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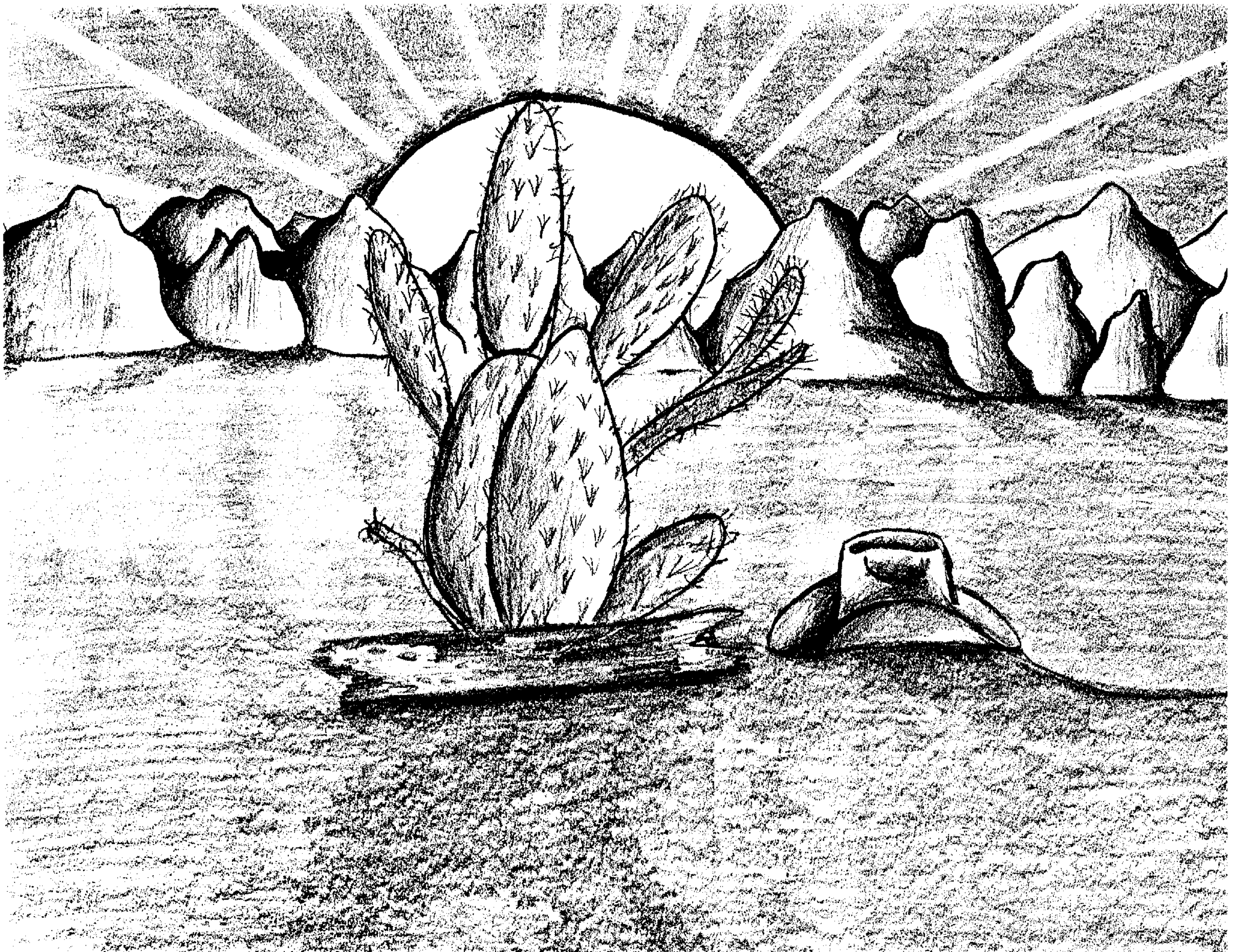

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7th Grade
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Open Meetings

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

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

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

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

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

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.

OFFICE OF THE ATTORNEY GENERAL

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

Opinions

Opinion No. JC-0405.

The Honorable E. Bruce Curry, District Attorney, 216th Judicial District Bandera, Gillespie, Kendall, Kerr Counties, 521 Earl Garrett Street, Kerrville, Texas 78028, regarding whether and when a district clerk must provide jury lists to litigants in civil and criminal trials (RQ-0353-JC).

S U M M A R Y.

In both civil and criminal actions, jury lists must be disclosed to the parties when the parties announce ready for trial. Subject to the direction of the presiding judge the district clerk may, in his or her discretion, release such information to the parties at any time after the jury list has been delivered to the sheriff to summon the jurors. The clerk must not show undue favoritism, and may not provide the list to one party while withholding it from another. Information contained in jury questionnaires completed pursuant to section 62.0132 of the Government Code, while confidential with respect to third parties, is available to the litigants in the cause of action in question. While personal information concerning jurors serving in particular criminal proceedings is confidential pursuant to article 35.29 of the Code of Criminal Procedure, and may not be disclosed by the district clerk absent an order from the trial court, article 35.29 does not preclude the provision of such information concerning the general panel to counsel for the purpose of voir dire.

Opinion No. JC-0406.

The Honorable Tom Ramsay, Chair, Committee on County Affairs, Texas House of Representatives, P.O. Box 2910, Austin, Texas 78768-2910, regarding creation of a fresh water supply district under chapter 53 of the Water Code (RQ-0359-JC).

S U M M A R Y.

Senate Bill 1444, enacted by the Seventy-seventh Legislature and effective June 17, 2001, validated the creation and all proceedings related to the creation of a conservation and reclamation district created under article III, section 52 or article XVI, section 59 of the Texas Constitution, such as the Kaufman County Fresh Water Supply District No. 1.

Pursuant to section 53.014 of the Water Code, a petition for the creation of a fresh water supply district must be signed by "50 or a majority of the electors of the proposed district who own land in the proposed district." Tex. Water Code Ann. § 53.014 (Vernon 1972). Whether the property-ownership requirement of section 53.014 violates the Equal Protection Clause of the United States Constitution may depend on whether such a district has a "special limited purpose" and whether its activities have a "disproportionate effect . . . on landowners as a group." Sayler Land Co. v. Tulare Lake Basin Water Storage Dist., 410 U.S. 719, 728 (1973).

The Secretary of State, the state's chief election officer, has determined that an election for the creation of a fresh water supply district should be called by the temporary supervisors of that district. Because this is not an unreasonable interpretation of section 3.004(b) of the Election Code, the Office of the Attorney General will defer to it.

For further information, please contact the Opinion Committee at (512) 463-2110.

TRD-200105126
Susan D. Gusky
Assistant Attorney General
Office of the Attorney General
Filed: August 29, 2001

Request for Opinions

RQ-0416-JC.

Mr. F. Lawerence Oaks, Executive Director, Texas Historical Commission, 1511 Colorado Street, Austin, Texas 78711-2276, regarding status of artifacts removed from state lands prior to the adoption of the Antiquities Code in 1969, and related questions (Request No. 0416-JC).

Briefs requested by September 24, 2001.

RQ-0417-JC.

The Honorable Eddie Lucio, Jr. Chair, Committee on Border Affairs, Texas State Senate, P.O. Box 12068, Austin, Texas 78711, regarding whether a manufacturer of bingo equipment may enter into a "revenue share" lease arrangement with a bingo distributor (Request No. 0417-JC).

Briefs requested by September 27, 2001.

RQ-0418-JC.

The Honorable John W. Smith, Ector County District Attorney, 300 Grant Street, Room 305, Odessa, Texas 79761, regarding whether a commissioners court may establish and fund a courthouse security force and related questions (Request No. 0418-JC).

Briefs requested by September 24, 2001.

RQ-0419-JC.

The Honorable Clyde Alexander, Chair, Transportation Committee, Texas House of Representatives, P.O. Box 2910, Austin, Texas 78768-2910, regarding validity of a rider to the General Appropriations Act requiring the Texas Department of Transportation to sign an agreement with the City of El Paso in order to expend funds to build a border inspection station (Request No. 0419-JC).

Briefs requested by September 24, 2001.

For further information, please call the Opinion Committee at (512) 463-2110.

TRD-200105125
Susan D. Gusky
Assistant Attorney General
Office of the Attorney General
Filed: August 29, 2001

EMERGENCY RULES

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

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

TITLE 13. CULTURAL RESOURCES

PART 3. TEXAS COMMISSION ON THE ARTS

CHAPTER 35. A GUIDE TO OPERATIONS, PROGRAMS AND SERVICES

13 TAC §35.1, §35.2

The Texas Commission on the Arts adopts on an emergency basis amendments to §35.1 and §35.2, concerning A Guide to Operations and A Guide to Programs and Services. Elsewhere in this issue of the *Texas Register*, the Texas Commission on the Arts contemporaneously proposes amendments to §35.1 and §35.2.

The purpose of the amendments is to be consistent with changes to programs and services of the commission as outlined in the A Guide to Operations, Programs and Services as amended September 2001.

These sections are adopted on an emergency basis to enable the Texas Commission on the Arts to get the word out to the arts field about our programs in a timely manner in anticipation of our upcoming annual grants deadline.

The amendments are adopted on an emergency basis under the Government Code, §444.009, which provides the Texas Commission on the Arts with the authority to make rules and regulations for its government and that of its officers and committees.

§35.1. A Guide to Operations.

The commission adopts by reference A Guide to Operations [~~effective September 2000~~]. This document is published by and available from the Texas Commission on the Arts, P.O. Box 13406, Austin, Texas 78711. This document is also available on line at www.arts.state.tx.us.

§35.2. A Guide to Programs and Services.

The commission adopts by reference A Guide to Programs and Services [~~effective September 2000~~]. This document is published by and available from the Texas Commission on the Arts, P.O. Box 13406, Austin, Texas 78711. This document is also available on line at www.arts.state.tx.us.

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

Filed with the Office of the Secretary of State, on August 24, 2001.

TRD-200105041
John Paul Batiste
Executive Director
Texas Commission on the Arts
Effective Date: August 24, 2001
Expiration Date: December 22, 2001
For further information, please call: (512) 463-5535

CHAPTER 37. APPLICATION FORMS AND INSTRUCTIONS FOR FINANCIAL ASSISTANCE

13 TAC §§37.22 - 37.24, 37.26, 37.28, 37.29

The Texas Commission on the Arts adopts on an emergency basis amendments to §§37.22 - 37.24, 37.26 and 37.28, concerning Application Forms and Instructions for Financial Assistance. The Texas Commission on the Arts also adopts new §37.29, concerning Application Forms and Instructions for Young Masters Program. Elsewhere in this issue of the *Texas Register*, the Texas Commission on the Arts contemporaneously proposes amendments to §§37.22 - 37.24, 37.26 and 37.28 and new §37.29.

The purpose of the amendments and new rule is to be consistent with changes to programs and services of the commission as outlined in the A Guide to Operations, Programs and Services as amended September 2001.

These sections are adopted on an emergency basis to enable the Texas Commission on the Arts to get the word out to the arts field about our programs in a timely manner in anticipation of our upcoming annual grants deadline.

The amendments and new rule are adopted on an emergency basis under the Government Code, §444.009, which provides the Texas Commission on the Arts with the authority to make rules and regulations for its government and that of its officers and committees.

§37.22. Application Form and Instructions for Artist-in-Education Program--Artist.

The commission adopts by reference the application form and instructions for the Artist-in-Education Program--Artist as outlined in A Guide to Operations, Programs, and Services [~~amended to be effective September 2000~~]. This document is published by and available from the Texas Commission on the Arts, P.O. Box 13406, Austin, Texas 78711. This document is also available on line at www.arts.state.tx.us.

§37.23. Application Form and Instructions for Arts in Education Program--Sponsors.

The commission adopts by reference application form and instructions for Arts in Education Program--Sponsors as outlined in A Guide to Operations, Programs, and Services [~~as amended September 2000~~]. This document is published by and available from the Texas Commission on the Arts, P.O. Box 13406, Austin, Texas 78711. This document is also available on line at www.arts.state.tx.us.

§37.24. Application Form and Instructions for Texas Touring Arts Program--Company/Artist.

The commission adopts by reference the application form and instructions for the Texas Touring Arts Program--Company/Artist as outlined in A Guide to Operations, Programs, and Services [~~amended to be effective September 2000~~]. This document is published by and available from the Texas Commission on the Arts, P.O. Box 13406, Austin, Texas 78711. This document is also available on line at www.arts.state.tx.us.

§37.26. Application Form and Instructions for Texas Touring Arts Program--Sponsors.

The commission adopts by reference application form and instructions for the Texas Touring Arts Program--Sponsors as outlined in A Guide to Operations, Programs, and Services [~~as amended September 2000~~]. This document is published by and available from the Texas Commission on the Arts, P.O. Box 13406, Austin, Texas 78711. This document is also available on line at www.arts.state.tx.us.

§37.28. Application Form and Instructions for Arts Education Service Provider.

The commission adopts by reference the application and instructions for Arts Education Service Provider as outlined in A Guide to Operations, Programs, and Services [~~as amended September 2000~~]. This document is published by and available from the Texas Commission on the Arts, P.O. Box 13406, Austin, Texas 78711. This document is also available on line at www.arts.state.tx.us.

§37.29. Application Form and Instructions for Young Masters Program.

The commission adopts by reference the application and instructions for Young Masters Program as outlined in A Guide to Operations, Programs, and Services. This document is published by and available from the Texas Commission on the Arts, P.O. Box 13406, Austin, Texas 78711. This document is also available on line at www.arts.state.tx.us.

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

Filed with the Office of the Secretary of State, on August 24, 2001.

TRD-200105042
John Paul Batiste
Executive Director
Texas Commission on the Arts
Effective Date: August 24, 2001
Expiration Date: December 22, 2001
For further information, please call: (512) 463-5535

PROPOSED RULES

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

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

TITLE 4. AGRICULTURE

PART 1. TEXAS DEPARTMENT OF AGRICULTURE

CHAPTER 19. QUARANTINES

SUBCHAPTER M. SWEET POTATO WEEVIL QUARANTINE

4 TAC §19.131

The Texas Department of Agriculture (the department) proposes an amendment to §19.131, concerning the addition of Gregg County to the area covered by the department's sweet potato weevil quarantine. The amendment is proposed because department's repeated attempts to eradicate isolated infestations in urban residential gardens in Gregg County have been unsuccessful, and as a result, it is necessary to quarantine Gregg County to prevent further spread of the weevil into adjacent weevil-free counties. The isolated infestations were difficult to monitor and control due to limited access to private property. The amendment will restrict the movement of quarantined articles to the sweet potato weevil-free areas. There is no commercial sweet potato production in Gregg County.

Dr. Awinash Bhatkar, Coordinator for Plant Quality Programs, has determined that for each year of the first five year period the amendment is in effect there will be no fiscal implication to state and local government as a result of enforcing or administering the amendment as proposed.

Dr. Bhatkar has also determined that for each year of the first five years the amendment is in effect, the public benefit anticipated as a result of enforcing or administering the rule will be to mitigate the risk of introduction of sweet potato weevils from an infested area to sweet potato weevil-free counties of Texas. There is no anticipated cost to microbusinesses, small businesses or individuals required to comply with the amendment.

Comments on the proposal may be submitted to Dr. Awinash Bhatkar, Coordinator for Plant Quality Programs, Texas Department of Agriculture, P.O. Box 12847, Austin, Texas 78711. Comments must be received no later than 30 days from the date of publication of the proposal in the *Texas Register*.

The amendment is proposed under the Texas Agriculture Code (the Code), §71.003, which provides the Texas Department of Agriculture with the authority to establish quarantines in areas surrounding pest free zones; §71.007 which authorizes the department to adopt rules as necessary to protect agricultural and horticultural interests, including rules preventing the entry into a pest-free zone of any plant, plant product, or substance found to be dangerous to the agricultural and horticultural interests of the zone.

The code affected by this proposal is the Texas Agriculture Code, Chapter 71.

§19.131. Quarantined Areas.

The quarantined areas are:

(1) - (7) (No change.)

(8) Texas: Anderson, Angelina, Aransas, Atascosa, Austin, Bandera, Bastrop, Bee, Bell, Bexar, Blanco, Brazoria, Brazos, Brooks, Burleson, Burnet, Caldwell, Calhoun, Cameron, Chambers, Cherokee, Colorado, Comal, Coryell, DeWitt, Dimmitt, Duval, Edwards, Falls, Fayette, Fort Bend, Freestone, Frio, Galveston, Goliad, Gonzales, Gregg, Grimes, Guadalupe, Hardin, Harris, Hays, Hidalgo, Houston, Jackson, Jasper, Jefferson, Jim Hogg, Jim Wells, Karnes, Kendall, Kenedy, Kerr, Kinney, Kleberg, Lampasas, La Salle, Lavaca, Lee, Leon, Liberty, Live Oak, Madison, Matagorda, Maverick, McMullen, Medina, Milam, Montgomery, Nacogdoches, Newton, Nueces, Orange, Panola, Polk, Real, Refugio, Rusk, Sabine, San Augustine, San Jacinto, San Patricio, Shelby, Starr, Travis, Trinity, Tyler, Uvalde, Val Verde, Victoria, Walker, Waller, Washington, Webb, Wharton, Willacy, Williamson, Wilson, Zapata, and Zavala.

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

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Dolores Alvarado Hibbs
Deputy General Counsel
Texas Department of Agriculture
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For further information, please call: (512) 463-4075

PART 10. TEXAS BOLL WEEVIL ERADICATION FOUNDATION

CHAPTER 195. ORGANIC COTTON REGULATIONS

4 TAC §§195.1 - 195.5

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

The Texas Department of Agriculture (department) proposes the repeal of Title 4, TAC, Part 10, Chapter 195, concerning organic cotton regulations established by the Texas Boll Weevil Eradication Foundation (foundation). The repeal of Chapter 195 is proposed by the department because under the Texas Agriculture Code, Chapter 74, Subchapter D, the law establishing the boll weevil eradication program for Texas, the foundation no longer has the statutory authority to promulgate regulations relating to the implementation of the state's boll weevil eradication program. The department now has the sole authority to promulgate regulations for implementation of the eradication program. Moreover, the department has adopted regulations governing the production of organic cotton in eradication zones, found at Title 4, Texas Administrative Code, Chapter 3, Subchapter J. The proposed repeal eliminates Chapter 195, §§195.1-195.5 relating to regulation of organic producers, notification of organic production, payment of assessment and provisions for indemnity funds.

Dolores Alvarado Hibbs, deputy general counsel for the department, has determined that for each year of the first five- year period the repeal is in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering the repeal.

Ms. Hibbs also has determined that for each year of the first five years the repeal is in effect the public benefit anticipated as a result of enforcing the repeal will be the elimination of unnecessary rules. There be no effect on micro-business or small businesses, or to persons who are required to comply with the proposed repeal.

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

The repeal of Chapter 195, §§195.1-195.5 is proposed under the Texas Agriculture Code (the Code), §12.016, which provides the Texas Department of Agriculture with authority to adopt rules for administering the Code; and the Code, §74.120, which provides the department with the authority to adopt rules to carry out the Code, Chapter 74, Subchapter D.

The code affected by this proposal is the Texas Agriculture Code, Chapters 12 and 74.

§195.1. Statement of Authority for Regulating Organic Producers.

§195.2. Notification of Organic Production.

§195.3. Payment of Assessments.

§195.4. Zone Flexibility for Organic Certified Cotton Production.

§195.5. Indemnity Funds.

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

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Dolores Alvarado Hibbs
Deputy General Counsel, Texas Department of Agriculture
Texas Boll Weevil Eradication Foundation
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For further information, please call: (512) 463-4075

CHAPTER 196. ASSESSMENT AND ASSESSMENT COLLECTION

4 TAC §196.1

(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 Boll Weevil Eradication Foundation or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The Texas Department of Agriculture (department) proposes the repeal of Title 4, TAC, Part 10, Chapter 196, concerning assessment and assessment collection by the Texas Boll Weevil Eradication Foundation (foundation). The repeal of Chapter 196 is proposed by the department because under the Texas Agriculture Code, Chapter 74, Subchapter D, the law establishing the boll weevil eradication program for Texas, the foundation no longer has the statutory authority to promulgate regulations relating to the implementation of the state's boll weevil eradication program. The department now has the sole authority to promulgate regulations for implementation of the eradication program. The repeal eliminates Chapter 196, §196.1 relating to policy for assessment and assessment collection..

Dolores Alvarado Hibbs, deputy general counsel for the department, has determined that for each year of the first five- year period the repeal is in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering the repeal.

Ms. Hibbs also has determined that for each year of the first five years the repeal is in effect the public benefit anticipated as a result of enforcing the repeal will be the elimination of unnecessary rules. There be no effect on micro-business or small businesses, or to persons who are required to comply with the proposed repeal.

Comments on the proposal may be submitted to Dolores Alvarado Hibbs, Deputy General Counsel, Texas Department of

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

The repeal of Chapter 196, §196.1 is proposed under the Texas Agriculture Code (the Code), §12.016, which provides the Texas Department of Agriculture with authority to adopt rules for administering the Code; and the Code, §74.120, which provides the department with the authority to adopt rules to carry out the purposes of the Code, Chapter 74, Subchapter D.

The code affected by this proposal is the Texas Agriculture Code, Chapters 12 and 74.

§196.1. Policy for Assessment and Assessment Collection.

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

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Dolores Alvarado Hibbs
Deputy General Counsel, Texas Department of Agriculture
Texas Boll Weevil Eradication Foundation
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For further information, please call: (512) 463-4075

CHAPTER 197. REFERENDA RULES AND REGULATIONS

4 TAC §197.1

(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 Boll Weevil Eradication Foundation or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The Texas Department of Agriculture (department) proposes the repeal of Title 4, TAC, Part 10, Chapter 197, concerning referenda to discontinue a zone eradication program by the Texas Boll Weevil Eradication Foundation (foundation). The repeal of Chapter 197 is proposed by the department because under the Texas Agriculture Code, Chapter 74, Subchapter D, the law establishing the boll weevil eradication program for Texas, the foundation no longer has the statutory authority to promulgate regulations relating to the implementation of the state's boll weevil eradication program. The department now has the sole authority to promulgate regulations for implementation of the eradication program. Moreover, the department has adopted a regulation establishing procedures and requirements for conducting a referenda to discontinue a zone eradication program, found at Title 4, Texas Administrative Code, Chapter 3, §3.11. The proposed repeal eliminates Chapter 197, §197.1, relating to conducting of a referenda to discontinue a zone eradication program.

Dolores Alvarado Hibbs, deputy general counsel for the department, has determined that for each year of the first five- year period the repeal is in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering the repeal.

Ms. Hibbs also has determined that for each year of the first five years the repeal is in effect the public benefit anticipated as a result of enforcing the repeal will be the elimination of unnecessary rules. There be no effect on micro-business or small businesses, or to persons who are required to comply with the proposed repeal.

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

The repeal of Chapter 197, §197.1 is proposed under the Texas Agriculture Code (the Code), §12.016, which provides the Texas Department of Agriculture with authority to adopt rules for administering the Code; and the Code, §74.120, which provides the department with the authority to adopt rules to carry out the purposes of the Code, Chapter 74, Subchapter D.

The code affected by this proposal is the Texas Agriculture Code, Chapters 12 and 74.

§197.1. Referenda to Discontinue a Zone Eradication Program.

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

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Dolores Alvarado Hibbs
Deputy General Counsel, Texas Department of Agriculture
Texas Boll Weevil Eradication Foundation
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For further information, please call: (512) 463-4075

TITLE 13. CULTURAL RESOURCES

PART 3. TEXAS COMMISSION ON THE ARTS

CHAPTER 35. A GUIDE TO OPERATIONS, PROGRAMS AND SERVICES

13 TAC §35.1, §35.2

The Texas Commission on the Arts proposes amendments to §35.1 and §35.2, concerning A Guide to Operations and A Guide to Programs and Services. Elsewhere in this issue of the *Texas Register*, the Texas Commission on the Arts contemporaneously adopts amendments to §35.1 and §35.2 on an emergency basis.

The purpose of the amendments is to be consistent with changes to programs and services of the commission as outlined in the A Guide to Operations, Programs and Services as amended September 2001.

Fred Snell, Director of Finance and Administration, Texas Commission on the Arts, 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 the sections.

Mr. Snell also 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 the ability to utilize federal and state financial assistance funds in a more effective manner, thereby allowing more Texas organizations, communities, and citizens to participate in agency programs. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the sections as proposed.

Comments on the proposal may be submitted to Ricardo Hernandez, Texas Commission on the Arts, P.O. Box 13406, Austin, Texas 78711-3406. Comments will be accepted for 30 days after publication in the *Texas Register*.

The amendments are proposed under the Government Code, §444.009, which provides the Texas Commission on the Arts with the authority to make rules and regulations for its government and that of its officers and committees.

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

§35.1. A Guide to Operations.

The commission adopts by reference A Guide to Operations [~~effective September 2000~~]. This document is published by and available from the Texas Commission on the Arts, P.O. Box 13406, Austin, Texas 78711. This document is also available on line at www.arts.state.tx.us.

§35.2. A Guide to Programs and Services.

The commission adopts by reference A Guide to Programs and Services [~~effective September 2000~~]. This document is published by and available from the Texas Commission on the Arts, P.O. Box 13406, Austin, Texas 78711. This document is also available on line at www.arts.state.tx.us.

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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John Paul Batiste
Executive Director
Texas Commission on the Arts
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For further information, please call: (512) 463-5535

CHAPTER 37. APPLICATION FORMS AND INSTRUCTIONS FOR FINANCIAL ASSISTANCE

13 TAC §§37.22 - 37.24, 37.26, 37.28, 37.29

The Texas Commission on the Arts proposes amendments to §§37.22 - 37.24, 37.26 and 37.28, concerning Application Forms and Instructions for Financial Assistance. The Texas Commission on the Arts also proposes new §37.29, concerning Application Forms and Instructions for Young Masters Program. Elsewhere in this issue of the *Texas Register*, the Texas Commission on the Arts contemporaneously adopts amendments to §§37.22 - 37.24, 37.26 and 37.28 and new §37.29 on an emergency basis.

The purpose of the amendments and new rule is to be consistent with changes to programs and services of the commission as outlined in the A Guide to Operations, Programs and Services as amended September 2001.

Fred Snell, Director of Finance and Administration, Texas Commission on the Arts, 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 the sections.

Mr. Snell also 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 the ability to utilize federal and state financial assistance funds in a more effective manner, thereby allowing more Texas organizations, communities, and citizens to participate in agency programs. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the sections as proposed.

Comments on the proposal may be submitted to Ricardo Hernandez, Texas Commission on the Arts, P.O. Box 13406, Austin, Texas 78711-3406. Comments will be accepted for 30 days after publication in the *Texas Register*.

The amendments and new rule are proposed under the Government Code, §444.009, which provides the Texas Commission on the Arts with the authority to make rules and regulations for its government and that of its officers and committees.

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

§37.22. Application Form and Instructions for Artist-in-Education Program--Artist.

The commission adopts by reference the application form and instructions for the Artist-in-Education Program--Artist as outlined in A Guide to Operations, Programs, and Services [~~amended to be effective September 2000~~]. This document is published by and available from the Texas Commission on the Arts, P.O. Box 13406, Austin, Texas 78711. This document is also available on line at www.arts.state.tx.us.

§37.23. Application Form and Instructions for Arts in Education Program--Sponsors.

The commission adopts by reference application form and instructions for Arts in Education Program--Sponsors as outlined in A Guide to Operations, Programs, and Services [~~as amended September 2000~~]. This document is published by and available from the Texas Commission on the Arts, P.O. Box 13406, Austin, Texas 78711. This document is also available on line at www.arts.state.tx.us.

§37.24. Application Form and Instructions for Texas Touring Arts Program--Company/Artist.

The commission adopts by reference the application form and instructions for the Texas Touring Arts Program--Company/Artist as outlined in A Guide to Operations, Programs, and Services [~~amended to be effective September 2000~~]. This document is published by and available from the Texas Commission on the Arts, P.O. Box 13406, Austin, Texas 78711. This document is also available on line at www.arts.state.tx.us.

§37.26. Application Form and Instructions for Texas Touring Arts Program--Sponsors.

The commission adopts by reference application form and instructions for the Texas Touring Arts Program--Sponsors as outlined in A Guide to Operations, Programs, and Services [~~as amended September 2000~~]. This document is published by and available from the Texas Commission on the Arts, P.O. Box 13406, Austin, Texas 78711. This document is also available on line at www.arts.state.tx.us.

§37.28. Application Form and Instructions for Arts Education Service Provider.

The commission adopts by reference the application and instructions for Arts Education Service Provider as outlined in A Guide to Operations, Programs, and Services [~~as amended September 2000~~]. This document is published by and available from the Texas Commission on the Arts, P.O. Box 13406, Austin, Texas 78711. This document is also available on line at www.arts.state.tx.us.

§37.29. Application Form and Instructions for Young Masters Program.

The commission adopts by reference the application and instructions for Young Masters Program as outlined in A Guide to Operations, Programs, and Services. This document is published by and available from the Texas Commission on the Arts, P.O. Box 13406, Austin, Texas 78711. This document is also available on line at www.arts.state.tx.us.

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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John Paul Batiste
Executive Director
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For further information, please call: (512) 463-5355

TITLE 16. ECONOMIC REGULATION

PART 2. PUBLIC UTILITY COMMISSION OF TEXAS

CHAPTER 25. SUBSTANTIVE RULES APPLICABLE TO ELECTRIC SERVICE PROVIDERS

SUBCHAPTER H. ELECTRICAL PLANNING

DIVISION 2. ENERGY EFFICIENCY AND CUSTOMER-OWNED RESOURCES

16 TAC §25.182, §25.183

The Public Utility Commission of Texas (commission) proposes new §25.182, relating to Energy Efficiency Grant Program, and new §25.183, relating to Reporting and Evaluation of Energy Efficiency Programs. The proposed new rules will provide guidance for the implementation of an energy efficiency grant program and reporting requirements regarding energy and demand savings, and concomitant air emission reduction as mandated under the Health and Safety Code, Title 5, Subtitle C, Chapter 386, Subchapter E, Energy Efficiency Grant Program. Under the proposed rules, electric utilities, electric cooperatives and municipally owned utilities may apply for grants from the commission to administer energy efficiency programs. The program is not mandatory and is available statewide, but will give priority to proposals that will reduce air emission in non-attainment areas and affected counties. The program and allowable activities will be consistent with §25.181 of this title, relating to the Energy Efficiency Goal. Project Number 24391 has been assigned to this proceeding.

Nieves López, Policy Analyst with the Policy Development Division has determined that for each year of the first five-year period the proposed section is in effect there will be no negative fiscal implications for state or local government as a result of enforcing or administering the section. Municipally owned utilities may, at their option, apply for an energy efficiency grant. The energy efficiency grant is expected to fully cover the costs of the program. The extent to which municipally owned utilities will apply for and receive an energy efficiency grant is unknown. The potential positive fiscal impact is therefore undeterminable.

Nieves López has determined that for each year of the first five years the proposed section is in effect the public benefit anticipated as a result of enforcing the section will be reductions in energy consumption, peak demand and air emissions. There will be no effect on small businesses or micro-businesses as a result of enforcing this section. There is no anticipated economic cost to persons who are required to comply with the section as proposed.

