chapter 327 continue to exist. The rules are needed to implement provisions of Texas Hazardous Substances Spill Prevention and Control Act, TWC, including §26.262, which establishes the policy of the state to prevent the spill or discharge of oil, hazardous substances, or other substances into the waters in the state and to cause the removal of such spills and discharges without undue delay. The commission's review of Chapter 327 also revealed the need for a number of changes, which the commission intends to propose in a future rulemaking.

PUBLIC COMMENT

The public comment period closed on April 9, 2001. No comments on whether the reasons for the rules continue to exist were received.

TRD-200103220
Margaret Hoffman
Director, Environmental Law Division
Texas Natural Resource Conservation Commission
Filed: June 8, 2001

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The Texas Natural Resource Conservation Commission (commission) adopts the rules review and readopts Chapter 332, Composting, 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 readoption each of their rules every four years. The review must include an assessment of whether the reasons for the rules continue to exist. The proposed rules review notice was published in the March 23, 2001 issue of the *Texas Register* (26 TexReg 2412).

CHAPTER SUMMARY

Chapter 332 provides general composting information and establishes general requirements for operations which are exempt from the commission's notification, registration, or permitting requirements. In addition, Chapter 332 provides regulatory requirements for those facilities which do require notification, registration, or a permit. More specifically, Chapter 332 includes requirements regarding notice, operation, forms, applications, reporting, application preparation, processing, records, and location standards. Chapter 332 also provides information and requirements for source-separated recycling, household hazardous waste collection, and end-product standards.

ASSESSMENT OF WHETHER THE REASONS FOR THE RULES CONTINUE TO EXIST

The commission determined that the reasons for the rules in Chapter 332 continue to exist. The rules are needed to establish regulations that will divert organic materials from the typical municipal solid waste stream. The rules are also needed to promote the beneficial reuse of those materials while maintaining standards for human health and safety and environmental protection.

PUBLIC COMMENT

No public hearing was held for this rules review. The rules review notice was published in the March 23, 2001, issue of the *Texas Register* (26 TexReg 2412). No comments were received during the comment period.

TRD-200103266
Margaret Hoffman
Director, Environmental Law Division
Texas Natural Resource Conservation Commission
Filed: June 11, 2001

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Railroad Commission of Texas

Title 16, Part 1

The Railroad Commission of Texas (Commission) adopts without changes the review of §20.5, relating to historically underutilized businesses, in accordance with Tex. Gov't Code §2001.039 (*as added by Acts 1999, 76th Leg., ch. 1499, §1.11(a)*), as amended in a concurrent rulemaking. The proposed rule review and amendments were published in the April 27, 2001, issue of the *Texas Register*. The reason for readopting the rule with the amendments continues to exist.

The Commission received no comments on the proposed amendments or the rule review.

TRD-200103184
Mary Ross McDonald
Deputy General Counsel, Office of General Counsel
Railroad Commission of Texas
Filed: June 6, 2001

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TABLES & GRAPHICS

Graphic material from the emergency, proposed, and adopted sections is published separately in this tables and graphics section. Graphic material is arranged in this section in the following order: Title Number, Part Number, Chapter Number and Section Number.

Graphic material is indicated in the text of the emergency, proposed, and adopted rules by the following tag: the word "Figure" followed by the TAC citation, rule number, and the appropriate subsection, paragraph, subparagraph, and so on.

APPLICATION FOR A HIGH SCHOOL DIPLOMA FOR CERTAIN VETERANS

Texas Education Code (TEC), §28.0251, provides for a school district to issue a high school diploma to certain veterans. An eligible applicant is one who: (a) is or was an honorably discharged member of the armed forces of the United States; (b) was scheduled to graduate from high school after 1940 and before 1951; and (c) left high school before graduation to serve in World War II. A veteran or person acting on behalf of a deceased veteran should use this form to request a high school diploma. The completed form and required documentation must be submitted to the local school district where the veteran was enrolled in high school. This form is also available at: http://www.tea.state.tx.us. **See back of this form for additional information and instructions**.

Name of Applicant: _____

Social Security Number: _____--_____--_____

Address of Veteran or Family Member (if deceased):

_____

City: _____

State: _____ Zip Code: _____

Telephone Number: _____--_____--_____

Name of District Where Veteran Was Enrolled in High School: _____

Year in Which Veteran Was Scheduled to Graduate from High School: _____

I hereby certify that the person named above is or was an honorably discharged member of the armed forces of the United States, was scheduled to graduate from high school after 1940 and before 1951, and left high school before graduation to serve in World War II. **I have attached a copy of the discharge notification (DD Form 214, enlisted record and report of separation, or discharge certificate) from the appropriate branch of the United States armed forces indicating dates of military service during World War II.**

_____ _____

Signature of Veteran or Person Acting on Behalf of a Deceased Veteran — Date

_____

Name of Person Acting on Behalf of Deceased Veteran (if applicable)

SEE REVERSE OF FORM FOR ADDITIONAL INFORMATION AND INSTRUCTIONS.

Information and Instructions for *Application for a High School Diploma for Certain Veterans*

A veteran or person acting on behalf of a deceased veteran will use the front of this form to request a high school diploma for certain veterans, as provided in Texas Education Code Section 28.0251.

1. The completed form (signed and dated) and required documentation must be submitted to the local Texas school district where the veteran was enrolled in high school. The form should be submitted to the district superintendent's office. The mailing addresses for all school districts in Texas can be located at http://askted.tea.state.tx.us or by calling (512) 463-9374. If the veteran's school district no longer exists (e.g., the district was consolidated into another district), the form should be submitted to the consolidated district, which will be responsible for issuing the high school diploma. If the veteran's high school no longer exists, (e.g., the high school was closed), the district in which the high school was formerly located is still responsible for issuing the high school diploma.

2. One of the following pieces of documentation must accompany the completed form:

   ?? DD Form 214
   ?? Enlisted Record and Report of Separation form
   ?? Discharge Certificate

   For more information about military records and how to order them, please contact the National Personnel Records Center, 9700 Page Boulevard, St. Louis, MO 63132-5100; (301) 713-6800; or at: http://www.nara.gov.

Figure: 30 TAC §305.69(k)

Modifications	Class
A. General Permit Provisions	
1. Administrative and informational changes	1
2. Correction of typographical errors	1
3. Equipment replacement or upgrading with functionally equivalent components (e.g., pipes, valves, pumps, conveyors, controls)	1
4. Changes in the frequency of or procedures for monitoring, reporting, sampling, or maintenance activities by the permittee:	
a. To provide for more frequent monitoring, reporting, sampling, or maintenance	1
b. Other changes	2
5. Schedule of compliance	
a. Changes in interim compliance dates, with prior approval of the executive director	1[1]
b. Extension of final compliance date	3
6. Changes in expiration date or permit to allow earlier permit expiration, with prior approval of the executive director	1[1]
7. Changes in ownership or operational control of a facility, provided the procedures of §305.64(g) of this title (relating to Transfer of Permits) are followed	1[1]
8. Six months or less extension of the construction period time limit applicable to commercial hazardous waste management units in accordance with §305.149(b)(2) or (4) of this title (relating to Time Limitation for Construction of Commercial Hazardous Waste Management Units)	2
9. Greater than six-month extension of the commercial hazardous waste management unit construction period time limit in accordance with §305.149(b)(3) or (4) of this title	3
10. Any extension in accordance with §305.149(b)(3) of this title of a construction period time limit for commercial hazardous waste management units which has been previously authorized under §305.149(b)(2) of this title	3
11. Changes to remove permit conditions that are no longer applicable (i.e., because the standards upon which they are based are no longer applicable to the facility)	1[1]
B. General Facility Standards	

1. Changes to waste sampling or analysis methods:

   a. To conform with agency guidance or regulations 1
   b. To incorporate changes associated with F039 (multi-source leachate) sampling or analysis methods . . . . . 1[1]
   c. To incorporate changes associated with underlying hazardous constituents in ignitable or corrosive wastes . . . . . 1[1]
   d. Other changes 2

2. Changes to analytical quality assurance/control plan:

   a. To conform with agency guidance or regulations 1
   b. Other changes 2

3. Changes in procedures for maintaining the operating record 1

4. Changes in frequency or content of inspection schedules 2

5. Changes in the training plan:

   a. That affect the type or decrease the amount of training given to employees 2
   b. Other changes 1

6. Contingency plan:

   a. Changes in emergency procedures (i.e., spill or release response procedures) 2
   b. Replacement with functionally equivalent equipment, upgrade, or relocate emergency equipment listed 1
   c. Removal of equipment from emergency equipment list 2
   d. Changes in name, address, or phone number of coordinators or other persons or agencies identified in the plan 1

7. Construction quality assurance (CQA) plan:

   a. Changes that the CQA officer certifies in the operating record will provide equivalent or better certainty that the unity components meet the design specifications 1
   b. Other Changes 2

Note: When a permit modification (such as introduction of a new unit) requires a change in facility plans or other general facility standards, that change shall be reviewed under the same procedures as the permit modification.

C. Groundwater Protection

1. Changes to wells:

a. Changes in the number, location, depth, or design of upgradient or downgradient wells of permitted groundwater monitoring system 2
b. Replacement of an existing well that has been damaged or rendered inoperable, without change to location, design, or depth of the well 1

2. Changes in groundwater sampling or analysis procedures or monitoring schedule, with prior approval of the executive director . . . . . 1[1]

3. Changes in statistical procedure for determining whether a statistically significant change in groundwater quality between upgradient and downgradient wells has occurred, with prior approval of the executive director . . . . . 1[1]

4. Changes in point of compliance 2

5. Changes in indicator parameters, hazardous constituents, or concentration limits (including alternate concentration limits (ACLs)):

a. As specified in the groundwater protection standard 3
b. As specified in the detection monitoring program 2

6. Changes to a detection monitoring program as required by §335.164(10) of this title (relating to Detection Monitoring Program), unless otherwise specified in this appendix 2

7. Compliance monitoring program:

a. Addition of compliance monitoring program pursuant to §335.164(7)(D) of this title, and §335.165 of this title (relating to Compliance Monitoring Program) 3
b. Changes to a compliance monitoring program as required by §335.165(11) of this title, unless otherwise specified in this appendix 2

8. Corrective action program:

a. Addition of a corrective action program pursuant to §335.165(9)(B) of this title and §335.166 of this title (relating to Corrective Action Program) 3
b. Changes to a corrective action program as required by §335.166(8) of this title, unless otherwise specified in this appendix 2

D. Closure

1. Changes to the closure plan:

a. Changes in estimate of maximum extent of operations or maximum inventory of waste on-site at any time during the active life of the facility, with prior approval of the executive director . . . . . 1[1]
b. Changes in the closure schedule for any unit, changes in the final closure schedule for the facility, or extension of the closure period, with prior approval of the executive director . . . . . 1[1]
c. Changes in the expected year of final closure, where other permit conditions are not changed, with prior approval of the executive director . . . . . 1[1]
d. Changes in procedures for decontamination of facility equipment or structures, with prior approval of the executive director . . . . . 1[1]
e. Changes in approved closure plan resulting from unexpected events occurring during partial or final closure, unless otherwise specified in this appendix 2
f. Extension of the closure period to allow a landfill, surface impoundment or land treatment unit to receive nonhazardous wastes after final receipt of hazardous wastes under 40 Code of Federal Regulations (CFR), 264.113(d) and (e). 2

2. Creation of a new landfill unit as part of closure 3

3. Addition of the following new units to be used temporarily for closure activities:

a. Surface impoundments 3
b. Incinerators 3
c. Waste piles that do not comply with 40 CFR 264.250(c) 3
d. Waste piles that comply with 40 CFR 264.250(c) 2
e. Tanks or containers (other than specified below) 2
f. Tanks used for neutralization, dewatering, phase separation, or component separation, with prior approval of the executive director . . . . . 1[1]
g. Staging Pile 2

E. Post-Closure

1. Changes in name, address, or phone number of contact in post-closure plan 1
2. Extension of post-closure care period 2
3. Reduction in the post-closure care period 3
4. Changes to the expected year of final closure, where other permit conditions are not changed 1
5. Changes in post-closure plan necessitated by events occurring during the active life of the facility, including partial and final closure 2

F. Containers

1. Modification or addition of container units:

   a. Resulting in greater than 25% increase in the facility's container storage capacity, except as provided in F(1)(c) and F(4)(a) of this appendix 3
   b. Resulting in up to 25% increase in the facility's container storage capacity, except as provided in F(1)(c) and F(4)(a) of this appendix 2
   c. Or treatment processes necessary to treat wastes that are restricted from land disposal to meet some or all of the applicable treatment standards or to treat wastes to satisfy (in whole or in part) the standard of "use of practically available technology that yields the greatest environmental benefit" contained in 40 CFR 268.8(a)(2)(ii), with prior approval of the executive director. This modification may also involve addition of new waste codes or narrative descriptions of wastes. It is not applicable to dioxin-containing wastes (F020, 021, 022, 023, 026, 027, and 028) . . . . . 1[1]

2. Modification of container units, as follows:

   a. Modification of a container unit without increasing the capacity of the unit 2
   b. Addition of a roof to a container unit without alteration of the containment system 1

3. Storage of different wastes in containers, except as provided in F(4) of this appendix:

   a. That require additional or different management practices from those authorized in the permit 3
   b. That do not require additional or different management practices from those authorized in the permit 2

Note: See §305.69(g) of this title (relating to Solid Waste Permit Modification at the Request of the Permittee) for modification procedures to be used for the management of newly listed or identified wastes.

4. Storage or treatment of different wastes in containers:

   a. That require addition of units or change in treatment process or

management standards, provided that the wastes are restricted from land disposal and are to be treated to meet some or all of the applicable treatment standards, or that are to be treated to satisfy (in whole or in part) the standard of "use of practically available technology that yields the greatest environmental benefit" contained in 40 CFR 268.8(a)(2)(ii), with prior approval of the executive director. This modification is not applicable to dioxin-containing wastes (F020, 021, 022, 023, 026, 027, and 028) . . . . . 1[1]

b. That do not require the addition of units or a change in the treatment process or management standards, and provided that the units have previously received wastes of the same type (e.g., incinerator scrubber water). This modification is not applicable to dioxin-containing wastes (F020, 021, 022, 023, 026, 027, and 028) 1

5. Other changes in container management practices (e.g., aisle space, types of containers, segregation) 2

G. Tanks

1. Modification or addition of tank units or treatment processes, as follows:

a. Modification or addition of tank units resulting in greater than 25% increase in the facility's tank capacity, except as provided in G(1)(c), G(1)(d), and G(1)(e) of this appendix 3

b. Modification or addition of tank units resulting in up to 25% increase in the facility's tank capacity, except as provided in G(1)(d) and G(1)(e) of this appendix 2

c. Addition of a new tank (no capacity limitation) that will operate for more than 90 days using any of the following physical or chemical treatment technologies: neutralization, dewatering, phase separation, or component separation 2

d. After prior approval of the executive director, addition of a new tank (no capacity limitation) that will operate for up to 90 days using any of the following physical or chemical treatment technologies: neutralization, dewatering, phase separation, or component separation . . . . . 1[1]

e. Modification or addition of tank units or treatment processes necessary to treat wastes that are restricted from land disposal to meet some or all of the applicable treatment standards or to treat wastes to satisfy (in whole or in part) the standard of "use of practically available technology that yields the greatest environmental benefit" contained in 40 CFR 268.8(a)(2)(ii), with prior approval of the executive director. This modification may also involve addition of new waste codes. It is not applicable to dioxin-containing wastes (F020, 021, 022, 023, 026, 027, and 028) . . . . . 1[1]

2. Modification of a tank unit or secondary containment system without increasing the capacity of the unit 2

3. Replacement of a tank with a tank that meets the same design standards and has a

capacity within +/-10% of the replaced tank provided: 1

a. The capacity difference is no more than 1,500 gallons;
b. The facility's permitted tank capacity is not increased; and
c. The replacement tank meets the same conditions in the permit.

4. Modification of a tank management practice 2

5. Management of different wastes in tanks:

a. That require additional or different management practices, tank design, different fire protection specifications, or significantly different tank treatment process from that authorized in the permit, except as provided in G(5)(c) of this appendix 3
b. That do not require additional or different management practices, tank design, different fire protection specifications, or significantly different tank treatment process from that authorized in the permit, except as provided in G(5)(d) of this appendix 2
c. That require addition of units or change in treatment processes or management standards, provided that the wastes are restricted from land disposal and are to be treated to meet some or all of the applicable treatment standards or that are to be treated to satisfy (in whole or in part) the standard of "use of practically available technology that yields the greatest environmental benefit" contained in 40 CFR 268.8(a)(1)(ii), with prior approval of the executive director. The modification is not applicable to dioxin-containing wastes (F020, 021, 022, 023, 026, 027,and 028) . . . . . 1[1]
d. That do not require the addition of units or a change in the treatment process or management standards, and provided that the units have previously received wastes of the same type (e.g., incinerator scrubber water). This modification is not applicable to dioxin-containing wastes (F020, 021, 022, 023, 026, 027, and 028) 1

Note: See §305.69(g) of this title for modification procedures to be used for the management of newly listed or identified wastes.

H. Surface Impoundments

1. Modification or addition of surface impoundment units that result in increasing the facility's surface impoundment storage or treatment capacity 3

2. Replacement of a surface impoundment unit 3

3. Modification of a surface impoundment unit without increasing the facility's surface impoundment storage or treatment capacity and without modifying the unit's liner, leak detection system, or leachate collection system 2

4. Modification of a surface impoundment management practice 2

5. Treatment, storage, or disposal of different wastes in surface impoundments:

   a. That require additional or different management practices or different design of the liner or leak detection system than authorized in the permit 3
   b. That do not require additional or different management practices or different design of the liner or leak detection system than authorized in the permit 2
   c. That are wastes restricted from land disposal that meet the applicable treatment standards or that are treated to satisfy the standard of "use of practically available technology that yields the greatest environmental benefit" contained in 40 CFR 268.8(a)(2)(ii), and provided that the unit meets the minimum technological requirements stated in 40 CFR 268.5(h)(2). This modification is not applicable to dioxin-containing wastes (F020, 021, 022, 023, 026, 027, and 028) 1
   d. That are residues from wastewater treatment or incineration, provided that disposal occurs in a unit that meets the minimum technological requirements stated in 40 CFR 268.5(h)(2), and provided further that the surface impoundment has previously received wastes of the same type (for example, incinerator scrubber water). This modification is not applicable to dioxin-containing wastes (F020, 021, 022, 023, 026, 027, and 028) 1

6. Modifications of unconstructed units to comply with §§264.221(c), 264.222, 264.223, and 264.226(d) of this title . . . . . 1[1]

7. Changes in response action plan:

   a. Increase in action leakage rate 3
   b. Change in a specific response reducing its frequency or effectiveness 3
   c. Other Changes 2

Note: See §305.69(g) of this title for modification procedures to be used for the management of newly listed or identified wastes.

I. Enclosed Waste Piles. For all waste piles except those complying with 40 CFR 264.250(c), modifications are treated the same as for a landfill.

   The following modifications are applicable only to waste piles complying with 40 CFR 264.250(c).

   1. Modification or addition of waste pile units:

      a. Resulting in greater than 25% increase in the facility's waste pile storage or treatment capacity 3
      b. Resulting in up to 25% increase in the facility's waste pile storage or treatment capacity 2

   2. Modification of waste pile unit without increasing the capacity of the unit 2

3. Replacement of a waste pile unit with another waste pile unit of the same design and capacity and meeting all waste pile conditions in the permit 1

4. Modification of a waste pile management practice 2

5. Storage or treatment of different wastes in waste piles:

   a. That require additional or different management practices or different design of the unit 3
   b. That do not require additional or different management practices or different design of the unit 2

Note: See §305.69(g) of this title for modification procedures to be used for the management of newly listed or identified wastes.