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

The commission staff will conduct a public hearing on this rulemaking under Government Code §2001.029 at the commission's offices, located in the William B. Travis Building, 1701 North Congress Avenue, Austin, Texas 78701, on Thursday, September 20, 2001 at 9:30 a.m. in the Commissioners' Hearing Room on the seventh floor.

Comments on the proposed new rules (16 copies) may be submitted to the Filing Clerk, Public Utility Commission of Texas, 1701 North Congress Avenue, P.O. Box 13326, Austin, Texas 78711-3326, within ten days after publication. Comments should be organized in a manner consistent with the organization of the proposed rule(s). The commission invites specific comments regarding the costs associated with, and benefits that will be gained by, implementation of the proposed section. The commission will consider the costs and benefits in deciding whether to adopt the section. All comments should refer to Project Number 24391.

These new rules are proposed under the Public Utility Regulatory Act, Texas Utilities Code Annotated §14.002 (Vernon 1998, Supplement 2001) (PURA), which provides the Public Utility Commission with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction; and specifically Section 11(c) of S.B. 5 (An Act of the 77th Leg., R.S., Ch. 967, eff. Sept. 1, 2001) which require(s) the commission to adopt all rules necessary to carry out its duties under the Act within 45 days after the effective date of the Act.

Cross Reference to Statutes: Public Utility Regulatory Act §14.002 and §39.905; Texas Health and Safety Code §§386.201, 386.202, 386.203, 386.204, and 386.205.

§25.182. Energy Efficiency Grant Program.

(a) Purpose. The purpose of this section is to provide implementation guidelines for the Energy Efficiency Grant Program mandated under the Health and Safety Code, Title 5, Subtitle C, Chapter 386, Subchapter E, Energy Efficiency Grant Program. Programs offered under the Energy Efficiency Grant Program shall utilize program templates that are consistent with §25.181 of this title (relating to the Energy Efficiency Goal). Programs shall include the retirement of materials and appliances that contribute to peak energy demand with the

goal of reducing energy demand, peak loads, and associated emissions of air contaminants.

(b) Eligibility for grants. Electric utilities, electric cooperatives, and municipally owned utilities are eligible to apply for grants under the Energy Efficiency Grant Program. Multiple eligible entities may jointly apply for a grant under one energy efficiency grant program application. Grantees shall administer programs consistent with §25.181 of this title.

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

(1) Affected counties - Bastrop, Bexar, Caldwell, Comal, Ellis, Gregg, Guadalupe, Harrison, Hays, Johnson, Kaufman, Nueces, Parker, Rockwall, Rusk, San Patricio, Smith, Travis, Upshur, Victoria, Williamson, and Wilson.

(2) Demand side management (DSM) - Activities that affect the magnitude or timing of customer electrical usage, or both.

(3) Energy demand - Energy consumption in kilowatt hour (kWh) or megawatt hour (MWh).

(4) Energy efficiency - Programs that are aimed at reducing the intensity of electric energy usage equipment or processes. Reduction in energy intensity may be obtained by substituting technically more advanced equipment to produce the same level of end-use services with less electricity; adoption of technologies and processes that reduce heat or other energy losses; or reorganization of processes to make use of waste heat. Efficient use of energy by consumer-owned end-use devices implies that existing comfort levels, convenience, and productivity are maintained or improved at a lower total system cost.

(5) Energy efficiency service provider - A person who installs energy efficiency measures or performs other energy efficiency services. An energy efficiency service provider may be a retail electric provider or a customer, if the person has executed a contract with the grantee.

(6) Grantee - the entity receiving Energy Efficiency Grant Program funds.

(7) Nonattainment area - An area so designated under the federal Clean Air Act §107(d) (42 U.S.C. §7407), as amended. A nonattainment area does not include affected counties.

(8) Peak demand - Electrical demand at the time of highest annual demand on the utility's system, in 15 minute intervals.

(9) Peak demand reduction - Peak demand reduction on the utility system during the utility's peak period.

(10) Peak energy demand - Energy consumption during the period of peak demand.

(11) Peak load - Peak demand.

(12) Peak period - Period during which a utility's system experiences its maximum demand. For the purposes of this section, the peak period is May 1 through September 30.

(13) Retirement - The disposal or recycling of equipment and materials in such a manner that they will be permanently removed from the system with minimal environmental impact.

(d) Commission administration. The commission shall administer the Energy Efficiency Grant Program, including the review of grant applications, allocation of funds to grantees and monitoring of grantees. The commission shall:

(1) Develop an energy efficiency grant program application form. The grant application form shall include:

(A) Application guidelines;

(B) Information on available funds;

(C) Listing of applicable affected counties and counties designated as nonattainment areas; and

(D) Information on the evaluation criteria, including points awarded for each criterion.

(2) Evaluate and approve grant applications, consistent with subsection (e) of this section.

(3) Enter into a contract with the successful applicant.

(4) Reimburse participating grantees quarterly from the fund for costs incurred by the grantee in administering the energy efficiency grant program.

(5) Monitor grantee progress on an ongoing basis, including review of grantee reports provided under subsection (g)(7) of this section.

(6) Compile data provided in the annual energy efficiency report, pursuant to §25.183 of this title (relating to Reporting and Evaluation of Energy Efficiency Programs).

(e) Criteria for making grants.

(1) Grants shall be awarded on a competitive basis. Applicants will be evaluated on the minimum criteria established in subparagraphs (A)-(G) of this paragraph.

(A) The extent to which the proposal would reduce air emissions of pollutants in a nonattainment area.

(B) The extent to which the proposal would reduce air emissions of pollutants in an affected county.

(C) The amount of peak demand reductions to be achieved under the proposal.

(D) The amount of energy savings to be achieved under the proposal.

(E) The extent to which the applicant has achieved verified peak demand reductions and verified energy savings under this or other similar energy efficiency programs and has complied with the requirements of the grant program established under this section.

(F) The extent to which the proposal is credible, internally consistent, and feasible and demonstrates the applicants ability to administer the program.

(G) Any other criteria the commission deems necessary to evaluate grant proposals.

(2) Applicants who receive the most points under the evaluation criteria shall be awarded grants, subject to the following constraints:

(A) The commission reserves the right to set maximum or minimum grant amounts, or both.

(B) The commission reserves the right to negotiate final program details and grant awards with a successful applicant.

(f) Use of approved program templates. All programs funded through the energy efficiency grant program shall be program templates developed pursuant to §25.181 of this title.

(1) Program templates shall include the retirement of materials and appliances that contribute to peak energy demand to ensure

the reduction of energy, peak demand, and associated emissions of air contaminants.

(2) Cost effectiveness and avoided cost criteria shall be consistent with §25.181(d) of this title.

(3) Incentive levels shall be consistent with program templates and in accordance with §25.181(g)(2)(F) of this title.

(4) Inspection, measurement and verification requirements shall be consistent with program templates and in accordance with §25.181(k) of this title.

(5) At the sole discretion of the commission, projects or measures under this program are not eligible for incentive payments or compensation if:

(A) A project would achieve demand reduction by eliminating an existing function, shutting down a facility, or operation, or would result in building vacancies, or the re-location of existing operations to locations outside of the facility or area served by the participating utility.

(B) A measure would be installed even in the absence of the energy efficiency service provider's proposed energy efficiency project. For example, a project to install measures that have wide market penetration would not be eligible.

(C) A project results in negative environmental or health effects, including effects that result from improper disposal of equipment and materials.

(D) The project involves the installation of self-generation or cogeneration equipment, except for renewable demand side management technologies.

(g) Grantee administration: The cost of administration may not exceed 10% of the total program budget before January 1, 2002, and may not exceed 5.0% of the total program budget thereafter. The commission reserves the right to lower the allowable cost of administration in the application guidelines.

(1) Administrative costs include costs necessary for grantee conducted inspections and the costs necessary to meet the following requirements:

(A) Conduct informational activities designed to explain the program to energy efficiency service providers and vendors.

(B) Review and select proposals for energy efficiency projects in accordance with the program template guidelines and applicable rules of the standard offer contracts under §25.181(i) of this title, and market transformation contracts under §25.181(j) of this title.

(C) Inspect projects to verify that measures were installed and are capable of performing their intended function, as required in §25.181(k) of this title, before final payment is made. Such inspections shall comply with Public Utility Regulatory Act (PURA) §39.157 and §25.272 of this title (relating to Code of Conduct for Electric Utilities and Their Affiliates) or, to the extent applicable to a grantee, §25.275 of this title (relating to the Code of Conduct for Municipally Owned Utilities and Electric Cooperatives Engaged in Competitive Activities).

(D) Review and approve energy efficiency service providers' savings monitoring reports.

(2) A grantee administering a grant under this program shall not be involved in directly providing customers any energy efficiency services, including any technical assistance for the selection of energy efficiency services or technologies, unless a petition for waiver has been granted by the commission pursuant to §25.343 of this title (relating to Competitive Energy Services), to the extent that section is applicable to a grantee.

(3) An electric utility may not count the energy and demand savings achieved under the energy efficiency grant program towards satisfying the requirements of PURA §39.905.

(4) Funding awarded under the energy efficiency grant program may not supplement or increase incentives available under programs pursuant to PURA §39.905.

(5) An electric utility, electric cooperative or municipally owned utility may not count air emissions reductions achieved under the energy efficiency grant program towards satisfying an obligation to reduce air contaminant emissions under state or federal law or a state or federal regulatory program.

(6) The grantee shall compensate energy efficiency service providers for energy efficiency projects in accordance with the applicable rules of the standard offer contracts under §25.181(i) of this title, and market transformation contracts under §25.181(j) of this title, and the requirements of this section.

(7) The grantee shall provide reports consistent with contract requirements and §25.183 of this title.

§25.183. Reporting and Evaluation of Energy Efficiency Programs.

(a) Purpose. The purpose of this section is to establish reporting requirements sufficient for the commission, in cooperation with Energy Systems Laboratory of Texas A&M University (Laboratory), to quantify, by county, the reductions in energy demand, peak demand and associated emissions of air contaminants achieved from the programs implemented under §25.181 of this title (relating to the Energy Efficiency Goal) and §25.182 of this title (relating to Energy Efficiency Grant Program).

(b) Application. This section applies to electric utilities administering energy efficiency programs implemented under the Public Utility Regulatory Act (PURA) §39.905 and pursuant to §25.181 of this title, and grantees administering energy efficiency grants implemented under the Health and Safety Code §§386.201-386.205 and pursuant to §25.182 of this title.

(c) Definitions. The words and terms in §25.182(c) of this title shall apply to this section, unless the context clearly indicates otherwise.

(d) Reporting. Each electric utility and grantee shall file by April 1, of each program year an annual energy efficiency report. The annual energy efficiency report shall include the information required under §25.181(g)(5) of this title and paragraphs (1)-(4) of this subsection in a format prescribed by the commission.

(1) Hourly (or 15 minute) load data within the applicable service area by county, zipcode and/or substation. If the grantee serves fewer than 100,000 retail customers, the grantee or its member organizations may report this information on a total system basis, i.e., the data need not be reported by county, zipcode and/or substation. If such information is available from an Independent System Operator (ISO) or Regional Transmission Organization (RTO) in the power region in which the electric utility or grantee is a member, then the ISO or RTO shall provide this information to the commission instead of the electric utility or grantee.

(2) The reduction in peak demand attributable to energy efficiency programs implemented under §25.181 and §25.182 of this title, in kW by county, by type of program and by funding source.

(3) The reduction in energy consumption attributable to energy efficiency programs implemented under §25.181 and §25.182 of this title, in kWh by county, by type of program and by funding source.

(4) Any other information determined by the commission to be necessary to quantify the air emission reductions.

(e) Evaluation.

(1) Annually the commission, in cooperation with the Laboratory, shall provide the Texas Natural Resources and Conservation Commission (TNRCC) a report, by county, that compiles the data provided by the utilities and grantees affected by this section and quantifies the reductions of energy consumption, peak demand and associated air emissions.

(2) Every two years the commission, in cooperation with the Energy Efficiency Implementation Docket, shall evaluate the Energy Efficiency Grant Program under §25.182 of this title.

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

Filed with the Office of the Secretary of State, on August 24, 2001.

TRD-200105048
Rhonda G. Dempsey
Rules Coordinator
Public Utility Commission of Texas
Earliest possible date of adoption: October 7, 2001
For further information, please call: (512) 936-7308

SUBCHAPTER R. CUSTOMER PROTECTION RULES FOR RETAIL ELECTRIC SERVICE

16 TAC §25.474

The Public Utility Commission of Texas (commission) proposes an amendment to §25.474, relating to Selection or Change of Retail Electric Provider. The proposed amendment to subsection (b) will provide the commission the flexibility to seek a more efficient and effective means to accomplish the commission's customer education goals. Project Number 24551 has been assigned to this proceeding.

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

Robert Bartels, Director of Information & Education, Customer Protection Division, has determined that for each year of the first five-year period the proposed section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Mr. Bartels has determined that for each year of the first five years the proposed section is in effect the public benefit anticipated as a result of enforcing the section will be to provide Texas customers with information regarding electric competition, in an easily obtainable manner. There will be no effect on small businesses or micro- businesses as a result of enforcing this section. There is no anticipated economic cost to persons who are required to comply with the section as proposed.

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

Comments on the proposed amendment (16 copies) may be submitted to the Filing Clerk, Public Utility Commission of Texas, 1701 North Congress Avenue, PO Box 13326, Austin, Texas 78711-3326, within 30 days after publication. Reply comments may be submitted within 45 days after publication. Comments should be organized in a manner consistent with the organization of the proposed rule. The commission invites specific comments regarding the costs associated with, and benefits that will be gained by, implementation of the proposed section. The commission will consider the costs and benefits in deciding whether to adopt the section. All comments should refer to Project Number 24551.

This amendment is proposed under the Public Utility Regulatory Act, Texas Utilities Code Annotated §14.002 (Vernon 1998, Supplement 2001) (PURA), which provides the Public Utility Commission with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction; and PURA §39.101 which grants the commission the authority to establish customer protections.

Cross Reference to Statutes: Public Utility Regulatory Act §§14.002, 39.101, and 39.902.

§25.474. Selection or Change of Retail Electric Provider.

(a) (No change.)

(b) Initial REP selection process.

(1) In[~~Before the start of electric competition and in~~] conjunction with the commission's customer education campaign, the commission may[~~shall~~] issue to [~~all~~]customers for whom customer choice will be an option an explanation of the REP selection process[~~and a REP information and selection form~~]. The information issued by the commission may include, but is not limited to[~~and selection form shall~~]:

(A) an explanation of[~~explain~~] retail electric competition;

(B) a list of all REPs qualified to provide electric service to the customer;

[~~(C) allow a customer to designate one of the listed REPs as that customer's provider of choice and by whom the customer would like to be contacted to receive additional enrollment information;~~]

(C) [~~(D)~~] a form that allows[~~allow~~] the customer to select one or more of the listed REPs from which the customer desires to receive information or to be contacted; and

(D) [~~(E)~~] information on how a customer may[~~inform customers how they can~~] designate whether the customer[~~they~~] would like to be placed on the statewide Do Not Call List and indicate the fee for such placement.[~~; and~~]

[~~(F) indicate how the customer may return such form to the commission.~~]

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

(c) - (o) (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 August 27, 2001.

TRD-200105055
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Earliest possible date of adoption: October 7, 2001
For further information, please call: (512) 936-7308

TITLE 19. EDUCATION

PART 2. TEXAS EDUCATION AGENCY

CHAPTER 89. ADAPTATIONS FOR SPECIAL POPULATIONS

SUBCHAPTER DD. COMMISSIONER'S RULES CONCERNING HIGH SCHOOL EQUIVALENCY PROGRAMS

19 TAC §§89.1401, 89.1403, 89.1405, 89.1407, 89.1409, 89.1411, 89.1413, 89.1415, 89.1417, 89.1419, 89.1421

The Texas Education Agency (TEA) proposes new §§89.1401, 89.1403, 89.1405, 89.1407, 89.1409, 89.1411, 89.1413, 89.1415, 89.1417, 89.1419, and 89.1421, concerning high school equivalency programs. The new sections implement the requirements that the TEA develop a process by which a school district or open-enrollment charter school may apply to the commissioner for authority to operate a program to prepare eligible students to take a high school equivalency examination, as authorized by Texas Education Code (TEC), §29.087, added by Senate Bill 1432, 77th Texas Legislature, 2001.

The proposed new sections establish definitions, requirements, and procedures for implementation of an in-school General Educational Development (GED) program. Highlights of the proposed new rules include the following. Section 89.1403 implements requirements in TEC, §29.087(d), which establishes the eligibility criteria for students participating in these programs. Section 89.1409, in accordance with TEC, §29.087(f), requires a student participating in an approved high school equivalency program to take the exit-level assessment instruments before entering the program or during the first year in which the student is enrolled in the program. This section also explains that, beginning with the 2002 - 2003 school year, a student may take the assessment instruments required for 10th grade students under TEC, §39.023(a), instead of the exit-level assessment instrument if the high school equivalency program receives prior written approval from the commissioner. Students enrolled in the program may not take the high school equivalency examination unless they have taken the required assessment instruments. Section 89.1413 implements TEC, §29.087(j), which stipulates that, for funding purposes, a student attending an approved high school equivalency program may be counted in attendance only for the actual number of hours each school day the student attends the program, in accordance with TEC, §25.081 and §25.082. Section 89.1417 specifies that, pursuant to TEC, §29.087(c), a school district or open-enrollment charter school may not increase enrollment of students in high school equivalency programs by more than five percent of the number of students enrolled during the 2000-2001 school year. Section 89.1419, as set forth in TEC, §29.087(l), establishes that the commissioner may revoke a school district's or open-enrollment charter school's authorization to operate a high school equivalency program after consideration of relevant factors. A revocation decision by the commissioner is final and may not be appealed.

Robert Muller, Associate Commissioner for Continuing Education and School Improvement, has determined that for the first five-year period the sections are in effect there will be minimal fiscal implications for state government as a result of enforcing or administering the new sections. Costs associated with developing and distributing the in-school GED program application are minimal and will be absorbed by the TEA. Administrative costs include receiving and reviewing applications, collecting and maintaining student and program data, complying with the statute's reporting requirements, and paying fees to the General Educational Development Testing Service (GEDTS). GEDTS has imposed a fee of $20,000 for states participating in the GED Option Program. There should be no fiscal impact on local government. No additional costs should accrue to school districts and open-enrollment charter schools that participate in the in-school GED program.

Mr. Muller also 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 the provision of another option for students desiring to obtain a high school credential. The potential effect may be a reduction of the dropout rate in school districts and open-enrollment charter schools authorized to operate a high school equivalency program. 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 sections.

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 sections 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 sections are proposed under the Texas Education Code (TEC), §29.087, as added by Senate Bill 1432, 77th Texas Legislature, 2001, which authorizes the commissioner of education to adopt rules to implement the requirement that the agency develop a process by which a school district or open-enrollment charter school may apply to the commissioner for authority to operate a program to prepare eligible students to take a high school equivalency examination.

The new sections implement the Texas Education Code, §29.087, as added by Senate Bill 1432, 77th Texas Legislature, 2001.

§89.1401. Definitions.

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

(1) Agency--The Texas Education Agency.

(2) High School Equivalency Program (HSEP)--A program approved by the commissioner of education to prepare eligible students to take the high school equivalency examination.

(3) Commissioner--The commissioner of education.

§89.1403. Student Eligibility.

A student is eligible to participate in a High School Equivalency Program if:

(1) the student has been ordered by a court under Code of Criminal Procedure, Article 45.054, to:

(A) participate in a preparatory class for the high school equivalency examination; or

(B) take the high school equivalency examination administered under Texas Education Code (TEC), §7.111; or

(2) the following conditions are satisfied:

(A) the student is at least 16 years of age at the beginning of the school year or semester;

(B) the student is at risk of dropping out of school, as defined by TEC, §29.081;

(C) the student and the student's parent, or person standing in parental relation to the student, agree in writing to the student's participation; and

(D) at least two school years have elapsed since the student first enrolled in Grade 9 and the student has accumulated less than one quarter of the credits required to graduate under the minimum graduation requirements of the district or school.

§89.1405. Application to Operate a High School Equivalency Program.

(a) Applicant eligibility. A school district or open-enrollment charter school may apply for authorization to operate a High School Equivalency Program if the district or charter school:

(1) was operating a General Educational Development (GED) in-school pilot program on May 1, 2001, as authorized by the agency; and

(2) had at least one student enrolled in the GED in-school pilot program during the 2000-2001 school year.

(b) Application process.

(1) As part of the application process, a district or charter school must provide information regarding the operation of the in-school GED pilot program during the preceding five years. If the program has been in operation for less than five years, the district or school must provide information for the year(s) the program has been in operation.

(2) Reported historical information disaggregated by ethnicity, age, gender, and socioeconomic status will include, but not be limited to:

(A) the total number of students served in the program;

(B) the number of program participants who passed the high school equivalency examination; and

(C) when available, information on students' subsequent attendance in postsecondary educational programs.

(3) The agency shall make available to eligible school districts and open-enrollment charter schools an application form that must be completed and submitted to the agency for approval.

§89.1407. Public Hearing.

(a) The board of trustees of a school district or the governing board of an open-enrollment charter school must hold a public hearing concerning the proposed application of the district or school before applying to operate a High School Equivalency Program (HSEP).

(b) The board of trustees of a school district or the governing board of an open-enrollment charter school must hold a public hearing annually to review the performance of the HSEP.

§89.1409. Assessment.

(a) A student must take the exit-level assessment instruments required by Texas Education Code (TEC), §39.025(a), before entering the program or within the first year in which the student is enrolled in the program.

(b) A student participating in a High School Equivalency Program (HSEP) after January 1, 2002, must take the exit-level assessment instruments before taking the high school equivalency examination.

(c) Beginning with the 2002 - 2003 school year, a student may take the assessment instruments required for Grade 10 students under the TEC, §39.023(a), instead of the exit-level assessment if the HSEP receives prior written approval from the commissioner.

(d) The school district or open-enrollment charter school operating an approved HSEP must present to the General Educational Development (GED) testing center, on a form provided by the agency, proof that a student has been administered the assessment instruments required by TEC, §39.025(a) and §39.023(a). GED testing centers will not allow an HSEP student to take the high school equivalency examination without proof from the approved HSEP that the student has been administered the required assessment instruments.

(e) The school district or open-enrollment charter school operating an approved HSEP must inform each student who has completed the program of the time and place at which the student may take the high school equivalency examination as authorized by TEC, §7.111. A student must be over 17 years of age or meet other requirements specified in TEC, §7.111, to take the high school equivalency examination.

§89.1411. Attendance.

(a) A student may attend a High School Equivalency Program (HSEP) a maximum of six hours of instruction per day.

(b) A student may only participate in an HSEP that is operated by the school district or open-enrollment charter school in which the student is enrolled.

(c) School districts and open-enrollment charter schools must report student HSEP attendance in a manner provided by the agency. The school district or open-enrollment charter school must report total contact hours and identify excess hours not eligible for funding purposes.

(d) A student may be enrolled only in an HSEP or may be enrolled in a HSEP in combination with regular attendance and/or special program attendance during the school day.

§89.1413. Funding Under Texas Education Code, Chapters 41, 42, and 46.

(a) For a student only enrolled in a High School Equivalency Program (HSEP), the following funding rules apply.

(1) A student is counted in attendance for the actual number of hours each school day the student attends the program, in accordance with Texas Education Code (TEC), §25.081 and §25.082.

(2) A student must attend the HSEP at least two hours of instruction to receive contact-hour funding.

(3) Funding contact hours above the two-hour minimum will be calculated in 30-minute increments (i.e., two hours and 30 minutes will equate to 2.5 contact hours, two hours and 29 minutes will equate to 2.0 contact hours).

(4) Funding is based upon the pro rata amount of time a student receives instructional services in an HSEP setting, calculated in 30-minute increments up to six hours.

(b) For a student enrolled in an HSEP in combination with regular attendance and/or special program attendance during the school day, the following funding rules apply.

(1) A student will be funded in accordance with §89.1411(a) of this title (relating to Attendance), with the funding rules for regular and special program attendance specified in the Student Attendance Accounting Handbook, and with the provisions in TEC, Chapter 42.

(2) Total funding for a student enrolled in an HSEP in combination with regular and/or special program attendance will not exceed funding for full-day attendance under the Foundation School Program.

§89.1415. Extracurricular Participation.

In accordance with Texas Education Code, §29.087(g), a student enrolled in an HSEP may not participate in a competition or activity sanctioned by the University Interscholastic League.

§89.1417. Conditions of Program Operation.

(a) A school district or open-enrollment charter school operating a High School Equivalency Program (HSEP) must comply with all assurances in the program application. Approved HSEPs will be required to submit annually at least two progress reports (midyear and final) on forms to be provided by the agency. The data in the progress reports must be disaggregated by ethnicity, age, gender, and socioeconomic status.

(b) Enrollment in an HSEP may not exceed by more than 5% the total number of students enrolled in a similar program operated by the district or charter school during the 2000 - 2001 school year.

§89.1419. Revocation of Authorization to Operate a High School Equivalency Program.

(a) The commissioner of education may revoke authorization of a High School Equivalency Program (HSEP) based on the following factors:

(1) noncompliance with application assurances and/or the provisions of this subchapter;

(2) lack of program success as evidenced by progress reports, program data including factors specified in TEC, §29.087(l), and/or on-site monitoring visits; or

(3) failure to provide accurate, timely, and complete information as required by the agency and specified in Texas Education Code, §29.087, to evaluate the effectiveness of the HSEP.

(b) A revocation of an approved HSEP takes effect for the semester immediately following the date on which the revocation is issued.

(c) An HSEP is entitled to a ten-day notice of the proposed revocation and an informal review by the commissioner's designee.

(d) A decision by the commissioner to revoke the authorization of an HSEP is final and may not be appealed.

§89.1421. Expiration.

This subchapter, issued under the Texas Education Code, §29.087, shall expire September 1, 2003.

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

Filed with the Office of the Secretary of State, on August 27, 2001.

TRD-200105069
Criss Cloudt
Associate Commissioner for Accountability Reporting and Research
Texas Education Agency
Earliest possible date of adoption: October 7, 2001
For further information, please call: (512) 463-9701

TITLE 22. EXAMINING BOARDS

PART 6. TEXAS BOARD OF PROFESSIONAL ENGINEERS

CHAPTER 131. PRACTICE AND PROCEDURE

SUBCHAPTER B. APPLICATION FOR LICENSE

22 TAC §131.31

The Texas Board of Professional Engineers proposes an amendment to §131.31, concerning bylaws and definitions.

The proposed amendment to §131.31 corrects grammatical errors and clarifies the purpose of the board by including fees for services, which are necessary for the performance of its duties.

Victoria J.L. Hsu, P.E., Executive Director, Texas Board of Professional Engineers, has determined that for the first five-year period the section is in effect there will no effect for state or local government.

Ms. Hsu also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be corrected grammatical errors and clarification of the purpose of the board by including fees for services, which are necessary for the performance of its duties. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the section as proposed.

Comments on the proposal may be submitted to Victoria J.L. Hsu, P.E., Executive Director, Texas Board of Professional Engineers, P.O. Drawer 18329, Austin, Texas 78760-8329.

The amendment is proposed under Texas Civil Statutes, Article 3271a, §8(a), which provide the Texas Board of Professional Engineers with the authority to promulgate rules in accordance with the Texas Engineering Practice Act, §20A.

Texas Civil Statutes, Article 3271a, §§9 and 13 is affected by the proposed amendment.

§131.31. Purpose.

The board shall promulgate and adopt rules as authorized and required by statute which are necessary for the performance of its duties. Such rules shall establish standards of conduct and ethics for engineers, ensure [~~insure~~] strict compliance with and enforcement of the provisions

of the Act, ensure [~~insure~~] uniform standards of practice and procedure including fees for services, and provide for public participation, notice of the agency actions, and a fair and expeditious determination of causes before the board.

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

Filed with the Office of the Secretary of State, on August 27, 2001.

TRD-200105056
Victoria J.L. Hsu, P.E.
Executive Director
Texas Board of Professional Engineers
Earliest possible date of adoption: October 7, 2001
For further information, please call: (512) 440-7723

22 TAC §131.52, §131.53

The Texas Board of Professional Engineers proposes amendments to §131.52 and §131.53, concerning application for license.

Section 131.52 is amended to correct awkward language concerning the Fundamentals of Engineering examination, clarify that official transcripts are only necessary to substantiate qualifying degrees for licensure, add two engineering disciplines to the list of recognized branches, and extend the period of time an application will be held pending receipt of all documentation from 30 to 45 days.

Section 131.53 is amended to clarify language concerning the examination requirement for licensure and the submission of an application to the board.

Victoria J.L. Hsu, P.E., Executive Director, Texas Board of Professional Engineers, has determined that for the first five-year period the sections are in effect there will no effect for state or local government.

Ms. Hsu also 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 §131.52 will be correction in awkward language concerning the Fundamentals of Engineering examination, clarification that official transcripts are only necessary to substantiate qualifying degrees for licensure, the addition of two engineering disciplines to the list of recognized branches, and extending the period of time an application will be held pending receipt of all documentation from 30 to 45 days. The public benefit anticipated as a result of enforcing §131.53 will be clarified language concerning the examination requirement for licensure and the submission of an application to the board. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the sections as proposed.

Comments on the proposal may be submitted to Victoria J.L. Hsu, P.E., Executive Director, Texas Board of Professional Engineers, P.O. Drawer 18329, Austin, Texas 78760-8329.

The amendments are proposed under Texas Civil Statutes, Article 3271a, §8(a), which provide the Texas Board of Professional Engineers with the authority to promulgate rules in accordance with the Texas Engineering Practice Act, §20A.

Texas Civil Statutes, Article 3271a, §§12 and 13 is affected by the proposed amendments.

§131.52. Applications for a Professional Engineer License.

(a) The board may issue a license only to applicants who submit sufficient evidence that they have credentials meeting the minimum requirements set forth in Texas Engineering Practice Act (Act), §12(a)(1) or (2).

(b) All persons must pass the Fundamentals of Engineering examination[~~,~~] or believe to the best of their knowledge that they are eligible for waiver from the Fundamentals of Engineering examination [~~and Principles and Practice of Engineering examination,~~] before submitting an application.

(c) Applicants must speak and write the English language. Proficiency in English may be evidenced by possession of an accredited bachelor of science degree taught exclusively in English, or passage of the Test of English as a Foreign Language (TOEFL) with a score of at least 550 and passage of the Test of Spoken English (TSE) with a score of at least 45, or other evidence such as significant academic or work experience in English acceptable to the executive director.

(d) Applicants requesting waivers of all or part of the examinations, the TOEFL, the TSE, or a commercial evaluation of non-accredited degrees shall submit the requests and supporting reasoning to the executive director in writing.

(e) Applications for a license shall be submitted on forms prescribed by the board, sworn under oath and accompanied by the current application fee.

(f) In addition to the application form, applicants shall submit their:

(1) social security number, as required under Texas Family Code, §231.302;

(2) supplementary experience record;

(3) official transcript(s) of qualifying degree(s);

(4) four reference statements required under §131.71(b) of this title (relating to References), or required to meet §131.81(a)(3) of this title (relating to Experience Evaluation) or §131.101(g) of this title (relating to Engineering Examinations Required for a License To Practice as a Professional Engineer) if those sections are applicable;

(5) current application fee;

(6) verification of examination(s);

(7) verification of a current license, if applicable;

(8) a completed Texas Ethics of Engineering Examination;

(9) scores of TOEFL and TSE, if applicable;

(10) a commercial evaluation of a non-accredited degree;

(11) statement describing criminal convictions, if any;

(12) written requests for waivers, if applicable.

(g) Applicants shall indicate a primary branch of engineering under which experience has been gained. Applicants seeking permission to take the Principles and Practice of Engineering examination shall indicate a primary branch for which there is an available National Council of Examiners for Engineering and Surveying (NCEES) examination as denoted, or other Board approved examination, or for which the Board will issue a license under applicable examination waiver rules. The branches and their corresponding alphabetical code are:

(1) (AGR) agricultural (NCEES);

(2) (CHE) chemical (NCEES);

(3) (CIV) civil (NCEES);

(4) (CSE) control systems (NCEES);

(5) (ELE) electrical, electronic, computer, communications (NCEES);

(6) (ENV) environmental (NCEES);

(7) (FIR) fire protection (NCEES);

(8) (IND) industrial (NCEES);

(9) (MEC) mechanical (NCEES);

(10) (MIN) mining/mineral (NCEES);

(11) (MET) metallurgical (NCEES);

(12) (MAN) manufacturing (NCEES);

(13) (NUC) nuclear (NCEES);

(14) (PET) petroleum (NCEES);

(15) (SDE) naval architecture/marine engineering [~~ship design~~] (NCEES);

(16) (STR) structural (NCEES);

(17) (A/A) aeronautical/aerospace;

(18) (BIO) biomedical;

(19) (CRM) ceramic;

(20) (ESG) engineering sciences/general;

(21) (GEO) geological;

(22) (OCE) ocean;

(23) (TEX) textile;

(24) (SAN) sanitary;

(25) (SWE) software;

(26) (BAR) building architectual;

(27) [~~(26)~~] (OTH) other.

(h) Applications shall be accepted for processing on the date the application and fee are received. Applicants shall be notified by the board at the earliest possible opportunity of deficiencies found during initial review of their application. Applications shall be held no more than forty-five (45) [~~30~~] days from the date of notification for applicants to correct those deficiencies. Failure to correct the deficiencies may be cause for administrative withdrawn [~~non-approval~~] of the application. Upon request of the applicant, thirty-day (30) extensions may be granted by the executive director for submitting deficient information.

(i) Once an application is accepted, the fee shall not be returned, and the application and all submissions shall become a permanent part of the board records.

(j) An applicant who is a citizen of another country and is physically present in this country shall show sufficient documentation to the board to verify the immigration status for the determination of their eligibility for a professional license in accordance with the Personal Responsibility and Work Opportunity Reconciliation Act of 1996.

§131.53. Applications - General.

(a) Upon receipt of applications at the board office in Austin, Texas, the board shall initiate a review of the credentials submitted. Applicants shall be either approved or non-approved to take the [~~Fundamentals of Engineering examination and~~] Principles and Practice of Engineering examination; or if they have met all examination/waiver requirements, applicants shall be issued or denied a license. The board shall issue a license to applicants who have been granted permission, taken and passed [~~pass~~] the [~~Fundamentals of Engineering examination and~~] Principles and Practice of Engineering examination [~~after being granted permission by the board to take the examination~~].

(b) All applications must be submitted on paper and [~~paper,~~]on forms prescribed by the board[~~,~~] with original signatures, notaries, and seals.

(c) In the event that information bearing on the suitability of an applicant is discovered after submission of an application but prior to issuance of a license, the board may rescind or alter any previous decision, or hold the application in abeyance, or may non-approve an application until the suitability of the applicant is adequately established.

(d) Any transcripts, reference statements, evaluations, experience records or other similar documents [~~materials~~] submitted to the board in previous applications may be included in a current application provided the applicant requests its use in writing at the time the application is filed and the executive director authorizes its use.

(e) Upon completion of all processes, including passage or waiver of examinations, applicants whose applications have been approved shall be issued a license and applicants whose applications have been non-approved shall be denied a license.

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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Victoria J.L. Hsu, P.E.
Executive Director
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For further information, please call: (512) 440-7723

SUBCHAPTER C. REFERENCES

22 TAC §131.71

The Texas Board of Professional Engineers proposes an amendment to §131.71, concerning references.

Section 131.71 is amended to clarify that a professional engineer who has not worked with or directly supervised an applicant for licensure may review and judge the applicant's experience and serve as a licensed engineer reference.

Victoria J.L. Hsu, P.E., Executive Director, Texas Board of Professional Engineers, has determined that for the first five-year period the section is in effect there will no effect for state or local government.

Ms. Hsu also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be clarification that a professional engineer who has not worked with or directly supervised

an applicant for licensure may review and judge the applicant's experience and serve as a licensed engineer reference. There is no anticipated economic cost to persons who are required to comply with the section as proposed.

Comments on the proposal may be submitted to Victoria J.L. Hsu, P.E., Executive Director, Texas Board of Professional Engineers, P.O. Drawer 18329, Austin, Texas 78760-8329.

The amendment is proposed under Texas Civil Statutes, Article 3271a, §8(a), which provide the Texas Board of Professional Engineers with the authority to promulgate rules in accordance with the Texas Engineering Practice Act, §20A.

Texas Civil Statutes, Article 3271a, §§12 and 13 is affected by the proposed amendment.

§131.71. References.

(a) Applicants shall provide references to verify all engineering experience claimed to meet the minimum years of experience required under the Texas Engineering Practice Act, §12(a)(1) or (2), unless more experience is being verified to meet the requirements of §131.81(a)(3) of this title (relating to Experience Evaluation) or §131.101(g) of this title (relating to Engineering Examinations Required for a License To Practice as a Professional Engineer). Experience that is unsupported by references may not be considered.

(b) Applicants for a license shall provide at least five references to the board, unless more references are required to meet the requirements of §131.81(a)(3) of this title (relating to Experience Evaluation) or §131.101(g) of this title (relating to Engineering Examinations Required for a License to Practice as a Professional Engineer). At least three of these references shall be currently licensed professional engineers who have personal knowledge of the applicant's engineering experience. One or more of the professional engineer references shall verify all engineering claimed to meet the minimum years of experience required. References on file with the board from previous applications may be used with the approval of the executive director. Professional engineers who have not worked with or directly supervised an applicant may review and judge the applicant's experience and may serve as a licensed engineer reference; such review shall be noted on the reference statement. Professional engineers serving as references shall not be compensated.

(c) All references shall be individuals with personal knowledge of the applicant's character, reputation, and general suitability for holding a license. If possible, references should include individuals who directly supervised the applicants.

(d) Professional engineers who provide reference statements and who are licensed in a jurisdiction other than Texas shall include a copy of their pocket card or other verification to indicate that their license is current and valid.

(e) The board members and staff may, at their discretion, consider any, all or none of the responses from references.

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. ENGINEERING EXPERIENCE

22 TAC §131.81

The Texas Board of Professional Engineers proposes an amendment to §131.81, concerning engineering experience.

Section 131.81 is amended to clarify the format and content of the supplementary experience record and to define design, analysis, implementation, and/or communication as an acceptable combination of engineering experience criteria for licensure. The section is also amended to remove teaching experience from the list of engineering activities as a result of Senate Bill 1797, 77th Legislature, Regular Session, and to clarify experience credit for post-baccalaureate engineering degrees.

Victoria J.L. Hsu, P.E., Executive Director, Texas Board of Professional Engineers, has determined that for the first five-year period the section is in effect there will no effect for state or local government.

Ms. Hsu also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be clarification in the format and content of the supplementary experience record and defined design, analysis, implementation, and/or communication as an acceptable combination of engineering experience criteria for licensure. The section is also amended to remove teaching experience from the list of engineering activities as a result of Senate Bill 1797, 77th Legislature, Regular Session, and to clarify experience credit for post-baccalaureate engineering degrees. There is no anticipated economic cost to persons who are required to comply with the section as proposed.

Comments on the proposal may be submitted to Victoria J.L. Hsu, P.E., Executive Director, Texas Board of Professional Engineers, P.O. Drawer 18329, Austin, Texas 78760-8329.

The amendment is proposed under Texas Civil Statutes, Article 3271a, §8(a), which provide the Texas Board of Professional Engineers with the authority to promulgate rules in accordance with the Texas Engineering Practice Act, §20A.

Texas Civil Statutes, Article 3271a, §§12 and 13 is affected by the proposed amendment.

§131.81. Experience Evaluation.

(a) Applicants shall submit a supplementary experience record to the board as a part of the application. The supplementary experience record is a written summary [~~narrative~~] documenting all of the applicant's engineering experience [~~acquired after completion of the first degree~~] used to meet the requirements of §131.91 of this title (relating to Educational Requirements for Applicants).

(1) The supplementary experience record shall be written by the applicant [~~in the first person~~], shall clearly describe the engineering work that the applicant personally performed, and shall delineate the role of the applicant in any group engineering activity.

(2) The supplementary experience record should provide an overall description of the nature and scope of the work[~~,~~] with [~~an~~] emphasis on detailed descriptions of the engineering work personally performed by the applicant.

(3) Professional engineer references must be provided to verify enough of the supplementary experience record to cover at least the minimum amount of time needed by the applicant for issuance of a license. Applicants applying under the Texas Engineering Practice Act (Act), §12(a)(1) shall provide references for at least four years of engineering experience; applicants applying under the Act, §12(a)(2) shall provide references for at least eight years of engineering experience. Applicants seeking a waiver from the Fundamentals of Engineering examination or the Principles and Practice of Engineering examination requirement shall provide supplementary experience records and references for an additional eight years of experience beyond that listed in this subsection and shall conform to §131.71(b) of this title (relating to References) and §131.101(g) of this title (relating to Engineering Examinations Required for a License To Practice as a Professional Engineer).

(4) Parts of the supplementary experience record that are to be verified by references shall be written in sufficient detail to allow the board reviewer to document the minimum amount of experience required and to allow the reference to recognize and verify the quality and quantity of the experience claimed.

(b) The board shall evaluate the character and quality of the experience found in the supplementary experience record and shall determine if the work is satisfactory to the board for the purpose of issuing a license to the applicant. The board shall evaluate the supplementary experience record for evidence of the applicant's competency to be placed in responsible charge of engineering work of a similar character.

(1) Satisfactory engineering work shall be of a nature such that its adequate performance requires engineering education, training, or experience. The application of engineering education, training and experience must be demonstrated through the application of the mathematical, physical, and engineering sciences. Such work must be fully described in the supplementary experience record. Satisfactory engineering experience shall include an acceptable combination of design, analysis, implementation, and/or communication experience, including the following types of engineering activities:

(A) design, conceptual design, or conceptual design coordination for engineering works, products or systems;

(B) development or optimization of plans and specifications for engineering works, products, or systems;

(C) analysis, consultation, investigation, evaluation, planning or other related services for engineering works, products, or systems;

(D) planning the use or alteration of land, water, or other resources;

(E) engineering for program management and for development of operating and maintenance manuals;

(F) engineering for construction, or review of construction;

(G) performance of engineering surveys, studies, or mapping;

(H) engineering for materials testing and evaluation;

(I) expert engineering testimony;

[~~(J) teaching of engineering subjects; in an EAC/ABET accredited program at the level of associate professor or higher;~~]

(J) [~~(K)~~] any other work of a mechanical, electrical, electronic, chemical, hydraulic, pneumatic, geotechnical, or thermal nature that requires engineering education, training or experience for its adequate performance.

(2) In the review of engineering experience, the board shall consider additional elements unique to the history of the applicant. Such elements should include, at a minimum:

(A) whether the experience was sufficiently complex and diverse, and of an increasing standard of quality and responsibility;

(B) whether the quality of the engineering work shows minimum technical competency;

(C) whether the submitted materials indicate good character and reputation;

[~~(D) whether the experience was gained by working under the supervision of a professional engineer;~~]

(D) [~~(E)~~] whether the experience was gained in accordance with the provisions [~~in violation~~] of the Act;

[~~(F) whether more than one year of total experience credit may be granted for non-EAC/ABET accredited teaching experience;~~]

(E) [~~(G)~~] whether the experience was gained in one dominant branch;

(F) [~~(H)~~] whether non-traditional engineering experience such as sales or military service provides sufficient depth of practice; and

(G) [~~(I)~~] whether short engagements have had an impact upon professional growth.

(3) Engineering experience may be considered satisfactory for the purpose of licensing provided that:

(A) the experience is gained during an engagement longer than three months in duration;

(B) the experience, when taken as a whole, meets the minimum time;

(C) the experience is not anticipated and has actually been gained at the time of application;

(D) the experience includes at least two years of [~~US~~] experience in the United States, not including time claimed for educational credit, or otherwise includes experience that would show a familiarity with US codes and engineering practice;

(E) the time granted for the experience claimed does not exceed the calendar time available for the periods of employment or education claimed.

(c) A total of one [~~One~~] year of experience credit may be granted for each post-baccalaureate engineering degree earned by applicants, not to exceed two years, provided the degree is from an engineering program approved by one of the organizations listed in §131.91(1)(A) of this title (concerning Educational Requirements for Applicants) where either the graduate or undergraduate degree in the same discipline is accredited or equivalent. [~~who would be eligible for licensing under the Act, §12(a)(1) without such degree, not to exceed two years; provided the degree is:~~]

~~[(1) the degree is from an engineering program approved by one of the organizations listed in §131.91(1)(A) of this title (concerning Educational Requirements for Applicants) where either the graduate or undergraduate degree in the same discipline is accredited;]~~

~~[(2) the graduate degree is in the same discipline as an earned undergraduate degree; and]~~

[(3) the academic time is are not concurrent with earned experience.]

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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Victoria J.L. Hsu, P.E.
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For further information, please call: (512) 440-7723

SUBCHAPTER E. EDUCATION

22 TAC §§131.91 - 131.93

The Texas Board of Professional Engineers proposes amendments to §§131.91-131.93, concerning education.

Section 131.91(1)(B) is amended to clarify that applicants must have a bachelor's degree in engineering or one of the mathematical, physical, or engineering sciences to fulfill the educational requirements for licensure under the Texas Engineering Practice Act, §12(a)(1). Section 131.92(a) is amended to clarify that an applicant using a degree from a non-accredited engineering program to qualify for licensure under the Act must furnish an evaluation of the degree from a commercial evaluation service approved by the board. Section 131.92(b) is amended to clarify that the executive director may waive the evaluation if the degree program has been deemed substantially equivalent by the Engineering Accreditation Commission of the Accreditation Board for Engineering and Technology (EAC/ABET) or an EAC/ABET-accredited institution. Section 131.93 is amended to clarify the submission requirements for transcripts necessary to meet the educational requirements for licensure.

Victoria J.L. Hsu, P.E., Executive Director, Texas Board of Professional Engineers, has determined that for the first five-year period the sections are in effect there will no effect for state or local government.

Ms. Hsu also 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 §131.91(1)(B) will be clarification that applicants must have a bachelor's degree in engineering or one of the mathematical, physical, or engineering sciences to fulfill the educational requirements for licensure under the Texas Engineering Practice Act, §12(a)(1). Section 131.92(a) clarifies that an applicant using a degree from a non-accredited engineering program to qualify for licensure under the Act must furnish an evaluation of the degree from a commercial evaluation service approved by the board. Section 131.92(b) clarifies that the executive director may waive the evaluation if the degree program has been deemed substantially equivalent by the Engineering Accreditation Commission of the Accreditation Board for Engineering and Technology (EAC/ABET) or an EAC/ABET-accredited institution. Section 131.93 clarifies the submission requirements for transcripts necessary to meet the educational requirements for licensure. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the sections as proposed.

Comments on the proposal may be submitted to Victoria J.L. Hsu, P.E., Executive Director, Texas Board of Professional Engineers, P.O. Drawer 18329, Austin, Texas 78760-8329.

The amendments are proposed under Texas Civil Statutes, Article 3271a, §8(a), which provide the Texas Board of Professional Engineers with the authority to promulgate rules in accordance with the Texas Engineering Practice Act, §20A.

Texas Civil Statutes, Article 3271a, §12 is affected by the proposed amendments.

§131.91. Educational Requirements for Applicants.

Applicants for a license shall have earned one of the following degrees or degree combinations listed in this section:

(1) Accredited degrees, under the Texas Engineering Practice Act (the Act), §12(a)(1), as described in subparagraphs (A) and (B) of this paragraph:

(A) all engineering degree programs approved by:

(i) The Engineering Accreditation Commission of the Accreditation Board for Engineering and Technology, United States (EAC/ABET);

(ii) The Institution of Engineers, Australia (IEAust);

(iii) The Canadian Engineering Accreditation Board of the Canadian Council of Professional Engineers (CEAB);

(iv) The Institution of Engineers of Ireland (IEI);

(v) The Institution of Professional Engineers New Zealand (IPENZ);

(vi) The Engineering Council, United Kingdom (ECUK) (Graduates of UK programs must have a diploma showing graduation with honors.); and

(vii) Consejo de Acreditacion de la Ensenanza de la Ingenieria, Mexico (Council of Accreditation for Engineering Education, C.A.);

(B) a bachelor's degree in engineering or one of the mathematical, physical, or engineering sciences, plus a graduate degree in engineering, provided that:

(i) the graduate degree is obtained from a college having an engineering program approved by one of the organizations listed in subparagraph (A) of this paragraph where either the graduate or undergraduate degree in the same discipline is accredited; and

(ii) the combination of the degrees is acceptable to the Board as equivalent in EAC/ABET approved curricula content, and the combination of degrees contain sufficient design curricula to provide minimal competency in the use of engineering algorithms and procedures.

(2) Non-accredited bachelor or graduate degrees acceptable to the board, under the Act, §12(a)(2) as described in subparagraphs (A) and (B) of this paragraph:

(A) a bachelor of engineering technology program that is accredited by the Technology Accreditation Commission of the Accreditation Board for Engineering and Technology (TAC/ABET);

(B) other bachelor or graduate degrees in engineering, mathematical, physical, or engineering science approved by the executive director. Such degree programs must include, as a minimum, the courses listed in clauses (i) and (ii) of this subparagraph or these courses must be taken in addition to the bachelor or graduate degree program:

(i) eight semester hours (12 quarter hours) of mathematics beyond trigonometry, including differential and integral calculus; and

(ii) 20 semester hours (30 quarter hours) of engineering sciences which include subjects such as mechanics, thermodynamics, electrical and electronic circuits, and others selected from material sciences, transport phenomena, computer science and comparable subjects depending on the discipline or branch of engineering. Course work should incorporate hands-on laboratory work as described in the EAC/ABET criteria, and shall contain a sufficient design program to provide minimal competency in the use of engineering algorithms and procedures.

(3) Other degree programs submitted to the board by the conferring institutions and approved by the board as meeting the requirements of paragraphs (1) or (2) of this section.

§131.92. Degrees from Non-Accredited Programs.

(a) Applicants using [~~having~~] degrees from non-accredited programs to qualify for licensure under the Texas Engineering Practice Act (the Act), §12(a)(2), must furnish at their own expense, an evaluation of all such degrees from a commercial evaluation service approved [~~selected~~] by the board. The degree evaluation must be sent directly to the board by the evaluation service and shall include an equivalency transcript (detailed evaluation of courses in semester hours with grades following the standard practice recommended by the National Council for the Evaluation of Foreign Educational Credentials).

(b) A commercial evaluation may be waived by the executive director if [~~the degree is earned from a United States institution and~~] sufficient resources are available for the board to evaluate it, if the degree program has been deemed substantially equivalent by the Engineering Accreditation Commission of the Accreditation Board for Engineering and Technology (EAC/ABET) or an EAC/ABET-accredited institution, or if the degree program does not contain curricula that is deemed by the executive director to be an integral part of the applicant's engineering education.

(c) Upon receipt or waiver of a commercial evaluation, the executive director shall evaluate the curricula of non-accredited programs under the standards of §131.91 of this title (relating to Educational Requirements for Applicants).

§131.93. Transcripts.

(a) An official [~~Official~~] transcript (including either grades or mark sheets and proof that the degree was conferred) shall be provided for the degree(s) [~~each degree~~] utilized to meet the educational requirements for licensing. Official or notarized copies of transcripts of all other engineering or mathematical, physical, or engineering science degrees shall also be submitted to the board. Applicants utilizing non-accredited degree(s) for licensure [~~Non-accredited degree holders~~] shall also provide a transcript from each school where more than 15 semester hours were earned towards the degree. Official transcripts shall be forwarded directly to the board office by the respective registrars. The applicant is responsible for ordering and paying for all such transcripts. [~~, which shall be forwarded directly to the board office by the respective registrars.~~] Additional academic information including but not limited to grades and transfer credit shall be submitted to the board at the request of the executive director.

(b) If transcripts cannot be transmitted directly to the board from the issuing institution, the executive director may recommend alternatives to the Licensing Committee for its approval. Such alternatives may include validating transcripts in the applicant's possession through a board-approved commercial evaluation service.

(c) The commercial evaluation of a degree will not be accepted in lieu of an official transcript.

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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Victoria J.L. Hsu, P.E.
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SUBCHAPTER F. EXAMINATIONS

22 TAC §131.101

The Texas Board of Professional Engineers proposes an amendment to §131.101, concerning examinations.

Section 131.101(f) and (g) as amended clarifies language regarding waiver of examination(s) and §131.101(i)(5) clarifies that the Principles and Practice of Engineering examinations will be offered according to the availability by the National Council of Examiners for Engineering and Surveying.

Victoria J.L. Hsu, P.E., Executive Director, Texas Board of Professional Engineers, has determined that for the first five-year period the section is in effect there will no effect for state or local government.

Ms. Hsu also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be clarified language regarding waiver of examination(s) and §131.101(i)(5) clarifies that the Principles and Practice of Engineering examinations will be offered according to the availability by the National Council of Examiners for Engineering and Surveying. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the section as proposed.

Comments on the proposal may be submitted to Victoria J.L. Hsu, P.E., Executive Director, Texas Board of Professional Engineers, P.O. Drawer 18329, Austin, Texas 78760-8329.

The amendment is proposed under Texas Civil Statutes, Article 3271a, §8(a), which provide the Texas Board of Professional Engineers with the authority to promulgate rules in accordance with the Texas Engineering Practice Act, §20A.

Texas Civil Statutes, Article 3271a, §§12 and 14 is affected by the proposed amendment.

§131.101. Engineering Examinations Required for a License to Practice as a Professional Engineer.

(a) Written examinations prescribed by the board shall consist of experience and knowledge examinations and an ethics of engineering examination for the purpose of determining the applicant's qualifications to design and supervise engineering works, ensuring the safety of life, health, and property.

(1) All examinations shall be in the English language.

(2) Experience and knowledge examinations shall be an eight-hour Fundamentals of Engineering examination and Principles and Practice of Engineering examination prepared by the National Council of Examiners for Engineering and Surveying (NCEES).

(A) Examinations shall be held in Austin or places designated by the board as scheduled by NCEES.

(B) Examinations may be scheduled by obtaining the necessary forms from the board office and submitting it to the board with the appropriate fee.

(C) Engineering students may schedule the Fundamentals of Engineering examination and Principles and Practice of Engineering examination at their participating school through the engineering dean's office.

(D) Individuals who plan to take an examination must have their completed examination scheduling form and the appropriate fee in the board office by the close of regular business on the date established by the examination policy adopted by the board.

(E) The principles and practice of engineering examination is open only to licensed engineers and to applicants who have received board approval to take it.

(F) Examination fees shall be not be refunded.

(3) The Texas Ethics of Engineering Examination shall be open book and shall be prepared and administered by the board. Each applicant must satisfactorily complete this examination and submit it with the application.

(b) The board shall adopt an examination policy at least once a year which shall include at least the following as listed in paragraphs (1)-(4) of this subsection:

(1) the places where the examinations shall be held;

(2) the dates of the examinations and the deadline date for an examinee to schedule an examination;

(3) fees for each examination;

(4) types of examinations offered.

(c) An undergraduate student who is within two full-time regular semesters (not including summer sessions) of graduating and who is enrolled in an EAC/ABET-accredited engineering program, a TAC/ABET-accredited four year baccalaureate technical program, or an engineering-related science program of four years or more that has been approved by the board, may take the Fundamentals of Engineering examination and Principles and Practice of Engineering examination at their school provided the school administers the examination as prescribed by the board.

(d) A graduate student may take the Fundamentals of Engineering examination and Principles and Practice of Engineering examination at their school provided the school administers the examination as prescribed by the board, that student is enrolled in an EAC/ABET-accredited graduate degree program or in a graduate program at an institution which has an EAC/ABET-accredited undergraduate degree program in that discipline, and the student has:

(1) a baccalaureate degree that is EAC/ABET-accredited;

(2) an engineering or engineering-related science program degree that has been approved by the board; or

(3) a non-engineering related curriculum or other degree in which the student has provided evidence acceptable to the executive director as meeting the minimum requirements of Texas Engineering Practice Act (Act), §12(a)(1) or (2).

(e) Persons who appear to meet the educational requirements for a license and who have not passed the Fundamentals of Engineering examination and Principles and Practice of Engineering examination while in college may apply to the board to take the examination in Austin or at other sites designated by the board.

(f) It is the intent of the board to utilize the examination as an integral part of the licensing process; all applicants are expected to have passed the examinations or to offer sufficient evidence of their qualifications in the absence of passage of the examinations. The board may waive the Fundamentals of Engineering examination for any applicant with at least four years of creditable experience and who holds at least the educational credentials described in paragraph (3)(A) of this subsection. The board may or may not waive one or both of the experience and knowledge examinations for applicants who do not pose a threat to the public health, safety, or welfare; request a waiver in writing at the time the application is filed; have not taken and failed the Principles and Practice of Engineering examination within the previous four years; and meet one of the following requirements listed in paragraphs (1)-(3) of this subsection:

(1) persons who have 12 or more years of engineering experience and meet the educational requirements of the Act, §12(a)(1); or

(2) persons who have 16 years of engineering experience and meet the educational requirements of the Act, §12(a)(2); or

(3) persons who have:

(A) a Ph.D. degree in engineering from a recognized college or university that offers an EAC/ABET-approved undergraduate or master's degree program in a related branch of engineering or a Ph.D. degree in engineering or other related field of science or mathematics that is individually assessed and approved by the board during the evaluation process; and

(B) taught in an EAC/ABET program for at least six years, or have at least six years of experience consisting of an acceptable combination of other creditable engineering experience or EAC/ABET teaching experience.

(g) Applicants requesting a waiver from any examination(s) shall file any additional information needed to substantiate the eligibility for the waiver with the application. Applicants requesting a waiver from the Principles and Practice of Engineering examination and who have never been licensed in any jurisdiction shall provide at least nine references, five of which shall be from licensed professional engineers. The board shall review all elements of the application to evaluate [~~including~~] waiver request(s) and may [~~shall~~] grant a waiver(s) [~~waivers~~] to qualified applicants [~~through the application review and evaluation process~~].

(h) Applicants providing an official verification from an NCEES member board certifying that they have passed at least the eight-hour examination in that state shall not be required to take that examination again.

(i) The following shall apply to the [~~Fundamentals of Engineering examination and~~] Principles and Practice of Engineering examination.

(1) The following individuals may register to take the Fundamentals of Engineering examination and Principles and Practice of Engineering examination:

(A) license holders who wish to take the examination for record purposes;

(B) applicants for a license approved by the board;

(C) other persons who have been approved or directed by the board to take the examination.

(2) Applicants approved to take the Fundamentals of Engineering examination and Principles and Practice of Engineering examination:

(A) shall be advised of the first examination date for which they are eligible;

(B) shall be solely responsible for timely registration for the examination and any payment of examination fees;

(C) shall have no more than four consecutive examination opportunities, including the examination given on the date of the first available examination, to pass the examination. No extensions shall be granted under any circumstances.

(3) Applications for applicants who do not pass the examination within the allotted time shall be non-approved.

(4) After an application has been non-approved for not passing the examination, an applicant may immediately apply for a license under the law and rules in place when submitting the new application.

(5) The [~~There are two groups of the Fundamentals of Engineering examination and~~] Principles and Practice of Engineering examination(s) [~~examination~~] will be offered according to the availability by the NCEES.

[~~(A) Group 1 examinations are offered both in the spring and fall of each year and include the following branches of engineering: chemical, civil, electrical, environmental, mechanical, and structural examinations I and II.~~]

[~~(B) Group 2 examinations are offered only in the fall and include examinations in the following branches of engineering: agriculture, control systems, fire protection, industrial, manufacturing, metallurgical, mining/mineral, nuclear, petroleum, and ship design.~~]

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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Victoria J.L. Hsu, P.E.
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22 TAC §§131.103 - 131.106

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

The Texas Board of Professional Engineers proposes the repeal to §§131.103-131.106, concerning examinations.

The proposed repeal of §§131.103-131.106 will enable the board to recodify §§131.103 and 131.104 as new sections in Subchapter H. Licensing, and recodify §§131.105 and 131.106 as new §§131.103 and 131.104 in this subchapter.

Victoria J.L. Hsu, P.E., Executive Director, Texas Board of Professional Engineers, has determined that for the first five-year period the repeals are in effect there will no effect for state or local government.

Ms. Hsu also has determined that for each year of the first five years the repeals are in effect the public benefit anticipated as a result of enforcing will be the ability of the board to recodify §§131.103 and 131.104 as new sections in Subchapter H. Licensing, and the ability to recodify §§131.105 and 131.106 as new §§131.103 and 131.104 in this subchapter. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the repeals as proposed.

Comments on the proposal may be submitted to Victoria J.L. Hsu, P.E., Executive Director, Texas Board of Professional Engineers, P.O. Drawer 18329, Austin, Texas 78760-8329.

The repeals are proposed under Texas Civil Statutes, Article 3271a, §8(a), which provide the Texas Board of Professional Engineers with the authority to promulgate rules in accordance with the Texas Engineering Practice Act, §20A.

Texas Civil Statutes, Article 3271a, §§12 and 14 is affected by the proposed repeals.

§131.103. Engineer-in-Training.
§131.104. Engineer-in-Training Certificates.
§131.105. Examination Analysis.
§131.106. Examination Irregularities.

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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Victoria J.L. Hsu, P.E.
Executive Director
Texas Board of Professional Engineers
Earliest possible date of adoption: October 7, 2001
For further information, please call: (512) 440-7723

22 TAC §131.103, §131.104

The Texas Board of Professional Engineers proposes new §131.103 and §131.104, concerning examinations.

The proposed new §131.103 establishes the policies and procedures for an examination analysis in accordance with the uniform examination procedures established by the National Council of Examiners for Engineering and Surveying. Proposed new

§131.104 establishes the corrective measures available to the board when an examinee does not abide by the National Council of Examiners for Engineering and Surveying policies and procedures for the administration of the examinations.

Victoria J.L. Hsu, P.E., Executive Director, Texas Board of Professional Engineers, has determined that for the first five-year period the sections are in effect there will no effect for state or local government.