6. Conversion of an enclosed waste pile to a containment building unit 2

J. Landfills and Unenclosed Waste Piles

1. Modification or addition of landfill units that result in increasing the facility's disposal capacity 3

2. Replacement of a landfill 3
3. Addition or modification or a liner, leachate collection system, leachate detection system, run-off control, or final cover system 3

4. Modification of a landfill unit without changing a liner, leachate collection system, leachate detection system, run-off control, or final cover system 2

5. Modification of a landfill management practice 2

6. Landfill different wastes:

   a. That require additional or different management practices, different design of the liner, leachate collection system, or leachate detection system 3
   b. That do not require additional or different management practices, different design of the liner, leachate collection system, or leachate detection system 2
   c. That are wastes restricted from land disposal that meet the applicable treatment standards or that are treated to satisfy the standard of "use of practically available technology that yields the greatest environmental benefit" contained in 40 CFR 268.8(a)(2)(ii), and provided that the landfill unit meets the minimum technological requirements stated in 40 CFR 268.5(h)(2). This modification is not applicable to dioxin-containing wastes (F020, 021, 022, 023, 026, 027, and 028) 1
   d. That are residues from wastewater treatment or incineration, provided that disposal occurs in a landfill unit that meets the minimum technological requirements stated in 40 CFR 268.5(h)(2), and provided

further that the landfill has previously received wastes of the same type (for example, incinerator ash). This modification is not applicable to dioxin-containing wastes (F020, 021, 022, 023, 026, 027, and 028) 1

Note: See §305.69(g) of this title for modification procedures to be used for the management of newly listed or identified wastes.

7. Modifications of unconstructed units to comply with §§264.251(c), 264.252, 264.253, 264.254(c), 264.301(c), 264.302, 264.303(c), and 264.304 of this title . . . . . 1[1]

8. Changes in response action plan:

   a. Increase in action leakage rate 3
   b. Change in a specific response reducing its frequency or effectiveness 3
   c. Other changes 2

K. Land Treatment

1. Lateral expansion of or other modification of a land treatment unit to increase areal extent 3

2. Modification of run-on control system 2

3. Modify run-off control system 3

4. Other modifications of land treatment unit component specifications or standards required in the permit 2

5. Management of different wastes in land treatment units:

   a. That require a change in permit operating conditions or unit design specifications 3
   b. That do not require a change in permit operating conditions or unit design specifications 2

Note: See §305.69(g) of this title for modification procedures to be used for the management of newly listed or identified wastes.

6. Modification of a land treatment management practice to:

   a. Increase rate or change method of waste application 3
   b. Decrease rate of waste application 1

7. Modification of a land treatment unit management practice to change measures of pH or moisture content, or to enhance microbial or chemical reactions 2

8. Modification of a land treatment unit management practice to grow food chain crops, or add to or replace existing permitted crops with different food chain crops, or to modify operating plans for distribution of animal feeds resulting from such crops 3

9. Modification of operating practice due to detection of releases from the land treatment unit pursuant to 40 CFR 264.278(g)(2) 3

10. Changes in the unsaturated zone monitoring system, resulting in a change to the location, depth, or number of sampling points, or that replace unsaturated zone monitoring devices or components thereof with devices or components that have specifications different from permit requirements 3

11. Changes in the unsaturated zone monitoring system that do not result in a change to the location, depth, or number of sampling points, or that replace unsaturated zone monitoring devices or components thereof with devices or components having specifications not different from permit requirements 2

12. Changes in background values for hazardous constituents in soil and soil-pore

liquid 2

13. Changes in sampling, analysis, or statistical procedure 2

14. Changes in land treatment demonstration program prior to or during the demonstration 2

15. Changes in any condition specified in the permit for a land treatment unit to reflect results of the land treatment demonstration, provided performance standards are met, and the executive director's prior approval has been received . . . . . 1[1]

16. Changes to allow a second land treatment demonstration to be conducted when the results of the first demonstration have not shown the conditions under which the wastes can be treated completely, provided the conditions for the second demonstration are substantially the same as the conditions for the first demonstration and have received the prior approval of the executive director . . . . . 1[1]

17. Changes to allow a second land treatment demonstration to be conducted when the results of the first demonstration have not shown the conditions under which the waste can be treated completely, where the conditions for the second demonstration are not substantially the same as the conditions for the first demonstration 3

18. Changes in vegetative cover requirements for closure 2

L. Incinerators, Boilers and Industrial Furnaces

1. Changes to increase by more than 25% any of the following limits authorized in the permit: A thermal feed rate limit; a feedstream feed rate limit; a chlorine feed rate limit, a metal feed rate limit, or an ash feed rate limit. The executive director will require a new trial burn to substantiate compliance with the regulatory performance standards unless this demonstration can be made through other means 3

2. Changes to increase by up to 25% any of the following limits authorized in the permit: A thermal feed rate limit; a feedstream feedrate limit; chlorine/chloride feed rate limit, a metal feed rate limit, or an ash feed rate limit. The executive director will require a new trial burn to substantiate compliance with the regulatory performance standards unless this demonstration can be made through other means 2

3. Modification of an incinerator, boiler, or industrial furnace unit by changing the internal size of geometry of the primary or secondary combustion units, by adding a primary or secondary combustion unit, by substantially changing the design of any component used to remove HCl/Cl_2, metals or particulate from the combustion gases, or by changing other features of the incinerator, boiler, or industrial furnace that could affect its capability to meet the regulatory performance standards. The executive director will require a new trial burn to substantiate compliance with the regulatory performance standards unless this demonstration can be made through other means 3

4. Modification of an incinerator, boiler, or industrial furnace unit in a manner that

would not likely affect the capability of the unit to meet the regulatory performance standards but which would change the operating conditions or monitoring requirements specified in the permit. The executive director may require a new trial burn to demonstrate compliance with the regulatory performance standards 2

5. Operating requirements:

   a. Modification of the limits specified in the permit for minimum or maximum combustion gas temperature, minimum combustion gas residence time, oxygen concentration in the secondary combustion chamber, flue gas carbon monoxide and hydrocarbon concentration, maximum temperature at the inlet to the particulate matter emission control system, or operating parameters for the air pollution control system. The executive director will require a new trial burn to substantiate compliance with the regulatory performance standards unless this demonstration can be made through other means 3
   b. Modification of any stack gas emission limits specified in the permit, or modification of any conditions in the permit concerning emergency shutdown or automatic waste feed cutoff procedures or controls 3
   c. Modification of any other operating condition or any inspection or recordkeeping requirement specified in the permit 2

6. Burning different wastes:

   a. If the waste contains a principal organic hazardous constituent (POHC) that is more difficult to burn than authorized by the permit or if burning of the waste requires compliance with different regulatory performance standards than specified in the permit. The executive director will require a new trial burn to substantiate compliance with the regulatory performance standards unless this demonstration can be made through other means 3
   b. If the waste does not contain a POHC that is more difficult to burn than authorized by the permit and if burning of the waste does not require compliance with different regulatory performance standards than specified in the permit 2

Note: See §305.69(g) of this title for modification procedures to be used for the management of newly regulated wastes and units.

7. Shakedown and trial burn:

   a. Modification of the trial burn plan or any of the permit conditions applicable during the shakedown period for determining operational readiness after construction, the trial burn period, or the period immediately following the trial burn 2
   b. Authorization of up to an additional 720 hours of waste burning during the shakedown period for determining operational readiness after construction, with the prior approval of the executive director . . . . . 1[1]
   c. Changes in the operating requirements set in the permit for conducting a

trial burn, provided the change is minor and has received the prior approval of the executive director . . . . . 1[1]

d. Changes in the ranges of the operating requirements set in the permit to reflect the results of the trial burn, provided the change is minor and has received the prior approval of the executive director . . . . . 1[1]

8. Substitution of an alternate type of nonhazardous waste fuel that is not specified in the permit 1

9. Technology changes needed to meet standards under Title 40 CFR Part 63 (Subpart EEE - National Emission Standards for Hazardous Air Pollutants from Hazardous Waste Combustors), provided the procedures of §305.69(i) of this title are followed. . . . . 1[1]

M. Corrective Action

1. Approval of a corrective action management unit pursuant to 40 Code of Federal Regulations 264.552 3

2. Approval of a temporary unit or time extension for a temporary unit pursuant to 40 Code of Federal Regulations 264.553 2

3. Approval of a staging pile or staging pile operating term extension pursuant to 40 Code of Federal Regulations §264.554 2

N. Containment Buildings

1. Modification or addition of containment building units:

a. Resulting in greater than 25% increase in the facility's containment building storage or treatment capacity 3

b. Resulting in up to 25% increase in the facility's containment building storage or treatment capacity 2

2. Modification of a containment building unit or secondary containment system without increasing the capacity of the unit 2

3. Replacement of a containment building with a containment building that meets the same design standards provided:

a. The unit capacity is not increased 1

b. The replacement containment building meets the same conditions in the permit 1

4. Modification of a containment building management practice 2

5. Storage or treatment of different wastes in containment buildings:

a. That require additional or different management

practices 3

b. That do not require additional or different management practices 2

Figure 1: 30 TAC §335.1(129)(D)(iv)
TABLE 1

	Use Constituting Disposal S.W. Def. (D)(i) (1)	Energy Recovery/Fuel S.W. Def. (D)(ii) (2)	Reclamation S.W. Def. (D)(iii) (3)[2]	Speculative Accumulation S.W. Def. (D)(iv) (4)
Spent materials (listed hazardous & not listed characteristically hazardous)	*	*	*	*
Spent materials (nonhazardous)[1]	*	*	*	*
Sludges (listed hazardous in 40 CFR §261.31 or §261.32)	*	*	*	*
Sludges (not listed characteristically hazardous)	*	*		*
Sludges (nonhazardous)[1]	*	*		*
By-products (listed hazardous in 40 CFR §261.31 or §261.32)	*	*	*	*
By-products (not listed characteristically hazardous)	*	*		*
By-products (nonhazardous)[1]	*	*		*
Commercial chemical products (listed, not listed characteristically hazardous, and nonhazardous)	*	*		
Scrap metal other than excluded scrap metal (see §335.17(9)) (hazardous)	*	*	*	*
Scrap metal other than excluded scrap metal (see §335.17(9)) (nonhazardous)[1]	*	*	*	*

NOTE: The terms "spent materials", "sludges", "by-products", "scrap metal" and "excluded scrap metal" are defined in §335.17 of this title (relating to Special Definitions for Recyclable Materials and Nonhazardous Recyclable Materials).

[1]These materials are governed by the provisions of §335.24(h) only.
[2]Except as provided in 40 CFR §261.4(a)(17) for mineral processing secondary materials

Figure: 30 TAC §335.13(e)

Generator Type	Waste Type	Shipment Type	Report Method
In-State Registered Generator	Texas Waste	Ship within Texas	Annual Waste Summary (G1)
		Ship out of Texas	Annual Waste Summary (G1)
In-State Unregistered Generator	Texas Waste	Ship within Texas	Waste Shipment Summary (S1)
		Ship out of Texas	Waste Shipment Summary (S1)
In-State Unregistered Primary Exporter/ Importer (TX EPA#)	Foreign Waste (Import)	Ship through Texas	Foreign Waste Shipment Summary (F1)
		Ship into Texas	No Report Required
Out-of-State Primary Exporter/Importer (Other State EPA #)	Foreign Waste (Import)	Ship through Texas	Foreign Waste Shipment Summary (F1)
		Ship into Texas	No Report Required
	Other State's Haz. Waste Exported to Foreign Country	Ship through Texas	Waste Shipment Summary (S1)

Figure: 30 TAC §335.325(j)(2)

	Noncommercial		Commercial	
Disposition	In State	Imported	In State	Imported
Landfill	N/A	N/A	$6/ton	$7.50/ton
Land Treatment	N/A	N/A	$4.80/ton	$6/ton
Underground Injection	N/A	N/A	$3.60/dwt	$4.50/dwt
Incineration	N/A	N/A	$3.20/ton	$4/ton

Figure: 30 TAC §335.521(b)

Appendix 2
Texas Natural Resource Conservation Commission
Waste Permits Division
Industrial and Hazardous Waste Permits Section
MC 130
P.O.Box 13087
Austin, Texas 78711-3087

http://home.tnrcc.state.tx.us/

Figure: 30 TAC §335.569

MODEL DEED CERTIFICATION LANGUAGE

STATE OF TEXAS
(_____) COUNTY

INDUSTRIAL SOLID WASTE
CERTIFICATION OF REMEDIATION

KNOW ALL MEN BY THESE PRESENTS THAT:

Pursuant to the Rules of the Texas Natural Resource Conservation Commission pertaining to Industrial Solid Waste Management, this document is hereby filed in the Deed Records of _____ County, Texas in compliance with the recordation requirements of said rules:

I

(Company Name) has performed a remediation of the land described herein. A copy of the Notice of Registration (No.), including a description of the facility, is attached hereto and is made part of this filing. A list of the known waste constituents, including known concentrations (i.e., soil and ground water, if applicable), which have been left in place is attached hereto and is made part of this filing. Further information concerning this matter may be found by an examination of company records or in the Notice of Registration (No.) files, which are available for inspection upon request at the central office of the Texas Natural Resource Conservation Commission in Austin, Texas.

The Texas Natural Resource Conservation Commission derives its authority to review the remediation of this tract of land from Texas Health and Safety Code, §361.002, which enables the Texas Natural Resource Conservation Commission to promulgate closure and remediation standards to safeguard the health, welfare and physical property of the people of the State and to protect the environment by controlling the management of solid waste. In addition, pursuant to the Texas Water Code, §5.012 and §5.013, Texas Water Code, Annotated, Chapter 5, the Texas Natural Resource Conservation Commission is given primary responsibility for implementing the laws of the State of Texas relating to water and shall adopt any rules necessary to carry out its powers and duties under the Texas Water Code. In accordance with this authority, the Texas Natural Resource Conservation Commission requires certain persons to provide certification and/or recordation in the real property records to notify the public of the conditions of the land and/or the occurrance of remediation. This deed certification is not a representation or warranty by the Texas Natural Resource Conservation Commission of the suitability of this land for any purpose, nor does it constitute any guarantee by the Texas Natural Resource Conservation Commission that the remediation standards specified in this certification have been met by (Company name).

II

Being a ___ acre tract, more or less, out of the (Company Name)'s ___ acre tract in the (Name) League (No.), Abstract (No.), recorded in Volume (No.), Page (No.) of the Deed of Records _____ County, Texas, said ___ acre tract being more particularly described as follows:

(Insert metes and bounds description here)

For Standard 2 cleanups: (Contaminants/contaminants and waste) deposited hereon have been remediated (to meet residential soil criteria/ to meet non-residential (i.e., industrial/commercial) soil criteria)), in accordance with a plan designed to meet the Texas Natural Resource Conservation Commission's requirements in 30 Texas Administrative Code, §335.555), which mandates that the remedy be designed to eliminate substantial present and future risk such that no post-closure care or engineering or institutional control measures are required to protect human health and the environment. Future land use is considered suitable for (residential, non-residential (i.e.,industrial/commercial)) purposes in accordance with risk reduction standards applicable at the time of this filing. Future land use is intended to be (residential, non-residential).

For Standard 3 cleanups: (Contaminants/contaminants and waste) deposited hereon have been remediated (to meet residential soil criteria/to meet non-residential (i.e., industrial/commercial) soil criteria) in accordance with a plan designed to meet the requirements of 30 Texas Administrative Code, §335.561 (Risk Reduction Standard Number 3), which mandates that the remedy be designed to eliminate or reduce to the maximum extent practicable, substantial present or future risk. The remediation plan (does/ does not) require continued post-closure care or engineering or institutional control measures. Future use of the property is considered appropriate for (describe) in accordance with risk reduction standards applicable at the time of this filing. Institutional or legal controls placed on the property to ensure appropriate future use include (describe).

For both Standard 2 and 3 cleanups where the remedy is based upon non-residential soil criteria: The current or future owner must undertake actions as necessary to protect human health or the environment in accordance with the rules of the Texas Natural Resource Conservation Commission.

III

The owner of the site is (Company Name), a Texas corporation, and its address is (P.O. Box or Street), (City), Texas (Zip Code), where more specific information may be obtained from the (plant manager, owner).

EXECUTED this the ___ day of _____, 20__.

(Company Name)
a Texas corporation

_____
(Name)
Plant Manager

STATE OF TEXAS
(_____) COUNTY

BEFORE ME, on this the ___ day of _____, personally appeared (Name), (Plant Manager, Owner) of (Company Name), a Texas corporation, known to me to be the person and agent of said corporation whose name is subscribed to the foregoing instrument, and he acknowledged to me that he executed the same for the purposes and in the capacity therein expressed.

GIVEN UNDER MY HAND AND SEAL OF OFFICE, this the ___ day of _____, 20__.

_____
Notary Public in and
for the State of Texas,
County of

_____
My Commission Expires

_____

(END OF APPENDIX III)

IN ADDITION

The ***Texas Register*** is required by statute to publish certain documents, including applications to purchase control of state banks, notices of rate ceilings, changes in interest rate and applications to install remote service units, and consultant proposal requests and awards.

To aid agencies in communicating information quickly and effectively, other information of general interest to the public is published as space allows.

Office of the Attorney General

Notice of Settlement of Natural Resource Damage Claim

Notice is hereby given by the State of Texas of the following proposed resolution of a claim for natural resource damages under the Comprehensive Environmental Response, Compensation, and Liability Act and applicable state law and for corrective action under the Texas Health and Safety Code. The State of Texas, on behalf of its Natural Resources Trustees, has reached an agreement with Voluntary Purchasing Groups, Inc., Bonny Corporation, and Ferti-Lome Distributors, Incorporated (collectively, "VPG"), to resolve VPG's liability to the State for damages to natural resources in the State arising from the release of solid waste and hazardous substances from a former VPG facility in Commerce, Texas and any potential liability for the disposal and/or release of solid waste at three sites in Bonham and Ridgeway, Texas. The Attorney General will consider any written comments received on the settlement within 30 days of the date of publication of this notice.

Case Title and Court: State of Texas v. Voluntary Purchasing Groups, Inc., United States District Court, Northern District of Texas, Dallas Division.

Nature of the Settlement: Under the proposed settlement, VPG will pay the State Natural Resource Trustees $800,000 for construction of a Restoration Project consisting of a freshwater wetland and associated habitat. In addition, VPG will investigate, assess, and if required under the Texas Risk Reduction Program Rules, conduct corrective action at the Bonham and/or Ridgeway Sites. VPG and other parties have previously reimbursed the State $2,864,000 for past response cost associated TNRCC's removal action at the Hi Yield State Superfund Site in Commerce, Texas.

The Office of the Attorney General will receive comments relating to the proposed settlement for 30 days following publication of this Notice. Comments should be addressed to Albert M. Bronson, Assistant Attorney General, Natural Resources Division, P.O. Box 12548, Austin, Texas 78711-2548 and should refer to the Hi-Yield State Superfund Site. The proposed settlement agreement may be examined at the Office of the Attorney General, 300 West 15th Street, 10th Floor, Austin, Texas by appointment A copy of the proposed Consent Decree may be obtained by mail from the Office of the Attorney General. In requesting a copy, please enclose a check for reproduction costs of $10.00 for the agreement, payable to the State of Texas.

TRD-200103299
Susan D. Gusky
Assistant Attorney General
Office of the Attorney General
Filed: June 12, 2001

♦ ♦ ♦

Notice Regarding Private Real Property Rights Preservation Act (SB 14) Guidelines

In 1995 the Legislature enacted Senate Bill 14, the Private Real Property Rights Preservation Act (the Act), codified at Government Code, Chapter 2007. As required by the Act, the Office of the Attorney General prepared Guidelines to assist governmental entities in identifying and evaluating those governmental actions that might result in a taking of private real property. Those guidelines were published in the January 12, 1996 issue of the *Texas Register* (21 TexReg 387). The Act also requires the Office of the Attorney General to review the Guidelines at least annually and revise them as necessary. The Office of the Attorney General revised the Guidelines in 2000 by amending §1.42 and published notice of the amendment in the August 18, 2000 issue of the *Texas Register* (25 TexReg 8078).