Ms. Hsu also 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 §131.103 will be established policies and procedures for an examination analysis in accordance with the uniform examination procedures established by the National Council of Examiners for Engineering and Surveying. Proposed new §131.104 establishes the corrective measures available to the board when an examinee does not abide by the National Council of Examiners for Engineering and Surveying policies and procedures for the administration of the examinations. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the sections as proposed.

Comments on the proposal may be submitted to Victoria J.L. Hsu, P.E., Executive Director, Texas Board of Professional Engineers, P.O. Drawer 18329, Austin, Texas 78760-8329.

The new sections are proposed under Texas Civil Statutes, Article 3271a, §8(a), which provide the Texas Board of Professional Engineers with the authority to promulgate rules in accordance with the Texas Engineering Practice Act, §20A.

Texas Civil Statutes, Article 3271a, §§12, 14, and 22 is affected by the proposed new sections.

§131.103. Examination Analysis.

(a) In accordance with the Texas Engineering Practice Act, §14(c), a written analysis will be provided to anyone failing an examination:

(1) provided the analysis has not been previously given to the applicant with the written notice of failure; and

(2) provided a written request is received in the board office during the period the actual examination is retained in the board files.

(b) No further review or regrading is available for the Fundamentals of Engineering or multiple-choice type Principles and Practice of Engineering examinations.

(c) Further, privileges of viewing the Principles and Practice of Engineering examination results or requesting regrading, as permitted by the uniform examination procedures set out by the National Council of Examiners for Engineering and Surveying (NCEES), may also be available:

(1) only at the dates and times made available by the board in the letter of failure notice; and

(2) provided that any costs associated with regrading by NCEES will be paid by the examinee.

§131.104. Examination Irregularities.

(a) The examinations will be administered in accordance with the National Council of Examiners for Engineering and Surveying (NCEES) policies and procedures. An examinee who does not abide by the NCEES policies and procedures will be subject to dismissal from the remainder of the examination. Cheating on examinations will not be tolerated. Examination proctors who conclusively observe that an examinee is giving or receiving assistance, compromising the integrity of the examination, or participating in any other form of cheating during an examination shall require the examinee to surrender all examination materials. The examinee involved shall leave the room and shall not be permitted to return. Evidence of cheating found after the examination shall also be a cause for action. The executive director shall be informed of such instances of suspected cheating at the earliest possible opportunity and will determine appropriate action. The results of all examinations where the executive director has determined that cheating has occurred will be disallowed.

(b) If the executive director determines that an examinee has cheated, the examinee will be barred from taking any examination in Texas for a period of two years. Any application for registration pending or approved for examination will be automatically proposed for rejection and will be evaluated or re-evaluated on that basis. Any examination taken and passed in another state during the two-year period will not be acceptable for registration purposes in Texas. Any subsequent examinations administered to the examinee will be given at the site and time determined by the executive director.

(c) A licensed professional engineer suspected of cheating shall be charged with violating the Texas Engineering Practice Act, §22 and the applicable board rules.

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

Filed with the Office of the Secretary of State, on August 27, 2001.

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Victoria J.L. Hsu, P.E.
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For further information, please call: (512) 440-7723

SUBCHAPTER G. BOARD REVIEW OF APPLICATION

22 TAC §§131.111, 131.112, 131.116

The Texas Board of Professional Engineers proposes amendments to §131.111, §131.116 and new §131.112, concerning board review of application.

Section 131.111 as amended incorporates the streamlining procedures the board will implement for reviewing, evaluating and processing an application for licensure. Section 131.116(e)(1)(3) is amended to provide clear and concise language concerning the completion process for licensure.

The proposed new §131.112 will establish the procedures for processing administratively withdrawn applications for licensure.

Victoria J.L. Hsu, P.E., Executive Director, Texas Board of Professional Engineers, has determined that for the first five-year period the sections are in effect there will no effect for state or local government.

Ms. Hsu also 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 the streamlining of procedures the board will implement for reviewing, evaluating and processing an application for licensure and clear and concise language concerning the completion process for licensure and established procedures for processing administratively withdrawn applications for licensure. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the sections as proposed.

Comments on the proposal may be submitted to Victoria J.L. Hsu, P.E., Executive Director, Texas Board of Professional Engineers, P.O. Drawer 18329, Austin, Texas 78760-8329.

The amendments and new section are proposed under Texas Civil Statutes, Article 3271a, §8(a), which provide the Texas Board of Professional Engineers with the authority to promulgate rules in accordance with the Texas Engineering Practice Act, §20A.

Texas Civil Statutes, Article 3271a, §15 is affected by the proposed amendments.

§131.111. Reviewing, Evaluating and Processing Applications.

All references to the executive director in this section shall allow for the delegation of authority by the executive director to other staff members. The following list of activities as shown in this section shall be conducted in order:

(1) application is received at the board office in Austin, Texas;

(2) the executive director shall review it for completeness;

(3) the executive director shall accept the application as complete for processing and evaluating, or shall accept the application and notify the applicant at the earliest possible time of deficient information [not yet submitted,] and give the applicant forty-five (45) [30] days to complete it. If the applicant does not submit all documents required in the time allowed for such submittals, the application shall be administratively withdrawn;

(4) the executive director [or a professional engineer designee]shall review and evaluate the qualifications found in the application and issue a recommendation of approval, non-approval or personal interview;

(5) the executive director may approve the application without further board action unless [if] the applicant:

[(A) is applying under the Texas Engineering Practice Act, §12(a)(1);]

[(B) has more than six years of experience;]

(A) [(C)] is [not] requesting a waiver of examinations; or

(B) [(D] isrecommended [recommend] for a license with [without] reservation by one or more [all] references;

[(E) is of a character and reputation acceptable to the board; and]

[(F) has not violated the Act or board rules.]

(6) The application shall be circulated among the professional engineer board members if any of the [six] conditions listed in paragraph (5)(A) or (B) [(5)(A)-(F)] of this section are not met or if the executive director requests an application be reviewed by board members.

(A) The application is approved if the first reviewing board member agrees with an executive director recommendation of approval.

(B) Circulation shall continue until a majority vote is cast if an application receives a recommendation of non-approval or personal appearance by the executive director or the first board member.

(7) The board shall either approve or non-approve the application.

(A) The board shall approve an applicant to:

(i) take the Principles and Practice of Engineering examination; or

(ii) issue a license to an applicant who has passed the Principles and Practice of Engineering examination or who has had that examination waived.

(B) The board shall non-approve an application if any of the following occur:

(i) the application has been administratively withdrawn for a period of six months;

(ii) a majority of the professional engineer board members voted to non-approve an application on the basis that the applicant does not meet the requirements of the Texas Engineering Practice Act, §12(a)(1) or (2); or

(iii) the applicant did not pass the Principles and Practice of Engineering examination in the prescribed time.

[(7) The approval of an application shall be either:]

[(A) to take the Fundamentals of Engineering examination and Principles and Practice of Engineering examination; or]

[(B) to issue a license to an applicant who has passed the principles and practice of engineering examination or who has had that examination waived.]

(8) The applicant shall be advised in writing of the board's action.

(9) [(8)] When the process is complete and a decision has been reached, the board shall complete the consideration of the application through the issuance or denial of a license and confirm such action in the regular order of business at the next quarterly board meeting.

§131.112. Processing of Administratively Withdrawn Applications.

(a) To reactivate an administratively withdrawn application, the applicant must submit:

(1) a reinstatement fee as set by the board;

(2) a new application complete with signatures; and

(3) supplementary experience records for the time period since the application was first submitted.

(b) If the application has been administratively withdrawn for a period of six months, the application shall be recommended for non-approval.

§131.116. Issuance of License.

(a) A license as a professional engineer shall be issued upon the approval of the application by the board.

(b) The fee which accompanied the application is applied toward the required licensing fee for the first partial year of licensure.

(c) The new license holder shall be assigned a serial number issued consecutively in the order of approval.

(d) The applicant shall be advised by the executive director of:

(1) the approval;

(2) the serial number;

(3) instructions to obtain a seal;

(4) the instructions to return a recent, wallet-size, portrait photograph.

(e) The applicant shall:

(1) obtain a seal(s);

(2) place the seal imprint(s) on the form provided by the board and return it to the board office;

(3) furnish a [~~the~~] wallet-size portrait photograph for [~~to~~] the board's [~~board for its~~] files.

(f) Any applicant who fails to furnish an acceptable seal impression or portrait within a period of 60 days after the notice is mailed shall be in violation of the Texas Engineering Practice Act, §22 and board rules and shall be subject to sanctions.

(g) The printed license shall bear the signature of the chairman and the secretary of the board, bear the seal of the board, and bear the full name and license number of the license holder.

(h) The printed license shall be uniform and of a design approved by the board. Any new designs for a printed license shall be made available to all license holders upon request and payment of a replacement certificate fee.

(i) A license issued by the board is as a professional engineer, regardless of branch designations or specialty practices. Practice is restricted only by the license holder's professional judgment and applicable board rules regarding professional practice and ethics.

(j) The records of the board shall indicate a branch considered by the board or license holder to be dominant.

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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Victoria J. L. Hsu, P.E.
Executive Director
Texas Board of Professional Engineers
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For further information, please call: (512) 440-7723

22 TAC 131.112

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

The Texas Board of Professional Engineers proposes the repeal to §131.112, concerning board review of application.

The proposed repeal of §131.112 will enable the board to propose new §131.112 due to extensive modification of this section.

Victoria J.L. Hsu, P.E., Executive Director, Texas Board of Professional Engineers, has determined that for the first five-year period the repeal is in effect there will be no effect for state or local government.

Ms. Hsu also has determined that for each year of the first five years the repeal is in effect the public benefit anticipated as a result of enforcing the repeal will be extensive modification of the section which replaces the repealed one. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the repeal as proposed.

Comments on the proposal may be submitted to Victoria J.L. Hsu, P.E., Executive Director, Texas Board of Professional Engineers, P.O. Drawer 18329, Austin, Texas 78760-8329.

The repeal is proposed under Texas Civil Statutes, Article 3271a, §8(a), which provide the Texas Board of Professional Engineers with the authority to promulgate rules in accordance with the Texas Engineering Practice Act, §20A.

Texas Civil Statutes, Article 3271a, §12 and §13 is affected by the proposed repeal.

§131.112. Processing of Non-Approved Applications.

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. LICENSING
DIVISION 1. PROFESSIONAL ENGINEER LICENSE

22 TAC §131.137, §131.138

The Texas Board of Professional Engineers proposes new §131.137 and §131.138, concerning licensing.

The proposed new §131.137 establishes the eligibility requirements for certification as an engineer-in-training. Proposed new §131.138 establishes the administrative procedures for obtaining certification as an engineer-in-training.

Victoria J.L. Hsu, P.E., Executive Director, Texas Board of Professional Engineers, has determined that for the first five-year period the sections are in effect there will be no effect for state or local government.

Ms. Hsu also 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 eligibility requirements for certification as an engineer-in-training and established administrative procedures for obtaining certification as an engineer-in-training. There will be no effect on small businesses.

There is no anticipated economic cost to persons who are required to comply with the sections as proposed.

Comments on the proposal may be submitted to Victoria J.L. Hsu, P.E., Executive Director, Texas Board of Professional Engineers, P.O. Drawer 18329, Austin, Texas 78760-8329.

The new sections are proposed under Texas Civil Statutes, Article 3271a, §8(a), which provide the Texas Board of Professional Engineers with the authority to promulgate rules in accordance with the Texas Engineering Practice Act, §20A.

Texas Civil Statutes, Article 3271a, §12.1 is affected by the proposed new sections.

§131.137. Engineer-in-Training.

Individuals who meet the requirements of the Texas Engineering Practice Act, §12.1, including successful passage of the Fundamentals of Engineering examination are eligible to apply for engineer-in-training certification.

§131.138. Engineer-in-Training Certificates.

A certificate as an engineer-in-training expires eight years from the date of issuance. This certification does not entitle an individual to practice as a professional engineer. The fee for engineer-in-training certification will be established by the board. To become enrolled as an engineer-in-training, a certificate may be issued to an eligible individual who requests the certificate and pays the established fee. Although the certificate has an expiration date, the records of the board will indicate that an individual has passed the Fundamentals of Engineering examination and these records will be maintained in the file indefinitely and will be made available as requested by the individual or another licensing jurisdiction. The certificate may be renewed.

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 August 27, 2001.

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Victoria J.L. Hsu, P.E.
Executive Director
Texas Board of Professional Engineers
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For further information, please call: (512) 440-7723

PART 8. TEXAS APPRAISER LICENSING AND CERTIFICATION BOARD

CHAPTER 157. RULES RELATING TO PRACTICE AND PROCEDURE

SUBCHAPTER B. CONTESTED CASE HEARINGS

22 TAC §157.9

The Texas Appraiser Licensing and Certification Board proposes amendments to §157.9, Notice of Hearing. These amendments will clarify the notification provision and also remove unnecessary language.

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

Mr. Liner also has determined that for each year of the first five years these amendments are in effect, the public benefit anticipated as a result of enforcing the amendments will be clarification of what constitutes notice for a hearing to avoid possible misunderstanding by the parties involved. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the amendments as proposed.

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

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

Section 5, Powers and Duties of the Board; §11 , Denial of Certificate or License; Appeal; §12, Enforcement Proceedings; and §12A, Contested Case Proceedings, may be affected by the proposed amendments.

§157.9. Notice of Hearing.

(a) (No change.)

(b) Service of notice of hearing or investigation on the respondent or applicant shall be complete and effective if the document to be served is sent by registered or certified mail to the respondent or applicant at his or her most recent address as shown by the records of the board. Service by mail shall be complete upon deposit of the document in question in a post paid properly addressed envelope in a post office of official depository under the care and custody of the United States Postal Service. [~~The notice shall comply with the requirements as set out in §12A of the Act.~~]

[~~(c) The notice prepared by the board shall be reviewed and approved by the attorney general.~~]

(c) [~~(d)~~] The notice shall include the following language in capital letters in boldface type: FAILURE TO APPEAR AT THE HEARING WILL RESULT IN THE ALLEGATIONS AGAINST YOU SET OUT IN THE COMPLAINT BEING ADMITTED AS TRUE AND A DEFAULT JUDGMENT BEING TAKEN AGAINST YOU.

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 August 23, 2001.

TRD-200104989
Renil C. Liner
Commissioner
Texas Appraiser Licensing and Certification Board
Earliest possible date of adoption: October 7, 2001
For further information, please call: (512) 465-3958

PART 21. TEXAS STATE BOARD OF EXAMINERS OF PSYCHOLOGISTS

CHAPTER 461. GENERAL RULINGS

22 TAC §461.11

The Texas State Board of Examiners of Psychologists proposes amendments to §461.11, concerning Continuing Education. The amendment is being proposed because the agency no longer has banking of CEU hours.

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

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

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

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

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

§461.11. Continuing Education.

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

(c) Permitted activities.

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

(4) When obtained, any submitted continuing education hours [~~other than hours banked pursuant to subsection (g) of this section,~~] must have been obtained during the 12 months prior to the renewal period for which they are submitted.

(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.

Filed with the Office of the Secretary of State, on August 24, 2001.

TRD-200105030
Sherry L. Lee
Executive Director
Texas State Board of Examiners of Psychologists
Earliest possible date of adoption: October 7, 2001
For further information, please call: (512) 305-7700

CHAPTER 463. APPLICATIONS AND EXAMINATIONS

22 TAC §463.5

The Texas State Board of Examiners of Psychologists proposes amendments to §463.5, concerning Application File Requirements. The amendments are being proposed in order to eliminate the requirement for two photos for application.

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

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

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

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

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

§463.5. Application File Requirements.

To be complete, an application file must contain whatever information or examination results the Board requires. Unless specifically stated otherwise by Board rule, all applications for licensure by the Board must contain:

(1) An application and required fee(s);

[~~(2) Two current passport pictures of the applicant;~~]

(2) [~~(3)~~] Official transcripts indicating the date the degree required for licensure was awarded or conferred. Transcripts must be sent directly to the Board's office from all colleges/universities where post-baccalaureate course work was completed;

(3) [~~(4)~~] Documentation that applicant has complied with Board Rule §463.14 of this title (relating to Written Examinations);

(4) [~~(5)~~] Three acceptable reference letters from three different psychologists, two of whom are licensed or were licensed at the time of applicant's training;

(5) [~~(6)~~] Supportive documentation and other materials the Board may deem necessary, including current employment arrangements and the name of all jurisdictions where the applicant currently holds a certificate or license to practice psychology; and

(6) [~~(7)~~] A written explanation and/or meeting with the Board or a committee of the Board, prior to final approval, if the application file contains any negative reference letters.

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

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TRD-200105038
Sherry L. Lee
Executive Director
Texas State Board of Examiners of Psychologists
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For further information, please call: (512) 305-7700

22 TAC §463.11

The Texas State Board of Examiners of Psychologists proposes amendments to §463.11, concerning Licensed Psychologist. The amendment is being proposed in order to clarify the rules so that they are easier for the licensees and general public to understand.

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

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

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

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

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

§463.11. Licensed Psychologist.

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

(c) Supervised Experience. In order to qualify for licensure, a psychologist must submit proof of two years of supervised experience, at least one year of which must have been received after the doctoral degree was officially conferred or completed, whichever is earliest, as shown on the official transcript, and at least one year of which must have been a formal internship. The formal internship year may be met either before or after the doctoral degree is conferred or completed. Supervised experience must be obtained in a minimum of two, and no more than three, calendar years, for full-time experience.

(1) General. All supervised experience for licensure as a psychologist, including the formal internship, must meet the following requirements:

(A) - (K) (No change.)

(L) All supervised experience obtained for the purpose of licensure must be conducted in accordance with all applicable Board rules [~~in effect during the supervision experience~~].

(M) - (O) (No change.)

(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.

Filed with the Office of the Secretary of State, on August 24, 2001.

TRD-200105037
Sherry L. Lee
Executive Director
Texas State Board of Examiners of Psychologists
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For further information, please call: (512) 305-7700

22 TAC §463.18, §463.19

The Texas State Board of Examiners of Psychologists proposes amendments to §463.18, concerning Failing Written/Oral Examinations, and §463.19, concerning Time Limit on Examination Failures and Passing Scores. The amendments are being proposed in order to make the rule applicable to the computerized national examination as well as to the Board's Jurisprudence Examination and Oral Examination.

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

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

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

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

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

§463.18. Failing Written/Oral Examinations.

Applicants who fail the written examinations [~~examination~~] or the Oral [~~oral~~] Examination [~~examination~~] are permitted to take them [~~it~~] again by paying additional [~~another~~] exam fees [~~fee~~]. [~~If the second examination is failed, the applicant may take it again at the next setting. If the third examination is failed, the applicant must wait a full calendar year before the examination may be taken again. This yearly interval applies to all succeeding applications for the examination. The Board may adjust this requirement a few days to provide flexibility in the Board's scheduling of examinations. In the event of subsequent examinations taken in other jurisdictions, the one year waiting period applies.~~] Split decisions on the Oral Examination are considered as failures.

§463.19. Time Limit on Examination Failures and Passing Scores.

(a) Applicants must successfully pass all examinations required of them within two [~~three~~] years from [~~of the first examination date immediately following~~] the date they are approved by the Board to sit for the [~~each~~] exams [~~exam~~]. Failure to do so will result in termination of application. The Board may adjust this requirement within 10 days to provide flexibility in the Board's scheduling of Oral Examinations [~~examinations~~].

(b) For the purpose of fulfilling application requirements for licensure, a passing score on the Board's Jurisprudence Examination [~~examination~~] is valid for only four years, unless the applicant has other active licensure with the Board at the time the application is received by the Board.

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

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Sherry L. Lee
Executive Director
Texas State Board of Examiners of Psychologists
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For further information, please call: (512) 305-7700

CHAPTER 465. RULES OF PRACTICE

22 TAC §465.4

The Texas State Board of Examiners of Psychologists proposes amendments to §465.4, concerning Employment of Individuals Not Licensed by This Board. The amendments are being proposed in order to clarify supervision of other professions.

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

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

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

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

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

§465.4. Employment of Individuals Not Licensed by This Board.

(a) Individuals Licensed in Another Profession. Psychologists may employ or utilize individuals who are licensed members of another profession to provide only activities or services permitted by the applicable license or licenses held by that individual. In addition, a Board licensee may supervise a licensed member of another profession to the extent permissible by the other profession's statute and regulations. Any service provided by the licensed member of another profession [~~These services and activities~~] may not be described or represented to the patient or client as psychological services, and the individual must be clearly identified to the patient or client as a licensee of the applicable profession who is providing services pursuant to that individual's own license.

(b) (No change.)

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

Filed with the Office of the Secretary of State, on August 24, 2001.

TRD-200105036
Sherry L. Lee
Executive Director
Texas State Board of Examiners of Psychologists
Earliest possible date of adoption: October 7, 2001
For further information, please call: (512) 305-7700

PART 29. TEXAS BOARD OF PROFESSIONAL LAND SURVEYING

CHAPTER 663. STANDARDS OF RESPONSIBILITY AND RULES OF CONDUCT

SUBCHAPTER B. PROFESSIONAL AND TECHNICAL STANDARDS

22 TAC §663.18

The Texas Board of Professional Land Surveying proposes an amendment to §663.18, concerning Certification.

The amendment will create a new subsection (c). The amendment is necessary so that surveyors will be afforded a method to release preliminary plats for limited purposes.

Sandy Smith, 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.

Ms. Smith 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 affording surveyors a method to release preliminary plats for limited purposes. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the rule as proposed.

Comments on the proposal may be submitted to Sandy Smith, Texas Board of Professional Land Surveying, 7701 North Lamar, Suite 400, Austin, Texas 78752.

The amendment is proposed under Section 9 of Professional Land Surveying Practices Act which provides the Texas Board of Professional Land Surveying with the authority to make and

enforce all reasonable and necessary rules, regulations and bylaws not inconsistent with the Texas Constitution, the laws of this state, and this Act.

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

§663.18. Certification.

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

(c) Preliminary documents released from a surveyor's control shall identify the purpose of the document, the surveyor of record and the surveyor's registration number, and the release date by placing the following text instead of a seal: "This document is released for the purpose of (Examples: interim review, mark-up, drafting) under the authority of (Example: Leslie H. Doe, P.E. 0112) on (date). It is not to be used for (Examples: recording, construction, bidding, permit) purposes. This document is not be relied upon as a complete survey and shall not be recorded."

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 August 27, 2001.

TRD-200105067
Sandy Smith
Executive Director
Texas Board of Professional Land Surveying
Earliest possible date of adoption: October 7, 2001
For further information, please call: (512) 452-9427

TITLE 30. ENVIRONMENTAL QUALITY

PART 1. TEXAS NATURAL RESOURCE CONSERVATION COMMISSION

CHAPTER 9. TRAINING FOR COMMISSIONERS

30 TAC §§9.1 - 9.5

The Texas Natural Resource Conservation Commission (commission) proposes new §9.1, Purpose; §9.2, Need for Training; §9.3, Scope of Training; §9.4, Certificate of Completion of Training; and §9.5, Reimbursement in new Chapter 9, Training for Commissioners. The commission proposes this new Chapter 9 in order to implement House Bill (HB) 2912, Article I (Administration and Policy), §1.05, as passed by the 77th Texas Legislature, 2001.

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE PROPOSED RULES

House Bill 2912 amended Subchapter C, Chapter 5, Texas Water Code (TWC), by adding §5.0535, relating to Required Training Program for Commission Members. This new section prohibits a person who is appointed to and qualifies for office as a member of the commission from voting, deliberating, or being counted as a member in attendance at a meeting of the commission until the person completes a training program that complies with this new section. The section specifies the information which must be provided in the training program. Under the section, a person appointed to the commission is entitled to reimbursement for the travel expenses incurred in attending the training program regardless of whether the attendance at the program occurs before or after the person qualifies for office. Section 18.08(b) of HB 2912 specifies that these provisions apply only to a member of the commission who is appointed on or after January 1, 2002.

SECTION BY SECTION DISCUSSION

Proposed new §9.1, relating to Purpose, would establish the purpose of the chapter which is to govern procedures for the training of commissioners appointed after January 1, 2002.

Proposed new §9.2, relating to Need for Training, would establish the need for training of commissioners as a requirement under TWC, §5.0535, which prohibits newly-appointed commissioners from voting, deliberating, or being counted as a member in attendance at a meeting of the commission until the commissioner completes a specified training program.

Proposed new §9.3, relating to Scope of Training, would prescribe the training program required under TWC, §5.0535. The required elements of the program are: 1) the legislation that created the commission; 2) the programs operated by the commission; 3) the role and functions of the commission; 4) the rules of the commission, with an emphasis on the rules that relate to disciplinary and investigatory authority; 5) the current budget for the commission; 6) the results of recent significant internal and external audits of the commission; 7) the requirements of the open meetings law, the public information law, the administrative procedure law, and other laws relating to public officials, including conflict of interest laws; 8) and any applicable ethics policies adopted by the commission or the Texas Ethics Commission.

Proposed new §9.4, relating to Certificate of Completion of Training, would provide for issuance of a certificate to a commissioner upon completion of the required training program to document compliance with the requirement.

Proposed new §9.5, relating to Reimbursement, would provide for reimbursement to a commissioner for the travel expenses incurred in attending the training program, as authorized by TWC, §5.0535.

FISCAL NOTE: COSTS TO STATE AND LOCAL GOVERNMENT

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

This rulemaking is intended to implement certain provisions of HB 2912 (an act relating to the continuation and functions of the Texas Natural Resource Conservation Commission; providing penalties), 77th Texas Legislature, 2001. The bill prohibits a person, appointed as a member of the commission, from voting, deliberating, or being counted as a member in attendance at a meeting of the commission until the person completes a training program that complies with provisions in HB 2912.

House Bill 2912 requires this training program to include the legislation that created the commission, the programs operated by the commission, the role and functions of the commission, the rules of the commission, with an emphasis on the rules that relate to disciplinary and investigatory authority, and the current budget for the commission. Additionally, the bill requires the training program to include the results of recent significant internal and external audits of the commission, the requirements

of the open meetings law, the public information law, the administrative procedure law, and other laws relating to public officials, including conflict of interest laws, and any applicable ethics policies adopted by the commission or the Texas Ethics Commission.

The proposed rulemaking only affects the agency. No other units of state and local government are affected by this proposal. The commission does not anticipate the proposed rulemaking will result in significant costs to the agency.

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 administration of the proposed rules would be a greater assurance that commissioners of the agency are adequately trained to perform their duties.

This rulemaking is intended to implement provisions of HB 2912, which prohibits a person, appointed as a member of the commission, from voting, deliberating, or being counted as a member in attendance at a meeting of the commission until the person completes a training program that complies with provisions in HB 2912.

The proposed rulemaking only affects the agency; therefore, there will be no costs to individuals and businesses to implement provisions of this proposal.

SMALL BUSINESS AND MICRO-BUSINESS ASSESSMENT

There will be no adverse fiscal impacts to small or micro-businesses as a result of the proposed new sections, which are intended to implement provisions of HB 2912, which prohibits a person, appointed as a member of the commission, from voting, deliberating, or being counted as a member in attendance at a meeting of the commission until the person completes a training program that complies with provisions of HB 2912.

The proposed rulemaking only affects the agency; therefore, there will be no costs to small or micro-businesses to implement provisions of this proposal.

DRAFT REGULATORY IMPACT ANALYSIS DETERMINATION

The commission has reviewed the proposed rulemaking in light of the regulatory impact analysis requirements of Texas Government Code, §2001.0225, and 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. "Major environmental rule" means a rule, the specific intent of which is to protect the environment or reduce risks to human health from environmental exposure and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. The proposed rules are not anticipated to adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state because the proposed rules are intended to simply implement a training program for newly- appointed commissioners, as mandated by state law.

TAKINGS IMPACT ASSESSMENT

The commission has prepared a takings impact assessment for this proposal under Texas Government Code, §2007.043. The following is a summary of that assessment. The specific purpose of this rulemaking is simply to implement a training program for newly-appointed commissioners, as mandated by state law. This action will not create a burden on private real property, and will not burden, restrict, or limit an owner's right to property. The proposals in this rulemaking also will not be the cause of a reduction in market value of private real property, and will not constitute a takings under Texas Government Code, Chapter 2007.

CONSISTENCY WITH THE COASTAL MANAGEMENT PROGRAM

The commission reviewed this rulemaking for consistency with the Texas Coastal Management Program (CMP) goals and policies in accordance with the regulations of the Coastal Coordination Council, and determined that the rulemaking will not have direct or significant adverse effect on any coastal natural resource areas, nor will the rulemaking have a substantive effect on commission actions subject to the CMP.

SUBMITTAL OF COMMENTS

Comments may be submitted to Joyce Spencer, Office of Environmental Policy, Analysis, and Assessment, MC 205, P.O. Box 13087, Austin, Texas 78711-3087 or faxed to (512) 239-4808. Comments must be received by 5:00 p.m., October 8, 2001, and should reference Rule Log Number 2001-067-009-AD. For further information, please contact Debra Barber at (512) 239-0412.

STATUTORY AUTHORITY

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

The proposed new sections implement TWC, §5.0535, Required Training Program for Commission Members.

§9.1. Purpose.

This chapter governs procedures applicable to the training of commissioners of the Texas Natural Resource Conservation Commission appointed on or after January 1, 2002.

§9.2. Need for Training.

A person who is appointed to and qualifies for office as a member of the commission may not vote, deliberate, or be counted as a member in attendance at a meeting of the commission until the person completes a training program that complies with this chapter. This training program should be completed as soon as practical after appointment.

§9.3. Scope of Training.

(a) The training program may include, but is not limited to, information provided through staff briefings, written material, seminars/conferences, or internet and intranet resources. The executive director and the general counsel, or their designees, will provide briefings on topics within their scope of authority.

(b) The training program must provide the person with information regarding:

(1) the legislation that created the commission, including relevant portions of the Texas Water Code and the Texas Health and Safety Code;

(2) the programs operated by the commission, including programs which are federally delegated or authorized;

(3) the role and functions of the commission, including the agency's mission statement and scope of commission's authority;

(4) the rules of the commission, with an emphasis on the rules that relate to disciplinary and investigatory authority;

(5) the current budget for the commission;

(6) the results of recent significant internal and external audits of the commission;

(7) the requirements of:

(A) the open meetings law, Texas Government Code, Chapter 551;

(B) the public information law, Texas Government Code, Chapter 552;

(C) the administrative procedure law, Texas Government Code, Chapter 2001; and

(D) other laws relating to public officials, including conflict of interest laws; and

(8) any applicable ethics policies adopted by the commission or the Texas Ethics Commission.

§9.4. Certificate of Completion of Training.

Upon completion of training by a newly-appointed commissioner, the general counsel shall issue the commissioner a certificate of completion to document that the commissioner is appropriately trained to serve as a commissioner. Such certificate will be kept on file by the general counsel and will be available for public inspection.

§9.5. Reimbursement.

A person appointed to the commission is entitled to reimbursement, as provided by the General Appropriations Act, for the travel expenses incurred in attending the training program regardless of whether the attendance at the program occurs before or after the person qualifies for office.