The Office of the Attorney General has begun its annual review and invites comments whether the Guidelines are consistent with actions of the 77th Legislature and the decisions of the United States and Texas Supreme Court from May 1, 2000 through May 31, 2001.

Comments should be addressed to Cue D. Boykin, Assistant Attorney General, Office of the Attorney General, Austin, Texas 78701-2548 no later than July 31, 2001.

For information regarding this publication, please contact A.G. Younger at (512) 463-2110.

TRD-200103298
Susan D. Gusky
Assistant Attorney General
Office of the Attorney General
Filed: June 12, 2001

♦ ♦ ♦

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 June 1, 2001, through June 7, 2001. The public comment period for these projects will close at 5:00 p.m. on July 16, 2001.

FEDERAL AGENCY ACTIONS

Applicant: U.S. Department of the Interior - U.S. Fish and Wildlife Service Location: The project is located approximately 12 miles west of Sabine Pass, TX, and 5 miles north on Clam Lake Road, at the junction of Clam Lake Road ditch and the Gulf Intracoastal Waterway (GIWW). The project can be located on the U.S.G.S. quadrangle map entitled Clam Lake, Texas. Approximate UTM Coordinates: Zone 15; Easting: 391729; Northing: 3287588. CCC Project No.: 01-0209-F1. Description of Proposed Action: The applicant proposes to plug an existing water control structure, using 2.62 cubic yards of clean soil placed below the high water mark, and to construct a new water control structure on the spoil levee of the GIWW, at an elevation greater than 5.4 feet. The existing water control structure connects the GIWW to approximately 250 acres of emergent marsh habitat. Because the structure is no longer serviceable, water levels in the marsh fluctuate drastically and salinities regularly reach levels greater than 20 ppt. The higher salinities and increased water amplitudes have caused the marsh to convert from a fresh to intermediate marsh. As a result, large areas of vegetation are dying and the marsh is highly fragmented. The new structure should allow water to exit the marsh, but not enter, reducing water fluctuations, salinity levels, and potential spill contamination. 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.

Pursuant to §306(d)(14) of the Coastal Zone Management Act of 1972 (16 U.S.C.A. §§1451-1464), as amended, interested parties are invited to submit comments on whether a proposed action is or is not consistent with the Texas Coastal Management Program goals and policies and whether the action should be referred to the Coastal Coordination Council for review.

Further information for the applications listed above may be obtained from Ms. Diane P. Garcia, Council Secretary, Coastal Coordination Council, 1700 North Congress Avenue, Room 617, Austin, Texas 78701-1495, or diane.garcia@glo.state.tx.us. Comments should be sent to Ms. Garcia at the above address or by fax at (512) 475-0680.

TRD-200103332
Larry R. Soward
Chief Clerk, General Land Office
Coastal Coordination Council
Filed: June 13, 2001

♦ ♦ ♦

Comptroller of Public Accounts

Local Sales Tax Rate Changes Effective July 1, 2001

COMPTROLLER OF PUBLIC ACCOUNTS

LOCAL SALES TAX RATE CHANGES EFFECTIVE JULY 1, 2001

The 1% local sales and use tax is effective July 1, 2001 in the city listed below.

City Name	Local Code	New Rate	Total Rate
Salado (Bell Co)	2014120	.010000	.082500

An additional 1/2% city sales and use tax for improving and promoting economic and industrial development as permitted under Article 5190.6, Section **4A** is effective July 1, 2001 in the city listed below.

City Name	Local Code	New Rate	Total Rate
Laguna Vista (Cameron Co)	2031110	.015000	.077500

An additional 1/4% city sales and use tax for improving and promoting economic and industrial development as permitted under Article 5190.6, Section **4B** is effective July 1, 2001 in the city listed below.

City Name	Local Code	New Rate	Total Rate
Hollywood Park (Bexar Co)	2015138	.015000	.082500

An additional 1/2% city sales and use tax for improving and promoting economic and industrial development as permitted under Article 5190.6, Section **4B** is effective July 1, 2001 in the cities listed below.

City Name	Local Code	New Rate	Total Rate
Taft (San Patricio Co)	2205030	.015000	.077500

The 1/2% city sales and use tax for improving and promoting economic and industrial development as permitted under Article 5190.6, Section **4B** is **continued** in the City listed below. The continuation effective date will be July 1, 2001.

City Name	Local Code	Rate	Total Rate
Muenster	2049021	.005000	.082500

The 1/2% Special Purpose District sales and use tax is **continued** in the Special Purpose Districts listed below. The continuation effective date will be July 1, 2001.

SPD Name	Local Code	Rate	Total Rate
North Richland Hills Crime Control	5220549	.005000	**See Note 1**
Watauga Crime Control	5220567	.005000	**See Note 2**
White Settlement Crime Control	5220558	.005000	**See Note 3**

NOTE 1: The boundaries of North Richland Hills Crime Control District are the same boundaries as the City of Richland Hills. The total rate in the City North Richland Hills will be .082500.

NOTE 2: The boundaries of Watauga Crime Control District are the same boundaries as the City of Watauga. The total rate in the City Watauga will be .082500.

NOTE 3: The boundaries of White Settlement Crime Control District are the same boundaries as the City of White Settlement. The total rate in the City of White Settlement will be .082500.

Combined Area Name	Local Code	New Rate	Total Rate
Austin/Westbank Comm. Library District	6227604	.010000	.082500 **See Note 4**

NOTE 4: The tax rate for the overlapping portion of the City of Austin and the Westbank Community Library District is 1% and should be reported by using the combined area local code 6227604. The Austin/Westbank Community Library District combined area is located in the southwestern portion of the City of Austin. Zip code 78746 is partially located within the Austin/Westbank Community Library District. Contact the district representative at 512/314-3592 for additional boundary information.

TRD-200103189
Martin Cherry
Deputy General Counsel for Tax Policy and Agency Affairs
Comptroller of Public Accounts
Filed: June 7, 2001

♦ ♦ ♦

Notice of Award

Pursuant to §§403.011, 2155.001, and 2156.121, Texas Government Code and Chapter 54, Subchapter F, §§54.602, and 54.611-618, Texas Education Code, the Comptroller of Public Accounts (Comptroller) announces this notice of contract award.

The notice of request for proposals (RFP #120c) was published in the February 23, 2001 issue of the *Texas Register*(26 TexReg 1778.)

The contractor will assist the Comptroller in providing records administration and management services to the Texas Prepaid Higher Education Tuition Board for the Texas Tomorrow Fund.

The contract is awarded to SCT Software & Resource Management Corporation, 4 Country View Road, Malvern, Pennsylvania 19355. The total amount of the contract is $2,600,000.00. The contract was executed on June 12, 2001. The term of the contract is June 12, 2001 through August 31, 2002.

TRD-200103333
William Clay Harris
Assistant General Counsel, Contracts Section
Comptroller of Public Accounts
Filed: June 13, 2001

♦ ♦ ♦

Notice of Contract Award

Notice of Award: Pursuant to Section 1201.027, Chapter 2254, Chapter A, and Sections Chapter 404, Subchapter H Texas Government Code, the Comptroller of Public Accounts (Comptroller) announces this notice of outside counsel contracts award for Task A as described the RFP noted below.

The notice of request for proposals (RFP #120i) was published in the March 16, 2001, issue of the *Texas Register* (26 TexReg 2225).

The outside counsel and co-counsel will assist Comptroller in the issuance of Tax Anticipation Revenue Notes.

Two contracts were awarded as follows:

A contract was awarded to Vinson & Elkins LLP, bond counsel, 600 Congress Ave., Ste. 2700, Austin, Texas 78701-3200. The total amount of this contract is not to exceed $155,000.00.

A contract was awarded to Wickliff & Hall, P.C., co-bond counsel 1000 Louisiana, Ste. 5400, Houston, Texas 77002-5013. The total amount of this contract is not to exceed $34,000.00.

The term of both contracts is June 7, 2001 through August 31, 2003.

TRD-200103292
William Clay Harris
Assistant General Counsel, Contracts
Comptroller of Public Accounts
Filed: June 12, 2001

♦ ♦ ♦

Notice of Contract Award

Notice of Award: Pursuant to Section 1201.027, Chapter 2254, Chapter A, and Sections Chapter 404, Subchapter H Texas Government Code, the Comptroller of Public Accounts (Comptroller) announces this notice of financial advisor contract award for Task A as described the RFP noted below.

The notice of request for proposals (RFP #121a) was published in the March 16, 2001, issue of the *Texas Register* (26 TexReg 2225).

The financial advisor will assist Comptroller in the issuance of Tax Anticipation Revenue Notes.

A contract was awarded as follows:

A contract was awarded to Dain Rauscher Incorporated, 2700 North Haskell, Ste. 2400, Dallas, Texas 75204-2936. The total amount of this contract is not to exceed $35,975.00.

The term of both contracts is June 7, 2001 through August 31, 2003.

TRD-200103293
William Clay Harris
Assistant General Counsel, Contracts
Comptroller of Public Accounts
Filed: June 12, 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 §303.003 and §303.009, Texas Finance Code.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of June 18, 2001 - June 24, 2001 is 18% for Consumer[1]/Agricultural/Commercial[2]/credit thru $250,000.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of June 18, 2001 - June 24, 2001 is 18% for Commercial over $250,000.

[1]Credit for personal, family or household use.

[2]Credit for business, commercial, investment or other similar purpose.

TRD-200103327
Leslie L. Pettijohn
Commissioner
Office of Consumer Credit Commissioner
Filed: June 13, 2001

♦ ♦ ♦

Texas Department of Criminal Justice

Notice to Bidders

The Texas Youth Commission invites bids for the new construction of 330 single cells, an additional classroom building, a vocational education building, two open air gymnasiums, additional recreation areas, expand the existing perimeter fence and road network, provide additional parking, extend/install new utility lines, at Mart, Texas. The project is located at the existing McLennan County State Juvenile Correctional Facility,116 West Burleson, Mart, Texas 76664. The work includes construction of an additional 330 single cells, an additional classroom building, a vocational education building, two open air gymnasiums, additional recreation areas, expand the existing perimeter fence and road network, provide additional parking, and extend/install new utility lines as further shown in the Contract Documents prepared by : HKS, Inc.

The successful bidder will be required to meet the following requirements and submit evidence within five days after receiving notice of intent to award from the Owner:

A. Contractor must have a minimum of five consecutive years of experience as a General Contractor and provide references for at least three projects within the last five years that have been completed of a dollar value and complexity equal to or greater than the proposed project.

B. Contractor must be bondable and insurable at the levels required.

All Bid must be accompanied by a Bid Guarantee in the amount of 5.0% of greatest amount bid. Bid Guarantee may be in the form of a Bid Bond or Certified Check. Performance and Payment Bonds in the amount of 100% of the contract amount will be required upon award of a contract. The Owner reserves the right to reject any or all bids, and to waive any informality or irregularity.

Bid Documents can be purchased from the Architect/Engineer at a cost of $ 220 (non-refundable) per set, inclusive of mailing/delivery costs, or they may be viewed at various plan rooms. Payment checks for documents should be made payable to the Architect/Engineer : HKS, Inc., 1919 McKinney Avenue, Dallas, Texas 75201, Attention: Paul Liptak, Jennifer Kiefling; Phone: (214) 969-3118 FAX: (214) 969-3397.

A Pre-Bid conference will be held at 11am on June 28, 2001, at the McLennan County State Juvenile Correctional Unit, in Mart Texas, followed by a site-visit. ATTENDANCE IS MANDATORY.

Bids will be publicly opened and read at 2PM on July 17, 2001, in the Conference Room at the Contracts and Procurement Office located in the Westhill Mall. 2 Financial Plaza, Suite 525, Huntsville, Texas 77340.

The Texas Youth Commission requires the Contractor to make a good faith effort to include Historically Underutilized Businesses (HUB's) in at least 26.1% of the total value of this construction contract award. Attention is called to the fact that not less than the minimum wage rates prescribed in the Special Conditions must be paid on these projects.

TRD-200103208
Carl Reynolds
General Counsel
Texas Department of Criminal Justice
Filed: June 8, 2001

♦ ♦ ♦

Edwards Aquifer Authority

Notice of Proposed Initial Regular Permits and Technical Summaries

The Edwards Aquifer Authority hereby gives notice of the issuance of Proposed Initial Regular Permits ("PIRP") and proposed denials of Applications for Initial Regular Permits ("IRP Applications"). The PIRPs, if issued as final Initial Regular Permits, would authorize the permittees to withdraw groundwater from the Edwards Aquifer according to the terms and conditions set forth in the permits. The conditions contained in the PIRPs concern the permit term, groundwater withdrawal amounts, purpose of use, location of points of withdrawal, place of use, meters, maximum rate of withdrawal, maximum historical use, statutory minimums, phase-1 proportionally adjusted amounts, step-up amounts, phase-2 proportionally adjusted amounts, equal percentage reduction amounts, transfers, reporting, fees, beneficial use, waste, other water sources, termination, interruption, and suspension of groundwater withdrawal amounts, restoration of groundwater withdrawal amounts, diversions of surface water from the Guadalupe River, amendments, conservation, reuse, registration of wells, water use reporting, water quality, well construction, operation, maintenance and

closure, well head protection and spacing, interim authorization, filing and recording of permits, change of address or telephone numbers, compliance with applicable law, and enforcement.

The Texas Department of Health (department) requests proposals for Ryan White/Title II Human Immunodeficiency Virus (HIV) services projects for the project period of January 1, 2002 through March 31, 2006. The purpose of the projects are to increase participation of minorities with HIV disease in the Texas HIV Medication Program (THMP) through grants to community-based organizations which serve minority populations. The target population are incarcerated and recently released African Americans, Hispanics and others in federal, state, or local adult and juvenile institutions in the state's two highest morbidity counties, Harris and Dallas. Project services will include: outreach, clinical services, case management, eligibility assistance and comprehensive support services. Project proposals will be reviewed and awarded on a competitive basis.

PROJECT AND BUDGET PERIODS

Project Periods. There will be a 15-month initial project period of January 1, 2002 through March 31, 2003, plus three 12-month project periods beginning April 1, 2003 through March 31, 2006.

Budget Periods. The TDH HIV/STD Clinical Resources Division will assign the contract period for each successful applicant. It is expected that the federally-funded contracts will begin on or about January 1, 2002, and will be made for a 3 month budget period (January 1, 2002 - March 31, 2002). A second contract will cover the 12-month period of April 1, 2002 through March 31, 2003. These contracts are renewable for three additional 12-month periods through the project period ending March 31, 2006. Award of continuation funds for each project period is dependent upon successful project performance as stipulated in the agency contract.

AVAILABLE FUNDS

The projected amount available is approximately $477,014 per 12-month period. The department expects to fund two projects with an average award of approximately $238,507 per project. The specific dollar amount to be awarded will depend upon the merit and scope of the proposed project. Award of these funds is contingent upon annual federal grant awards to the department from the Health Resources and Services Administration (HRSA).

Continued funding in future years will be based upon the availability of funds and documented progress in the provision of services to minority populations during the project period. Funding may vary and is subject to change for each budget period.

PURPOSE

Citing the continuing under-representation of minorities in state run AIDS Drug Assistance Programs (ADAP), Congress designated funds under the Ryan White/Title II Care Act to support educational and outreach grants to minority community-based organizations to increase the number of minorities participating in ADAP. According to the Health Resources and Services Administration (HRSA), Congressional intent is for these funds to be used to expand or support new initiatives consistent with the goal of having 100 percent access to quality care consistent with established guidelines, and zero percent disparity in health outcomes.

Underscoring the fact that more needs to be done to reduce disparities in minority health status and outcomes, the department proposes through this grant to target incarcerated and recently released African Americans, Hispanics, and others in federal, state or local adult and juvenile institutions in the state's two highest morbidity counties, Harris and Dallas. Minorities are over-represented in the incarcerated population and those with HIV are not accessing needed ADAP and other health and social services.

Project activities will focus on development of model systems and protocols for the screening, care, treatment and follow-up of minority inmates and recently released individuals who are living with HIV. The overall goal of the project is to increase minority client-level health outcomes by documenting increased participation in the THMP.

Other Project Goals include:

increasing the number of minority inmates and recently released individuals who apply for the THMP;

increasing access of minority inmates and recently released individuals to Ryan White Title II care programs and services at an earlier stage in their illness, including new treatments, consistent with established clinical and case management standards of care;

increasing the number of inmates and recently released individuals who receive health education/risk reduction counseling, early-on communicable disease screening, risk assessment, screening and treatment for HIV and other communicable diseases; and

developing policies and procedures for providing continuity of care, and establishing memoranda of understanding (MOU) between community and correctional entities.

Project strategies may include: racially or ethnically sensitive and culturally competent treatment education and outreach services and project staff; programs and services that facilitate change in community norms regarding testing late in the progression of the HIV disease; education and outreach programs which emphasize early detection as well as treatment education; strong linkages with correctional facilities, service providers, collaborating agencies and the community; on-site case managers and eligibility workers at correctional facilities and health clinics that can assist clients in early testing of individuals and immediate accessing of care following their receipt of HIV test results; assistance in obtaining medical/primary health care, substance abuse counseling and treatment, mental health services and other comprehensive support services; peer counseling; advocacy; and HIV-focused transportation.

Applicants are encouraged to propose innovative project activities that will assist minority individuals and families with HIV infection to access and remain in critical HIV health care and services, including accessing the THMP.

Ideally, the applicant should consult with the infected and affected populations, current and potential service providers in their community, community leaders in other fields (e.g., local elected officials, clergy, etc.), federal, state or local adult and juvenile institutions, Ryan White Title II Consortium, Ryan White Title I Planning Council, Ryan White Title III and IV grantees and the department's regional HIV Coordinator when planning the special project.

ELIGIBLE APPLICANTS

Only non-profit minority community-based organizations located within Harris or Dallas Counties, Texas are eligible for this grant. For purposes of this grant, a minority provider is defined as one in which fifty-one percent or more of key staff and managers are members of a minority community. Adequate representation of minorities in the provider's board that the provider is expected, or proposed to serve will be considered. Individuals are not eligible to apply. Applicants must have experience and/or expertise in working with the target population(s). Entities that have had state or federal contracts terminated within the last 24 months for deficiencies in fiscal or programmatic performance are not eligible to apply. Applicants must provide historical evidence of fiscal and administrative responsibility as outlined in the administrative information of the grant instructions.

SCHEDULE OF EVENTS

Issuance of RFP: (July 19, 2001)

Letters of Intent Due: (August 20, 2001)

Deadline for Technical Assistance Requests: (August 20, 2001)

Application Deadline: (September 19, 2001)

Award Notification to All Applicants: (October 19, 2001)

Estimated Contract Start Date: (January 1, 2002)

TO OBTAIN A COPY OF THE RFP

For a copy of the RFP, please contact Ms. Laura Ramos, HIV/STD Health Resources Division, at (512) 490-2525 or e-mail: laura.ramos@tdh.state.tx.us. Copies of the RFP and forms may also be obtained at the Bureau of HIV and STD Prevention web site, http://www.tdh.state.tx.us/hivstd/grants/default.htm. No copies of the RFP will be released prior to July 19, 2001.

TRD-200103339
Susan K. Steeg
General Counsel
Texas Department of Health
Filed: June 13, 2001

♦ ♦ ♦

Houston-Galveston Area Council

Request for Proposals

The Houston-Galveston Area Council (H-GAC) solicits qualified individuals or organizations to provide English language testing, English as a second language instruction, and review/preparation for the Texas Board of Nurse Examiners test to license registered nurses. Services will be provided for legal immigrants or resident aliens who have nursing credentials from a foreign country to allow these individuals to pass the Texas' registered nurses examination, be licensed, and go to work in the Houston area. Prospective proposers may request that the proposal package be sent in hard copy or may access the package for download at *http://www.theworksource.org.* The proposal package contains detailed information and instructions on preparing a response. Prospective proposers may contact Carol Kimmick to request a package by writing her at H-GAC, Human Services-Workforce, P.O. Box 2777, Houston, Texas, 77227-2777, by calling her at (713) 627-3200 or by sending e-mail to *ckimmick@hgac.cog.tx.us*. Proposals are due at H-GAC offices, 3555 Timmons Lane, Suite 500, Houston, Texas 77027 no later than 12:00 p.m. (noon) Central Daylight Time on Friday, June 22, 2001. Late proposals will not be accepted. There will be no exceptions.