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

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

TRD-200104974
Ramon Dasch
Acting Division Director, Environmental Law Division
Texas Natural Resource Conservation Commission
Earliest possible date of adoption: October 7, 2001
For further information, please call: (512) 239-5017

CHAPTER 70. ENFORCEMENT
SUBCHAPTER A. ENFORCEMENT GENERALLY
30 TAC §70.4

The Texas Natural Resource Conservation Commission (agency or commission) proposes new §70.4, Enforcement Action Using Information Provided by Private Individual.

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE PROPOSED RULE

The proposed new rule concerns the participation of private individuals in the agency's enforcement activities. Currently, when private individuals submit information to the agency that is intended to show a third person has violated laws that protect human health and safety and the environment, the executive director (ED) reviews the information and decides on an appropriate response. In many instances the ED sends an investigator to investigate the area or facility where the alleged violation occurred. The ED then evaluates all the information and determines whether to initiate an enforcement action against the person who allegedly violated the law. If the ED determines to initiate enforcement, the ED's case relies on the information and documentation developed by the ED's staff.

The proposed rule would implement new law concerning this matter. During the 77th legislative session the agency underwent the sunset review process, leading to the passage of House Bill (HB) 2912 (the "Sunset bill"). Section 1.24 of the Sunset bill added Texas Water Code (TWC), §7.0025 concerning the initiation of enforcement using information provided by a private individual. This section specifies that the commission may initiate enforcement using information provided by a private individual, gives certain limits on the use of such information, and authorizes the commission to adopt rules that set criteria for the ED's evaluation and use of the information. Section 18.10(a) of the Sunset bill requires the commission to adopt rules to implement the new law not later than December 1, 2001. Section 18.10(b) directs that the new law applies only to information provided by a private individual on or after January 1, 2002.

When private individuals contact the commission about a possible violation, the information they submit is of varying detail. Also, the private individual may or may not wish to participate further in any agency investigation or enforcement action. The following paragraphs describe how the agency would process information from private individuals under the new rule under various scenarios.

In some instances when a private individual submits information to the agency they wish the agency to investigate and resolve the problem without the private individual's further participation. While the agency has in place procedures for accepting and processing complaints, and the agency will continue to use those procedures, the commission is taking this opportunity to review them. Currently, the Field Operations Division categorizes each complaint, and each category of complaint must be investigated within a specified amount of time. Agency staff must give reports on the status of the agency's response, and give a report on the final resolution of the complaint. The commission is considering whether to change this procedure to give earlier notice of the status of the ED's response to the complaint. The commission would note that these comments on complaint procedures apply to all types of complaints, whether the person making the complaint wishes to participate further in enforcement proceedings or not.

In other instances, when a private individual gives information to the agency they intend the agency to use that information in an enforcement action. The agency will review the information and conduct its own investigation of the violation. Depending on the value and credibility of both the information provided by the private individual and the information gathered by agency staff, the ED may initiate an enforcement action. In some cases, the ED may initiate an enforcement action using information both from the private individual and from agency staff. The ED may also initiate enforcement based solely on the information provided by a private individual when the value and credibility of that information is very strong.

When a private individual submits information that is intended to be used in an enforcement action, its value and credibility will depend on whether the information meets the requirements of TWC, §7.0025, the requirements of the rule, and evidentiary requirements. The proposed rule tracks the statutory language in requiring that any physical or sampling data must have been collected or gathered in accordance with agency protocols. This requirement ensures that the information was gathered using established procedures for collecting reliable and accurate data. Also, the ED can pursue an enforcement action only if he/she knows the information he/she relies on will be admissible as evidence at the hearing. Commission enforcement actions are processed under the Texas Administrative Procedure Act, Texas Government Code, Chapter 2001. An enforcement action, if contested by the alleged violator, is processed as a contested case hearing held before the State Office of Administrative Hearings, and in the hearing the Texas Rules of Evidence apply. The purpose of the Rules of Evidence is to ensure that the truth is ascertained and that proceedings are justly determined. The ED must comply with these requirements in an enforcement action whether the violation is based on information from private individuals or from agency investigators.

The commission considered whether the proposed rule should give explicit direction on what are the relevant agency protocols for gathering physical or sampling data, and for meeting evidentiary requirements. The proposed rule does not contain such information because there are numerous protocols used by agency investigators to document violations and most apply only to certain types of cases. Moreover, the Sunset bill (§1.14, adding new TWC, §5.1765) requires the commission to make available to the public in pamphlet form an explanation of the complaint policies and procedures, including information regarding and standards applicable to the collection and preservation of credible evidence of environmental problems by members of the public. This pamphlet will describe the agency's protocols. The commission is also considering publishing this information as a web page. The proposed rule does not include an explanation of evidentiary requirements because those requirements are already set forth in the rules of evidence. An attempt to summarize evidentiary requirements would likely cause confusion or be so general as to mislead the public.

The commission would note that neither HB 2912 nor the proposed rule would authorize a private individual to enter the property of another person for purposes of gathering information to document a violation. There would likely be difficulties using information as evidence when it was gathered while trespassing on another's property.

SECTION DISCUSSION

Section 70.4(a) directs that when a private individual wishes to submit information to the agency concerning an alleged violation, the private individual should submit the information to the ED rather than to the commissioners. This is because the ED is responsible for evaluating information, whether gathered by a private individual or by the ED's own staff, and initiating an enforcement case under TWC, §5.230. The ED may initiate an administrative enforcement action or refer the case to the proper authority for initiating a civil or criminal case (e.g., TWC, Chapter 7, Subchapters C - E).

Section 70.4(b) tracks the statutory language which states that the ED has the discretion to evaluate the information provided by a private individual. The ED may evaluate whether to initiate enforcement after determining the value and credibility of the information, and the merits of an enforcement action. The subsection also provides that the ED may initiate an enforcement case based on any combination of information provided by private individuals or the ED's staff. For example, at a hearing the ED may present evidence to prove a violation that includes both information from a private individual and information from agency investigators. This latter provision in the rule is not intended to limit the ED to gathering information only from private individuals and from agency investigations. Rather, the ED may continue to gather information from all possible sources such as other governmental entities.

Section 70.4(c) sets forth the criteria the ED shall use to determine whether to use information provided by a private individual. First, the individual must be willing to sign an affidavit verifying the information gathered and verifying that any writings, recordings, or photographs he/she submits are what they purport to be. Second, the individual must agree to testify under oath in any enforcement proceedings. Third, the individual must be willing to sign an affidavit that the individual knew and used any relevant agency protocols when collecting the information.

The agency believes the requirement to sign affidavits is reasonable and necessary. Agency inspectors in the course of their work are required to sign affidavits for various purposes during the course of an enforcement proceeding. The ED would not require affidavits from every private individual who provides information because such practice could discourage public input. To prevent that from happening the ED would ask a private individual to sign an affidavit only when the ED has determined that an enforcement case should be initiated based on the information provided by the private individual.

The commission recognizes that a private individual may wish to submit information to the ED that is not in the form of data or analysis, but is nonetheless useful information for enforcement. For this information there is no relevant agency protocol. For example, the ED may use information from private individuals to establish a violation of 30 TAC §101.4, relating to air emissions that create nuisance conditions. This violation requires that the ED show the responsible person caused air emissions that tended to be injurious to or adversely affect human health or welfare, animal life, vegetation, or property, or interfered with the normal use and enjoyment of animal life, vegetation, or property. A private individual's information showing how the emissions affected them may be used to establish the violation. Another example might include when a private individual submits information in the form of a videotape or picture showing a violation. While such information alone may not establish a violation, it may be used in conjunction with other information to establish a violation. However, when proof of a violation requires data or other analysis, that data and analysis must be collected in accordance with agency protocols.

Section 70.4(d) tracks the statutory language by stating that if the ED relies on information provided by a private individual for all or part of an enforcement case, the individual may be called to testify in the enforcement proceedings and is subject to all sanctions under law for knowingly falsifying evidence.

Section 70.4(e) provides that if the ED determines not to initiate an enforcement action based on information received from a private individual pursuant to this section, the ED will process the information received from the individual as a complaint, subject to applicable complaint investigation procedures. While information submitted by a private individual may not constitute evidence

supporting initiation of an enforcement action, a complaint investigation will follow. That investigation may yield additional evidence that would support the initiation of an enforcement action.

FISCAL NOTE: COSTS TO STATE AND LOCAL GOVERNMENT

Jeffrey Horvath, Strategic Planning and Appropriations, has determined that for the first five-year period the proposed rule is in effect there will not be significant fiscal implications for the agency or other units of state and local government as a result of administration or enforcement of the proposed rule.

The proposed rule would implement certain provisions in HB 2912 (relating to the continuation and functions of the TNRCC; providing penalties), 77th Legislature, 2001, relating to citizen collected evidence. The proposed rule implements provisions in HB 2912 that allow the commission to initiate an enforcement action on a matter under its jurisdiction based on information it receives from a private individual if that information, in the ED's judgment, is of sufficient value and credibility to warrant the initiation of an enforcement action.

The proposed rule would provide that the ED has the discretion to evaluate the information provided by a private individual and to evaluate whether to initiate enforcement action. The proposed rule would set criteria for the use of citizen collected evidence and includes the following: 1.) the individual must be willing to sign an affidavit verifying that the information gathered (including any writings, recording, and photographs submitted) is as purported; 2.) the individual must agree to testify under oath in any enforcement proceedings; and 3.) the individual must be willing to sign an affidavit that the individual knew and used relevant agency protocols when collecting information.

Agency protocol for the use of citizen collected evidence and the collection of physical or sampling data is available on the agency's website or by phone. Additional staff time may be necessary to assist with environmental investigations and to provide guidance for citizens collecting and presenting evidence. However, any additional costs associated with additional staff time are not considered significant. Adoption of the proposed rule is not anticipated to result in significant fiscal implications for any unit of state or local government as the proposed rule concerns private citizens' submission of information to the ED and the subsequent use of that information by ED.

PUBLIC BENEFITS AND COSTS

Mr. Horvath also determined that for each year of the first five years the proposed new section is in effect, the public benefit anticipated from enforcement of and compliance with the proposed rule will be to expand the role of private individuals in compliance and enforcement proceedings. The proposed rule will also benefit the public by allowing the use of citizen collected evidence in enforcement actions prepared by the ED.

Individuals or businesses wishing to submit information to the agency for use in an enforcement case must use equipment and/or methods prescribed by agency protocols. In certain cases, this may result in costs for sampling, equipment, certification, or analysis, though these costs are not considered to be significant. The proposed rule does not require implementation by any entity.

The proposed rule would implement certain provisions in HB 2912. The proposed rule implements provisions in HB 2912 that allow the commission to initiate an enforcement action on a matter under its jurisdiction based on information it receives from a private individual if that information, in the ED's judgment, is of sufficient value and credibility to warrant the initiation of an enforcement action.

The proposed rule would provide that the ED has the discretion to evaluate the information provided by a private individual and to evaluate whether to initiate enforcement action. The proposed rule would set criteria for the use of citizen collected evidence and includes the following: 1.) the individual must be willing to sign an affidavit verifying that the information gathered (including any writings, recording, and photographs submitted) is as purported; 2.) the individual must agree to testify under oath in any enforcement proceedings; and 3.) the individual must be willing to sign an affidavit that the individual knew and used relevant agency protocols when collecting information.

Agency protocol for the use of citizen collected evidence and the collection of physical or sampling data is available on the agency's website or by phone. The proposed rule does not require implementation by any entity, though individuals or businesses wishing to submit information to the ED for use in an enforcement case must use equipment and/or methods prescribed by agency protocols. In certain cases, this may result in costs for sampling, equipment, certification, or analysis, though these costs are not considered to be significant.

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 rule. Small or micro-businesses wishing to submit information to the agency for use in an enforcement case must use equipment and/or methods prescribed by agency protocols. In certain cases, this may result in costs for sampling, equipment, certification, or analysis, though these costs are not considered to be significant. The proposed rule does not require implementation by any entity, including a small or micro-business.

The proposed rule would implement certain provisions in HB 2912. The proposed rule implements provisions in HB 2912 that allow the commission to initiate an enforcement action on a matter under its jurisdiction based on information it receives from a private individual if that information, in the ED's judgment, is of sufficient value and credibility to warrant the initiation of an enforcement action.

The proposed rule would provide that the ED has the discretion to evaluate the information provided by a private individual and to evaluate whether to initiate enforcement action. The proposed rule would set criteria for the use of citizen collected evidence and includes the following: 1.) the individual must be willing to sign an affidavit verifying that the information gathered (including any writings, recording, and photographs submitted) is as purported; 2.) the individual must agree to testify under oath in any enforcement proceedings; and 3.) the individual must be willing to sign an affidavit that the individual knew and used relevant agency protocols when collecting information.

Agency protocols for the collection of physical or sampling data is available on the agency's website or by phone. The proposed rule does not require implementation by any entity, though small or micro-businesses wishing to submit information to the agency for use in an enforcement case must use equipment and/or methods prescribed by agency protocols. In certain cases, this may result in costs for sampling, equipment, certification, or analysis, though these costs are not considered to be significant.

DRAFT REGULATORY IMPACT ANALYSIS DETERMINATION

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

"Major environmental rule" means a rule, the specific intent of which, is to protect the environment or reduce risks to human health from environmental exposure and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. The specific primary intent of the proposed rule is procedural in nature, establishing procedures allowing the commission to initiate an enforcement action on a matter under its jurisdiction based on information it receives from a private individual. The proposed rule does not concern an existing or new regulatory program that would adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. The proposed rule does not prescribe control requirements or any other requirements that would normally be associated with a commission environmental rulemaking. When private individuals submit information concerning a violation the ED will continue to process the information as a complaint as described above in this preamble. The proposed rule does not require implementation by any entity, though individuals wishing to submit information to the agency for use in an enforcement case must use equipment and/or methods prescribed by agency protocols. In certain cases, this may result in costs for sampling, equipment, certification, or analysis, though these costs are not considered to be significant.

In addition, this proposed rule does not exceed a standard set by federal law, exceed an express requirement of state law, exceed a requirement of a delegation agreement, or propose to adopt a rule solely under the general powers of the agency. This proposal does not exceed a standard set by federal law because the proposed rule does not require implementation by any entity. This proposal does not exceed an express requirement of state law because it is authorized by the following state statutes: Texas Government Code, §2001.004, which requires state agencies to adopt rules of practice, as well as the authorities cited in the STATUTORY AUTHORITY section of this preamble. This proposal does not exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program. The proposed rule does not require implementation by any entity. This proposal does not adopt a rule solely under the general powers of the agency, but rather under a specific state law (i.e., HB 2912, §1.24 and §18.10). Finally, this rulemaking is not being proposed or adopted on an emergency basis to protect the environment or to reduce risks to human health from environmental exposure.

TAKINGS IMPACT ASSESSMENT

The commission has assessed the takings impact for the proposed rule in accordance with Texas Government Code, §2007.043. The following is a summary of that assessment. The specific primary purpose of the proposed new section is to implement certain provisions in HB 2912. The proposed rule implements provisions in HB 2912 that allow the commission to initiate an enforcement action on a matter under its jurisdiction based on information it receives from a private individual if that information, in the ED's judgment, is of sufficient value and credibility to warrant the initiation of an enforcement action. The proposed rule will substantially advance the stated purpose by providing specific criteria on how the ED will evaluate information from private individuals. Promulgation and enforcement of this rule will not affect private real property which is the subject of the rule because the proposed language consists of a new section relating to the commission's procedural rules. The proposed rule does not require implementation by any entity.

CONSISTENCY WITH THE COASTAL MANAGEMENT PROGRAM

The commission has reviewed the rulemaking and has determined that the section is not subject to the Texas Coastal Management Program (CMP). The proposed action concerns only the procedural rules of the commission and general agency operations, are not substantive in nature, do not govern or authorize any actions subject to the CMP, and are not themselves capable of adversely affecting a coastal natural resource area (Title 31 Natural Resources and Conservation Code, Chapter 505; 30 TAC, §§281.40, *et seq.*).

ANNOUNCEMENT OF HEARINGS

Six public hearings on the proposal will be held at the following locations and times: 1.) El Paso City Council Chambers, 2nd Floor, 2 Civic Center Plaza, El Paso on September 24, 2001, 7:00 p.m.; 2.) University of Texas at San Antonio (Downtown Campus), Frio Street Building, Room 1.406, 501 Durango, San Antonio on September 25, 2001, 7:00 p.m.; 3.) TNRCC Waco Regional Office, 6801 Sanger Ave., Suite 2500, Waco on September 27, 2001, 7:00 p.m.; 4.) Arlington City Council Chambers, 1st Floor, 101 W. Abram St., Arlington on October 1, 2001, 7:00 p.m.; 5.) Texas A&M University - Corpus Christi, Natural Resources Center, Room 1003, 6300 Ocean Dr., Corpus Christi on October 2, 2001, 7:00 p.m.; and 6.) Houston City Hall, 2nd Floor, 901 Bagby, Houston on October 4, 2001, 7:00 p.m.

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 2001-029-070-AD. Comments must be received by 5:00 p.m., October 9, 2001. For further information contact Richard O'Connell at (512)-239-5528.

STATUTORY AUTHORITY

The new section is proposed under TWC, §5.103, which provides the commission authority to adopt any rules necessary to carry out its powers and duties under this code and other laws of this state and to adopt rules when adopting, repealing, or amending any agency statement of general applicability that interprets or prescribes law or policy, or describes the procedure or practice requirements of an agency; and §5.105, which authorizes the commission to establish and approve all general policy of the commission by rule. The new section is also proposed under HB 2912, §1.24 and §18.10, which require the commission to adopt rules to implement new TWC, §7.0025.

There are no other statutes, articles, or codes affected by this proposal.

§70.4. Enforcement Action Using Information Provided by Private Individual.

(a) A private individual with information demonstrating possible violations of law within the commission's jurisdiction should notify the executive director (ED). The ED may initiate an administrative enforcement action, or he/she may refer to the appropriate prosecuting authority a civil or criminal enforcement action.

(b) The ED may initiate an enforcement action based on information received from a private individual if that information, in the ED's judgment, is of sufficient value and credibility to warrant the initiation of an enforcement action. The ED may initiate an enforcement action based on any combination of information provided by private individuals or by the ED's own investigations.

(c) In evaluating the value and credibility of information provided by a private individual and determining the use of such information as evidence in an enforcement action, the ED shall consider the following criteria:

(1) the individual providing the information must be willing to submit a sworn affidavit attesting to the facts that constitute the alleged violation and authenticating any writings, recordings, or photographs provided by the individual;

(2) the individual providing the information must be willing to testify in any enforcement proceedings regarding the alleged violations; and

(3) if the ED relies on any physical or sampling data submitted by a private individual to prove one or more elements of an enforcement case, such data must have been collected or gathered in accordance with relevant agency protocols. The individual submitting the physical or sampling data must be willing to submit a sworn affidavit demonstrating that the individual knew and followed relevant agency protocols when collecting the data.

(d) A private individual who submits information on which the ED relies for all or part of an enforcement case may be called to testify in the enforcement proceedings and is subject to all sanctions under law for knowingly falsifying evidence.

(e) If the ED determines not to initiate an enforcement action based on information received from a private individual in accordance with this section, the ED will process the information received from the individual as a complaint, subject to applicable complaint investigation procedures. The ED may ultimately initiate an enforcement action that is based on information the ED develops during the complaint investigation.

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 August 23, 2001.

TRD-200104987
Ramon Dasch
Interim Director, Environmental Law Division
Texas Natural Resource Conservation Commission
Earliest possible date of adoption: October 7, 2001
For further information, please call: (512) 239-6087

CHAPTER 90. REGULATORY FLEXIBILITY

The Texas Natural Resource Conservation Commission proposes amendments to §90.1, Purpose; and §90.2, Applicability and Eligibility. The commission also proposes new §90.30, Definitions; §90.32, Minimum Standards for Environmental Management Systems; §90.34, Regulatory Incentives; §90.36, Evaluation of an Environmental Management System by the Executive Director; §90.38, Requests for Modification of State or Federal Regulatory Requirements; §90.40, Executive Director Action on Request for Regulatory Incentives through the Use of an Environmental Management System; §90.42, Termination of Regulatory Incentives under an Environmental Management System; and §90.44, Motion to Overturn.

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE PROPOSED RULES

The 77th Legislature, 2001, passed House Bill (HB) 2997 which amended Texas Water Code (TWC), §5.127, Environmental Management Systems, to be read in conjunction with HB 2912, §1.12, which amended TWC, §5.131 to encourage the use of environmental management systems (EMS) by the regulated community. This legislation is based on the E*Texas Report from the Comptroller's Office, December 2000, which suggested that the use of an EMS would result in enhanced compliance and continuous improvement in environmental performance for entities implementing these systems. In addition, industry organizations supported the legislation that created the requirement for the commission to develop regulatory incentives to encourage the use of EMS. In this rulemaking, an EMS is a management system that addresses applicable environmental regulatory requirements through the use of an organizational structure, environmental planning activities, and delineation of responsibilities, practices, procedures, processes, and resources for developing, implementing, achieving, reviewing, and maintaining an environmental policy directed toward continuous improvement and compliance assurance.

The legislation requires that the commission adopt a comprehensive program that provides regulatory incentives to encourage the use of EMS by regulated entities, state agencies, local governments, and others. Additionally, the legislation requires that any rules adopted by the commission meet the minimum standards outlined in the bill. Further, the commission must integrate the use of EMS into its regulatory programs, develop EMS for small business and local governments, and establish environmental performance indicators to measure the program's performance. Finally, the legislation requires that the commission consider the use of an EMS in an applicant's compliance history for an applicant's facility for demonstration of compliance and potential use of an EMS to improve compliance history.

While the legislation encourages the use of EMS to achieve regulatory flexibility, the commission cannot modify federally mandated state requirements without approval from the United States Environmental Protection Agency (EPA). This will severely limit the ability of the program to offer real incentives for the adoption of EMS. It also affects the commission's ability to create a broad performance-based regulatory structure. The commission will pursue discussion of these issues with EPA. Additionally, the proposed rules are structured to allow the approval of these types of incentives. Until the commission and the EPA come to an agreement on how to approve incentives related to federally-mandated state requirements, any request made for these incentives require EPA approval on a case-by-case basis. The commission is specifically requesting comments on this issue.

Other factors the commission must consider in developing these rules include the type of review completed by the executive director of an EMS through the potential use of approved third-party

auditors to complete the evaluations and also how affected public should be involved in the EMS development and approval process. The commission is specifically requesting comments on these items.

The legislation requires that the commission have these rules adopted by December 1, 2001.

SECTION BY SECTION DISCUSSION

The commission proposes to change the title of Chapter 90 from Regulatory Flexibility to Regulatory Flexibility and Environmental Management Systems to address the addition of the EMS regulatory incentives program to this chapter.

Subchapter A: Purpose, Applicability, and Eligibility

Section 90.1, Purpose, clarifies that the purpose of this chapter is to create the EMS regulatory incentives program for regulated entities as authorized under TWC, §5.127 and §5.131.

Section 90.2, Applicability and Eligibility, outlines the applicability and eligibility requirements to qualify for regulatory incentives for using an EMS and for regulatory flexibility orders (RFOs). This section provides that any person is eligible to receive regulatory incentives, except a person who has been referred to the Texas or United States attorney general for an environmental violation and incurred a judgment is not eligible for a period of three years from the date of the judgement. Additionally, a person is ineligible to receive regulatory incentives if that person has been convicted of willfully or knowingly committing an environmental crime in this or any other state for a period of three years from the date of the conviction.

Subchapter C: Regulatory Incentives for Using Environmental Management Systems

The commission proposes to create a new Subchapter C, Regulatory Incentives for Using Environmental Management Systems, to accommodate the new rule sections that outline how a person would become eligible to request regulatory incentives for using an EMS.

New §90.30, Definitions, is proposed to provide the meanings of the terms, environmental aspect, environmental impact, and environmental management system as they are used in Chapter 90. The definition for environmental management system is from HB 2997. The definitions for environmental impact and environmental aspect are from the International Organization for Standardization's ANSI/ISO 14001 standard for "Environmental management systems - Specification with guidance for use," 1996.

New §90.32, Minimum Standards for Environmental Management Systems, is proposed to provide the minimum standards for an EMS that a person must follow in order to request regulatory incentives. The minimum standards are taken from HB 2997 without any additions or deletions. The standards include: adoption of a written environment policy governing performance improvement and compliance assurance; identification and prioritization of the environmental aspects and impacts of the person's activities; sets of priorities, goals, and targets for continuous improvement in environmental performance and for ensuring compliance with environmental laws, regulations, and permit conditions applicable to the facility; assignment of clear responsibility for implementation, training, monitoring, and corrective action to ensure compliance with environmental laws, regulations, and permit conditions applicable to the facility; documentation of procedures for and results of the use of the EMS; and routine intervals for scheduled evaluation and refinement of the EMS and demonstration of improved attainment of priorities/goals/targets set as well as improvement of the EMS itself.

New §90.34, Regulatory Incentives, is proposed to provide the range of regulatory incentives that could potentially be requested under the EMS regulatory incentive program. These incentives include, but are not limited to, on-site technical assistance, accelerated access to program information, modification of state or federal regulatory requirements that do not change emission or discharge limits, adjustment to the methods or frequency for scheduling and conducting compliance inspections, and inclusion of the use of an EMS in a person's compliance history and compliance summaries. While the basic language was taken from HB 2997, the proposed section was expanded to provide further clarification on what types of incentives could be requested.

New §90.36, Evaluation of an Environmental Management System by the Executive Director, is proposed to provide details on how the executive director will evaluate whether the EMS meets the standards of this chapter. Upon receipt of a request to evaluate an EMS, the request will be reviewed and then an on-site evaluation will be scheduled with the person. After the on-site evaluation is complete, the executive director will provide the person information on whether the EMS meets the standards of the chapter or if it does not, how it can be improved to meet the standards. After all requirements of the chapter have been met, the person will be notified that the EMS meets the standards of the chapter and that they may qualify for incentives. In addition to the initial evaluation, the executive director or an approved third-party auditor will conduct a follow-up evaluation every three years from the date of the initial evaluation. Deficiencies noted during these follow-up evaluations must be corrected in a specified time frame or incentives could be terminated in accordance with the new §90.42 proposed in this rulemaking package.

New §90.38, Request for Modification of State or Federal Regulatory Requirements, is proposed to address the fact that certain types of incentives may only be legally approved through the use of the commission's order process and in some cases, the involvement of the EPA. Therefore, this section provides that if a person submits a request for incentives that cannot be approved through any other process but an order, that the executive director will notify the person that they must follow the requirements of Subchapter B.

New §90.40, Executive Director Action on Request for Regulatory Incentives through the Use of an Environmental Management System, will be proposed to provide persons information on when the executive director would approve regulatory incentives depending on the type of incentive requested. Regulatory incentives specifically authorized by rule may be implemented as soon as the person is notified that their EMS meets the requirements of the chapter. Regulatory incentives that do not require an order or are not adopted by rule, will be approved within 60 days of notification that the person's EMS meets the standards of the chapter. In addition, this section details that the executive director shall consider in the decision to allow certain regulatory incentives, the person's compliance history, the efforts made to involve the local community and achieve local support, the person's participation in voluntary programs for environmental improvement, and the steps the person has taken to develop an EMS that exceeds the minimum requirements of this chapter.

New §90.42, Termination of Regulatory Incentives under an Environmental Management System, is proposed to provide a mechanism for the executive director to terminate regulatory

incentives if a person does not maintain their EMS to the standards of the chapter. In addition, it provides a mechanism for a person to terminate incentives if they no longer wish to participate in the EMS regulatory incentive program. In addition, the executive director may specify an appropriate and reasonable transition period to allow the person to come into full compliance with all existing commission requirements, including time to apply for any necessary permits or authorizations. The person can terminate the EMS regulatory incentives by sending notice through certified mail and shall reference the order number if applicable. The person must be in compliance with all permits, existing statutes, or commission rules at the time of termination.

New §90.44, Motion to Overturn, proposes to allow any person who has requested approval of an EMS and whose EMS was denied approval; any person who has been notified by the executive director that the approval for his system has been terminated; any person who has been denied regulatory incentives under §90.40; or any person who has been notified by the executive director that a regulatory incentive has been terminated to file a motion to overturn the executive director's decision with the Office of the Chief Clerk. Additionally, this section requires the motion to be filed within 23 days after the date the commission mails notice of the executive director's decision to the person. Finally, this section notes that motions that are filed in a timely fashion are subject to 30 TAC §50.139 (e) - (g).

FISCAL NOTE: COSTS TO STATE AND LOCAL GOVERNMENT

John Davis, Technical Specialist with Strategic Planning and Appropriations, determined for the first five-year period the proposed rules are in effect, there will be fiscal implications, which may be significant, for units of state and local government that voluntarily decide to participate in the provisions of this rulemaking. There will be no fiscal implications to other units of state and local government who chose not to participate in the program established by this proposed rulemaking. The cost to implement an EMS program is anticipated to range from no cost to approximately $89,000, depending on business practices and procedures of the organization implementing the new program.

The proposed rulemaking is intended to implement certain provisions of both HB 2912 (an act relating to the continuation and functions of the commission; providing penalties) and HB 2997 (an act relating to the implementation by the commission of a program to encourage the use of an EMS, 77th Legislature, 2001). These bills require the commission to develop and implement a program that provides regulatory incentives to encourage the use of an EMS by regulated entities, including state agencies and local governments. The bill requires the commission to integrate the use of an EMS into its regulatory programs, help develop EMS programs for small business and local governments, and establish environmental performance indicators to measure the effectiveness of the program's performance. Additionally, the bills require that the commission consider the use of EMS in an applicant's compliance history.

An EMS is a documented management system that contains all applicable environmental regulatory requirements that includes organizational structure, planning activities, responsibilities, practices, procedures, processes, and resources for developing, implementing, achieving, reviewing, and maintaining an environmental policy directed toward continuous improvement.

This rulemaking does not require units of state and local government to adopt the use of an EMS; therefore, there will be no additional costs to comply with these proposed rules unless a unit of state or local government voluntarily decide to participate in the EMS program. The cost to implement an EMS varies widely and is site specific. According to a report published by NSF International titled, "*Environmental Management System Demonstration Project,*" 1996, the cost to implement an EMS program at one large business referenced in the report was approximately $89,000 per site. The major cost of implementing an EMS was listed as staff salaries. If an organization chooses to have an outside consultant perform a large portion of the work, consulting fees might increase this cost estimate. Implementation costs will vary significantly depending on the facility/site and the amount of internal personnel allocated to implement the program. Other businesses listed in the report did not report additional costs, because implementation of an EMS program was considered part of doing business.

PUBLIC BENEFIT AND COSTS

Mr. Davis also determined for each year of the first five years the proposed rules are in effect, the public benefit anticipated from enforcement of and compliance with this rulemaking will be a potential increase in environmental regulatory compliance.

The proposed rulemaking is intended to implement certain provisions of HB 2912 and HB 2997, which require the commission to implement a program that provides regulatory incentives to encourage the use of an EMS by regulated entities, state agencies, and local governments.

An EMS is a documented management system that addresses applicable environmental regulatory requirements that includes organizational structure, planning activities, responsibilities, practices, procedures, processes, and resources for developing, implementing, achieving, reviewing, and maintaining an environmental policy directed toward continuous improvement and compliance assurance.

This rulemaking does not require individuals and businesses to adopt the use of an EMS; therefore, there will be no additional costs to comply with these proposed rules unless an affected person voluntarily decides to participate in the EMS program. The cost to implement an EMS varies widely and is site specific. According to a report published by NSF International titled, "*Environmental Management System Demonstration Project,*" 1996, the cost to implement an EMS program at one large business referenced in the report was approximately $89,000 per site. The major cost of implementing an EMS was listed as staff salaries. If an organization chooses to have an outside consultant perform a large portion of the work, consulting fees might increase this cost estimate. Implementation costs will vary significantly depending on the facility/site and the amount of internal personnel allocated to implement the program. Other businesses listed in the report did not report additional costs, because implementation of an EMS program was considered part of doing business.

SMALL AND MICRO-BUSINESS ASSESSMENT

There will be no adverse fiscal impacts to any small or micro-business as a result of the proposed rules, unless an affected person decides to implement the voluntary provisions of this rulemaking. The proposed rules are intended to implement certain provisions of HB 2912 and HB 2997, which require the commission to implement a program that provides regulatory incentives to encourage the use of an EMS by regulated entities, state agencies, and local governments.

An EMS is a documented management system that addresses applicable environmental regulatory requirements that includes organizational structure, planning activities, responsibilities, practices, procedures, processes, and resources for developing, implementing, achieving, reviewing, and maintaining an environmental policy directed toward continuous improvement.

This rulemaking does not require small or micro-businesses to adopt the use of an EMS; therefore, there will be no additional costs to comply with these proposed rules unless an affected person voluntarily decides to participate in the EMS program. The cost to implement an EMS varies widely and is site specific. According to a report published by NSF International titled, "*Environmental Management System Demonstration Project,*" 1996, the cost to implement an EMS program at one large business referenced in the report was approximately $89,000 per site. The major cost of implementing an EMS was listed as staff salaries. If an organization chooses to have an outside consultant perform a large portion of the work, consulting fees might increase this cost estimate. Implementation costs will vary significantly depending on the facility/site and the amount of internal personnel allocated to implement the program. Other businesses listed in the report did not report additional costs, because implementation of an EMS program was considered part of doing business.

The following is an analysis of the potential cost savings per employee for small or micro- businesses affected by the proposed rules. Small and micro-business are defined as having fewer than 100 or 20 employees respectively. A small business that decides to implement an EMS program would incur costs up to approximately $89,000 per site or $890 per employee. A micro-business that decides to implement an EMS program would incur costs of approximately $89,000 per site or $4,450 per employee. The costs used in this example were for a large business. Actual implementation costs for small or micro-businesses are anticipated to be less than the $89,000 used in this cost per employee analysis. The overall costs to implement an EMS would vary widely between businesses and would depend largely on the amount of internal resources available to implement the program.

DRAFT REGULATORY IMPACT ANALYSIS DETERMINATION

The commission reviewed the proposed rulemaking in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and determined that the rulemaking is not subject to §2001.0225 because it does not meet the definition of a "major environmental rule" as defined in that statute. 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. As the intent of the rule is to implement HB 2997 and HB 2912, §1.12, which require the commission to adopt procedural rules establishing a regulatory process that encourage the use of an EMS by regulated entities, these proposed rules do not meet the definition of a major environmental rule. Furthermore, the rulemaking does not meet any of the four applicability requirements listed in §2001.0225(a). Specifically, the proposed rules do not exceed a federal standard, exceed an express requirement of state law, or exceed a requirement of a delegation agreement. Finally, the proposed rules were not developed solely under the general powers of the commission, but were specifically developed to implement HB 2997 and HB 2912, §1.12, as passed by the Texas Legislature and signed by the governor. The commission invites public comment on the draft regulatory impact analysis determination.

TAKINGS IMPACT ASSESSMENT

The commission evaluated these proposed rules and performed a preliminary assessment of whether they constitute a takings under Texas Government Code, Chapter 2007. The following is a summary of that evaluation and preliminary assessment. The commission's preliminary assessment indicates that Texas Government Code, Chapter 2007 does not apply to the proposed rules because this is an action that is reasonably taken to fulfill an obligation mandated by state law, which is exempt under Texas Government Code, §2007.003(b)(4). Furthermore, the purpose of this rulemaking is to implement HB 2997 and HB 2912, §1.12, which require the commission to adopt procedural rules establishing a regulatory process that encourages the use of EMS by regulated entities. Promulgation and enforcement of these proposed rules will constitute neither a statutory nor a constitutional taking of private real property. There are no burdens imposed on private real property under this rulemaking as the proposed rules neither relate to nor have any impact on the use or enjoyment of private real property, and there is no reduction in value of the property as a result of this rulemaking.

CONSISTENCY WITH THE COASTAL MANAGEMENT PROGRAM

The commission reviewed the proposed rulemaking and found that the proposed rules are neither identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11, nor will they affect any action or authorization identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11. Therefore, the proposed rules are not subject to the Texas Coastal Management Program.

ANNOUNCEMENT OF HEARING

A public hearing on this proposal will be held September 27, 2001, at 10:00 a.m. in Room 131E of TNRCC Building C, located at 12100 Park 35 Circle, Austin. The hearing will be structured for the receipt of oral or written comments by interested persons. Individuals may present oral statements when called upon in order of registration. There will be no open discussion during the hearing; however, an agency staff member will be available to discuss the proposal 30 minutes before the hearing and will answer questions before and after the hearing.

SUBMITTAL OF COMMENTS

Comments may be submitted to Angela Slupe, MC 205, Office of Environmental Policy, Analysis, and Assessment, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087, or faxed to (512) 239-4808. All comments should reference Rule Log Number 2001-040-090-AD. Comments must be received by 5:00 p.m., October 8, 2001. For further information, please contact Kathy Ramirez, Regulation Development Section, at (512) 239-6757.

SUBCHAPTER A. PURPOSE, APPLICABILITY, AND ELIGIBILITY

30 TAC §90.1, §90.2

STATUTORY AUTHORITY

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

other laws of this state. Specific statutory authorization is derived from HB 2997 and HB 2912, §1.12, 77th Legislature, 2001, which amended TWC by adding §5.127, Environmental Management Systems, and §5.131, Environmental Management Systems, which require the commission to promulgate rules that establish a regulatory process that encourages the use of an EMS by regulated entities.

The proposed amendments implement TWC, §5.127, Environmental Management Systems, and §5.131, Environmental Management Systems.

§90.1. Purpose.

The purpose of this chapter is to implement [~~the commission's authority under~~] Texas Water Code (TWC), §5.123, Regulatory Flexibility; §5.127, Environmental Management Systems; and §5.131, Environmental Management Systems. [~~to provide regulatory flexibility to an applicant who proposes an alternative method or alternative standard to control or abate pollution.~~]

§90.2. Applicability and Eligibility.

(a) Subchapter B of this chapter applies to any statute or commission rule regarding the control or abatement of pollution, except that it does not apply to requirements for storing, handling, processing, or disposing of low-level radioactive materials.

(b) Subchapter C of this chapter applies to any person whose environmental management system (EMS) meets the minimum standards in §90.32 of this title (relating to Minimum Standards for Environmental Management Systems).

(c) Except as provided in subsection (e) or (f) of this section, a person whose EMS meets the minimum standards of §90.32 of this title may be eligible to receive regulatory incentives under this chapter.

(d) Except as provided in subsection (e) or (f) of this section, any person subject to any statute or commission rule regarding the control or abatement of pollution may be eligible to receive a regulatory flexibility order (RFO).

(e) A person who has been referred to the Texas or United States attorney general and has incurred a judgement, is ineligible to receive regulatory incentives for using an EMS or an RFO for a period of three years from the date the judgement was final.

(f) A person who has been convicted of willfully or knowingly committing an environmental crime in this state or any other state is ineligible to receive regulatory incentives for using an EMS or for an RFO for a period of three years from the date of the conviction.

[~~(a) This chapter applies to any statute or commission rule regarding the control or abatement of pollution, except that it does not apply to requirements for storing, handling, processing, or disposing of low-level radioactive materials.~~]

[~~(b) Any person subject to any statute or commission rule regarding the control or abatement of pollution may be eligible to receive a Regulatory Flexibility Order, except that:~~]

[~~(1) a person who has been referred to the Texas or United States attorney general, and has incurred a judgment, is ineligible for a period of three years from the date the judgment was final;~~]

[~~(2) a person who has been convicted of willfully or knowingly committing an environmental crime in this state or any other state is ineligible for a period of three years from the date of the conviction.~~]

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 August 24, 2001.

TRD-200105008
Ramon Dasch
Acting Director, Environmental Law Division
Texas Natural Resource Conservation Commission
Proposed date of adoption: October 8, 2001
For further information, please call: (512) 239-4712

SUBCHAPTER C. REGULATORY INCENTIVES FOR USING ENVIRONMENTAL MANAGEMENT SYSTEMS

30 TAC §§90.30, 90.32, 90.34, 90.36, 90.38, 90.40, 90.42, 90.44

STATUTORY AUTHORITY

The new sections are proposed under TWC, §5.103 and §5.105, which provide the commission with authority to adopt any rules necessary to carry out its powers and duties under TWC and other laws of this state. Specific statutory authorization is derived from HB 2997 and HB 2912, §1.12, 77th Legislature, 2001, which amended TWC by adding §5.127, Environmental Management Systems, and §5.131, Environmental Management Systems, which require the commission to promulgate rules that establish a regulatory process that encourages the use of an EMS by regulated entities.

The proposed new sections implement TWC, §5.127, Environmental Management Systems, and §5.131, Environmental Management Systems.

§90.30. Definitions.

(a) Environmental aspect -- Any element of a person's activities, products, or services that can interact with the environment.

(b) Environmental impact -- Any change to the environment, whether adverse or beneficial, wholly or partially resulting from a person's activities, products, or services.

(c) Environmental management system -- A documented management system to address applicable environmental regulatory requirements that includes organizational structure, planning activities, responsibilities, practices, procedures, processes, and resources for developing, implementing, achieving, reviewing, and maintaining an environmental policy directed toward continuous improvement.

§90.32. Minimum Standards for Environmental Management Systems.

A person may be eligible to receive regulatory incentives under this chapter if the person's environmental management system (EMS), at a minimum:

(1) includes a written environmental policy governing performance improvement and compliance assurance;

(2) identifies and prioritizes the environmental aspects and impacts of the person's activities;

(3) sets the priorities, goals, and targets for continuous improvement in environmental performance and for ensuring compliance with applicable environmental laws, regulations, and permit conditions;

(4) assigns clear responsibility for implementation, training, monitoring, and taking corrective action and for ensuring compliance with applicable environmental laws, regulations, and permit conditions;

(5) requires written documentation of the implementation of the EMS and the results of so doing; and

(6) requires a written evaluation, on a routine schedule, of the refinement to the EMS to demonstrate how attainment of the priorities, goals, and targets of the system has improved.

§90.34. Regulatory Incentives.

Regulatory incentives may include, but are not limited to:

(1) on-site technical assistance;

(2) accelerated access to program information;

(3) modification of state or federal regulatory requirements that do not change emission or discharge limits;

(4) adjustment to the methods or frequency for scheduling and conducting compliance inspections; and

(5) inclusion of the use of an EMS in a person's compliance history and compliance summaries.

§90.36. Evaluation of an Environmental Management System by the Executive Director.

(a) A person must submit documentation of their environmental management system (EMS) as part of a written request for an on-site evaluation of their EMS to the executive director to be eligible to receive regulatory incentives under this subchapter except as described in subsection (b) of this section.

(b) A person who qualifies as a Clean Texas Leader is exempt from providing documentation for their EMS to the executive director if the information the person submitted to qualify to become a Clean Texas Leader is still current. Clean Texas Leaders must still submit a written request to the executive director for an on-site evaluation of their EMS to be eligible for regulatory incentives under this subsection.

(c) Within 30 days of submission of the request for evaluation of an EMS, the executive director shall notify in writing the person who submitted the request of whether the information provided is complete or that additional information must be submitted to the executive director.

(d) Within 30 days of submission of the request for an on-site evaluation of the EMS, the executive director will schedule with the person who has submitted the request an on-site evaluation to be performed by the executive director or an approved third-party auditor.

(e) The executive director will notify the person who submitted the request for evaluation of whether the EMS qualifies for regulatory incentives under this subchapter. If the EMS does not qualify for regulatory incentives under this subchapter, the executive director will send the person who requested an evaluation of their EMS a notice detailing where the EMS does not meet the standards in §90.32 of this title (relating to Minimum Standards for Environmental Management Systems).

(f) The person has 30 days from the date the executive director mailed the notice to provide in writing the additional information the executive director has requested. If the person does not respond to the executive director's request in 60 days, the EMS is considered withdrawn from consideration.

(g) If a person receives regulatory incentives under this subchapter, the executive director or an approved third-party auditor will conduct a follow-up on-site evaluation of the EMS at least every three years from the date of the initial evaluation.

(h) Any areas in which the executive director or an approved third-party auditor finds the EMS does not meet the standards in §90.32 of this title during the follow-up evaluation shall be corrected in accordance with the schedule required by the executive director. If the deficiencies are not corrected within the time frame allowed or are of such a nature to indicate the EMS no longer meets the standards of this subchapter, the regulatory incentives may be terminated under §90.42 of this title (relating to Termination of Regulatory Incentives under an Environmental Management System).

§90.38. Requests for Modification of State or Federal Regulatory Requirements.

Persons who request modifications of state or federal regulatory requirements which cannot be authorized by any other approval method except a commission order must follow the requirements of Subchapter B of this chapter.

§90.40. Executive Director Action on Request for Regulatory Incentives through the Use of an Environmental Management System.

(a) Executive director action on regulatory incentives authorized by rule is not required. Regulatory incentives authorized by rule may be implemented as soon as the person is notified that its environmental management system (EMS) meets the requirements of §90.32 of this title (relating to Minimum Standards for Environmental Management Systems).

(b) When considering approval of regulatory incentives, the executive director shall consider, among other factors:

(1) the compliance history of the person who submitted the EMS;

(2) the efforts made by the person who submitted the EMS to involve the person's community and achieve community support; and

(3) the person's participation in voluntary programs for environmental improvement.

(c) When considering regulatory incentives which modify state or federal requirements, the executive director shall consider the steps the person has taken to develop an EMS that exceeds the minimum requirements in §90.32 of this title.

(d) The executive director shall act on regulatory incentives not included in subsection (a) of this section or subject to §90.38 of this title (relating to Requests for Modification of State or Federal Regulatory Requirements) within 60 days of notifying the person that their EMS meets the standards outlined in this subchapter. This time frame may be extended at the request of the person or the executive director to allow additional approval time for incentives that require approval by the EPA for implementation.

§90.42. Termination of Regulatory Incentives under an Environmental Management System.

(a) Termination by the recipient.

(1) A person who receives regulatory incentives through the use of an environmental management system (EMS) that meets the standards in this subchapter may terminate the regulatory incentives at any time by sending a notice of termination to the executive director by certified mail.

(2) Once a regulatory incentive is terminated, the person who received the regulatory incentives must be in compliance with all permits, existing statutes, or commission rules affected by the regulatory incentives granted at the time of termination.

(3) If the regulatory incentives approved involve the use of an order, the person who received the regulatory incentives shall comply with the applicable provisions of §90.20 of this title (relating to Termination).

(b) Termination by the executive director.

(1) Noncompliance with the terms and conditions of the regulatory incentives, Texas Water Code, §5.127 or §5.131, or this chapter, may result in the regulatory incentives being terminated.

(2) If a person who is approved to use regulatory incentives under this subchapter is found by the executive director or an approved third-party auditor to no longer meet the requirements of this subchapter, the executive director shall notify the person in writing of the deficiencies found.

(3) Any areas in which the executive director or an approved third-party auditor finds the EMS does not meet the standards in §90.32 of this title (relating to Minimum Standards for Environmental Management Systems) during the follow-up evaluation shall be corrected in accordance with the schedule required by the executive director. If the deficiencies are not corrected within the time frame allowed or are of such a nature to indicate the EMS no longer meets the standards of this subchapter, the regulatory incentives will be terminated under this section.

(4) In the event regulatory incentives are terminated, the executive director may specify an appropriate and reasonable transition period to allow the person previously operating under regulatory incentives to come into full compliance with all existing commission requirements, including time to apply for any necessary permits or other authorizations.

§90.44. Motion to Overturn.

Any person who has requested approval of an environmental management system (EMS) and whose EMS was denied approval, any person who has been notified by the executive director that the approval for their system has been terminated, any person who has been denied regulatory incentives that the executive director is authorized to approve under §90.40 of this title (relating to Executive Director Action on Request for Regulatory Incentives through the Use of an Environmental Management System), or who has been notified by the executive director that a regulatory incentive has been terminated, may file with the chief clerk a motion to overturn the executive director's decision. A motion must be filed within 23 days after the date the commission mails notice of the executive director's decision to the person. Timely motions are subject to §50.139(e) - (g) of this title (relating to Motion to Overturn).

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 August 24, 2001.

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Ramon Dasch
Acting Director, Environmental Law Division
Texas Natural Resource Conservation Commission
Proposed date of adoption: October 8, 2001
For further information, please call: (512) 239-4712

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CHAPTER 220. REGIONAL ASSESSMENTS OF WATER QUALITY
SUBCHAPTER B. PROGRAM FOR WATER QUALITY ASSESSMENT FEES

30 TAC §220.21

The Texas Natural Resource Conservation Commission (commission) proposes an amendment to §220.21, Water Quality Assessment Fees. The commission concurrently proposes amendments to Chapters 303 and 304.

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE PROPOSED RULE

Chapter 220 implements the Texas Clean Rivers Program, under Texas Water Code (TWC), §26.0135. The Texas Clean Rivers Program staff monitors and assesses water quality conditions that support water quality management decisions necessary to maintain and improve the quality of the state's water resources (as defined in TWC, §26.001(5)). Under TWC, §26.0135, water right holders and wastewater permit holders are assessed fees to pay for the costs of this program. This proposed amendment would implement Senate Bill (SB) 289, 77th Texas Legislature, 2001, which amends TWC, §26.0135, to provide that the commission shall not assess water quality assessment fees against a holder of a non-priority hydroelectric water right that owns or operates privately-owned facilities that collectively have a capacity of less than two megawatts. This proposal represents a change from the existing rules, which provide that water quality assessment fees shall be established for each water right holder for each water right authorized by category of use, except for irrigation water rights. This proposed rule would amend §220.21 to specify that the commission may not assess costs against a holder of a non-priority hydroelectric right that owns or operates privately-owned facilities that collectively have a capacity of less than two megawatts.

SECTION BY SECTION DISCUSSION

Section 220.21 is proposed to be amended to add the provision that the commission may not assess costs against a holder of a non-priority hydroelectric right that owns or operates privately-owned facilities that collectively have a capacity of less than two megawatts. The word below was changed to in this subsection to reflect current *Texas Register* style.

FISCAL NOTE: COSTS TO STATE AND LOCAL GOVERNMENT

Jeffrey Horvath, Strategic Planning and Appropriations, has determined for the first five-year period the proposed rule is in effect, no significant fiscal implications for the commission or other units of state and local government are anticipated as a result of administration or enforcement of the proposed rule.

The proposed rule would implement SB 289 (an act relating to the exemption of a certain class of small hydroelectric facilities from water quality assessment fees and watermaster fees), 77th Legislature, 2001, and provides that the commission shall not assess water quality assessment fees against holders of hydroelectric rights that own or operate privately-owned facilities that collectively have a capacity of less than two megawatts. Current rules provide that water quality assessment fees shall be established for each water right holder for each water right authorized by category of use, except for irrigation water rights. Water quality assessment fees are used to support the Texas Clean Rivers

Program. The program staff monitors and assesses water quality conditions that support water quality management decisions necessary to maintain and improve the quality of the state's water resources. Water right holders and wastewater permit holders are assessed water quality assessment fees to pay for the costs of the program.

The proposed rule would provide an exemption from these fees. There are two known small hydroelectric facilities that would qualify for this exemption. Fee rates are based upon the volume of water allocated in the water right. The estimated amount of the water quality assessment fees assessed for Fiscal Year (FY) 2002 for both facilities is $6,354. Program fee rates will not be revised to compensate for the potential loss of fee revenue. The average annual budget of the Texas Clean Rivers Program is approximately $5 million. The loss of revenue is negligible and is not considered significant.

Senate Bill 289 also provides that the watermaster shall not assess fees against holders of hydroelectric rights that own or operate privately-owned facilities that collectively have a capacity of less than two megawatts.

PUBLIC BENEFIT AND COSTS

Mr. Horvath also determined for each year of the first five years the proposed rule is in effect, the public benefit anticipated from enforcement of and compliance with the proposed rule will be continued compliance with state law while maintaining the current Texas Clean Rivers Program.

There are no fiscal implications anticipated to businesses or individuals as a result of implementing the proposed rule, except for the positive implication for the two facilities expected to be exempted.

The proposed rule amendment would implement SB 289 and provides that the commission shall not assess water quality assessment fees against holders of hydroelectric rights that own or operate privately-owned facilities that collectively have a capacity of less than two megawatts. Current rules provide that water quality assessment fees shall be established for each water right holder for each water right authorized by category of use except for irrigation water rights. Water quality assessment fees are used to support the Texas Clean Rivers Program. The program staff monitors and assesses water quality conditions that support water quality management decisions necessary to maintain and improve the quality of the state's water resources. Water right holders and wastewater permit holders are assessed water quality assessment fees to pay for the costs of the program.

The proposed rule would provide an exemption from these fees. There are two known small hydroelectric facilities that would qualify for this exemption. Fee rates are based upon the volume of water allocated in the water right. The estimated amount of the water quality assessment fees assessed for FY 2002 for both facilities is $6,354. Program fee rates will not be revised to compensate for the potential loss of fee revenue. The average annual budget of the Texas Clean Rivers Program is approximately $5 million. The loss of revenue is negligible and is not considered significant relative to the total cost of the program.

SMALL BUSINESS AND MICRO-BUSINESS ASSESSMENT

There are no adverse fiscal implications for small or micro-businesses anticipated as a result of implementation of the proposed rule. The proposed rule would result in positive fiscal implications for the two facilities expected to be exempted from water quality assessment fees.

The proposed rule amendment would implement SB 289 and provides that the commission shall not assess water quality assessment fees against holders of hydroelectric rights that own or operate privately-owned facilities that collectively have a capacity of less than two megawatts. Current rules provide that water quality assessment fees shall be established for each water right holder for each water right authorized by category of use except for irrigation water rights. Water quality assessment fees are used to support the Texas Clean Rivers Program. The program staff monitors and assesses water quality conditions that support water quality management decisions necessary to maintain and improve the quality of the state's water resources. Water right holders and wastewater permit holders are assessed water quality assessment fees to pay for the costs of the program.

The proposed rule would provide an exemption from these fees. There are two known small hydroelectric facilities that would qualify for this exemption. At least one of the facilities and perhaps both, may be considered small businesses. The exemption from water quality assessment fees results in positive fiscal implications for the two facilities. Fee rates are based upon the volume of water allocated in the water right. The estimated amount of the water quality assessment fees assessed for FY 2002 for both facilities is $6,354. Program fee rates will not be revised to compensate for the potential loss of fee revenue. The average annual budget of the Texas Clean Rivers Program is approximately $5 million. The loss of revenue is negligible and is not considered significant.

DRAFT REGULATORY IMPACT ANALYSIS DETERMINATION

The commission reviewed the proposed rulemaking in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and determined that the rulemaking is not subject to §2001.0225 because it does not meet the definition of a "major environmental rule" as defined in that statute because the specific intent of this amendment is not to protect the environment or reduce risks to human health from environmental exposure. The intent of the proposed amendment is to exempt a certain class of small privately-owned hydroelectric facilities from paying water quality assessment fees under the Texas Clean Rivers Program. The commission invites public comment on the draft regulatory impact analysis determination.

TAKINGS IMPACT ASSESSMENT

The commission evaluated this proposed rule and performed a preliminary assessment of whether Texas Government Code, Chapter 2007 is applicable. The specific purpose of the proposed rulemaking is to implement legislation which changes who may be assessed water quality assessment fees under the Texas Clean Rivers Program. This rulemaking substantially advances this purpose by proposing to amend §220.21 of the water quality assessment rules to provide that the Texas Clean Rivers Program staff may not assess fees from a certain class of small privately-owned hydroelectric facilities that collectively generate less than two megawatts.

The commission's preliminary assessment indicates that Texas Government Code, Chapter 2007 does not apply to this proposed rule because this proposed rule amendment does not affect any private real property that is the subject of this rulemaking in a manner that restricts or limits the owner's right to the

property that would otherwise exist in the absence of the governmental action. This rulemaking only relates to fees charged for water quality assessment.

CONSISTENCY WITH THE COASTAL MANAGEMENT PROGRAM

The commission reviewed the rulemaking and found that the rule is neither 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), nor will it affect any action or authorization identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11(a)(6). Therefore, the proposed rule amendment is not subject to the CMP.

ANNOUNCEMENT OF HEARING

A hearing will be held on this proposed rulemaking on October 4, 2001 at 10:00 a.m. at the Texas Natural Resource Conservation Commission Region 13 Office, 14250 Judson Road, San Antonio, Texas. The hearing is structured for the receipt of oral or written comments by interested persons. Individuals may present oral statements when called upon in order of registration. Open discussions will not occur during the hearing; however, an agency staff member will be available to discuss the proposal 30 minutes prior to the hearing and will answer questions before and after the hearing.

Persons with disabilities who have special communication or other accommodation needs who are planning to attend the hearings should contact the agency at (512) 239-4900. Requests should be made as far in advance as possible.

SUBMITTAL OF COMMENTS

Comments may be submitted to 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 2001-048-304-WT. Comments must be received by 5:00 p.m., October 8, 2001. For further information contact Melissa Estes, Policy and Regulations Division, at (512) 239-3937.

STATUTORY AUTHORITY

The amendment is proposed under TWC, §5.103, which provides the commission authority to adopt any rules necessary to carry out its powers and duties under this code and other laws of this state; §5.105, which authorizes the commission to establish and approve all general policy of the commission by rule; and §26.0135, which requires assessments of fees from users of water and wastewater permit holders to pay for the administrative costs of periodic monitoring and assessment of water quality conditions in each watershed and river basin in the state.

This proposed amendment implements the duties and responsibilities of the Texas Clean Rivers Program under TWC, §26.011 and §26.0135, which gives the commission authority to monitor and assess water quality conditions that support water quality management decisions necessary to maintain and improve the quality of the state's water resources.

§220.21. Water Quality Assessment Fees.

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

(e) For municipal or industrial water rights, or portions thereof, not directly associated with a facility or operation which is assessed a fee under subsection (c) or (d) of this section, and for all other types of water rights except irrigation water rights and certain hydroelectric water rights described in this subsection, each water right holder shall pay a fee based on the authorization to impound, divert or use state water. The fee for each water right authorizing diversion of more than 250 acre-feet per year for consumptive use, other than for irrigation, shall be $.22 per acre-foot up to 20,000 acre-feet, and $.08 per acre-foot thereafter. An authorization to impound water will be assessed a fee only when there is no associated consumptive use authorized, and then the fee will be calculated at the nonconsumptive rate described in this subsection [~~below~~]. Except for water rights for use for hydroelectric generation, the fee shall be $.021 per acre-foot for water rights for non-consumptive use above 2,500 acre-feet per year up to 50,000 acre-feet, and $.0007 per acre-foot thereafter. The fee for water rights for use for hydroelectric generation shall be $.04 per acre-foot per year up to 100,000 acre-feet and $.004 per acre-foot thereafter. This fee shall not be assessed against a holder of a non-priority hydroelectric right who owns or operates privately-owned facilities which collectively have a capacity of less than two megawatts.

(f) - (l) (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 August 24, 2001.

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Ramon Dasch
Acting Director, Environmental Law Division
Texas Natural Resource Conservation Commission
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For further information, please call: (512) 239-4712

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CHAPTER 303. OPERATION OF THE RIO GRANDE

SUBCHAPTER H. FINANCING RIO GRANDE WATERMASTER OPERATION

30 TAC §303.71

The Texas Natural Resource Conservation Commission (commission) proposes an amendment to §303.71, Costs of Administration. The commission concurrently proposes amendments to Chapters 220 and 304.

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE PROPOSED RULE

Chapter 303 implements water rights and the duties and responsibilities of watermaster operations in portions of the Rio Grande Basin and the Nueces - Rio Grande Basin. Under Texas Water Code (TWC), §11.329, holders of water rights that are administered by a watermaster shall reimburse the commission for the expense of watermaster operations. This proposed amendment would implement Senate Bill (SB) 289, 77th Texas Legislature, 2001, which amends TWC, §11.329, to provide that the watermaster shall not assess fees against a holder of hydroelectric rights that own or operate privately-owned facilities that collectively have a capacity of less than two megawatts. This proposal represents a change from the existing rules, which provide that watermaster costs shall be established for each water right holder for each water right authorized by category of use. Subchapter H establishes the procedures for establishing accounts;

commission approval of assessments and budget; and assessment of costs of watermaster operations. The existing rule provides that costs shall be established for each water right holder for each water right authorization by category of use. This proposed rule would amend §303.71 to specify that the commission may not assess costs against a holder of a non-priority hydroelectric right that owns or operates privately-owned facilities that collectively have a capacity of less than two megawatts.

SECTION BY SECTION DISCUSSION

Section 303.71 is proposed to be amended to add the provision that the commission may not assess costs against a holder of a non-priority hydroelectric right that owns or operates privately-owned facilities that collectively have a capacity of less than two megawatts. This amendment is proposed to implement SB 289. The proposed amendment also deletes an obsolete requirement for rules review, changes the phrase in accordance with to under for simplicity, changes the term hearing to meeting because a public comment meeting is not a formal legal hearing, and deletes the term total because it is redunant.

FISCAL NOTE: COSTS TO STATE AND LOCAL GOVERNMENT

Jeffrey Horvath, Strategic Planning and Appropriations, has determined for the first five-year period the proposed rule is 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 rule.

The proposed rule would implement SB 289 (an act relating to the exemption of small hydroelectric facilities from water quality assessment fees and watermaster fees), 77th Legislature, 2001, and would provide that the watermaster shall not assess fees against holders of hydroelectric rights that own or operate privately-owned facilities that collectively have a capacity of less than two megawatts. Holders of water rights that are administered by a watermaster currently reimburse the commission for the expense of watermaster operations. Watermaster costs are established for each water right holder by category of use for each authorized water right. The watermaster assesses an annual fee to each water right holder to cover costs of the watermaster program.

Currently there are no facilities in the Rio Grande Watermaster Division affected by this rulemaking. There are two known facilities in the South Texas Watermaster Division that would qualify for the proposed exemption from watermaster fees. The amount assessed fluctuates, depending upon the projected expenses for operation of the South Texas Watermaster Division, the type of water right held, and the volume of water used.