TRD-200103177
Jack Steele
Executive Director
Houston-Galveston Area Council
Filed: June 6, 2001

♦ ♦ ♦

Texas Department of Insurance

Amended Notice

Notice of the previous filing was published in the May 25, 2001 issue of the *Texas Register* (26 TexReg 3860).

The Commissioner of Insurance, or his designee, will consider approval of a rate filing request submitted by American International Insurance Company proposing to use rates for homeowners insurance that are outside the upper or lower limits of the flexibility band promulgated by the Commissioner of Insurance, pursuant to TEX. INS. CODE ANN. art 5.101 §3(g). The Company is requesting the following flex percent of -40% to +30% range for HO-A, HO-B & HO-C coverage forms by territory and size of risk range. The company is requesting -15% to +30% range for HO-BT, HO-CT, HO-CON-B & HO-CON-C coverage forms by territory and size of risk range. **In addition, the company proposes splitting Texas territories 1, 11 and 14 into subterritories. Texas territory 1, Harris County, is being split by ZIP codes into two subterritories. Texas territory 11 is being split into 3 subterritories. The new subterritories will include numerous ZIP codes in Fort Bend County, the City of McAllen in Hidalgo County, and the remainder of Texas territory 11. Texas territory 14 is subdivided into the entire county of Montgomery and the remainder of Texas territory 14. The filing also proposes changes to the optional credits and introduces new credits and additions to the Personal Lines Manual.** This is a new program, so there is no rate change effect.

Copies of the filing may be obtained by contacting George Russell, at the Texas Department of Insurance, Automobile/Homeowners Division, P.O. Box 149104, Austin, Texas 78714-9104, telephone (512) 305-7468.

This filing is subject to Department approval without a hearing unless a properly filed objection, pursuant to art. 5.101 §3(h), is made with the Chief Actuary for P&C, Mr. Phil Presley, at the Texas Department of Insurance, MC 105-5F, P.O. Box 149104, Austin, Texas 78701 by July 23, 2001.

TRD-200103194
Judy Woolley
Deputy Chief Clerk
Texas Department of Insurance
Filed: June 7, 2001

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Insurer Services

Application to change the name of MINNESOTA FIRE AND CASUALTY COMPANY to HARLEYSVILLE INSURANCE COMPANY, a foreign fire and casualty company. The home office is in Minneapolis, Minnesota.

Application to change the name of HERITAGE MUTUAL INSURANCE COMPANY to ACUITY, A MUTUAL INSURANCE COMPANY, a foreign fire and casualty company. The home office is in Sheboygan, Wisconsin.

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-200103336
Judy Woolley
Deputy Chief Clerk
Texas Department of Insurance
Filed: June 13, 2001

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Notice

Pursuant of the Texas Insurance Code, Section 40.059 and 28 TAC §1.1317(3), the Commissioner of Insurance will hold a public meeting to consider the proposal for decision and the exception, replies, brief and arguments of the parties in SOAH Docket No. 454-01-0449.G In the Matter of Residential Property Insurance Benchmark Rate Setting

& Texas Windstorm Insurance Rate Setting. The parties are permitted to make oral argument before the commissioner in the same order of presentation as in the benchmark hearing. The public meeting is scheduled for July 17, 2001 at 1:30 p.m. in Room 100 of the William P. Hobby, Jr. State Office Building, 333 Guadalupe Street in Austin, Texas.

TRD-200103322
Judy Woolley
Deputy Chief Clerk
Texas Department of Insurance
Filed: June 12, 2001

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Texas Natural Resource Conservation Commission

Correction of Error

The Texas Natural Resource Conservation Commission adopted changes to 30 TAC Chapter 285, concerning on-site sewage facilities. The rules were published in the June 8, 2001, *Texas Register* (26 TexReg 4115). The agency's submission contained the following errors.

In §285.3(b)(3) on page 4187, first column, the sentence that reads, "...(relating to Tables) or the owner's agent, must record in the county deed records..." omits a reference to "the affidavit". The sentence should read as follows. "...(relating to Tables) or the owner's agent, must record the affidavit in the county deed records..."

In §285.90(2) on page 4212, second column, the figure tag reads, "Figure 2. Affidavit to the Public." The tag should read, "Figure 2. Model Deed and Affidavit Language."

In §285.91(5) on page 4213, first column, the table title reads, "(5) Table V. Criteria for Standard Subsurface Disposal Methods," The correct title should read as follows. "(5) Table V. Criteria for Standard Subsurface Absorption systems."

TRD-200103350

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Enforcement Orders

An agreed order was entered regarding WEATHERFORD AEROSPACE, INC., Docket Number 1999-1476-IHW-E on May 29, 2001 assessing $50,000 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting LISA DYER, Staff Attorney at (512) 239-5692, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding WORTH OIL COMPANY DBA WORTH OIL #9724, Docket Number 1999-1069-PST-E on May 29, 2001 assessing $50,000 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting RICHARD O'CONNELL, Staff Attorney at (512) 239-5528, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding COLLIER'S TOP OF TEXAS, INC., Docket Number 2000-0642-AIR-E on May 29, 2001 assessing $3,500 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting TONI TOLIVER, SEP Coordinator at (512) 239-6122, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding CROSSTEX/WRA GAS SERVICES, Docket Number 2000-0999-AIR-E on May 29, 2001 assessing $6,750 in administrative penalties with $1,350 deferred.

Information concerning any aspect of this order may be obtained by contacting CAROL MCGRATH, Enforcement Coordinator at (361) 825-3275, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding E. I. DUPONT DE NEMOURS & COMPANY, INC., Docket Number 2000-0974-AIR-E on May 29, 2001 assessing $6,250 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting TONI TOLIVER, SEP Coordinator at (512) 239-6122, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding GLEN ENOS DBA JIM ENOS MOTORS, Docket Number 2000-1256-AIR-E on May 29, 2001 assessing $750 in administrative penalties with $150 deferred.

Information concerning any aspect of this order may be obtained by contacting JUDY FOX, Enforcement Coordinator at (871) 588-5825, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding EOG RESOURCES INC, Docket Number 2000-1134-AIR-E on May 29, 2001 assessing $1,875 in administrative penalties with $375 deferred.

Information concerning any aspect of this order may be obtained by contacting TONI TOLIVER, SEP Coordinator at (512) 239-6122*, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding ALLIANCE RIGGERS & CONSTRUCTORS LTD, Docket Number 2000-1442-AIR-E on May 29, 2001 assessing $750 in administrative penalties with $150 deferred.

Information concerning any aspect of this order may be obtained by contacting STACEY YOUNG, Enforcement Coordinator at (512) 239-1899*, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding PIONEER NATURAL RESOURCES USA, INCORPORATED, Docket Number 2000-1388-AIR-E on May 29, 2001 assessing $3,750 in administrative penalties with $750 deferred.

Information concerning any aspect of this order may be obtained by contacting STACEY YOUNG, Enforcement Coordinator at (512) 239-1899*, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding FEW READY MIX CONCRETE COMPANY, Docket Number 2000-1347-AIR-E on May 29, 2001 assessing $500 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting JOHN BERRY, Enforcement Coordinator at (409) 899-8791*, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding MOBIL OIL CORPORATION, Docket Number 2000-0530-AIR-E on May 29, 2001 assessing $162,000 in administrative penalties with $32,400 deferred.

Information concerning any aspect of this order may be obtained by contacting TONI TOLIVER, SEP Coordinator at (512) 239-6122, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding FOAM FABRICATORS, INC., Docket Number 2000-1177-AIR-E on May 29, 2001 assessing $6,050 in administrative penalties with $1,210 deferred.

Information concerning any aspect of this order may be obtained by contacting WENDY COOPER, Enforcement Coordinator at (817) 588-5867, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding FFP MARKETING COMPANY, INC., Docket Number 2000-1443-AIR-E on May 29, 2001 assessing $750 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting STACEY YOUNG, Enforcement Coordinator at (512) 239-1899, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding ENGINEERED CARBONS, INCORPORATED, Docket Number 2000-0972-AIR-E on May 29, 2001 assessing $78,750 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting TONI TOLIVER, SEP Coordinator at (512) 239-6122*, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding R. L. ELDRIDGE CONSTRUCTION INC. DBA GABBY'S DOCK, Docket Number 2000-1373-AIR-E on May 29, 2001 assessing $1,000 in administrative penalties with $200 deferred.

Information concerning any aspect of this order may be obtained by contacting LAURA CLARK, Enforcement Coordinator at (409) 899-8760*, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding OVERWRAPS PACKAGING, L.P., Docket Number 2000-0684-AIR-E on May 29, 2001 assessing $10,000 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting TONI TOLIVER, SEP Coordinator at (512) 239-6122*, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding SCYTHIAN, LTD., Docket Number 2000-0715-AIR-E on May 29, 2001 assessing $7,000 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting GARY SHIPP, Enforcement Coordinator at (806) 796-7092, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An order was entered regarding TEXAS LEHIGH CEMENT COMPANY, Docket Number 2001-0500-AIR-E on May 29, 2001.

Information concerning any aspect of this order may be obtained by contacting VICTOR SIMONDS, Staff Attorney at (512) 239-6201*, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An order was entered regarding TEXAS LEHIGH CEMENT COMPANY, Docket Number 2001-0501-AIR-E on May 29, 2001.

Information concerning any aspect of this order may be obtained by contacting VICTOR SIMONDS, Staff Attorney at (512) 239-6201*, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding RANGER AVIATION ENTERPRISES, INC., Docket Number 2000-1141-IHW-E on May 29, 2001 assessing $4,950 in administrative penalties with $990 deferred.

Information concerning any aspect of this order may be obtained by contacting MARK NEWMAN, Enforcement Coordinator at (915) 655-9479*, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding OFS, INC., Docket Number 2000-1015-IHW-E on May 29, 2001 assessing $6,250 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting CATHERINE SHERMAN, Enforcement Coordinator at (713) 767-3624, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding JACINTOPORT INTERNATIONAL LP, Docket Number 2000-0942-IWD-E on May 29, 2001 assessing $1,800 in administrative penalties with $360 deferred.

Information concerning any aspect of this order may be obtained by contacting CATHERINE SHERMAN, Enforcement Coordinator at (713) 767-3624, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding TXU ELECTRIC COMPANY, Docket Number 2000-0861-IWD-E on May 29, 2001 assessing $6,000 in administrative penalties with $1,200 deferred.

Information concerning any aspect of this order may be obtained by contacting SUZANNE WALRATH, Enforcement Coordinator at (512) 239-2134*, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding PETRO, INC., Docket Number 2000-1045-IWD-E on May 29, 2001 assessing $4,500 in administrative penalties with $900 deferred.

Information concerning any aspect of this order may be obtained by contacting STEVEN LOPEZ, Enforcement Coordinator at (512) 239-1896*, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding NORTH ORANGE WATER & SEWER LLC DBA LANGFORD PLACE, Docket Number 2000-1013-MLM-E on May 29, 2001 assessing $1,375 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting LAURA CLARK, Enforcement Coordinator at (409) 899-8760*, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding R. J. SHERWIN DBA THE MARINA ON LAKE MEDINA, LLC, Docket Number 2000-0210-MLM-E on May 29, 2001 assessing $3,000 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting GITANJALI YADAV, Staff Attorney at (512) 239-2029, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding CITY OF AMHERST, Docket Number 2000-0987-MSW-E on May 29, 2001 assessing $4,375 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting GARY SHIPP, Enforcement Coordinator at (806) 796-7092, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding MR. DOYLE RINN DBA BALLINGER AUTO WRECKING, Docket Number 2000-0410-MSW-E on May 29, 2001 assessing $3,125 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting JAMES BEAUCHAMP, Enforcement Coordinator at (915) 698-9674, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding HARDIN COUNTY WATER CONTROL IMPROVEMENT DISTRICT NO. 1, Docket Number 2000-1008-MWD-E on May 29, 2001 assessing $11,250 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting TONI TOLIVER, SEP Coordinator at (512) 239-6122*, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding MOUNTAIN MAN INC., Docket Number 2000-0990-MWD-E on May 29, 2001 assessing $3,000 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting DAVID VAN SOEST, Enforcement Coordinator at (512) 239-0468, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding WHARTON COUNTY WATER CONTROL IMPROVEMENT DISTRICT NO. 2, Docket Number 2000-0905-MWD-E on May 29, 2001 assessing $5,000 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting DAVID VAN SOEST, Enforcement Coordinator at (512) 239-0468, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding CITY OF MENARD, Docket Number 2000-0810-MWD-E on May 29, 2001 assessing $2,500 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting TONI TOLIVER, SEP Coordinator at (512) 239-6122*, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding GRAPE CREEK/PULLIAM INDEPENDENT SCHOOL DISTRICT, Docket Number 2000-1178-MWD-E on May 29, 2001 assessing $6,000 in administrative penalties with $1,200 deferred.

Information concerning any aspect of this order may be obtained by contacting MARK NEWMAN, Enforcement Coordinator at (915) 655-9479*, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding CITY OF RAYMONDVILLE, Docket Number 2000-0823-MWD-E on May 29, 2001 assessing $7,500 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting TONI TOLIVER, SEP Coordinator at (512) 239-6122*, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding RICHARD TATSCH, Docket Number 1999-1370-OSI-E on May 29, 2001 assessing $750 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting DARREN REAM, Staff Attorney at (817) 588-5878, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding FRANCISCO SOLIS, Docket Number 2000-0014-OSS-E on May 29, 2001 assessing $1,250 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting LAURIE LINDSEY, Staff Attorney at (512) 239-3693*, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding MR. SUNIL KUMAR PATEL DBA COUNTRY CORNER, Docket Number 2000-0908-PST-E on May 29, 2001 assessing $3,150 in administrative penalties with $630 deferred.

Information concerning any aspect of this order may be obtained by contacting WENDY COOPER, Enforcement Coordinator at (817) 588-5867*, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding SPEEDY STOP FOOD STORES, LTD., Docket Number 2000-1056-PST-E on May 29, 2001 assessing $27,500 in administrative penalties with $5,500 deferred.

Information concerning any aspect of this order may be obtained by contacting AUDRA BAUMGARTNER, Enforcement Coordinator at (361) 825-3312, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding MR. ZAKI NIAZI DBA KING MART #4, Docket Number 2000-0520-PST-E on May 29, 2001 assessing $13,750 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting TRINA K. LEWISON, Enforcement Coordinator at (713) 767-3607*, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding ASHFAQ AHMED & KULSOOM YOUSUF DBA FINA, Docket Number 2000-1139-PST-E on May 29, 2001 assessing $1,000 in administrative penalties with $200 deferred.

Information concerning any aspect of this order may be obtained by contacting THOMAS JECHA, Enforcement Coordinator at (512) 239-2576*, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding AKBER ALLAUDDIN DBA E-Z SEVEN FOOD MART, Docket Number 2000-1133-PST-E on May 29, 2001 assesssing $4,375 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting GLORIA STANFORD, Enforcement Coordinator at (512) 239-1871*, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding GBAK PROPERTIES INC. DBA SUNRISE CONVENIENCE STORE, Docket Number

2000-0600-PST-E on May 29, 2001 assessing $1,250 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting LAURENCIA FASOYIRO, Staff Attorney at (713) 422-8914, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding CHAMPION WINDOW, INC., Docket Number 2000-1094-PWS-E on May 29, 2001 assessing $3,813 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting JAYME BROWN, Enforcement Coordinator at (512) 239-1683*, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding MIDWAY PETROLEUM, LP, Docket Number 2000-1341-PWS-E on May 29, 2001 assessing $938 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting SUBHASH JAIN, Enforcement Coordinator at (512) 239-5867*, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding GARY LUCAS DBA TURF ESTATES WATER SYSTEM, Docket Number 2000-0888-PWS-E on May 29, 2001 assessing $313 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting REBECCA CERVANTES, Enforcement Coordinator at (915) 834-4965*, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding UNITED GALVANIZING, INC., Docket Number 2000-1167-PWS-E on May 29, 2001 assessing $938 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting BRIAN LEHMKUHLE, Enforcement Coordinator at (512) 239-4482, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding STAR MOUNTAIN WATER SUPPLY CORPORATION, Docket Number 2000-0944-PWS-E on May 29, 2001 assessing $788 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting CAROLYN LIND, Enforcement Coordinator at (903) 535-5145, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding RIDERVILLE WATER SUPPLY CORPORATION, Docket Number 2000-0943-PWS-E on May 29, 2001 assessing $1,125 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting CAROLYN LIND, Enforcement Coordinator at (903) 535-5162, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding LILLY GROVE SPECIAL UTILITY DISTRICT, Docket Number 2000-0837-PWS-E on May 29, 2001 assessing $2,726 in administrative penalties with $70 deferred.

Information concerning any aspect of this order may be obtained by contacting TONI TOLIVER, SEP Coordinator at (512) 239-6122*, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding CITY OF HAMLIN, Docket Number 2000-1235-PWS-E on May 29, 2001 assessing $3,125 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting SUBHASH JAIN, Enforcement Coordinator at (512) 239-5867*, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding KENNETH F. SMITH, Docket Number 2000-0759-WOC-E on May 29, 2001.

Information concerning any aspect of this order may be obtained by contacting REYNALDO DELOSSANTOS, Staff Attorney at (210) 403-4016**, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding WORTH OIL COMPANY, Docket Number 1999-1438-PST-E on May 29, 2001 assessing $2,875 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting RICHARD O'CONNELL, Staff Attorney at (512) 239-5528, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

TRD-200103183
LaDonna Castañuela
Chief Clerk
Texas Natural Resource Conservation Commission
Filed: June 6, 2001

Notice of Opportunity to Comment on Default Orders of Administrative Enforcement Actions

The Texas Natural Resource Conservation Commission (TNRCC or commission) staff is providing an opportunity for written public comment on the listed Default Orders (DOs). The TNRCC staff proposes a DO when the staff has sent an Executive Director's Preliminary Report and Petition (EDPRP) to an entity outlining the alleged violations; the proposed penalty; and the proposed technical requirements necessary to bring the entity back into compliance, and the entity fails to request a hearing on the matter within 20 days of its receipt of the EDPRP. Similar to the procedure followed with respect to Agreed Orders entered into by the executive director of the TNRCC pursuant to Texas Water Code (TWC), §7.075, this notice of the proposed order and the opportunity to comment is published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **July 23, 2001**. The TNRCC will consider any written comments received and the TNRCC may withdraw or withhold approval of a DO if a comment discloses facts or considerations that indicate that a proposed DO is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the TNRCC's jurisdiction, or the TNRCC's orders and permits issued pursuant to the TNRCC's regulatory authority. Additional notice of changes to a proposed DO is not required to be published if those changes are made in response to written comments.

A copy of each of the proposed DOs is available for public inspection at both the TNRCC's Central Office, located at 12100 Park 35 Circle, Building A, 3rd Floor, Austin, Texas 78753, (512) 239-3400 and at the applicable Regional Office listed as follows. Comments about the DO should be sent to the attorney designated for the DO at the TNRCC's Central Office at P.O. Box 13087, MC 175, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on July 23, 2001**. Comments may also be sent by facsimile machine to the attorney at (512) 239-3434.

The TNRCC attorneys are available to discuss the DOs and/or the comment procedure at the listed phone numbers; however, comments on the DOs should be submitted to the TNRCC in **writing**.

(1) COMPANY: Joe Ruiz dba J-B Kustoms; DOCKET NUMBER: 2000-0225-AIR-E; TNRCC ID NUMBER: DB-5020-G; LOCATION: 706 East Redbird Lane, Suite 120, Duncanville, Dallas County, Texas; TYPE OF FACILITY: auto body repair and painting shop, (shop); RULES VIOLATED: §382.085(b) and §382.0518(a), by failing to obtain a permit prior to construction or to satisfy the conditions of a permit by rule prior to operating an auto body refinishing shop; §115.421(a)(8)(B) and Texas Health and Safety Code (THSC), §382.085(b), by failing to meet the volatile organic compound content requirements for paints and solvents used for auto body refinishing; §115.422(1)(A) and THSC, §382.085(b), by failing to use a solvent with a vapor pressure of less than 100 mmHg at 68ø Fahrenheit for non-enclosed equipment cleaning; §115.426(a)(1)(A) and THSC, §382.085(b), by failing to maintain records of the vapor pressure of the solvent used for non-enclosed equipment cleaning; PENALTY: $5,000; STAFF ATTORNEY: Darren Ream, Litigation Division, MC R-4, (817) 588-5878; REGIONAL OFFICE: Arlington Regional Office, 1101 East Arkansas Lane, Arlington, Texas 76010-6499, (817) 588-5800.

(2) COMPANY: John Randall Hunt aka Randy Jo Hunt dba Hunt Utility Company; DOCKET NUMBER: 1999-1390-OSS-E; TNRCC ID NUMBER: OS2936; LOCATION: intersection of Highway 190 and Counts Road, Precinct 4, Point Blank, San Jacinto County, Texas; TYPE OF FACILITY: on-site sewage facility (OSSF); RULES VIOLATED: §285.50(c) and THSC, §366.071, by misrepresenting himself as a certified OSSF Installer II by entering into an agreement and accepting compensation to perform services, construct, and install an OSSF; PENALTY: $688; STAFF ATTORNEY: Joshua M. Olszewski, Litigation Division, MC 175, (512) 239-3400; REGIONAL OFFICE: Beaumont Regional Office, 3870 Eastex Fwy., Beaumont, Texas 77703-1892, (409) 892-2119.

(3) COMPANY: Po Jung Chen aka Paul Chen and Sunilandings Utilities, Inc.; DOCKET NUMBER: 2000-0652-MLM-E; TNRCC ID NUMBERS: 0290056, 12653-001, 20739, 12525; LOCATION: Sunilandings Subdivision in Enchanted Harbor, immediately south of the intersection of County Road 306 and Dolphin Drive, Port Alto, Calhoun County, Texas; TYPE OF FACILITY: wastewater treatment facility and public drinking water system (PDWS); RULES VIOLATED: §305.125(2) and TWC, §26.121, by failing to renew the required water quality discharge permit for an active PDWS by submitting a renewal application prior to the expiration of Water Quality Permit Number 12653-001; §291.21(a) and TWC, §13.135, by charging sewer and water utility rates higher than those prescribed in the approved tariffs sections without submitting an application requesting a rate increase; PENALTY: $7,150; STAFF ATTORNEY: Scott McDonald, Litigation Division, MC R-4, (817) 588-5888; REGIONAL OFFICE: Corpus Christi Regional Office, 6300 Ocean Dr., Ste. 1200, Corpus Christi, Texas 78412-5503, (361) 825-3100.

TRD-200103297
Paul C. Sarahan
Director, Litigation Division
Texas Natural Resource Conservation Commission
Filed: June 12, 2001

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Notice of Opportunity to Comment on Settlement Agreements of Administrative Enforcement Actions

The Texas Natural Resource Conservation Commission (TNRCC or commission) staff is providing an opportunity for written public comment on the listed Agreed Orders (AOs) pursuant to Texas Water Code (the Code), §7.075, which requires that the TNRCC may not approve these AOs unless the public has been provided an opportunity to submit written comments. Section 7.075 requires that notice of the proposed orders and of the opportunity to comment must be published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **July 23, 2001**. Section 7.075 also requires that the TNRCC promptly consider any written comments received and that the TNRCC may withhold approval of an AO if a comment discloses facts or considerations that indicate the proposed AO is inappropriate, improper, inadequate, or inconsistent with the requirements of the Code, the Texas Health and Safety Code (THSC), and/or the Texas Clean Air Act (the Act). Additional notice is not required if changes to an AO are made in response to written comments.

A copy of each of the proposed AOs is available for public inspection at both the TNRCC's Central Office, located at 12100 Park 35 Circle, Building C, 1st Floor, Austin, Texas 78753, (512) 239-1864 and at the applicable Regional Office listed as follows. Written comments about these AOs should be sent to the enforcement coordinator designated for each AO at the TNRCC's Central Office at P.O. Box 13087, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on July 23, 2001**. Written comments may also be sent by facsimile machine to the enforcement coordinator at (512) 239-2550. The TNRCC enforcement coordinators are available to discuss the AOs and/or the comment procedure at the listed phone numbers; however, §7.075 provides that comments on the AOs should be submitted to the TNRCC in **writing**.

(1) COMPANY: AKZO Nobel Polymer Chemicals LLC; DOCKET NUMBER: 2000-1073- IHW-E; IDENTIFIER: Solid Waste Registration Number 30281; LOCATION: Deer Park, Harris County, Texas; TYPE OF FACILITY: chemical manufacturing; RULE VIOLATED: 30 TAC §335.69(a)(1)(B), §335.112(a)(9) and 40 Code of Federal Regulations (CFR) §§262.34(a)(1)(ii), 265.192(a) and (b), and 265.193(b)(1) and (2), by failing to perform an assessment certified by an independent engineer; 30 TAC §335.69(a)(1)(B), §335.112(a)(9), and 40 CFR §§262.34(a)(1)(ii), 265.192(a)(1)(2)(3), 265.193(e)(1)(ii), and §265.193(e)(1)(iii), by failing to maintain secondary containment free of cracks and gaps and perform a structural integrity assessment certified by an independent engineer; 30 TAC §101.24, by failing to pay outstanding air investigation fees; and the Code, §370.008, by failing to pay outstanding toxic chemical release fees; PENALTY: $14,080; ENFORCEMENT COORDINATOR: Catherine Sherman, (713) 767-3500; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(2) COMPANY: Aldine Independent School District; DOCKET NUMBER: 2000-1172-MWD-E; IDENTIFIER: Texas Pollutant Discharge Elimination System (TPDES) Permit Numbers 12070-001 and 12070-002; LOCATION: Houston, Harris County, Texas; TYPE OF FACILITY: wastewater treatment; RULE VIOLATED: 30 TAC §305.125(1), TPDES Permit Numbers 12070-001 and 12070-002, and the Code, §26.121, by failing to comply with the permit limits for total suspended solids, five-day carbonaceous biochemical oxygen demand, and dissolved oxygen; PENALTY: $2,250; ENFORCEMENT COORDINATOR: Pamela Campbell, (512) 239-4493; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(3) COMPANY: Bargo Energy Company; DOCKET NUMBER: 2001-0206-AIR-E; IDENTIFIER: Air Account Number BL-0771-K; LOCATION: Danciger, Brazoria County, Texas; TYPE OF FACILITY: oil and gas production; RULE VIOLATED: 30 TAC §122.121 and the Code, §382.054, by failing to operate without a Title V permit;

PENALTY: $2,000; ENFORCEMENT COORDINATOR: Rebecca Johnson, (713) 767-3500; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(4) COMPANY: Clyde Clardy dba Bastrop West Water System; DOCKET NUMBER: 2001- 0217-PWS-E; IDENTIFIER: Public Water Supply (PWS) Number 11047 and Certificate of Convenience and Necessity Number 12050; LOCATION: Bastrop, Bastrop County, Texas; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.106(a)(1) (now 30 TAC §290.109(c)(1)(B)), by failing to provide a bacteriological sample siting plan; and 30 TAC §290.46(f)(2), (j)(3), and (p) (now 30 TAC §290.46(f)(3)(E)(iv)), by failing to provide documentation of chlorine residual test results, customer service inspections certification, and annual storage tank inspections; PENALTY: $600; ENFORCEMENT COORDINATOR: Subhash Jain, (512) 239-5867; REGIONAL OFFICE: 1921 Cedar Bend Drive, Suite 150, Austin, Texas 78758-5336, (512) 339-2929.

(5) COMPANY: Citation Oil and Gas Corporation; DOCKET NUMBER: 2001-0338-AIR-E; IDENTIFIER: Air Account Number WJ-0002-I; LOCATION: San Perlita, Willacy County, Texas; TYPE OF FACILITY: natural gas and oil production; RULE VIOLATED: 30 TAC §122.146(2) and the Code, §382.085(b), by failing to submit an annual Title V compliance certification; and 30 TAC §122.145(2) and the Code, §382.085(b), by failing to submit deviation reports; PENALTY: $2,000; ENFORCEMENT COORDINATOR: Sandra Hernandez, (956) 425-6010; REGIONAL OFFICE: 1804 West Jefferson Avenue, Harlingen, Texas 78550-5247, (956) 425-6010.

(6) COMPANY: Crockett Gas Processing Company; DOCKET NUMBER: 2001-0340-AIR-E; IDENTIFIER: Air Account Number CZ-0011-M; LOCATION: Ozona, Crockett County, Texas; TYPE OF FACILITY: natural gas processing; RULE VIOLATED: 30 TAC §122.146(2) and the Code, §382.085(b), by failing to submit a Title V compliance certification; PENALTY: $3,125; ENFORCEMENT COORDINATOR: Mark Newman, (915) 655-9479; REGIONAL OFFICE: 622 South Oakes, Suite K, San Angelo, Texas 76903-7013, (915) 655-9479.

(7) COMPANY: Diamond Water Company; DOCKET NUMBER: 2001-0056-PWS-E; IDENTIFIER: PWS Number 0460211; LOCATION: Bulverde, Comal County, Texas; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.120(c) (now 30 TAC §290.117), by failing to conduct initial tap sampling monitoring for lead and copper analysis; PENALTY: $313; ENFORCEMENT COORDINATOR: Erika Fair, (512) 239-6673; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(8) COMPANY: Duke Energy Field Services, L.P.; DOCKET NUMBER: 2000-0386-AIR-E; IDENTIFIER: Air Account Numbers EB-0197-H, AB-0011-B, ML-0178-N, HT-0092-N, ML-0127-H, EB-0274-O, UB-0049-H, CY-0015-P, UB-0027-R, EB-0207-G, MF-0029-A, HT-0064-S, CY-0013-T, EB-0148-U, LM-0011-K, AB-0032-Q, ML-0075-B, GE-0023-U, UB-0029-N, GA-0097-M, AB-0002- C, ML-0093-W, GE-0017-P, PE-0167-Q, PE-0025-O, UB-0036-Q, UB-0057-I, WC-0111-F, WC- 0146-J, ML-0074-D, ML-0179-L, ML-0053-L, ML-0008-Q, PE-0051-N, PE-0193-P, GE-0016-R, WM-0012-S, WC-0031-E, PE-0024-Q, WC-0072-N, UB-0025-V, MR-0106-S, MR-0049-F, HW-0067-C, CF-0066-N, OA-0052-D, HL-0072-K, HD-0072-K, HD-0038-B, MR-0069-W, HD-0044-G, HL 0049-F, LJ-0025-J, GH-0068-L, HD-0030-R, HD-0031-P, RH-0015-T, SJ-0020-P, SJ-0021-N, LJ-0019-E, SJ-0022-L, SJ-0023-J, HD-0026-I, HW-0028-M, HW-0020-F, GH-0069-J, HW-0014-A, MR-0107-Q, MR-0134-N, SJ-0024-H, LJ-0028-D, HL-0007-V, MR-0108-O, OA, 0027-C, SJ-0025-F, RL-0097-V, PB-0002-N, PB-0067-I, PB-0095-D, RL-0096-A, WO-0007-M, SF-0001-M, SQ-0088-T, CZ-0005-H, SQ-0006-B, SQ-0013-E, RC-0017-B, SQ-0054-N, CZ-0009-W, BR-0054-C, BR-0055-A, JC-0067-H, JE-0203-B, JE-0342-J, FC-0049-S, LF-0016-O, FC-0046-B, LF-0041-E, FC-0042-J, LF- 0042-C, FC-0104-M, FC-0102-Q, LF-0019-U, ZF-0039-O, LF-0024-E, LF-0022-I, FC-0068-O, LF- 0038-A, MQ-0002-T, WF-005-O, KA-0025-F, NE-0188-T, NE-0354-D, NE-0028-T, NE-0029-R, WC-0065-K, JG-0017-B, JG-0018-W, LE-0012-W, MR-0029-L, MR-0030-D, BE-0032-M; LOCATION: Bulverde, Comal County, Texas; TYPE OF FACILITY: natural gas handling; RULE VIOLATED: 30 TAC §122.145(2)(C), 122.146(2), and the Act, §382.085(b), by failing to submit Title V compliance certification and deviation reports; PENALTY: $237,070; ENFORCEMENT COORDINATOR: Gary McDonald, (361) 825-3100; REGIONAL OFFICE: 6300 Ocean Drive, Suite 1200, Corpus Christi, Texas 78412-5503, (361) 825-3100.

(9) COMPANY: Good Time Stores, Incorporated; DOCKET NUMBER: 2000-0171-AIR-E; IDENTIFIER: Air Account Number EE-1223-O ; LOCATION: El Paso, El Paso County, Texas; TYPE OF FACILITY: gasoline dispensing station; RULE VIOLATED: 30 TAC §114.100(a) and the Code, §382.085(b), by offering for sale gasoline for use as a motor vehicle fuel which failed to meet the minimum oxygen content of 2.7% by weight; PENALTY: $600; ENFORCEMENT COORDINATOR: Suzanne Walrath, (512) 239-2134; REGIONAL OFFICE: 401 East Franklin Avenue, Suite 560, El Paso, Texas 79901-1206, (915) 834-4949.

(10) COMPANY: Highland Bayou Water Supply Corporation; DOCKET NUMBER: 2000-1379- PWS-E; IDENTIFIER: PWS Number 0840080; LOCATION: Hitchcock, Galveston County, Texas; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.45(b)(1)(A)(ii), by failing to provide a pressure tank capacity of 50 gallons per connection; 30 TAC §291.21(c)(7), §291.93(2)(A), and the Code, §13.136(a), by failing to ensure that its tariff included an approved drought contingency plan; and 30 TAC §288.20(a)(2), §288.30(3)(B), and the Code, §13.132(a)(1), by failing to prepare and make available for inspection an adopted drought contingency plan; PENALTY: $438; ENFORCEMENT COORDINATOR: Elvia Maske, (512) 239- 0789; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(11) COMPANY: Joshua Creek Ranch, Inc.; DOCKET NUMBER: 2001-0069-IHW-E; IDENTIFIER: Hazardous Waste Identification Number F0707; LOCATION: Boerne, Kendall County, Texas; TYPE OF FACILITY: wobble trap shotgun shooting range; RULE VIOLATED: 30 TAC §335.4 and the Code, §26.121, by allowing lead shotgun waste generated to be directly discharged and accumulated in Joshua Creek; PENALTY: $1,000; ENFORCEMENT COORDINATOR: Malcolm Ferris, (210) 490-3096; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(12) COMPANY: La Porte Methanol Company, L.P.; DOCKET NUMBER: 2001-0108-AIR-E; IDENTIFIER: Air Account Number HX-2302-N; LOCATION: La Porte, Harris County, Texas; TYPE OF FACILITY: chemical plant; RULE VIOLATED: 30 TAC §113,100, §113.120, 40 CFR §63.136(b), and the Code, §382.085(b), by failing to operate or maintain each individual drain; 30 TAC §115.356(1) and the Code, §832.085(b), by failing to maintain documentation of fugitive monitoring of all components; 30 TAC §§113.100, 113,110, 113.120,113.300, 40 CFR §§63,104(a), 63.151(a)(1) - (5), and 63.563(b)(1), and the Code, §382.085(b), by failing to conduct the initial compliance testing for the methanol vapor recovery system, provide a written monitoring plan to detect leaks in the heat exchange system, and submit reports that include the wastewater initial notification, notification of compliance status, implementation plans, and the semiannual hazardous organic - National Emission Standards

for Hazardous Air Pollutants; 30 TAC §101.10(b)(2) and the Code, §382.085(b), by failing to submit emission inventory data; and 30 TAC §§115.146(1), 113.100, 113.120, 40 CFR §63.144(b)(1) and (3) and §63.146(b)(2) and (4) - (6), and the Code, §382.085(b), by failing to determine the classification for a wastewater stream, the annual average flow rate and concentration, highest annual quantity of wastewater managed, and the maximum design capacity of the system; PENALTY: $26,000; ENFORCEMENT COORDINATOR: Gloria Stanford, (512) 239-1871; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(13) COMPANY: Marsh Petroleum Corporation and Cougar Stop, Inc. dba Normandy Truck Stop; DOCKET NUMBER: 2000-1424-PST-E; IDENTIFIER: Petroleum Storage Tank Facility Identification Number 0060804; LOCATION: Houston, Harris County, Texas; TYPE OF FACILITY: underground storage tanks; RULE VIOLATED: 30 TAC §334.105(a) and (b) (now 30 TAC §37.875), by failing to maintain proof of financial assurance; 30 TAC §334.50(d)(4)(A)(i) and (ii), and the Code, §26.3475(c)(1), by failing to conduct inventory control and put automatic tank gauging system into test mode; 30 TAC §334.48(c), by failing to conduct inventory control at a retail facility; and 30 TAC §334.7(d)(3), by failing to amend, update, or change underground storage tank registration information; PENALTY: $5,600; ENFORCEMENT COORDINATOR: Trina Lewison, (713) 767-3500; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023- 1486, (713) 767-3500.

(14) COMPANY: Mr. Odie Nehring dba Chaparral III Water System, Green Acres Water System, Walburg Water System, and Weir Water Works; DOCKET NUMBER: 2000-0094-PWS-E; IDENTIFIER: PWS Numbers 2460047, 2460054, 2460016, and 2460017; LOCATION: Weir, Williamson County, Texas; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.41(c)(1)(F) and (3)(A) and (K), and §290.46(x), by failing to properly plug and abandon well number two, establish a sanitary control easement, seal the wellhead, submit well completion data, and provide well number one with a 16-mesh or finer corrosion-resistant screening casing vent; 30 TAC §290.103(2) and the Code §341.031(a) and §341.0315(c), by allegedly distributing drinking water that exceeded the maximum contaminant level for fluoride; 30 TAC §290.51(a)(3) and the Code, §341.041, by failing to pay public health service fees; 30 TAC §290.113(a), by failing to submit a written request for approval to use drinking water that exceeds the secondary constituent level for fluoride; 30 TAC §290.46(d), (m)(4), (p), (q)(1), (r), - (t), and (y), and §290.47(h), by failing to provide complete monthly operation reports and copies of the inspection reports for the ground storage and pressure tanks, maintain cleanliness and the general appearance of all plant facilities, provide a water tight suction line, maintain the exterior paint coating of the ground storage tank, use the prescribed notification format for the boil water notice, provide a minimum of 35 pounds per square inch throughout the distribution system, issue a boil water notice, maintain all related appurtenances in a watertight condition, and have water system wiring installed in a securely mounted conduit; 30 TAC §290.45(b)(1)(C)(iv), by failing to provide a pressure tank capacity of 20 gallons per connection; 30 TAC §290.43(c)(1) and (3), by failing to provide the above ground storage tank with a 16-mesh or finer vent screen and provide an above ground storage tank overflow pipe with an appropriate weighted cover; 30 TAC §290.44(a)(4), (b)(1)(C)(i), (ii), and (iv), and (h)(4)(D) and (E), by failing to provide a test report for each backflow assembly, provide a well capacity of 0.6 gallons per minute (gpm) per connection, provide a total storage tank capacity of 200 gallons per connection, provide a pressure tank capacity of 20 gpm per connection, and bury all water transmission lines at least 24 inches below ground level; 30 TAC §291.76 and the Code, §5.235(n), by failing to pay regulatory assessment fees; and 30 TAC §290.110(d), by failing to provide an acceptable chlorine kit; PENALTY: $4,001; ENFORCEMENT COORDINATOR: Craig Fleming, (512) 239-5806; REGIONAL OFFICE: 1921 Cedar Bend Drive, Suite 150, Austin, Texas 78758-5336, (512) 339-2929.