PUBLIC BENEFIT AND COSTS

Mr. Horvath also determined for each year of the first five years the proposed rule is in effect, the public benefit anticipated from enforcement of and compliance with the proposed rule will be continued compliance with state law for the South Texas Watermaster Division.

Fiscal implications anticipated to businesses or individuals as a result of implementing the proposed rule are not anticipated to be significant.

The proposed rule would implement SB 289 and would provide that the watermaster shall not assess fees against holders of hydroelectric rights that own or operate privately-owned facilities that collectively have a capacity of less than two megawatts. Holders of water rights that are administered by a watermaster currently reimburse the commission for the expense of watermaster operations. Watermaster costs are established for each water right holder by category of use for each authorized water right. The watermaster assesses an annual fee to each water right holder to cover costs of the watermaster program.

Currently there are no facilities in the Rio Grande Watermaster Division affected by this rulemaking. There are two known facilities in the South Texas Watermaster Division that would qualify for the proposed exemption from watermaster fees.

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 rule. Any increases in assessments to water rights holders in the South Texas Watermaster Division, including small or micro-businesses, resulting from the adoption of the proposed rule are not considered significant.

The proposed rule would implement SB 289 and would provide that the watermaster shall not assess fees against holders of hydroelectric rights that own or operate privately-owned facilities that collectively have a capacity of less than two megawatts. Holders of water rights that are administered by a watermaster currently reimburse the commission for the expense of watermaster operations. Watermaster costs are established for each water right holder by category of use for each authorized water right. The watermaster assesses an annual fee to each water right holder to cover costs of the watermaster program.

Currently there are no facilities in the Rio Grande Watermaster Division affected by this rulemaking. There are two known facilities in the South Texas Watermaster Division that would qualify for the proposed exemption from watermaster fees. At least one of these facilities and perhaps both, may be considered small businesses, selling hydroelectric power. The exemption from assessments for the two hydroelectric facilities result in positive fiscal implications for them.

DRAFT REGULATORY IMPACT ANALYSIS DETERMINATION

The commission reviewed the proposed rulemaking in light of the regulatory analysis requirements of Texas Government Code, §2001.0225 and determined that the rulemaking is not subject to §2001.0225 because it does not meet the definition of a "major environmental rule" as defined in that statute because the specific intent of this amendment is not to protect the environment or reduce risks to human health from environmental exposure. The intent of the proposed amendment is to exempt small privately-owned hydroelectric facilities from paying watermaster fees. The commission invites public comment on the draft regulatory impact analysis determination.

TAKINGS IMPACT ASSESSMENT

The commission evaluated this proposed rule and performed a preliminary assessment of whether Texas Government Code, Chapter 2007 is applicable. The specific purpose of the proposed rulemaking is to implement legislation which changes who may be assessed fees for a watermaster. This rulemaking substantially advances this purpose by proposing to amend §303.71 of the Rio Grande watermaster rules to provide that a watermaster may not assess fees from small privately-owned hydroelectric facilities.

The commission's preliminary assessment indicates that Texas Government Code, Chapter 2007, does not apply to this proposed rule because this proposed rule amendment does not affect any private real property that is the subject of this rulemaking in a manner that restricts or limits the owner's right to the property that would otherwise exist in the absence of the governmental action. This rulemaking only relates to fees charged for the services of a watermaster.

CONSISTENCY WITH THE COASTAL MANAGEMENT PROGRAM

The commission reviewed the rulemaking and found that the rule is neither 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), nor will it affect any action or authorization identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11(a)(6). Therefore, the proposed rule amendment is not subject to the CMP.

ANNOUNCEMENT OF HEARING

A hearing will be held on this proposed rulemaking on October 4, 2001 at 10:00 a.m. at the Texas Natural Resource Conservation Commission, Region 13 Office, 14250 Judson Road, San Antonio, Texas. The hearing is structured for the receipt of oral or written comments by interested persons. Individuals may present oral statements when called upon in order of registration. Open discussions will not occur during the hearing; however, an agency staff member will be available to discuss the proposal 30 minutes prior to the hearing and will answer questions before and after the hearing.

Persons with disabilities who have special communication or other accommodation needs who are planning to attend the hearings should contact the agency at (512) 239-4900. Requests should be made as far in advance as possible.

SUBMITTAL OF COMMENTS

Comments may be submitted to 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 2001-048-304-WT. Comments must be received by 5:00 p.m., October 8, 2001. For further information contact Melissa Estes, Policy and Regulations Division, at (512) 239-3937.

STATUTORY AUTHORITY

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

This proposed amendment implements the duties and responsibilities of watermaster operations as specified in TWC, §§11.325 - 11.458, which establish water divisions; the watermaster for these water divisions; the duties, responsibilities, and compensation of the watermaster; the commission's authority to establish water divisions and the watermaster; and all duties and responsibilities necessary to carry out the authority of the commission through watermaster operations.

§303.71. Costs of Administration.

Under [~~In accordance with~~] the Texas Water Code, §11.329, holders of water rights that are administered by the Rio Grande watermaster shall reimburse the commission for the expenses of the wastermaster operation. An assessment account shall be established for each water right, or for each authorization thereunder by category of use. The commission shall not assess costs against a holder of a non-priority hydroelectric right that owns or operates privately-owned facilities that collectively have a capacity of less than two megawatts. The [~~total~~] assessment for each account shall be the sum of a uniform base charge and, as applicable, a use fee and a storage fee. Following a public meeting [~~hearing~~], the commission shall issue an order approving the assessment income needed for the Rio Grande Watermaster for the next fiscal year. The order shall also specify the base charge per account and the reinstatement fee for delinquent assessment payment. At least 30 days prior to the commission holding such a meeting [~~hearing~~], the executive director shall file with the commission a copy of the proposed budget. [~~On or before September 1, 1989, the commission shall review this section for any appropriate changes.~~]

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 August 24, 2001.

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Ramon Dasch
Acting Director, Environmental Law Division
Texas Natural Resource Conservation Commission
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For further information, please call: (512) 239-4712

CHAPTER 304. WATERMASTER OPERATIONS

SUBCHAPTER G. FINANCING WATERMASTER OPERATIONS

30 TAC §304.61

The Texas Natural Resource Conservation Commission (commission) proposes an amendment to §304.61, Costs of Administration. The commission concurrently proposes amendments to Chapters 220 and 303.

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE PROPOSED RULE

Chapter 304 implements the duties and responsibilities of watermaster operations. Under Texas Water Code (TWC), §11.329, holders of water rights that are administered by a watermaster shall reimburse the commission for the expense of watermaster operations. This proposed amendment would implement Senate Bill (SB) 289, 77th Texas Legislature, 2001, which amends TWC, §11.329, to provide that the watermaster shall not assess fees against hydroelectric rights that own or operate privately-owned facilities that collectively have a capacity of less than two megawatts. This proposal represents a change from the existing rules, which provide that watermaster costs shall be established for each water right holder for each water right authorized by category of use. Subchapter G establishes the procedures for establishing accounts, commission approval of

assessments and budget, and assessment of costs of watermaster operations. The existing rule provides that costs shall be established for each water right holder for each water right authorization by category of use. This proposed rule would amend §304.61 to specify that the commission may not assess costs for a non-priority hydroelectric right that owns or operates privately-owned facilities that collectively have a capacity of less than two megawatts.

SECTION BY SECTION DISCUSSION

Section 304.61 is proposed to be amended to add the provision that the commission may not assess costs against a holder of a non-priority hydroelectric right that owns or operates privately-owned facilities that collectively have a capacity of less than two megawatts. This amendment is proposed to implement SB 289. The proposed amendment also changes the phrase in accordance with to under for simiplicity, changes the term hearing to meeting because a public comment meeting is not a formal legal hearing, and deletes the term total because it was redundant.

FISCAL NOTE: COSTS TO STATE AND LOCAL GOVERNMENT

Jeffrey Horvath, Strategic Planning and Appropriations, has determined for the first five-year period the proposed rule is 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 rule.

The proposed rule would implement SB 289 (an act relating to the exemption of small hydroelectric facilities from water quality assessment fees and watermaster fees), 77th Legislature, 2001, and would provide that the watermaster shall not assess fees against holders of hydroelectric rights that own or operate privately-owned facilities that collectively have a capacity of less than two megawatts. Holders of water rights that are administered by a watermaster currently reimburse the commission for the expense of watermaster operations. Watermaster costs are established for each water right holder by category of use for each authorized water right. The watermaster assesses an annual fee to each water right holder to cover costs of the watermaster program.

There are two known facilities in the South Texas Watermaster district that would qualify for the proposed exemption from watermaster fees. The amount assessed fluctuates depending upon the projected expenses for operation of the South Texas Watermaster Division, the type of water right held, and the volume of water used. These two facilities combined have been assessed between $4,000 and $4,600 each year for the last three years. The combined assessment for Fiscal Year (FY) 2002 is estimated to be $4,032. Projected expenses for the South Texas Watermaster Division for FY 2002 are approximately $460,000. The exempted portion would be reallocated to the other 1,217 water rights holders. The increase in assessments to other water rights holders would depend upon the type of water right held and the volume of water used. Any unit of government, business, or individual possessing a water right in the South Texas Watermaster Division may realize an increase in its assessment, but because the amount of the exempted assessment is such a small percentage of the watermaster costs, and would be spread among a large number of water rights holders, the increase is not considered significant.

PUBLIC BENEFIT AND COSTS

Mr. Horvath also determined for each year of the first five years the proposed rule is in effect, the public benefit anticipated from enforcement of and compliance with the proposed rule will be continued compliance with state law for the South Texas Watermaster Division.

Fiscal implications anticipated to businesses or individuals as a result of implementing the proposed rule are not anticipated to be significant.

The proposed rule would implement SB 289 and would provide that the watermaster shall not assess fees against holders of hydroelectric rights that own or operate privately-owned facilities that collectively have a capacity of less than two megawatts. Holders of water rights that are administered by a watermaster currently reimburse the commission for the expense of watermaster operations. Watermaster costs are established for each water right holder by category of use for each authorized water right. The watermaster assesses an annual fee to each water right holder to cover costs of the watermaster program.

There are two known facilities in the South Texas Watermaster Division that would qualify for the proposed exemption from watermaster fees. The amount assessed fluctuates depending upon the projected expenses for operation of the South Texas Watermaster Division, the type of water right held, and the volume of water used. These two facilities combined have been assessed between $4,000 and $4,600 each year for the last three years. The combined assessment for FY 2002 is estimated to be $4,032. Projected expenses for the South Texas Watermaster Division for FY 2002 are approximately $460,000. The exempted portion would be reallocated to the other 1,217 water rights holders. The increase in assessments to other water rights holders would depend upon the type of water right held and the volume of water used. Any unit of government, business, or individual possessing a water right in the South Texas Watermaster Division may realize an increase in its assessment, but the increase is not considered significant.

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 rule which are not considered to be significant. Any increases in assessments to water rights holders in the South Texas Watermaster Division, including small or micro- businesses, resulting from the adoption of the proposed rule are not considered significant.

The proposed rule would implement SB 289 and would provide that the watermaster shall not assess fees against holders of hydroelectric rights that own or operate privately-owned facilities that collectively have a capacity of less than two megawatts. Holders of water rights that are administered by a watermaster currently reimburse the commission for the expense of watermaster operations. Watermaster costs are established for each water right holder by category of use for each authorized water right. The watermaster assesses an annual fee to each water right holder to cover costs of the watermaster program.

The amount assessed fluctuates depending upon the projected expenses for operation of the South Texas Watermaster Division, the type of water right held, and the volume of water used. There are two known facilities in the South Texas Watermaster Division that would qualify for the proposed exemption from watermaster fees. At least one of these facilities and perhaps both, may be considered small businesses, selling hydroelectric power. The exemption from assessments for the two hydroelectric facilities

result in positive fiscal implications for them. These two facilities combined have been assessed between $4,000 and $4,600 each year for the last three years. The combined assessment for FY 2002 is estimated to be $4,032. Projected expenses for the South Texas Watermaster Division for FY 2002 are approximately $460,000. The combined assessment which would be exempted represents less than 1% of the watermaster projected expenses. The exempted portion would be reallocated to the other 1,217 water rights holders. The increase in assessments to other water rights holders would depend upon the type of water right held and the volume of water used.

It is not known how many of the 1,217 water rights holders in the South Texas Watermaster Division are small or micro-businesses. There are several different types of water right accounts in the South Texas Watermaster Division including municipal, industrial, irrigation, hydroelectric, recreation, recharge, secondary, salt water, spreader, domestic and livestock, storage, and nonconsumptive. Any small or micro-business possessing a water right in the South Texas Watermaster Division for one of these types of uses may realize an increase in its assessment, but because the amount of the exempted assessment is such a small percentage of the watermaster costs, and would be spread among a large number of water rights holders, the increase is not considered significant.

DRAFT REGULATORY IMPACT ANALYSIS DETERMINATION

The commission reviewed the proposed rulemaking in light of the regulatory analysis requirements of Texas Government Code, §2001.0225 and determined that the rulemaking is not subject to §2001.0225 because it does not meet the definition of a "major environmental rule" as defined in that statute. The specific intent of this proposed amendment is not to protect the environment or reduce risks to human health from environmental exposure; the intent is to exempt small privately-owned hydroelectric facilities from paying watermaster fees. The commission invites public comment on the draft regulatory impact analysis determination.

TAKINGS IMPACT ASSESSMENT

The commission evaluated this proposed rule and performed a preliminary assessment of whether Texas Government Code, Chapter 2007 is applicable. The specific purpose of the proposal rulemaking is to implement legislation which changes who may be assessed fees for a watermaster. This rulemaking substantially advances this purpose by proposing to amend §304.61 of the watermaster rules to provide that a watermaster may not assess fees from small privately-owned hydroelectric facilities.

The commission's preliminary assessment indicates that Texas Government Code, Chapter 2007, does not apply to this proposed rule because this proposed rule amendment does not affect any private real property that is the subject of this rulemaking in a manner that restricts or limits the owner's right to the property that would otherwise exist in the absence of the governmental action. This rulemaking only relates to fees charged for the services of a watermaster.

CONSISTENCY WITH THE COASTAL MANAGEMENT PROGRAM

The commission reviewed the rulemaking and found that the rule is neither 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), nor will it affect any action or authorization identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11(a)(6). Therefore, the proposed rule amendment is not subject to the CMP.

ANNOUNCEMENT OF HEARING

A hearing will be held on this proposed rulemaking on October 4, 2001 at 10:00 a.m. at the Texas Natural Resource Conservation Commission Region 13 Office, 14250 Judson Road, San Antonio, Texas. The hearing is structured for the receipt of oral or written comments by interested persons. Individuals may present oral statements when called upon in order of registration. Open discussions will not occur during the hearing; however, an agency staff member will be available to discuss the proposal 30 minutes prior to the hearing and will answer questions before and after the hearing.

Persons with disabilities who have special communication or other accommodation needs who are planning to attend the hearings should contact the agency at (512) 239-4900. Requests should be made as far in advance as possible.

SUBMITTAL OF COMMENTS

Comments may be submitted to 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 2001-048-304-WT. Comments must be received by 5:00 p.m., October 8, 2001. For further information contact Melissa Estes, Policy and Regulations Division, at (512) 239-3937.

STATUTORY AUTHORITY

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

This proposed amendment implements the duties and responsibilities of watermaster operations as specified in TWC, §§11.325 - 11.458, which establish water divisions; the watermaster for these water divisions; the duties, responsibilities, and compensation of the watermaster; the commission's authority to establish water divisions and the watermaster; and all duties and responsibilities necessary to carry out the authority of the commission through watermaster operations.

§304.61. Costs of Administration.

Under [~~In accordance with the~~] Texas Water Code, §11.329, all holders of water rights that are administered by a watermaster shall reimburse the commission for the expense of watermaster operations. An assessment account shall be established for each water right holder for each water right authorization by category of use. The commission shall not assess costs against a holder of a non-priority hydroelectric right that owns or operates privately-owned facilities that collectively have a capacity of less than two megawatts. The [~~total~~] assessment for each assessment account shall be the sum of a uniform base charge and, as applicable for that assessment account, either a use fee or a storage fee, or both. The executive director shall file with the commission a copy of the proposed budget. Following a public meeting [~~hearing~~], the commission shall issue an order for each water division or group of water divisions, as the commission may determine to be appropriate, approving the assessment income needed for the watermaster operations for

the assessment period under consideration. The order shall also specify the base charge per assessment account and the reinstatement fee for delinquent assessment payment.

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

Filed with the Office of the Secretary of State, on August 24, 2001.

TRD-200105013
Ramon Dasch
Acting Director, Environmental Law Division
Texas Natural Resource Conservation Commission
Proposed date of adoption: October 8, 2001
For further information, please call: (512) 239-4712

TITLE 34. PUBLIC FINANCE

PART 1. COMPTROLLER OF PUBLIC ACCOUNTS

CHAPTER 3. TAX ADMINISTRATION

SUBCHAPTER DD. OIL FIELD CLEANUP REGULATORY FEE

34 TAC §3.731

The Comptroller of Public Accounts proposes an amendment to §3.731, concerning the imposition and collection of the oil fee. This section is being amended pursuant to Senate Bill 310, 77th Legislature, 2001. Senate Bill 310 increased the oil field cleanup fee for crude oil produced in the state to five-eighths of $.01 per taxable barrel of crude oil, effective September 1, 2001.

James LeBas, Chief Revenue Estimator, has determined that for the first five-year period the amendment 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 amendment is in effect the public benefit anticipated as a result of adopting the amendment will be in providing new information regarding tax responsibilities. This amendment 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 amendment.

Comments on the proposal may be submitted to Bryant K. Lomax, Manager, Tax Policy Division, P.O. Box 13528, Austin, Texas 78711-3528.

This amendment is proposed under the 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 the Tax Code, Title 2.

The amendment implements Natural Resource Code, §81.116.

§3.731. Imposition and Collection of the Oil Fee.

(a) Imposition. The oil field cleanup regulatory fee on oil is effective with reports for the production month of September 1991.

(b) Reports. The fee is to be reported and paid in the same manner as the regulatory tax imposed by the Natural Resources Code, §81.111, and the occupation tax imposed by the Tax Code, Chapter 202.

(c) Amount of fee.

(1) Except as provided in paragraph (2) of this subsection; [~~,~~] the rate of the fee for crude oil produced prior to September 1, 2001 shall be five-sixteenths of $.01 ($.003125) per taxable barrel of crude oil and the rate of the fee for crude oil produced September 1, 2001 and later shall be five- eighths of $.01 ($.00625) per taxable barrel of crude oil.

(2) The fee shall not be collected or required to be paid for the production month that begins on the first day of the second month following the Texas Railroad Commission's certification to the comptroller that the fund balance has reached $20 [~~$10~~] million. The comptroller shall publish notification in the Texas Register that the fee shall no longer be collected 15 days prior to the beginning of the production month for which the fee shall no longer be collected.

(3) If the Railroad Commission certifies to the comptroller that the balance of the fund has fallen below $10 [~~$6~~] million, the fee shall again be due, beginning the first day of the second month following the commission's certification to the comptroller. The comptroller shall publish notification in the Texas Register that the fee shall be required to be collected 15 days prior to the beginning of the production month for which the fee shall be collected.

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 August 24, 2001.

TRD-200105017
Martin Cherry
Deputy General Counsel for Tax Policy and Agency Affairs
Comptroller of Public Accounts
Earliest possible date of adoption: October 7, 2001
For further information, please call: (512) 305-9881

TITLE 40. SOCIAL SERVICES AND ASSISTANCE

PART 5. TEXAS VETERANS LAND BOARD

CHAPTER 175. GENERAL RULES OF THE VETERANS LAND BOARD

40 TAC §175.2

The Veterans Land Board of the State of Texas (the "Board") proposes amendments to Title 40, Part 5, Chapter 175 of the Texas Administrative Code, §175.2 (relating to "Loan Eligibility Requirements") of the General Rules of the Veterans Land Board. These amendments propose changes the military discharge requirements that a person who has been discharged from the military would have to meet for eligibility for a land loan from the Board under Chapter 175 and for a housing assistance loan from the Board under Title 40, Part 5, Chapter 177 relating to Veterans Housing Assistance Program. Both types of loans are affected

since §177.5(b) (relating to Loan Eligibility Requirements) incorporates the requirements of §175.2(c)(1) by reference. These proposed amendments do not affect the eligibility of a person who has not received a discharge from military service. Title 40, Part 5, Chapter 176 of the Texas Administrative Code §176.7 (relating to Admissions Requirements) concerning State Veterans Homes is also affected by these amendments since §176.7(c)(3) refers to the loan eligibility criteria in §175.2 as one of a number of factors that the Board may use to establish a priority system for admitting applicants to State Veterans Homes based on availability of space.

Current §175.2 contains one military discharge requirement for loan eligibility; the person must not have been dishonorably discharged from military service. Under the proposed amendments, the military discharge standard is being changed to provide that for a person who has been discharged from the military to be eligible for a loan, the person has to be considered not to have been dishonorably discharged. Under the proposed amendment, a person is considered not to have been dishonorably discharged if the person: (1) received an honorable discharge, (2) received a discharge under honorable conditions, or (3) received a discharge and provides evidence from the United States Department of Veterans Affairs or other competent authority that indicates that the character of the person's duty has been determined to be other than dishonorable.

The proposed amendments are in the best interest of the Board's land and housing assistance programs because they are necessary to bring the Board's loan eligibility rules for said programs in compliance with the new provisions of the Natural Resources Code, Title 7, Chapter 161, §161.001(c) and Chapter 162, §162.001(c), as enacted by House Bill 271 of the 77th Legislature, which became effective on May 11, 2001. Although the proposed amendments also revise a factor that the Board may consider in establishing a priority system for admitting applicants to the State Veterans Homes under §176.7(c)(3), this revised factor is consistent in principle with the factor in the existing §176.7(c)(3) in that the factor for the Board to consider is still whether the applicant for admission to a State Veterans Home meets loan eligibility criteria for the Board's land and housing program loans and is thereby eligible for other Board benefits.

Larry Soward, Chief Clerk of the General Land Office, has determined that for each year of the first five years the section as amended is in effect, there will be no significant fiscal implications to state or local government as a result of enforcing or administering the section.

Mr. Soward has determined that for each year of the first five years the section as proposed will be in effect, the public will benefit because the proposed amendments will bring the Board's administrative rules regarding a veteran's eligibility for land and housing assistance loans in compliance with a recent change in state law.

Mr. Soward has determined that the proposed amendments will have no effect on small businesses during each year of the first five years the section is in effect.

Mr. Soward has also determined that during each year of the first five years the proposed amendments are in effect, the anticipated economic costs to persons who are required to comply with the section will be insignificant.

Comments may be submitted to Melinda Tracy, Legal Services, General Land Office of the State of Texas, 1700 North Congress Avenue, Austin, Texas 78701.

The amendments to the section are proposed under the Natural Resources Code, Title 7, Chapter 161, §§161.001, 161.061, and 161.063, Chapter 162, §162.001 and §162.003, and Chapter 164, §164.004, which authorize the Board to adopt land and housing assistance program rules to define the term "veteran," to adopt rules that it considers necessary and advisable for those programs, and to adopt rules concerning the operation of veterans homes.

Natural Resources Code §§161.001, 162.001, and 164.004 are affected by this proposed action.

§175.2. Loan Eligibility Requirements.

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

(c) To be eligible to participate in the program, an applicant must satisfy one of the following:

(1) be a person who:

(A) - (C) (No change.)

(D) is considered [~~has~~] not to have been dishonorably discharged under subsection (j) of this section, if the person has been discharged from military service; and

(E) (No change.)

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

(d) - (i) (No change.)

(j) For purposes of this section, a person who has been discharged from the branch of the service in which the person served or from the Texas National Guard is considered not to have been dishonorably discharged if the person:

(1) received an honorable discharge;

(2) received a discharge under honorable conditions; or

(3) received a discharge and provides evidence from the United States Department of Veterans Affairs, its successor, or other competent authority that indicates that the character of the person's duty has been determined to be other than dishonorable.

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 August 24, 2001.

TRD-200105046
Larry R. Soward
Chief Clerk, General Land Office
Texas Veterans Land Board
Earliest possible date of adoption: October 7, 2001
For further information, please call: (512) 305-9129

PART 19. TEXAS DEPARTMENT OF PROTECTIVE AND REGULATORY SERVICES

CHAPTER 700. CHILD PROTECTIVE SERVICES

SUBCHAPTER M. SUBSTITUTE-CARE SERVICES

40 TAC §700.1350

The Texas Department of Protective and Regulatory Services (TDPRS) proposes an amendment to §700.1350, concerning special services, in its Child Protective Services chapter. The purpose of the amendment is to allow expansion of day care services for foster children to contracted private sector foster and group homes. The expansion will allow equity of services to foster children whether they reside in a TDPRS verified foster home or a private agency foster home. The proposal will also assist in the transition of homes from the TDPRS sector to the private sector.

Mary Fields, Budget and Federal Funds Director, has determined that for the first five-year period the proposed section will be in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Ms. Fields also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be that the private sector will have an opportunity to provide the same services for children as those provided in TDPRS verified foster homes. The proposal may increase the provider base by offering the incentive of day care services for TDPRS foster children who are being fostered by private agency foster parents who are employed full time. There will be no effect on large, small, or micro-businesses because the increase in foster day care services translates to approximately 388 additional monthly statewide foster care day care slots in fiscal year 2002. This is not considered a significant amount that would adversely affect day care facilities. There is no anticipated economic cost to persons who are required to comply with the proposed section.

Questions about the content of the proposal may be directed to Judy Popejoy at (512) 438- 3144 in TDPRS's Child Protective Services Division. Written comments on the proposal may be submitted to Texas Register Liaison, Legal Services-185, Texas Department of Protective and Regulatory Services E-611, P.O. Box 149030, Austin, Texas 78714-9030, within 30 days of publication in the *Texas Register*.

Under §2007.003(b) of the Texas Government Code, the department has determined that Chapter 2007 of the Government Code does not apply to this rule. Accordingly, the department is not required to complete a takings impact assessment regarding this rule.

The amendment is proposed under the Human Resources Code (HRC), §40.029, which authorizes the department to propose and adopt rules in compliance with state law and to implement departmental programs.

The amendment implements the Human Resources Code, §40.029.

§700.1350. Special Services.

(a) Day care for children in foster homes [~~that the Office of Protective Services for Families and Children (PSFC) has verified~~]. Children in the Texas Department of Protective and Regulatory Services' (TDPRS's) managing conservatorship who have been placed in foster family-homes and group-homes [~~that PSFC has trained and verified~~] may receive TDPRS-paid day-care services from licensed and registered day-care providers if:

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

(b) (No change.)

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

Filed with the Office of the Secretary of State, on August 24, 2001.

TRD-200105027
C. Ed Davis
Deputy Director, Legal Services
Texas Department of Protective and Regulatory Services
Proposed date of adoption: October 26, 2001
For further information, please call: (512) 438-3437

CHAPTER 730. LEGAL SERVICES
SUBCHAPTER S. CONTRACTING ETHICS

40 TAC §§730.1801 - 730.1807

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

The Texas Department of Protective and Regulatory Services (PRS) proposes the repeal of §§730.1801-730.1807, concerning contracting ethics, in its Legal Services chapter. The purpose of the repeals is to conform to current law and to update and clarify procedures. Also in this issue of the *Texas Register*, PRS is proposing related rules in Chapter 732, Contracted Services.

Mary Fields, Budget and Federal Funds Director, has determined that for the first five-year period the proposed sections will be in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the sections.

Ms. Fields also 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 to improve contract administration. There will be no effect on large, small, or micro-businesses because the rules are not substantially different than current contracting rules. There is no anticipated economic cost to persons who are required to comply with the proposed sections.

Questions about the content of the proposal may be directed to Ron Curry at (512) 833- 3405 in PRS's Contract Administration Division. Written comments on the proposal may be submitted to Texas Register Liaison, Legal Services-184, Texas Department of Protective and Regulatory Services E-611, P.O. Box 149030, Austin, Texas 78714-9030, within 30 days of publication in the *Texas Register*.

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

The repeals are proposed under the Human Resources Code (HRC), §40.029, which authorizes the department to adopt rules to facilitate implementation of departmental programs.

The repeals implement the Human Resources Code, §40.029.

§730.1801. Introduction.
§730.1802. Definitions.
§730.1803. Prohibition against Contracts with Certain Former Employees.
§730.1804. Presumption against Contract Involving Former Employees, Former Board Members, and Their Relatives.
§730.1805. Contracts Involving Current Employees.
§730.1806. Contracts Involving Current Board Members.
§730.1807. Nongovernmental Contractor Certification.

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 August 24, 2001.

TRD-200105024
C. Ed Davis
Deputy Director, Legal Services
Texas Department of Protective and Regulatory Services
Proposed date of adoption: October 26, 2001
For further information, please call: (512) 438-3437

CHAPTER 732. CONTRACTED SERVICES

SUBCHAPTER L. CONTRACT ADMINISTRATION

The Texas Department of Protective and Regulatory Services (PRS) proposes the repeal of §§732.240 and 732.258-732.260, and proposes new §§732.240, 732.241, 732.258- 732.260, and 732.291-732.298, concerning allowable costs and contracting ethics, in its Contracted Services chapter. The purpose of the repeals and new sections is to conform to current law and to update and clarify procedures.

Mary Fields, Budget and Federal Funds Director, has determined that for the first five-year period the proposed sections will be in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the sections.

Ms. Fields also 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 to improve contract administration. There will be no effect on large, small, or micro-businesses because the rules are not substantially different than current contracting rules. There is no anticipated economic cost to persons who are required to comply with the proposed sections.

Questions about the content of the proposal may be directed to Ron Curry at (512) 833- 3405 in PRS's Contract Administration Division. Written comments on the proposal may be submitted to Texas Register Liaison, Legal Services-184, Texas Department of Protective and Regulatory Services E-611, P.O. Box 149030, Austin, Texas 78714-9030, within 30 days of publication in the *Texas Register.*

40 TAC §§732.240, 732.258 - 732.260

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

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

The repeals are proposed under the Human Resources Code (HRC), §40.029, which authorizes the department to adopt rules to facilitate implementation of departmental programs.

The repeals implement the Human Resources Code, §40.029.

§732.240. General Principles of Allowable and Unallowable Costs.
§732.258. Financial Interest by Officer/Employee of the Texas Department of Protective and Regulatory Services.
§732.259. Previous State Employment.
§732.260. Consultant Contracts Amendments.

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 August 24, 2001.

TRD-200105025
C. Ed Davis
Deputy Director, Legal Services
Texas Department of Protective and Regulatory Services
Proposed date of adoption: October 26, 2001
For further information, please call: (512) 438-3437

40 TAC §§732.240, 732.241, 732.258 - 732.260, 732.291 - 732.298

The new sections are proposed under the Human Resources Code (HRC), §40.029, which authorizes the department to adopt rules to facilitate implementation of departmental programs.

The new sections implement the Human Resources Code, §40.029.

§732.240. What are the general principles of allowable and unallowable costs?