(15) COMPANY: Performance Plastics Products, Incorporated; DOCKET NUMBER: 2000- 1227-AIR-E; IDENTIFIER: Air Account Number HG-2360-P; LOCATION: Houston, Harris County, Texas; TYPE OF FACILITY: polymer lined pipe, tank and fitting manufacturing; RULE VIOLATED: 30 TAC §115.421(a)(9)(A)(iv) and the Code, §382.085(b), by exceeding the emission specification of three pounds per gallon of coating; 30 TAC §116.110(a) and the Code, §382.085(b) and §382.0518(a), by failing to obtain an air permit and satisfy the requirements of a Permit by Rule prior to construction of a surface coating operation; 30 TAC §116.115(c), Permit Number T-18900, and the Code, §382.085(b), by failing to keep daily usage records for coating and solvent materials, exceeding the volatile organic compound maximum allowable emission rate and the isopar maximum allowable usage rate, and failing to equip the calendaring line curing oven stack with an exhaust fan; 30 TAC §116.116(e)(4), §116.117(b)(3), and the Code, §382.085(b), by failing to make pre-change notification for a qualified facility modification; and 30 TAC §122.130(b)(1), §122.121, and the Code, §382.054 and §382.085(b), by failing to submit a timely federal operating permit application; PENALTY: $29,100; ENFORCEMENT COORDINATOR: Carl Schnitz, (512) 239-1892; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(16) COMPANY: City of Prairie View; DOCKET NUMBER: 2001-0152-PWS-E; IDENTIFIER: PWS Number 2370029; LOCATION: Prairie View, Waller County, Texas; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.120(e)(2) (now 30 TAC §290.117(e)), by failing to conduct reduced monitoring tap sampling for lead and copper analysis; PENALTY: $313; ENFORCEMENT COORDINATOR: Brian Lehmkuhle, (512) 239-4482; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(17) COMPANY: Quality Recycling of America, Inc. dba Quality Tire Recycling; DOCKET NUMBER: 2001-0163-MSW-E; IDENTIFIER: Tire Transporter Identification Number 26125; LOCATION: San Antonio, Bexar County, Texas; TYPE OF FACILITY: scrap tire storage; RULE VIOLATED: 30 TAC §328.60(a), by failing to obtain approval for a scrap tire storage site or other registration; and 30 TAC §328.55(4), by failing to provide written notice of changes in the mailing address, phone number, applicant's registered name, and designated place of business; PENALTY: $4,800; ENFORCEMENT COORDINATOR: Malcolm Ferris, (210) 490-3096; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(18) COMPANY: City of Stanton; DOCKET NUMBER: 2001-0189-PWS-E; IDENTIFIER: PWS Number 1590001; LOCATION: Stanton, Martin County, Texas; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.45(b)(1)(D)(iv), by failing to meet the minimum water system capacity requirements; PENALTY: $175; ENFORCEMENT COORDINATOR: Dan Landenberger, (915) 570-1359; REGIONAL OFFICE: 3300 North A Street, Building 5, Suite 107, Midland, Texas 79705-5404, (915) 570-1359.

(19) COMPANY: Torch Energy Marketing, Inc.; DOCKET NUMBER: 2000-1449-AIR-E; IDENTIFIER: Air Account Number SG-0029-C; LOCATION: Snyder, Scurry County, Texas; TYPE OF FACILITY: gas plant; RULE VIOLATED: 30 TAC §122.146(1) and the Code, §382.085(b), by failing to certify compliance with Title V General Operating Permit Number O- 00220; PENALTY: $2,500; ENFORCEMENT COORDINATOR: George Ortiz, (915) 698-9674;

REGIONAL OFFICE: 1977 Industrial Boulevard, Abilene, Texas 79602-7833, (915) 698-9674.

(20) COMPANY: Walnut Bend Independent School District; DOCKET NUMBER: 2001-0092- PWS-E; IDENTIFIER: PWS Number 0490040; LOCATION: Gainesville, Cooke County, Texas; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.45(b)(1)(B)(iv), by failing to provide a pressure tank capacity of 20 gallons per connection; 30 TAC §290.46(n)(2) and (3), and (u), by failing to provide an accurate and up-to-date map of the distribution system, provide a copy of the well material setting date, geological log, sealing information, disinfection information, microbiological sample results, and a chemical analysis report, plug the abandoned public water supply well; 30 TAC §290.41(c)(1)(F) and (c)(3)(C) and (J), by failing to provide a cement bonding log, provide the well with proper concrete sealing blocks, and secure a sanitary control easement; 30 TAC §290.43(c)(2) and (3), by failing to equip the ground storage tank with an access ladder, roof hatch, and an overflow; and 30 TAC §290.51(a)(3), by failing to pay the public health service fees; PENALTY: $1,625; ENFORCEMENT COORDINATOR: Jorge Ibarra, (817) 588-5800; REGIONAL OFFICE: 1101 East Arkansas Lane, Arlington, Texas 76010-6499, (817) 588-5800.

TRD-200103294
Paul Sarahan
Director, Litigation Division
Texas Natural Resource Conservation Commission
Filed: June 12, 2001

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Notice of Opportunity to Comment on Settlement Agreements of Administrative Enforcement Actions

The Texas Natural Resource Conservation Commission (TNRCC or commission) staff is providing an opportunity for written public comment on the listed Agreed Orders (AOs) pursuant to Texas Water Code (TWC), §7.075. Section 7.075 requires that before the commission may approve the AOs, the commission shall allow the public an opportunity to submit written comments on the proposed AOs. Section 7.075 requires that notice of the opportunity to comment must be published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **July 23, 2001**. Section 7.075 also requires that the commission promptly consider any written comments received and that the commission may withdraw or withhold approval of an AO if a comment discloses facts or considerations that the consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the TNRCC's orders and permits issued pursuant to the TNRCC's regulatory authority. Additional notice of changes to a proposed AO is not required to be published if those changes are made in response to written comments.

A copy of each of the proposed AOs is available for public inspection at both the TNRCC's Central Office, located at 12100 Park 35 Circle, Building A, 3rd Floor, Austin, Texas 78753, (512) 239-3400 and at the applicable Regional Office listed as follows. Comments about the AOs should be sent to the attorney designated for the AO at the TNRCC's Central Office at P.O. Box 13087, MC 175, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on July 23, 2001**. Comments may also be sent by facsimile machine to the attorney at (512) 239-3434. The TNRCC attorneys are available to discuss the AOs and/or the comment procedure at the listed phone numbers; however, §7.075 provides that comments on the AOs should be submitted to the TNRCC in **writing**.

(1) COMPANY: The City of Whitehouse; DOCKET NUMBER: 2000-0179-PWS-E; TNRCC ID NUMBER: 2120025; LOCATION: Farm-to-Market Road 346, one-half mile west of State Highway 110, Whitehouse, Smith County, Texas; TYPE OF FACILITY: public water supply system; RULES VIOLATED: §290.45(b)(1)(D)(iv), by failing to have an elevated storage capacity of 100 gallons per connection or a pressure tank capacity of 20 gallons per connection; §290.45(b)(1)(D)(iii), by failing to have two or more service pumps with a total rated capacity of 2.0 gallons per minute per connection; §290.43(c)(8), by failing to meet maintenance requirements for elevated storage tanks, specifically, failure to ensure that the interior and exterior coating system is continuing to provide adequate protection to all metal surfaces; PENALTY: $5,075; STAFF ATTORNEY: Elisa Roberts, Litigation Division, MC R-4, (817) 588-5877; REGIONAL OFFICE: Tyler Regional Office, 2916 Teague Drive, Tyler, Texas 75701-3756, (903) 535-5100.

(2) COMPANY: Oren Bruce Allen; DOCKET NUMBER: 1999-0909-WOC-E; TNRCC ID NUMBER: 449562268; LOCATION: Burleson, Johnson County, Texas; TYPE OF FACILITY: wastewater treatment company; RULES VIOLATED: §325.2(a) and TWC, §26.0301, by operating a wastewater system without the required wastewater operator certification; PENALTY: $6,250; STAFF ATTORNEY: Joshua M. Olszewski, Litigation Division, MC 175, (512) 239-3400; REGIONAL OFFICE: Waco Regional Office, 6801 Sanger Ave., Ste. 2500, Waco, Texas 76710-7826, (254) 751-0335.

(3) COMPANY: Tessye Maurer dba Tamiga Mobile Home Park; DOCKET NUMBER: 2000-1488-PWS-E; TNRCC ID NUMBER: 0460161; LOCATION: 17059 Highway 46 West, Lot 1, Spring Branch, Comal County, Texas; TYPE OF FACILITY: public water system; RULES VIOLATED: §290.109(c)(2) and (g)(3), and §290.122(b), by failing to collect and submit repeat samples following total coliform positive bacteriological sample results and failed to provide public notification for failing to collect and submit repeat samples; §§290.103(5), 290.106(e), and 290.109(b), by exceeding the Commission's maximum contaminant level (MCL) for total coliform bacteria and by failing to provide public notification for exceeding the MCL for total coliform bacteria; PENALTY: $1,250; STAFF ATTORNEY: James Biggins, Litigation Division, MC R-13, (210) 403-4017; REGIONAL OFFICE: San Antonio Regional Office, 14250 Judson Rd., San Antonio, Texas 78233-4480, (210) 490-3096.

TRD-200103296
Paul C. Sarahan
Director, Litigation Division
Texas Natural Resource Conservation Commission
Filed: June 12, 2001

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Notice of Public Hearing (Chapter 114)

The Texas Natural Resource Conservation Commission (commission) will conduct a public hearing to receive testimony regarding revisions to 30 TAC Chapter 114 and to the state implementation plan (SIP) under the requirements of the 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 (EPA) regulations concerning SIPs. The revisions to Chapter 114 are proposed as revisions to the SIP.

The proposed amendments to Chapter 114 address concerns of research laboratories and academic institutions by allowing them to conduct research using gasoline with a higher Reid vapor pressure (RVP) than allowed in the 95-county central and eastern Texas region; more closely

match the exemptions established for the RVP rules to those exemptions allowed in the diesel fuel regulations; and correct the spelling of Smith County.

A public hearing on this proposal will be held July 17, 2001, at 10:00 a.m., Texas Natural Resource Conservation Commission, Building F, Room 2210, 12100 North I-35, 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, agency staff members will be available to discuss the proposal 30 minutes prior to the hearing, and will answer questions before and after the hearing.

Comments may be submitted to Lola Brown, Office of Environmental Policy, Analysis, and Assessment, MC 206, P.O. Box 13087, Austin, Texas 78711-3087; or faxed to (512) 239-4808. All comments must be received by 5:00 p.m. on July 23, 2001, and should reference Rule Log Number 2001-009-114-AI. For further information on the proposed revisions, please contact Scott Carpenter at (512) 239-1757 or Alan Henderson at (512) 239-1510.

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-200103222
Margaret Hoffman
Environmental Law Division
Texas Natural Resource Conservation Commission
Filed: June 8, 2001

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Notice of Public Hearing Regarding Revisions to 30 TAC Chapter 116, and to The Texas State Implementation Plan

The Texas Natural Resource Conservation Commission (commission or TNRCC) will conduct a public hearing to receive testimony regarding revisions to 30 TAC Chapter 116, and to the Texas state implementation plan (SIP) under the requirements of the 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 (EPA) regulations concerning SIPs. The revisions concern the inclusion of marine vessel emissions in applicability determinations for prevention of significant deterioration (PSD) and nonattainment (NA) permits and will update references to federal rules in the chapter.

This proposed revision to the SIP eliminate the inconsistency in the commission's rules and the rules promulgated by the EPA on August 7, 1980 concerning the inclusion of marine vessel emissions in applicability determinations for PSD and NA permits. This proposal would also revise §116.160 and §116.162 to incorporate updated federal regulation citations. Sections 116.12, 116.160, and 116.162 will be submitted to the EPA as a revision to the SIP.

A public hearing on this proposal will be held in Austin at 2:00 p.m. on July 19, 2001 at the TNRCC Complex in Building F, Room 2210, located at 12100 Park 35 Circle. The hearing will be structured for the receipt of oral or written comments by interested persons. Individuals may present oral statements when called upon in order of registration. A four-minute time limit will be established to assure that enough time is allowed for every interested person to speak. There will be no open discussion during the hearing; however, an agency staff member will be available to discuss the proposal 30 minutes prior to the hearing and will answer questions before and after the hearing.

Written comments may be submitted to Patricia Durón, Office of Environmental Policy, Analysis, and Assessment, MC 205, P.O. Box 13087, Austin, Texas 78711-3087; faxed to (512) 239-4808. The public comment period will close at 5:00 p.m. on July 23, 2001. For further information on the proposed revisions, please contact Karen Olson, Air Permits Division, at (512) 239-1294 or Joseph Thomas, Policy and Regulations Division, at (512) 239-4580.

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-200103262
Margaret Hoffman
Director, Environmental Law Division
Texas Natural Resource Conservation Commission
Filed: June 11, 2001

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Notice of Water Quality Applications

The following notices were issued during the period of April 25, 2001 through May 30, 2001.

The following require the applicants to publish notice in the newspaper. The public comment period, requests for public meetings, or requests for a contested case hearing may be submitted to the Office of the Chief Clerk, Mail Code 105, P.O. Box 13087, Austin Texas 78711-3087, WITHIN 30 DAYS OF THE DATE OF NEWSPAPER PUBLICATION OF THIS NOTICE.

CITY OF BROWNFIELD has applied for a major amendment to Permit Number 10677-001, to authorize an increase in the acreage irrigated from 372 acres to 404.59 acres. The current permit authorizes the disposal of treated domestic wastewater at a daily average flow not to exceed 1,250,000 gallons per day via surface irrigation with a minimum area of 372 acres. This permit will not authorize a discharge of pollutants into waters in the State. The facility and disposal site are located approximately 3,600 feet east and 5,200 feet south of the intersection of U.S. Highway 62 and 2nd Street in the City of Brownfield in Terry County, Texas.

CITY OF CAMPBELL has applied for a renewal of TPDES Permit Number 13791-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 116,000 gallons per day. The facility is located adjacent to the northwest bank of Timber Creek, approximately 1000 feet south of State Highway 50; approximately 0.75 mile north of Interstate Highway 30; approximately 0.75 mile southwest of the northern intersection of State Highway 50 and Farm-to-Market 499 and approximately one mile southwest of the City of Campbell in Hunt County, Texas.

FREESTONE POWER GENERATION, L.P. which proposes to operate a combined cycle electric power generation facility, has applied for a new permit, proposed Texas Pollutant Discharge Elimination System (TPDES) Permit Number 04298, to authorize the discharge of cooling tower blowdown, low volume waste, and storm water at a daily average flow not to exceed 820,000 gallons per day via Outfall 001. The facility is located on the east side of State Highway 488, approximately 0.9 miles northeast of the intersection of State Highway 488 and County Road 1124, and 12 miles northeast of the City of Fairfield, Freestone County, Texas.

CITY OF GUNTER has applied for a renewal of TPDES Permit Number 10569-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 240,000 gallons per day. The facility is located adjacent to the St. Louis-San Francisco

and Texas Railway, approximately 2,300 feet west of State Highway 289 and approximately 1,400 feet north of Farm-to-Market Road 121 in the City of Gunter in Grayson County, Texas.

HOLIDAY BEACH WATER SUPPLY CORPORATION which operates a potable water treatment plant, has applied for a new permit, proposed Texas Pollutant Discharge Elimination System (TPDES) Permit Number 04290, to authorize the discharge of reverse osmosis reject water at a daily average flow not to exceed 120,000 gallons per day via Outfall 001. The facility is located on the west side of Interstate Highway 35, 0.5 miles southwest of the intersection of Interstate Highway 35 and Holiday Boulevard, and approximately 8.0 miles northeast of the City of Rockport, Aransas County, Texas.

JOCO HOLDING CORPORATION has applied for a renewal of Permit Number 02730, which authorizes the disposal of treated domestic wastewater at a daily average flow not to exceed 30,000 gallons per day via evaporation and irrigation of 152 acres. This permit will not authorize a discharge of pollutants into waters in the State. The facility and disposal area are located on the east side of Interstate Highway 35 West, approximately 2000 feet southeast of the Bethesda Road overpass and approximately 5.1 miles southeast of the City of Burleson, Johnson County, Texas.

CITY OF LADONIA which operates a Domestic Wastewater Treatment Plant has applied for a renewal of TNRCC Permit Number 10740-001, proposed Texas Pollutant Discharge Elimination System (TPDES) Permit Number 04300, to authorize the discharge of treated domestic wastewater at a daily average flow not to exceed 530,000 gallons per day via Outfall 001. The proposed permit has been renumbered and classified as an Industrial Wastewater Permit based on the prior contribution of process wastewater from a currently inactive meat packing plant. The facility is located approximately 900 feet west of State Highway 50 and approximately 700 feet south of the intersection of State Highway 50 and Farm-to-Market Road 2456, in Fannin County, Texas.

LAKE WHITNEY RV RESORT, L.L.C. has applied for a renewal of TNRCC Permit Number 13891-001, which authorizes, in the Interim phase, the subsurface disposal of treated domestic wastewater by at a daily average flow not to exceed 5,000 gallons per day. In the final phase the permit authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 15,000 gallons per day. The facility is located approximately 4 miles west of the intersection of Farm-to-Market Road 933 and Farm-to-Market Road 1713 in Hill County, Texas. The treated effluent is discharged to an unnamed creek; thence to Whitney Lake in Segment No. 1203 of the Brazos River Basin.

MARATHON WATER SUPPLY & SEWER SERVICE CORPORATION has applied for a renewal of Permit Number 10974-001, which authorizes the disposal of treated domestic wastewater at a daily average flow not to exceed 200,000 gallons per day via surface irrigation of 40 acres of land. The facility and disposal site are located approximately 5,000 feet south of U.S. Highway 90 and 1-1/2 miles west of U.S. Highway 385, and approximately one mile southwest of the City of Marathon in Brewster County, Texas.

MERCY SHIPS FOUNDATION a rehabilitation center has applied for a major amendment to Permit Number 11771-001, to authorize an increase in the daily average flow from 20,000 gallons per day to 30,000 gallons per day and to increase the acreage irrigated from 20 acres to 30 acres. The current permit authorizes the disposal of treated domestic wastewater at a daily average flow not to exceed 20,000 gallons per day via surface irrigation of 20 acres of Bahia grassland. The permittee has requested to discontinue the authorization to dispose of treated domestic wastewater sludge by land application on the permittee's property. This permit will not authorize a discharge of pollutants into waters in the State. The facility and disposal site are located at 15862 Highway 110 North, approximately 0.5 mile north of Interstate Highway 20 on State Highway 110 (Van Highway) and approximately 5 miles west of the Community of Lindale in Smith County, Texas.

MOORE WATER SUPPLY CORPORATION has applied for a new permit, proposed Texas Pollutant Discharge Elimination System (TPDES) Permit Number 14239-001, to authorize the discharge of treated domestic wastewater at a daily average flow not to exceed 65,000 gallons per day. The facility is located on a five-acre tract approximately 2,800 linear feet south and 1,500 linear feet east of the Missouri-Pacific Railroad crossing at 3rd Street in the City of Moore, in Frio County, Texas.

CITY OF NEW LONDON has applied for a renewal of TPDES Permit Number 12376-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 100,000 gallons per day. The facility is located approximately 7,500 feet northwest of the intersection of the State Highway 323 and Farm-to-Market Road 838 and approximately 5,000 feet east of Farm-to-Market Road 2089 in Rusk County, Texas

NORTHWEST HARRIS COUNTY MUNICIPAL UTILITY DISTRICT NO. 10 has applied for a major amendment to TPDES Permit Number 11912-002 to authorize an increase in the discharge of treated domestic wastewater from a daily average flow not to exceed 255,000 gallons per day to a daily average flow not to exceed 500,000 gallons per day. The facility is located approximately 1,300 feet north of the intersection of Spring-Cypress Road and Dry Creek in Harris County, Texas. The treated effluent is discharged to Harris County Flood Control Ditch No. K-145-00-00; thence to Dry Creek; thence to Cypress Creek in Segment No. 1009 of the San Jacinto River Basin.

RED RIVER AUTHORITY OF TEXAS has applied for renewal of an existing wastewater permit. The applicant has an existing National Pollutant Discharge Elimination System (NPDES) Permit Number TX0101818 and an existing Texas Natural Resource Conservation Commission (TNRCC) Permit Number 11445-001. The draft permit authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 30,000 gallons per day. The plant site is located on Arrowhead Ranch Estates property , approximately 2,300 feet east of Farm-to-Market Road 1954 and 5.4 miles southeast of the intersection of U.S. highway 281 and Farm-to-Market Road 1954 in Clay County, Texas.

CITY OF SHAMROCK has applied for a major amendment to Permit Number 10279-003, to authorize an increase in the daily average flow from 300,000 gallons per day to 350,000 gallons per day. The proposed amendment requests to reduce the sampling frequency for Biochemical Oxygen Demand (5-day). The current permit authorizes the disposal of treated domestic wastewater at a daily average flow not to exceed 300,000 gallons per day via surface irrigation of 98 acres of land. This permit will not authorize a discharge of pollutants into waters in the State. The facility and disposal site are located approximately 1.6 miles north-northwest of the intersection of United States Highway 83 (U.S. 83) and Interstate Highway 40 (I-40) on the north side of the City of Shamrock in Wheeler County, Texas. The facility and disposal site are located in the drainage basin of Roundup Creek in Segment No. 0224 of the Red River Basin.

TEMPLE-INLAND FOREST PRODUCTS CORPORATION which operates a wood and wood products manufacturing complex, has applied for a major amendment to TNRCC Permit Number 01153 to reduce the monitoring frequency for certain pollutants at Outfall 003, to remove effluent limits for total chromium at Outfall 004, and to add new waste streams to the discharge description at Outfalls 003 and 004.

The current permit authorizes the discharge of treated process wastewater and storm water at a daily average flow not to exceed 170,000 gallons per day via Outfall 001; commingled remediated groundwater, utility wastewater and storm water runoff on a flow variable basis via Outfall 003; boiler blowdown and cooling tower blowdown commingled with storm water runoff on an intermittent and flow variable basis via Outfall 004; storm water runoff from plywood plant area on an intermittent and flow variable basis via Outfall 006; and the disposal of particleboard equipment wash water and laminating equipment wash water via irrigation of a minimum of 175 acres. The facility is located approximately 0.25 miles west of U.S. Highway 59 at the Southwest quadrant of the intersection of Borden Drive and First Street, in the City of Diboll, Angelina County, Texas. The irrigation disposal site is located 1.93 miles west of U.S. Highway 59 and 0.5 miles east of Little Cedar Creek Lake.

TICONA POLYMERS, INC. which operates the Bishop Plant, which manufactures organic chemicals, plastics, and bulk pharmaceuticals, and purifies and packages sodium formate, has applied for a major amendment to TNRCC Permit Number 00579 to authorize a revision of the existing biomonitoring requirement to substitute an alternative test species, to eliminate the total silver monitoring requirement at Outfall 001, to increase the total nickel limitation at Outfall 001, to authorize the addition of new process wastestreams to Outfall 101 (an internal monitoring point), and to increase the flow and effluent limitations at Outfall 101 based on the additional process wastestreams. The current permit authorizes the discharge of process wastewater, cooling tower blowdown, boiler blowdown, domestic wastewater, and storm water runoff at a daily average flow not to exceed 3,500,000 gallons per day via Outfall 001, and storm water and utility wastewater on an intermittent and flow variable basis via Outfall 002. The facility is located adjacent to State Highway - Loop 428, approximately one mile southwest of the City of Bishop, Nueces County, Texas.

TRANS-GLOBAL SOLUTIONS, INC. which proposes to operate a petroleum coke storage and handling facility, has applied for a new permit, proposed Texas Pollutant Discharge Elimination System (TPDES) Permit Number 04301, to authorize the discharge of process wastewater and storm water on an intermittent and flow variable basis via Outfall 001. The facility is located just south of the Houston Ship Channel, and approximately 1.0 mile northeast of the intersection of East Beltway and State Highway 225, in the City of Pasadena, Harris County, Texas.

VANCECO, INC. has applied for a new permit, proposed Texas Pollutant Discharge Elimination System (TPDES) Permit Number 14248-001, to authorize the discharge of treated domestic wastewater at a daily average flow not to exceed 20,000 gallons per day. The facility is located on the north side of State Highway 105, approximately 3,200 feet west of the point where State Highway 105 crosses the San Jacinto River in Montgomery County, Texas.

CITY OF WESLACO has applied for a renewal of TNRCC Permit Number 10619-005, which authorizes the discharge of treated domestic wastewater at an annual average flow not to exceed 2,000,000 gallons per day. The facility is located approximately 0.2 mile west and 0.6 mile north of the confluence of the South Donna Drain and Llano Grande Lake and approximately 3.2 miles south of the Missouri-Pacific Railroad southwest of the City of Weslaco in Hidalgo County, Texas.

THE WHITMORE MANUFACTURING COMPANY which operates a facility that produces specialty lubricating oils and greases, has applied for a renewal of TNRCC Permit Number 03099, which authorizes the discharge of storm water, once through non-contact cooling water, and boiler blowdown on an intermittent and flow variable basis via Outfall 001. Issuance of this Texas Pollutant Discharge Elimination System (TPDES) permit will replace the existing TNRCC Permit Number 03099, issued on January 16, 1995. The facility is located at 930 Whitmore Drive in the City of Rockwall, Rockwall County, Texas.

Written comments or requests for a public meeting may be submitted to the Office of the Chief Clerk, at the address provided in the information section above, WITHIN 30 DAYS OF THE ISSUED DATE OF THIS NOTICE.

PALO PINTO COUNTY has applied for a renewal of TNRCC Permit Number 11698-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 50,000 gallons per day. The plant site is located on the east bank of Town Branch Creek approximately 1200 feet due north of the intersection of U.S. Highway 180 and Farm-to-Market Road 4 at the end of North Ninth Avenue in the outskirts of the town of Palo Pinto in Palo Pinto County, Texas.

TRD-200103182
LaDonna Castañuela
Chief Clerk
Texas Natural Resource Conservation Commission
Filed: June 6, 2001

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Notice of Water Quality Applications

The following notices were issued during the period of May 23, 2001 through June 8, 2001.

The following require the applicants to publish notice in the newspaper. The public comment period, requests for public meetings, or requests for a contested case hearing may be submitted to the Office of the Chief Clerk, Mail Code 105, P O Box 13087, Austin Texas 78711-3087, WITHIN 30 DAYS OF THE DATE OF NEWSPAPER PUBLICATION OF THIS NOTICE.

CITY OF ANGLETON has applied for a new permit, proposed Texas Pollutant Discharge Elimination System (TPDES) Permit No. 10548-004, to authorize the discharge of treated domestic wastewater at an annual average flow not to exceed 3,600,000 gallons per day. The proposed permit would also authorize the land application of sewage sludge for beneficial use on 75 acres. The facility is located adjacent to and south of County Road 609 (Old Highway 35), approximately 1.5 miles southwest of the intersection of State Highway 35 and State Highway 227 in Brazoria County, Texas. The sludge disposal site is located adjacent to the treatment facility.

ATOFINA PETROCHEMICALS, INC. which operates a polypropylene manufacturing plant, has applied for a major amendment to TPDES Permit No. 01000 to authorize an increase in the discharge of process wastewater, utility wastewater, and domestic wastewater from a daily average flow not to exceed 700,000 gallons per day to a daily average flow not to exceed 900,000 gallons per day via Outfall 001 and to authorize an increase in mass-based effluent limitations at Outfall 001. The current permit authorizes the discharge of process wastewater, utility wastewater, domestic wastewater, and storm water at a daily average flow not to exceed 700,000 gallons per day via Outfall 001, and storm water on an intermittent and flow variable basis via Outfall 002. The facility is located on State Highway 134 (Battleground Road) approximately 1.6 miles south of the San Jacinto Monument, in the City of Deer Park, Harris County, Texas.

BENTON CITY WATER SUPPLY CORPORATION has applied for a new permit, proposed Texas Pollutant Discharge Elimination System (TPDES) Permit No. 14265-001 to authorize the discharge of treated water treatment filter backwash water at a daily average flow not to exceed 15,000 gallons per day. The facility is located approximately 1.0 mile south of the intersection of Farm-to-Market Road 2504 and Farm-to-Market Road 476 in Atascosa County, Texas.

CERESTAR USA, INC. has applied for a major amendment of Permit No. 01410 to authorize an increase in the irrigation area from 280 acres to 948 acres, and to increase the capacity of the holding pond to 380 acre- feet. Additional changes include increasing the daily average flow from 1,300,000 gallons per day to 1,500,000 gallons per day. The current permit authorizes the disposal of wastewater from the wet corn milling process at a daily average flow not to exceed 1,300,000 gallons per day via irrigation of 280 acres and an application rate not to exceed 4.2 acre-feet/acre/year. The applicant operates a corn starch and high fructose corn syrup production facility. This permit will not authorize a discharge of pollutants into waters in the State. The facility is located approximately 3/10 of a mile north and 1 and 4/10 miles east of the intersection of U.S. Highway 385 and State Highway 86, east of the City of Dimmitt, Castro County, Texas.

COOPER NATURAL RESOURCES INC. has applied to the Texas Natural Resource Conservation Commission for a renewal of TNRCC Permit No. 03642, which authorizes the discharge of process wastewater, Mother Liquor, and stormwater on an intermittent and flow variable basis via Outfall 001; brine, wash down, condensate, and stormwater on an intermittent and flow variable basis via Outfall 002; and brine, condensate, wash down, and stormwater on an intermittent and flow variable basis via Outfall 003. The applicant operates a sodium sulfate production plant. The plant site is located at a site one mile south of Farm-to-Market (FM) Road 1066 and 2.4 miles west of the intersection of FM Roads 1066 and 1067, and approximately 8.5 miles southeast of the Town of Loop, Gaines County, Texas.

COWTOWN ENTERPRISES, INC. has applied for a renewal of TPDES Permit No. 14003-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 21,600 gallons per day. The facility is located a the Cowtown Recreational Vehicle Park, approximately 1800 feet south of the centerline of Interstate Highway 20 and approximately 4650 feet west of Farm-to-Market 1044 north of Aledo in Parker County, Texas.

CITY OF DAWSON has applied for a renewal of TPDES Permit No. 10026-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 130,000 gallons per day The facility is located approximately 0.5 mile south-southeast of Farm-to-Market Road 709 and approximately 0.5 mile east-northeast of Farm-to-Market Road 1838 in the southeast section of the City of Dawson in Navarro County, Texas.

DISCIPLES' CONFERENCE CENTER, INC. has applied to the Texas Natural Resource Conservation Commission (TNRCC) for a renewal of Permit No. 13532-001, which authorizes the disposal of treated domestic wastewater at a daily average flow not to exceed 5,200 gallons per day (January-May), 25,800 gallons per day (June-August), and 11,600 gallons per day (September-December) via surface irrigation of 5 acres of restricted access pasture land with an application rate of 2.7 acre-feet/acre/year. The facility and disposal site are located approximately 6 miles south of the intersection of State Highway 97 and U.S. Highway 183 in Gonzales County, Texas.

ECOWATER INDUSTRIES, L.L.C. which operates a reclamation facility for third-party oil and petroleum contaminated wastewater, has applied for a major amendment to TNRCC Permit No. 03756 to upgrade treatment processes, discontinue on-site treatment and disposal of domestic wastewater, the removal of requirements associated with the domestic wastewater discharge, and the addition of waste streams to be discharged generated from third-party wastes. The current permit authorizes the discharge of treated process and domestic wastewater at a daily average flow not to exceed 250,000 gallons per day via Outfall 001. The facility is located at 8741 Yacht Club Road, on the west bank of the Engineer's Slip at the termination of the Sabine- Neches Canal into Sabine Lake, Jefferson County, Texas.

EXPLORER PIPELINE COMPANY has applied for a Texas Pollutant Discharge Elimination System (TPDES) wastewater permit. The applicant has an existing Texas Natural Resource Conservation Commission (TNRCC) Permit No. 02395. The draft permit authorizes the discharge of process wastewater consisting of tank bottom water and stormwater on an intermittent and flow variable basis via Outfall 001. The plant site is located approximately one mile north of Interstate Highway 30, and 1/4 mile east of Farm-to-Market Road 36 near the City of Caddo Mills in Hunt County, Texas.

BAILEY RAY HAWLEY has applied for a renewal of TNRCC Permit No. 13853-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 29,500 gallons per day. The facility is located approximately 200 feet east of Farm-to-Market Road 2946, approximately 1.2 miles south of the intersection of Farm-to-Market Road 2946 and State Highway 514, and approximately 7.5 miles east- northeast of the City of Emory in Rains County, Texas.

INLAND PAPERBOARD AND PACKAGING, INC. has applied for a major amendment to TNRCC Permit No. 01185 to authorize an increase in the permitted daily average flow limit at Outfall 001 from 20,000,000 gallons per day to 25,000,000 gallons per day; removal of chemical oxygen effluent limitations at Outfall 001; removal of Outfall 101; the addition of utility wastewater at Outfall 002; and authorization of an alternate sampling point for pH at Outfall 002. The current permit authorizes the discharge of treated process, utility, sanitary wastewater, and storm water at a daily average flow not to exceed 20,000,000 gallons per day via Outfall 001; and storm water on an intermittent and flow variable basis via Outfall 002. Issuance of this Texas Pollutant Discharge Elimination System (TPDES) permit will replace the existing NPDES Permit No. TX0003158 issued on September 30, 1994 and TNRCC Permit No. 01185 issued on November 16, 1994. The applicant operates an unbleached kraft pulp/paperboard mill and corrugated container recycle mill. The plant site is located approximately five miles north of the City of Orange between State Highway 87 and the Sabine River and north of West Bluff Road, Orange County, Texas

LOWER COLORADO RIVER AUTHORITY has applied for a renewal of an existing wastewater permit. The applicant has an existing National Pollutant Discharge Elimination System (NPDES) Permit No. TX0073121 and an existing Texas Natural Resource Conservation Commission (TNRCC) Permit No. 02105. The draft permit authorizes the discharge of once-through cooling water at a daily average flow not to exceed 1,509,000,000 gallons per day via Outfall 001; the discharge of cooling water drained from condensers and other cooling equipment during maintenance periods at a total volume not to exceed 2,500,000 gallons during any 24- hour period via Outfall 002; the discharge of coal pile runoff commingled with low volume waste and stormwater on an intermittent and flow variable basis via Outfall 003; and the discharge of stormwater runoff on an intermittent and flow variable basis via Outfall 004. The applicant operates the Fayette Power Project, a steam electric station. The plant site is located adjacent to the south shore of Cedar Creek Reservoir, approximately two miles north of State Highway 71 and seven miles east of the City of La Grange, Fayette County, Texas.

CITY OF MINEOLA has applied for a renewal of TPDES Permit No. 10349-001, which authorizes the discharge of treated domestic wastewater at an annual average flow not to exceed 2,000,000 gallons per day. The facility is located approximately 2.0 miles southeast of the intersection of U.S. Highway 69 and U.S. Highway 80 in Wood County, Texas.

ORANGE COUNTY WATER CONTROL AND IMPROVEMENT DISTRICT NO. 1 has applied for a renewal of TPDES Permit No. 10875-003, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 255,000 gallons per

day. The facility is located approximately 3,500 feet southwest of the intersection of Farm-to-Market Road 1132 and State Highway 105 in Orange County, Texas.

PINE COVE INC. has applied for a new permit, Proposed Permit No. 14254-001, to authorize the disposal of treated domestic wastewater at a daily average flow not to exceed 120,000 gallons per day via surface irrigation of 54 acres of land. The facility and disposal site are located on Farm-to-Market Road 2661, 0.2 mile south of County Road 1133 in Smith County, Texas. The facility and disposal site are located in the drainage basin of Lake Palestine in Segment No. 0605 of the Neches River Basin.

SAN YGNACIO MUNICIPAL UTILITY DISTRICT has applied to the TNRCC for a renewal of Permit No. 13383-001 to authorize the disposal of treated domestic wastewater at a daily average flow not to exceed 194,000 gallons per day via irrigation of 72 acres of pastureland. This permit will not authorize a discharge of pollutants into waters in the State. The wastewater treatment facilities and disposal site are located approximately 2.2 miles north-northeast of the intersection of U.S. Highway 83 and Farm-to-Market Road 3169 at San Ygnacio in Zapata County, Texas.

CITY OF SEGUIN has applied for a renewal of TNRCC Permit No. 10277-002, which authorizes the discharge of treated water treatment filter backwash water at a daily average flow not to exceed 40,000 gallons per day. The plant site is located 150 feet upstream from the State Highway 123 bridge on the Guadalupe River in the City of Seguin, in Guadalupe County, Texas.

SOUTHWESTERN PUBLIC SERVICE COMPANY which operates the Clifford B. Jones Steam Electric Station, has applied for a major amendment to Permit No. 01312 to authorize an increase in the upper pH limitation and to reduce the monitoring frequency for pH. The current permit authorizes the disposal of cooling tower blowdown, low volume waste sources, metal cleaning wastes, and storm water at a rate not to exceed 5.0 acre-feet/acre/year via irrigation of 1080 acres. This permit will not authorize a discharge of pollutants into waters in the State. The facility is located approximately two miles east of the intersection of U.S. Highway 84 and State Highway 331, southeast of the City of Lubbock, Lubbock County, Texas.

TEMPLE-INLAND FOREST PRODUCTS CORPORATION has applied for a renewal of NPDES Permit No. TX0086031 (TPDES Permit No. 04120), which authorizes the discharge of wet decking wastewater and storm water runoff on an intermittent and flow variable basis via Outfall 001. Issuance of this Texas Pollutant Discharge Elimination System (TPDES) permit will replace the existing NPDES Permit No. TX0086037 issued on March 15, 1984. The applicant operates a log storage facility. The plant site is located on State Highway 96, approximately one mile east of the City of Silsbee and approximately one mile west of the Neches River, Hardin County, Texas.

TEXAS DEPARTMENT OF MENTAL HEALTH AND MENTAL RETARDATION has applied for a renewal of TPDES Permit No. 10557-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 200,000 gallons per day. The facility is located approximately 0.25 mile east of U.S. Highway 69 and one mile southeast of the intersection of U.S. Highway 69 and farm-to-Market Road 843 in Angelina County, Texas.

VIDOR INDEPENDENT SCHOOL DISTRICT has applied for a renewal of TNRCC Permit No. 13210- 001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 11,500 gallons per day. The facility is located on the southwest corner of the Pine Forest Elementary School property, approximately 1,500 feet south of the intersection of Farm-to-Market Road 105 and Farm-to-Market 1131 in Orange County, Texas.

CITY OF WEATHERFORD has applied for a renewal of TPDES Permit No. 10380-002, which authorizes the discharge of treated domestic wastewater at an annual average flow not to exceed 4,500,000 gallons per day. The facility is located at 1327 Eureka Street approximately 4,000 feet north-northwest of the intersection of Interstate Highway 20 and Farm-to-Market Road 2552 in Parker County, Texas.

CITY OF WINNSBORO has applied for a renewal of TNRCC Permit No. 10319-002, which authorizes the discharge of treated domestic wastewater at an annual average flow not to exceed 1,120,000 gallons per day. The facility is located approximately 1.0 mile south of Winnsboro, approximately 1900 feet east of Old State Highway 37 and 1400 feet west of Farm-to-Market Road 312 in Wood County, Texas.

TRD-200103326
LaDonna Castañuela
Chief Clerk
Texas Natural Resource Conservation Commission
Filed: June 12, 2001

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Notice of Water Right Application

Application Number 5728; City of Weimar, P.O. Box 67, Weimar, Texas, 78962, applicant, seeks a Water Use Permit pursuant to Chapter 11.042, Texas Water Code, and Texas Natural Resource Conservation Commission Rules 30 TAC Chapter 295.1, et seq.

Applicant seeks authorization to use approximately 50 feet of the bed and banks of an unnamed tributary of Harvey's Creek, tributary of the Colorado River, Colorado River Basin to convey its privately-developed ground-water-based-effluent from the city's wastewater treatment plant to one diversion point downstream of the plant on the unnamed tributary of Harvey's Creek. Water diverted will be impounded in an off-channel reservoir for subsequent diversion for irrigation purposes.

Applicant will discharge a maximum of 552.4 acre-feet of ground-water-based-effluent annually at a maximum rate of 0.77 cfs (350 gpm) into the unnamed tributary of Harvey's Creek, tributary of the Colorado River, Colorado River Basin, at a point authorized by applicant's TPDES Permit Number 10311-01, approximately 3,230 feet east of FM 155 and 3,310 feet north of the Interstate Highway 10. This point is located at Latitude 29.701° N, and Longitude 96.765° W, also being N 24.336° W, 38.43 feet from NGS Marker Y-818.

Applicant seeks to divert a total of 22.5 acre-feet of ground-water-based-effluent per annum from a point on the west bank of the aforesaid unnamed tributary located approximately 50 feet downstream from the aforesaid point of discharge, approximately 14 miles west of City of Columbus, Colorado County, and being on Latitude 29.701° N, Longitude 96.766° W, also being N 16.532° W, 134.735 feet from the aforesaid marker. Ground-water-based- effluent will be diverted at a rate of 0.58 cfs (250 gpm) to an off-channel structure for subsequent irrigation purposes. The reservoir has an impoundment capacity of 12.5 acre-feet of water and a surface area of 1.0 acre, and is located in the H. Austin 5 League Grant, Abstract No. 4, Colorado County, approximately 14 miles west of Columbus, and 1.0 mile east of the Weimar, being Latitude 29.703 degrees N, Longitude 96.769° W.

Applicant will subsequently divert the aforesaid 22.5 acre-feet of groundwater-based effluent per annum from the aforesaid impoundment at a point on the perimeter of the reservoir for irrigation purposes. Water will be diverted from the off-channel impoundment to irrigate 35.4 acres of land out of a 111.12 acre-tract, not owned by the applicant, and located in the aforesaid survey. Applicant has received authorization from landowners to irrigate the aforesaid tract as evidenced by Letter of Consent dated April 26, 2001.

Applicant has stated that there will be a neglible carriage loss in the approximately 300 feet stretch of the aforesaid unnamed tributary between the discharge point and the downstream diversion point. Applicant has indicated that the discharge volume and rate from the plant will always exceed the diversion volume and rate from the diversion point located downstream on the aforesaid unnamed tributary.

Applicant has not requested an appropriation of state water from the aforesaid unnamed tributary of Harvey's Creek. If granted, this permit will be contingent upon the continued discharge of applicant's return flows into the unnamed tributary of Harvey's Creek at the current rate and shall become null and void without further Commission consideration upon cessation of said return flows. The application was received on November 14, 2000. Additional information was received on January 23, 2001. The Executive Director reviewed the application and determined it to be administratively complete on January 25, 2001.

Written public comments and requests for a public meeting should be submitted to the Office of Chief Clerk, at the address provided in the information section below, within 30 days of the date of newspaper publication of the notice. A public meeting is intended for the taking of public comment, and is not a contested case hearing. A public meeting will be held if the Executive Director determines that there is a significant degree of public interest in the application.

The TNRCC may grant a contested case hearing on this application if a written hearing request is filed within 30 days from the date of newspaper publication of this notice. The Executive Director may approve the application unless a written request for a contested case hearing is filed within 30 days after newspaper publication of this notice.

To request a contested case hearing, you must submit the following: (1) your name (or for a group or association, an official representative), mailing address, daytime phone number, and fax number, if any; (2) applicant's name and permit number; (3) the statement "[I/we] request a contested case hearing;" (4) a brief and specific description of how you would be affected by the application in a way not common to the general public; and (5) the location and distance of your property relative to the proposed activity. You may also submit proposed conditions in the requested permit which would satisfy your concerns. Requests for a contested case hearing must be submitted in writing to the Office of the Chief Clerk at the address provided in the information section below.

If a hearing request is filed, the Executive Director will not issue the permit and will forward the application and hearing request to the TNRCC Commissioners for their consideration at a scheduled Commission meeting.

Written hearing requests, public comments or requests for a public meeting should be submitted to the Office of the Chief Clerk, MC 105, TNRCC, P.O. Box 13087, Austin, Texas 78711-3087. For information concerning the hearing process, please contact the Public Interest Counsel, MC 103, the same address. For additional information, individual members of the general public may contact the Office of Public Assistance at 1-800-687-4040. General information regarding the TNRCC can be found at our web site at www.tnrcc.state.tx.us.

TRD-200103181
LaDonna Castañuela
Chief Clerk
Texas Natural Resource Conservation Commission
Filed: June 6, 2001

♦ ♦ ♦

Proposal for Decision

The State Office Administrative Hearing issued a Proposal for Decision and Order to the Texas Natural Resource Conservation Commission on June 5, 2001. Executive Director of the Texas Natural Resource Conservation Commission, Petitioner v. Curlin & Associates, Inc., DBA Kwik Mart II and Shailendra S. Jayswal DBA Kwik Mart II; Respondent; SOAH Docket No. 582-01-2448; TNRCC Docket No. 2000-0006- PST-E. In the matter to be considered by the Texas Natural Resource Conservation Commission on a date and time to be determined by the Chief Clerk's Office in Room 201S of Building E, 12118 N. Interstate 35, Austin, Texas. This posting is Notice of Opportunity to Comment on the Proposal for Decision and Order. The comment period will end 30 days from date of publication. Written public comments should be submitted to the Office of the Chief Clerk, MC-105 TNRCC PO Box 13087, Austin Texas 78711-3087. If you have any questions or need assistance, please contact Doug Kitts, Chief Clerk's Office, (512) 239-3317.

TRD-200103324
Douglas Kitts
Agenda Coordinator
Texas Natural Resource Conservation Commission
Filed: June 12, 2001

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Proposal for Decision

The State Office Administrative Hearing issued a Proposal for Decision and Order to the Texas Natural Resource Conservation Commission on June 8, 2001. Executive Director of the Texas Natural Resource Conservation Commission, Petitioner v. Roger Boyd and Rocket Water Company, Inc., DBA Oak Forest Water Systems; Respondent; SOAH Docket No.582-01-1222; TNRCC Docket No. 2000-1168-PWS-E. In the matter to be considered by the Texas Natural Resource Conservation Commission on a date and time to be determined by the Chief Clerk's Office in Room 201S of Building E, 12118 N. Interstate 35, Austin, Texas. This posting is Notice of Opportunity to Comment on the Proposal for Decision and Order. The comment period will end 30 days from date of publication. Written public comments should be submitted to the Office of the Chief Clerk, MC-105 TNRCC PO Box 13087, Austin Texas 78711-3087. If you have any questions or need assistance, please contact Doug Kitts, Chief Clerk's Office, (512) 239-3317.

TRD-200103325
Douglas Kitts
Agenda Coordinator
Texas Natural Resource Conservation Commission
Filed: June 12, 2001

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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 June 5, 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 ACN Energy, Inc. for Retail Electric Provider (REP) certification, Docket Number 24219 before the Public Utility Commission of Texas.

Applicant's requested service area is the geographic area of the Electric Reliability Council of Texas (ERCOT).

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 June 29, 2001. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136.

TRD-200103179
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: June 6, 2001

♦ ♦ ♦

Notice of Application for Amendment to Service Provider Certificate of Operating Authority

On June 4, 2001, ICG Telecom Group, Inc. filed an application with the Public Utility Commission of Texas (commission) to amend its service provider certificate of operating authority (SPCOA) granted in SPCOA Certificate Number 60103. Applicant intends to discontinue certain services.

The Application: Application of ICG Telecom Group, Inc. to Discontinue Certain Services, Docket Number 24167.

Persons with questions about this docket, or who wish to intervene or otherwise participate in these proceedings should make appropriate filings or comments to the Public Utility Commission of Texas, P.O. Box 13326, Austin, Texas 78711-3326 no later than June 27, 2001. You may contact the commission's Customer Protection Division at (512) 936-7120. Hearing and speech- impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136. All correspondence should refer to Docket Number 24167.

TRD-200103178
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: June 6, 2001

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Notice of Application for Amendment to Service Provider Certificate of Operating Authority

On June 5, 2001, Fiber America Inc. filed an application with the Public Utility Commission of Texas (commission) to amend its service provider certificate of operating authority (SPCOA) granted in SPCOA Certificate Number 60357. Applicant intends to reflect a change in ownership whereby El Paso Networks L.L.C. will acquire a 100% ownership interest in the Applicant, thereby relinquishing its certificate.

The Application: Application of Fiber America Inc. for an Amendment to its Service Provider Certificate of Operating Authority, Docket Number 24220.

Persons with questions about this docket, or who wish to intervene or otherwise participate in these proceedings should make appropriate filings or comments to the Public Utility Commission of Texas, P.O. Box 13326, Austin, Texas 78711-3326 no later than June 27, 2001. You may contact the commission's Customer Protection Division at (512) 936-7120. Hearing and speech- impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136. All correspondence should refer to Docket Number 24220.

TRD-200103180
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: June 6, 2001

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Notice of Application for Determination and Approval of Self-Insurance

Notice is given to the public of the filing with the Public Utility Commission of Texas (commission) of a petition on June 8, 2001, for determination and approval of self-insurance, pursuant to §§53.064(a) of the Public Utility Regulatory Act (PURA). A summary of the application follows.

Docket Title and Number: Petition of Southwestern Bell Telephone Company for Determination and Approval of Self-Insurance, Docket Number 24234 before the Public Utility Commission of Texas.

Applicant seeks approval of its self-insurance program for all or part of their potential liability or catastrophic property loss, including windstorm, fire, and explosion losses, that could not have been reasonably anticipated and included under operating and maintenance expenses.

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 July 6, 2001. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136.

TRD-200103330
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: June 13, 2001

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Notice of Application to Amend Certificate of Convenience and Necessity

Notice is given to the public of the filing with the Public Utility Commission of Texas (commission) of an application filed on June 8, 2001, to amend a certificate of convenience and necessity pursuant to the P.U.C. Substantive Rule §26.101(b)(4). A summary of the application follows.

Docket Style and Number: Application to Amend Certificate of Convenience for Southwestern Bell Telephone Company. Docket Number 24233.

The Application: The proposed amendment would realign the boundary between the Cedar Valley zone of Southwestern Bell Telephone Company's (SWBT) Austin Metropolitan exchange and the Dripping Springs exchange of Verizon in Hays County. SWBT states in its application that this amendment would allow customers to be efficiently served by a single local exchange carrier. The realignment would occur just south of Hwy. 290 and west of Sawyer Ranch Road between Verizon's Dripping Springs exchange and the Cedar Valley zone of SWBT's Austin Metropolitan exchange. The boundary realignment would allow Verizon to serve a new subdivision that is under development, and SWBT to serve the Foster property, which is currently split by the exchange boundary line. The proposed amendment would allow the customers in both areas to be served most efficiently by one local exchange carrier.

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 or (888) 782-8477. Hearing and speech- impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or use Relay Texas (toll-free) 1-800-735-2989.

TRD-200103331
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: June 13, 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 Returned Check Charge Pursuant to P.U.C. Substantive Rule §26.215 on or about June 4, 2001, Docket Number 24221.

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 24221. 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-200103207
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: June 8, 2001

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Public Notice of Interconnection Agreement

On June 11, 2001, Southwestern Bell Telephone Company and Verizon Select Services, Inc. formerly known as GTE Communications Corporation, collectively referred to as applicants, filed a joint application for approval of interconnection agreement under Section 252(i) of the federal Telecommunications Act of 1996, Public Law Number 104-104, 110 Statute 56, (codified as amended in scattered sections of 15 and 47 United States Code) (FTA) and the Public Utility Regulatory Act, Texas Utilities Code Annotated, Chapters 52 and 60 (Vernon 1998 & Supplement 2001) (PURA). The joint application has been designated Docket Number 24246. The joint application and the underlying interconnection agreement are available for public inspection at the commission's offices in Austin, Texas.

The commission must act to approve the interconnection agreement within 35 days after it is submitted by the parties.

The commission finds that additional public comment should be allowed before the commission issues a final decision approving or rejecting the interconnection agreement. Any interested person may file written comments on the joint application by filing ten copies of the comments with the commission's filing clerk. Additionally, a copy of the comments should be served on each of the applicants. The comments should specifically refer to Docket Number 24246. 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 July 10, 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 24246.

TRD-200103334
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: June 13, 2001

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Public Notice of Interconnection Agreement

On June 11, 2001, Southwestern Bell Telephone Company and Brazos Global Communications, collectively referred to as applicants, filed a joint application for approval of interconnection agreement under Section 252(i) of the federal Telecommunications Act of 1996, Public Law Number 104-104, 110 Statute 56, (codified as amended in scattered sections of 15 and 47 United States Code) (FTA) and the Public Utility Regulatory Act, Texas Utilities Code Annotated, Chapters 52 and 60 (Vernon 1998 & Supplement 2001) (PURA). The joint application has been designated Docket Number 24247. The joint application and the underlying interconnection agreement are available for public inspection at the commission's offices in Austin, Texas.

The commission must act to approve the interconnection agreement within 35 days after it is submitted by the parties.

The commission finds that additional public comment should be allowed before the commission issues a final decision approving or rejecting the interconnection agreement. Any interested person may file written comments on the joint application by filing ten copies of the

comments with the commission's filing clerk. Additionally, a copy of the comments should be served on each of the applicants. The comments should specifically refer to Docket Number 24247. 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 July 10, 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 24247.

TRD-200103335
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: June 13, 2001

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South East Texas Regional Planning Commission

Request for Proposal for Cost Estimation

The SETRPC-MPO is currently updating its long-range transportation plan, known as the Jefferson-Orange-Hardin-Regional Transportation Study (JOHRTS) MTP-2025. As part of this process, new proposed transportation projects from local entities are considered for inclusion into the updated MTP. The JOHRTS Project Selection Process (PSP) requires that each new proposed transportation project be developed after an assessment of alternatives and have an accurate cost estimate before it can be approved for submission into the revised MTP.

The SETRPC-MPO is soliciting written proposals from firms for their assistance to regional project sponsors in: (a) developing accurate cost estimates; and (b) conducting preliminary alternatives analysis for all existing and proposed projects; and (c) providing an engineering report discussing the safety, rehabilitation, and other project benefits according to the JOHRTS PSP guidelines.

The cost estimation process is designed to:

1. Assist local government staffs in developing project cost estimates for existing and new proposed transportation projects in the MTP.

2. Conduct a general review of all cost estimates for existing and new proposed transportation projects to ensure uniformity and consistency of project costs in the MTP.

Each cost estimate must include a spreadsheet, in Microsoft Excel format, showing a detailed breakdown of all costs (adjusted for inflation), and a schematic of a typical section of the proposed project. **All cost estimates, including non-construction costs, must be consistent with Texas Department of Transportation (TxDOT) standards.**

The preliminary alternatives analysis should evaluate each project based on its ability to:

1. Provide a practical solution to an identified transportation problem.

2. Produce the most effective solution at the least cost.

3. Utilize the latest engineering principles in roadway design.

4. Mitigate any adverse community impacts and prevent further transportation problems in the future.

The Consultant should submit a signed one-page document briefly discussing how the project satisfies the aforementioned criteria. Also, the engineering report must contain the signatures of the consulting professional engineer and the project sponsor representative. If the Consultant feels that the project needs to be examined in further detail, he should contact MPO staff as soon as possible.

Final Products

The Consultant is required to submit the following documentation for each project:

1. A cost estimate of the proposed project, shown as a spreadsheet in Microsoft Excel format showing a detailed breakdown of all costs (adjusted for inflation)

2. A schematic of a typical section of the proposed project

3. A one-page alternatives analysis of the proposed project

4. A brief one or two page engineering report as per the guidelines listed in the current JOHRTS PSP

Closing Dates: If your firm is interested and qualified to provide an accurate cost estimate and conduct preliminary alternatives analysis for existing and proposed projects for the (JORHTS) area, please contact our office either via letter addressed to Bob Dickinson, South East Texas Regional Planning Commission, 3501 Turtle Creek Drive, Port Arthur, Texas, 77642 or via fax at (409) 729-6511 to express your interest. All responding firms will receive a complete Request for Proposal package. **Final Proposals will be due by 12 Noon CST on July 13, 2001.**

TRD-200103329
Chester R. Jourdan
Executive Director
South East Texas Regional Planning Commission
Filed: June 13, 2001

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Stephen F. Austin State University

Notice of Availability of Consultant Contract

This request for consulting services is filed under the provisions of the Government Code, Chapter 2254.

Stephen F. Austin State University (herein called SFA) intends to contract for advertising administration and creative services from an outside firm. The successful agency will conduct an advertising campaign beginning at the date of award for one year, and the agreement may be extended for one-year periods up to four years (for a total of five years). SFA estimates expenditures from $250,000 up to and not exceeding $500,000 for a year-long advertising campaign. From this budget, all agency fees, including all services, production and delivery charges, as well as all media buys must be debited. The purpose is to promote and yield increased enrollment and retention in graduate and undergraduate programs. The campaign's goal will be focused on SFA student recruitment and enrollment from throughout the state of Texas with a particular emphasis on the following 15 regional East Texas counties: Cherokee, Rusk, Panola, Shelby, Nacogdoches, San Augustine, Sabine, Newton, Jasper, Tyler, Polk, Angelina, Trinity, Houston and Smith. The major Texas metropolitan areas are also to be included. All new contracts/agreements must be consistent with State Procurement Regulations and university procurement policies and procedures.

Current marketing efforts at SFA are decentralized. No university-wide marketing strategy has been adopted. In short, a more strategic approach to institution-wide marketing is needed, in order to strengthen relationships with various target audiences across the region. The successful agency will be required to provide specific services, which will include the following: Creative guidance on existing enrollment print, broadcast and internet materials; Design and production of all advertising; Placement of print, radio and Internet advertising, as well as recommendations on appropriate media; Monitoring of the placed advertisements; Detailed assistance with billing procedures and budgeting of all expenditures.

Respondent must demonstrate: The ability to make targeted media placement recommendations in the area of print, radio and Internet advertising; Examples of creative design services for each of the three media; A thorough knowledge of Texas media opportunities specific to the areas indicated; A thorough understanding of Internet media buying and placement; The assignment of a representative to work as an account executive to the SFA director of public affairs; Submitted references of clients with which the agency worked in the areas of print, radio and Internet advertising, as well as samples of previous work performed for those clients; A brief summary of why the Stephen F. Austin State University account is of interest and how the agency can specifically address the university's unique needs of increasing enrollment and student retention; All account team members should be specified with a brief biography. If the agency does not have the ability to provide all services in-house, contracted services and subcontractors must be provided with an explanation of how the professionals will work together on the SFA account in a cohesive manner that is transparent to the university. Submission of a HUB Subcontracting Plan showing a good faith effort to do business with Historically Underutilized Businesses.

Persons interested in this RFP should contact Diana Boubel, Director of Purchasing & Inventory/HUB Coordinator, 936-468-4037, for complete RFP requirements.

A MANDATORY pre-proposal conference is scheduled for 10:00am, Friday, June 22, 2001 in the Austin Building, Conference Room 307 on the campus of SFA.

All proposals must be received in the office of Diana Boubel, Director of Purchasing, P.O. Box 13030, 2124 Wilson Drive, Nacogdoches, TX 75962, no later than 5:00pm, Friday, July 6, 2001.

TRD-200103205
R. Yvette Clark
General Counsel
Stephen F. Austin State University
Filed: June 7, 2001

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
Services

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Texas Natural Resource Conservation Commission, Title 30

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