(a) In cost reimbursement contracts, the Department reimburses its contractors only for costs (both direct and indirect) which are allowable, reasonable, necessary, and properly allocated to the specific contract. The cost guidelines, principles, and definitions for allowable and unallowable costs (both direct and indirect) for purposes of preparing budgets, for expenditure purposes, and for cost-reporting purposes are the same. Those guidelines are published in federal and state regulations. Contractors receiving Title IV-E funding on a cost reimbursement basis are required to be in compliance with 45 Code of Federal Regulations (CFR) Part 74 and 48 CFR Part 31 regarding the use and expenditure of Title IV-E funds. Contractors receiving Title IV-B funding on a cost reimbursement basis are required to be in compliance with 45 CFR Part 92 regarding the use and expenditure of Title IV-B funds. All purchased client services contractors (both for-profits and nonprofits) who have cost reimbursement contracts are required to be in compliance with Office of Management and Budget (OMB) Circular A-110 (Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals and Other Non-Profit Organizations) and this section and §§732.242- 732.256 of this title (relating to Contract Administration)

regarding the guidelines for use and expenditure of funds received from the Department, which consist of federal and/or state revenues. If the contractor is a governmental entity, the contractor shall remain in compliance with OMB Circular A-87 (Cost Principles for State and Local Governments). If the contractor is either a for-profit entity or a nonprofit entity, the contractor is required to be in compliance with OMB Circular A-122 (Cost Principles for Nonprofit Organizations). In the event of any conflict or contradiction between or among the regulations referenced in this subsection, the regulations shall control in the following order of precedence:

(1) federal regulations - for Title IV-E funding, 45 CFR Part 74 and 48 CFR Part 81; for Title IV-B funding, 45 CFR Part 92;

(2) federal OMB circulars - OMB Circular A-110 and either OMB Circular A-87 or OMB Circular A-122, as applicable;

(3) state regulations - this section, §732.241 of this title (relating to What happens if a cost is not allowable?) and §§732.242-732.256 of this title (relating to Contract Administration); and

(4) any other applicable departmental regulations.

(b) Only those items that represent an actual cash outlay, or the compensation for the use of buildings, other capital improvements, and equipment on hand through a use allowance or depreciation are allowable. The value of donated goods or services (in-kind) are unallowable. However, depreciation or a use allowance on a donated building, donated capital improvements, or donated equipment subject to ownership requirements and/or donor-imposed conditions is allowable. Contractors shall not use revenues from the Department to finance activities other than those activities specifically allowable under their contract with the Department. Unallowable uses of contract revenues from the Department include, but are not limited to, inter-fund loans/transfers, interdepartmental loans/transfers, inter-company loans/transfers, and employee loans not considered salary advances.

(c) Costs budgeted, expended, used, and/or reported by a contractor and/or paid by the Department must be consistent with generally accepted accounting principles (GAAP), which are those principles approved by the American Institute of Certified Public Accountants (AICPA). Internal Revenue Services (IRS) laws and regulations do not necessarily apply in the preparation of budgets, the expenditure, and/or use of funds received from the Department, and/or the reporting of costs to the Department. In cases where there are differences between the Department's rules, GAAP, IRS, or other authorities, the Department's rules take precedence.

(d) The contractor's accounting system must include an accurate and consistent method for gathering statistical information that properly relates the costs incurred to the units of service rendered.

(e) The contractor is responsible for designing and implementing fiscal policies and ensuring that financial data are collected, recorded, and analyzed as part of the delivery of service under a contract with the Department.

(f) Costs incurred under less-than-arms-length (related-party) transactions are allowable only up to the cost to the related party (see OMB Circulars A-87 and A-122). However, the cost must not exceed the price of comparable services, equipment, facilities, or supplies that could be purchased or leased elsewhere. The purpose of this principle is twofold: to avoid the payment of a profit factor to the contractor through the related organization (whether related by common ownership or control), and to avoid payment of artificially-inflated costs which may be generated from less-than-arms-length bargaining. The related organization's costs include all reasonable costs, direct and indirect, incurred in the furnishing of services, equipment, facilities, and supplies to the contractor. The intent is to treat the costs incurred by the related organization as if they were incurred by the contractor itself. An exception is provided to the general rule applicable to related organizations and applies if the contractor demonstrates by convincing evidence to the satisfaction of the Department that certain criteria have been met. Those criteria are:

(1) The related organization is a bona fide separate corporation and not merely an operating division of the contractor's organization;

(2) A majority of the related organization's business activity of the type carried on with the contractor is transacted with other organizations not related to the contractor or the related organization by common ownership or control and there is an open, competitive market for the type of services, equipment, facilities, or supplies furnished by the related organization. In determining whether the business activities are of a similar type, it is important also to consider the scope of the business activity. The requirement that there be an open, competitive market is intended to assure that the item supplied has a readily discernible price that is established through arms-length bargaining by well-informed buyers and sellers; and

(3) The charge to the contractor is in line with the charge for such services, equipment, facilities, or supplies in the open, competitive market and no more than the charge made under comparable circumstances to others by the related organization for such services, equipment, facilities, or supplies.

(g) In determining whether a contractor is related to a supplying organization, the tests of common ownership and control are to be applied separately. Related to a contractor means that the contractor to a significant extent is associated or affiliated with, has control of, or is controlled by the organization furnishing the services, equipment, facilities, or supplies. Common ownership exists if an individual or individuals posses any ownership or equity in the contractor and the supplying organization. Control exists if an individual or an organization has the power, directly or indirectly, to significantly influence or direct the actions or policies of an organization or institution. If the elements of common ownership or control are not present in both organizations (i.e., the contractor and the supplying organization), then the organizations are deemed not to be related to each other. The existence of an immediate family relationship will create a conclusive presumption of relatedness through control or attribution of ownership or equity interests where the significance tests are met. The following persons are considered immediate family: husband and wife; natural parent, child, and sibling; adopted child and adoptive parent; stepparent, stepchild, stepsister, and stepbrother; father-in-law, mother-in-law, sister-in-law, brother-in-law, son-in-law, and daughter-in-law; grandparent and grandchild; uncles and aunts by blood or marriage; nephews and nieces by blood or marriage; and first cousins by blood or marriage.

(1) A determination as to whether an individual (or individuals) or organization possesses ownership or equity in the contractor and the supplying organization, so as to consider the organizations related by common ownership, will be made on the basis of the facts and circumstances in each case. This rule applies whether the contractor or supplying organization is a sole proprietorship, partnership, corporation, trust or estate, or any other form of business organization, proprietary or nonprofit. In the case of a nonprofit organization, ownership or equity interest will be determined by reference to control of the organization or to an interest in the assets of the organization; for example, a reversionary interest provided for in the articles of incorporation of a nonprofit organization.

(2) The term control includes any kind of control, whether or not it is legally enforceable and however it is exercisable or exercised. It is the reality of the control which is decisive, not its form

or the mode of its exercise. The facts and circumstances in each case must be examined to ascertain whether legal or effective control exists. Since a determination made in a specific case represents a conclusion based on the entire body of facts and circumstances, such determination should not be used as a precedent in other cases unless the facts and circumstances are substantially the same. Organizations, whether proprietary or nonprofit, are considered to be related through control of their directors or officers in common.

(h) Disclosure of all less-than-arms-length (related-party) transactions is required for all costs budgeted, expended, used, and/or reported by the contractor, including related-party transactions occurring at any level in the contractor's organization. The contractor must make available, upon request, adequate documentation to support the costs incurred by the related party. Such documentation could include an identification of the related organization's total costs, the basis of allocation of direct and indirect costs to the contractor, and other business entities served. If a contractor fails to provide adequate documentation to substantiate the cost to the related organization, then the cost is unallowable.

(i) Direct costing must be used whenever reasonably possible. Direct costing means that costs, direct or indirect, incurred for the benefit of, or directly attributable to, a specific business component must be directly charged to that particular business component. For direct costs as defined in OMB Circulars A-122 and A-87, direct costing is required. For indirect costs as defined in OMB Circulars A-122 and A-87, it is necessary to allocate these costs either directly or as a pool of costs across those business components sharing in the benefits of those costs. If cost allocation is necessary, contractors must use reasonable methods of allocation and must be consistent in their use of allocation methods across all program areas and business entities in which the contractor has an interest (see OMB Circulars A-87 and A-122).

(1) Each employee is required (see OMB Circulars A-122 and A-87) to have time or activity sheets. Time or activity sheets must be prepared at least monthly and must coincide with one or more pay periods. The sheets must account for the total activity for which the employee is compensated and which is required to fulfill the employee's obligation to the contractor. If an employee performs only one function and only performs that one function for one contract/program area, then that employee's time or activity sheet can include the minimum information: name, date, beginning time, ending time, total time worked, appropriate signature(s), and accounting for paid and unpaid leave time.

(2) Direct care staff must be directly costed between program areas (business components) based upon their time or activity sheets (not a time study). If a direct care employee performs more than one function, performs one function for more than one contract/program area, and/or performs more than one function for more than one contract/program area, the sheets must account for those different functions and/or contracts/program areas. These sheets should be the documentation for the percentages of salaries budgeted to the various contracts. In other words, if a counselor works on a contractor's nonresidential contract and for one or more of the contractor's residential contracts, the percentage of that counselor's salary in the nonresidential budget should be based upon the results of sheets for a recent historical period prior to the submission of the budget. The actual amounts charged to the nonresidential contract for that counselor should be based upon the counselor's sheets during the contract period, with a reconciliation to the contract's budget. If the counselor's actual time is less than that budgeted, the contractor is reimbursed based upon the actual time. If the counselor's actual time is more than that budgeted, the contractor is reimbursed based upon the budgeted amount. The counselor's sheets for that contract period then become the basis for the estimates used for the next year's contract budget.

(3) Any cost allocation method should be a reasonable reflection of the actual business operations. Allocation methods that do not reasonably reflect the actual business operations and resources expended toward each unique business entity are not acceptable. An indirect allocation method approved by some other department, program, or governmental entity is not automatically approved by the Department. The purpose of cost allocation of shared indirect costs is to ensure that those costs are properly and accurately recorded within each program area, so that each program receives its fair share of those shared indirect costs which benefit that program and so that each program's costs are properly identified (direct and indirect). There are three basic methods for allocating shared (pooled) indirect costs: units of service, cost-to-cost, and functional.

(A) To use the units-of-service cost allocation method, each of your program areas would have to deliver the same type of services (i.e., equivalent services) and would have to be measured with the same units of service (i.e., equivalent units). If your program areas (business components) do not have equivalent units of equivalent services, you must use a cost-to-cost or functional allocation method for shared indirect costs that are not directly chargeable to a specific program area (business component).

(B) Cost-to-cost allocation methods merely calculate a program's percentage of a specified cost basis and use that percentage to then calculate that program's share of indirect costs. Shared indirect costs are always allocated first to each program area, then any unallowable shared indirect costs are removed from (or separately reported for) each program area for purposes of contracting with the Department. In this manner, it is ensured that 100% (and only 100%) of the total shared indirect costs have been allocated across the various program areas. The specific cost bases for a cost-to-cost allocation methodology include: salaries; salaries, payroll taxes and employee benefits; salaries and contract labor; salaries, payroll taxes, employee benefits, and contract labor; all direct program costs; and all direct program costs minus building costs. These shared indirect costs must be allocated across all the program areas which benefit from these shared indirect costs. If there are some shared indirect costs that benefit only a portion of the corporation's program areas, then an allocation method must be used to properly allocate that subset of the total shared indirect costs to those program areas benefiting from those shared indirect costs. In such complex financial systems, these subsets of shared indirect costs become part of the basis for allocating the shared administration costs benefiting all program areas. For example, if a contractor has a subset of shared indirect costs that only benefit the contractor's residential programs, that subset could be allocated based upon units of service. When allocating on a cost-to-cost basis those shared indirect costs benefiting all program areas (business components) for the contractor, the cost basis for each of the contractor's residential programs would include the residential program's direct care costs and its allocated share of the subset of shared indirect costs.

(C) Functional cost allocation for an administrative staff person can be based upon a time study. Time studies can only be used to allocate administrative time and cannot be used to allocate direct care time. In other words, if an administrative employee also performs direct care duties, that employee must have time sheets (not a time study) to document his/her direct care time.

(i) The baseline for allocation using a time study can be calculated upon time sheets recording daily time/effort for an entire month.

(ii) Daily time sheets are then completed for a randomly-selected period throughout the remainder of the fiscal year. That "randomly-selected period" could be a randomly-selected week each quarter, randomly-selected two days per month, or other time period

which would result in time sheets representing at least 20 days per year, in addition to the baseline.

(iii) A contractor can use the results of the baseline time study for allocating the employee's salary for the remainder of the year and make any necessary adjustments required from the results of the randomly-selected periods during the last month of the year or a contractor can allocate the employee's salary each month based upon the results of that month's time study.

(iv) A contractor must have its time study methodology and procedures in writing.

(D) Other shared indirect costs may be more accurately allocated based upon a functional methodology rather than a cost-to-cost allocation method.

(i) Maintenance staff costs could be functionally allocated, based upon the percentage (or dollar amounts) of work orders performed for the various program areas.

(ii) If one program pays its employees weekly and another program pays its employees monthly, payroll costs could be functionally allocated based upon each program's pro rata share of the number of payroll checks issued.

(4) Each cost allocation method will be reviewed on a case-by-case basis to ensure that the allocated costs fairly and reasonably represent the operations of the contractor. If in the course of an audit it is determined that the cost allocation method does not fairly and reasonably represent the operations of the contractor, then an adjustment to the allocation method will be made.

(5) Cost allocation methods must be clearly and completely documented in the contractor's work papers, with details as to how pooled costs are allocated to each segment (component) of the business entity, for both contracted and non-contracted programs.

§732.241. What happens if a cost is not allowable?

(a) The Department regularly reviews bills and monitors or audits contracts. If, at any time, it appears to the Department that a cost claimed for reimbursement pursuant to a cost reimbursement contract is unallowable for any reason (unreasonable, unnecessary, not properly allocated, not in the approved budget, or specifically unallowable), the cost may be questioned and possibly disallowed as provided in other rules in this chapter. If the contractor incurred other legitimate costs pursuant to the contract and budget, or pursuant to the contract and the Department agrees to allow a minor amendment to the budget, the contract amount or payment to the contractor does not need to be decreased. The contractor must provide convincing evidence of these other legitimate costs during the process of the costs being questioned or disallowed. However, the Department may, in its sole discretion, consider such additional costs after the costs have been disallowed and before collection of excess payments.

(b) Residential contract rates are set as an average to assure that costs to the Department are reasonable for federal funding purposes, and it is expected that one-half of the contractors will report individual costs lower than this average. The Department will not expect repayment by residential contractors for costs claimed below the rate or for disallowed costs unless the contractor:

(1) was not entitled to the number of days or level-of-care rates paid because of the contract; or

(2) has breached the contract.

§732.258. What must employees do when they or their relatives want to consult for the Department?

(a) A Department employee who has control or a financial interest in any amount in a firm or corporation acting as or offering to act as a private consultant for the Department must report the financial interest to the executive director within 10 days after the consultant submits an offer to the Department.

(b) The same requirement applies if the officer or employee is related within the second degree of consanguinity or affinity to a person having the control or financial interest.

(c) Failure to provide the information will result in a voided contract.

§732.259. What must former state employees do when they want to consult for the Department?

(a) A person who offers to perform a consulting service for the Department, or who has a substantial interest in a firm so offering, and who has been employed by the Department or another state agency at any time during the two preceding years must disclose in the offer the following information:

(1) The nature of the previous employment within the Department or the other state agency;

(2) The date the employment ended; and

(3) The annual rate of compensation for the employment at the time the employment ended.

(b) Failure to provide this information will result in a voided contract.

§732.260. How may consultant contracts be amended?

(a) Existing contracts for less than $10,000. The contract may be amended if both the Department and the contractor agree and the Department does not incur additional costs from the contractor which would increase the total contract to equal or exceed $10,000.

(b) Existing contracts for $10,000 or more. The contract may be extended or otherwise amended without re-procurement if both the Department and the contractor agree and the Department does not incur additional costs from the contractor which would increase the total contract beyond the scope of the original procurement.

§732.291. What is the purpose of rules on contracting ethics?

Rules on contracting ethics in this subchapter specify the standards by which the Department awards or continues contracts with nongovernmental organizations.

§732.292. How are important terms in this subchapter defined?

The words and terms in this subchapter have the following meanings, unless the context clearly indicates otherwise:

(1) Control - The power to exercise, directly or indirectly, a controlling influence over the management, policies, or delivery of services of the contractor. Board members, executive directors, and directors of the program specific to the contract have control. Others may have control. Control does not depend on ownership or salary.

(2) Current Board member - Any person who is a member of the Texas Board of Protective and Regulatory Services.

(3) Current employee - Any person currently employed by the Texas Department of Protective and Regulatory Services.

(4) Former Board member - Any person who was a member of the Texas Board of Protective and Regulatory Services.

(5) Former employee - Any person who was an employee of the Texas Department of Protective and Regulatory Services.

(6) Organization - Any form of for-profit business or non-profit entity including, but not limited to, corporations, sole proprietorships, partnerships, and unincorporated associations, but excluding any governmental entity.

(7) Relative of a current or former Texas Department of Protective and Regulatory Services employee or current or former Board member - Any of the following:

(A) wife;

(B) husband;

(C) father;

(D) mother;

(E) brother;

(F) sister;

(G) son;

(H) daughter;

(I) stepdaughter;

(J) stepson;

(K) mother-in-law;

(L) father-in-law;

(M) spouse's brother or sister; or

(N) brother's or sister's spouse.

(8) Substantial financial interest - Ownership by a current or former employee, current or former Board member, or their relatives of 10% or more of the contracting firm or its stock or an investment of $2,500 or more in the organization, whichever amount is less, or a 25% or more increase in overall annual benefits, including salary or wages, upon employment by a contractor of a former employee who had "substantial involvement in the development of the contract," (as defined below in paragraph 10) as compared to the employee's Department salary and benefits.

(9) Substantial interest - Control or substantial financial interest.

(10) Substantial involvement in the development of the contract -

(A) Direct or indirect participation by a current or former employee, current or former Board member, or their relatives in the:

(i) development of program policy that influenced the type of services provided by the contracting organization;

(ii) development of specifications or criteria for the award of contracts for the type of services provided by the contracting organization;

(iii) actual competition or award process for contracts for the type of services provided by the contracting organization; or

(iv) management or monitoring of the contracts for the type of services provided by the contracting organization.

(B) The following positions are deemed to have had such participation for contracts for all contracts in the State for all program areas:

(i) Board member;

(ii) executive director;

(iii) deputy director;

(iv) director of the Contract Administration Division;

(v) director of Business Services; or

(vi) contract attorney.

(C) The following positions are deemed to have had such participation for contracts for all contracts in the State for their own program areas:

(i) director of a statewide program;

(ii) contract manager of statewide contracts;

(iii) assistant director, division administrator, or program specialist determining statewide policy;

(iv) Contract Administration or Business Services Division employees; or

(v) other director at the state office.

(D) The following positions are assumed to have had such participation for contracts for the region for their own program areas:

(i) regional director for all program areas;

(ii) regional administrator for all program areas;

(iii) management services program administrator for all program areas;

(iv) program administrator; or

(v) regional purchasers and contract managers.

§732.293. Are there absolute prohibitions on contracts with certain former employees?

(a) For a period of one year from the date the person ceased his employment, the Department will not award a contract to an employee who was paid a salary equivalent to, or more than, a Grade B-9, Step 1, of the position classification salary schedule. Such a former employee may not receive a contract with the Department, nor for pay may he aid, attempt, or aid in the attempt to obtain a contract with the Department for a period of one year from the person's last date of employment if the contract relates to a program or services in which the person was directly concerned or for which the person had administrative responsibility.

(b) For a period of one year from the date the person ceased his employment, the Department will not award a contract to a former employee or to an entity in which the former employee has a substantial interest if the contract is for consulting, professional services, or an employment contract.

(c) Subsection (a) of this section does not apply to a former employee who is employed by another state agency or a community mental health/mental retardation center. Subsection (b) of this section does not apply to a former employee who is employed by another state agency or local governmental entity.

(d) These prohibitions are required by the Human Resources Code, §40.034, and by appropriation acts and are not subject to waiver.

§732.294. Will the Department contract with current employees?

(a) Except as noted in this section, the Department will not contract directly with current employees, their spouses, children, parents, or siblings. The Department also will not contract with organizations that are owned or controlled in part or whole by these individuals.

(b) The executive director may waive this section if he finds that the employee is not an exempt employee compensated at Grade B-13, Step 1 or higher, that enforcement would create an undue hardship, and that §732.293 of this title (relating to Are there absolute prohibitions on contracts with certain former employees?) would not prohibit the contract if the employee was a former employee.

(c) This section is not intended to preclude current employees from serving contracted organizations on a volunteer basis that does not control the contractor.

§732.295. Will the Department contract with current Board members?

The Department will not contract directly with current Board members or their spouses, children, parents, or siblings, or with organizations which are owned or controlled, in part or whole, by these individuals, unless the Texas Board of Protective and Regulatory Services finds that enforcement would create an undue hardship.

§732.296. Are there additional prohibitions on contracts with certain former Board members and former employees?

The following prohibitions apply to the award of Department contracts regarding former Board members and former employees:

(1) For a period of two years from the date the person ceased his employment or Board member duties with the Department, the Department will not award a contract to an organization in which any former Board member, or any former employee or any former Board member's or former employee's relative, as defined in §732.292 of this title (relating to How are important terms in this subchapter defined?), is an officer, director, employee, consultant or owner (in part or whole) if the former employee, former Board member, or former Board member's or former employee's relative has a substantial interest.

(2) For a period of two years from the date the person ceased his employment or Board member duties with the Department, the Department will not award a contract to an organization in which any former Board member, any former employee, or any former Board member's or former employee's relative, as defined in §732.292 of this title is an officer, director, employee, consultant or owner (in part or whole) if the former employee or former Board member had a substantial involvement in the development of the contract.

§732.297. Is there a waiver process available for the additional prohibitions on contracts with former Board members and former employees?

(a) The executive director may waive the prohibitions in §732.296 of this title (relating to Are there additional prohibitions on contracts with certain former Board members and former employees?), but may not waive §732.293 of this title (relating to Are there absolute prohibitions on contracts with certain former employees?) if he determines that the award of the contract to the specific contractor for the needed goods, products, or services is the best value for the Department considering all relevant circumstances.

(b) The Department will follow any procedures required by statute or requested by the Legislative Budget Board or the Governor's Office of Budget and Planning before or after granting a waiver in subsection (a) of this section.

(c) Waivers concerning former employees who were not exempt employees compensated at Grade B-13, Step 1 or higher, may be delegated by the executive director.

§732.298. What must a vendor do to comply with this subchapter?

(a) Each vendor whose legal entity is not a governmental body must execute a certification disclosing the identity, salary, and job functions of any current employee, former employee, current Board member, former Board member, and the relatives of any of the foregoing persons, who are in the employ of the contractor, or who are officers, directors, consultants, major subcontractors, or owners of or for the contractor.

(b) If a vendor certifies that it has a former employee, current employee, former Board member, current Board member, or their relatives as defined in §732.292 of this title (relating to How are important terms in this subchapter defined?), §732.294 of this title (relating to Will the Department contract with current employees?), and §732.295 of this title (relating to Will the Department contract with current Board members?) as an officer, director, employee, consultant, major subcontractor or owner (in part or whole), the contract or contract renewal will not be executed by the Department unless and until the executive director or designee approves the contract or contract renewal in accordance with this subchapter or unless and until the Department determines that no waiver is necessary.

(c) The contract of a contractor may be terminated for cause if the contractor:

(1) knowingly provides incorrect information in its certification; or

(2) uses a subterfuge, such as a subcontract arrangement, to avoid the application of the rules in this subchapter.

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 August 24, 2001.

TRD-200105026

C. Ed Davis

Deputy Director, Legal Services

Texas Department of Protective and Regulatory Services

Proposed date of adoption: October 26, 2001

For further information, please call: (512) 438-3437

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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 31. NATURAL RESOURCES AND CONSERVATION

PART 2. TEXAS PARKS AND WILDLIFE DEPARTMENT

CHAPTER 65. WILDLIFE

SUBCHAPTER A. STATEWIDE HUNTING AND FISHING PROCLAMATION

DIVISION 1. GENERAL PROVISIONS

31 TAC §65.7, §65.24

Pursuant to Texas Government Code, §2001.027 and 1 TAC §91.65(c)(2), the proposed amended and new section's, submitted by the Texas Parks and Wildlife Department have been automatically withdrawn. The new sections as proposed appeared in the February 23, 2001 issue of the *Texas Register* (26 TexReg 1664).

Filed with the Office of the Secretary of State on August 24, 2001.

TRD-200105019

ADOPTED RULES

An agency may take final action on a section 30 days after a proposal has been published in the ***Texas Register***. The section becomes effective 20 daysafter the agency files the correct document with the ***Texas Register***, unless a later date is specified or unless a federalstatute or regula tion requires implementation of the action on shorter notice.

If an agency adopts the section without any changes to the proposed text, only the preamble of the notice and statement of legal authority will be published. If an agency adopts the section with changes to the proposed text, the proposal will be republished with the changes.

TITLE 4. AGRICULTURE

PART 1. TEXAS DEPARTMENT OF AGRICULTURE

CHAPTER 19. QUARANTINES

SUBCHAPTER K. EUROPEAN CORN BORER QUARANTINE

4 TAC §19.113

The Texas Department of Agriculture (the department) adopts amendments to §19.113, concerning the European Corn Borer Quarantine, without changes to the proposal published in the July 13, 2001, issue of the *Texas Register* (26 TexReg 5174). The amendments are adopted to clarify restrictions upon movement of quarantined articles entering the European corn borer-free areas of Texas. The adoption also provides for exceptions to facilitate the movement of quarantined articles originating from an approved establishment in a quarantined state that has a current compliance agreement with the department. In addition the amendments are adopted to mitigate the risk of introduction of European corn borer from the infested areas to the free areas Texas. The amendments to §19.113(b) relating to exemptions, changes the reference to "quarantined articles" to specify "grain" in paragraph (2) and to specify "ornamentals" in paragraph (3). The amendment to subsection (c) also changes the reference to "quarantined articles" to "grain" at subparagraph (1)(B), and to "ornamentals" at subparagraph (E). Subparagraph (D) is amended to provide that a quarantined article originating from an approved establishment may be excepted from quarantine requirements if the approved establishment has a current compliance agreement with the originating state department of agriculture.

No comments were received on the proposal.

The amendments are adopted under the Texas Agriculture Code, § 71.007 which authorizes the department to adopt rules as necessary to protect agricultural and horticultural interests, including rules preventing the entry into a pest- free zone of any plant, plant product, or substance found to be dangerous to the agricultural and horticultural interests of the zone.

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 August 23, 2001.

TRD-200104977
Dolores Alvarado Hibbs
Deputy General Counsel
Texas Department of Agriculture
Effective date: September 12, 2001
Proposal publication date: July 13, 2001
For further information, please call: (512) 463-4075

TITLE 16. ECONOMIC REGULATION

PART 1. RAILROAD COMMISSION OF TEXAS

CHAPTER 3. OIL AND GAS DIVISION

16 TAC §3.83

The Railroad Commission of Texas adopts amendments to §3.83, regarding Tax Exemption for Two-Year Inactive Wells and Three- Year Inactive Wells, without changes to the version published in the July 6, 2001, issue of the *Texas Register* (26 TexReg 4955). The adopted amendments reflect changes in the Texas Tax Code, §202.056, extending the time to designate wells that qualify for a tax exemption as two-year inactive wells. Wells can qualify for a ten-year severance tax exemption on subsequent oil and gas production if they have had no more than one month of production in the two-year period prior to application to the Comptroller for tax exemption.

The adopted amendments will also implement the statutory change allowing certifications to continue until February 28, 2010. An operator seeking two-year inactive well designation must apply or have applied for certification during the period between September 1, 1997, through August 31, 2009.

The Commission received no comments regarding the proposed amendments.

The Commission simultaneously readopts this rule, with the amendments, in accordance with Texas Government Code §2001.039 (*as added by Acts 1999, 76th Leg., ch. 1499, §1.11(a)*). The agency's reasons for adopting this rule, as amended, continue to exist. The notice of proposed review was filed with the *Texas Register* concurrently with the proposal and published in the July 6, 2001, issue of the *Texas Register* (26 TexReg 5076).

The Commission adopts the amendments to §3.83 under Texas Natural Resources Code, §§81.051 and 81.052, which provide

the Commission the jurisdiction over all persons owning or engaged in drilling or operating oil or gas wells in Texas and the authority to adopt all necessary rules for governing persons and their operations under the jurisdiction of the Commission, and under the Texas Tax Code, §202.056, which directs the Commission to adopt all rules necessary to administer the section.

Texas Tax Code, §202.056, is affected by the adopted amendments.

Issued in Austin, Texas on August 21, 2001.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on August 21, 2001.

TRD-200104931
Mary Ross McDonald
Deputy General Counsel, Office of General Counsel
Railroad Commission of Texas
Effective date: September 10, 2001
Proposal publication date: July 6, 2001
For further information, please call: (512) 475-1295

16 TAC §3.98

The Railroad Commission of Texas adopts amendments to §3.98, relating to Standards for Management of Hazardous Oil and Gas Waste, with changes to the version published in the May 11, 2001, issue of the *Texas Register* (26 TexReg 3431). The adopted amendments clarify the definition of the term "generation site" and clarify the requirement that an oil and gas waste generator must make a hazardous waste determination.

Amended subsection (b)(29)(A) clarifies that a generation site may be any site under the Commission's jurisdiction. Amended subsection (e) clarifies that an oil and gas waste generator is required to make a hazardous waste determination.

One comment was received regarding subsection (b)(29)(A), the definition of the term "generation site." The commenter, Texas Oil & Gas Association ("TXOGA"), suggested adding the word "other" to subsection (b)(29)(A) to clarify the meaning of "sites." The Commission agrees, and the word "other" has been added to clarify that operational units that are owned or operated by one person are sites at which hazardous oil and gas waste is generated or where actions first cause a hazardous waste to become subject to regulation.

TXOGA also commented that subsection (b)(29)(A)(ii) is intended to "designate as a 'generation site' a stand-alone injection or disposal facility that is unassociated with an operator's production operations, such as a commercial disposal facility or a water injection station in a cooperative waterflood project, if hazardous oil and gas wastes are generated at that location." TXOGA stated that the proposed amendment "could have the unintended consequence of treating all injection and disposal well facilities as sites separate and apart from their associated production operation in a field." TXOGA recommended clarification of the word "site" by adding the phrase "that is not part of a generation site described in subparagraph (A)(i) of this paragraph." The Commission agrees and has added this language for clarification.

No comments were received regarding the proposed amendments to subsection (e). Amended subsection (e) removes the portion of paragraph (1) which states that "The operator of a facility where waste is generated shall," and replaces it with the phrase "A person who generates a waste shall." This amendment removes reference to the term "facility" in the requirement for a hazardous oil and gas waste determination. "Facility," as defined in §3.98(b)(27), relating to definitions, refers to a permitted hazardous waste treatment, storage, or disposal facility. The Commission intends that oil and gas waste generators be required to make hazardous waste determinations. This amendment clarifies the intent of the Commission and ensures interpretation and application consistent with federal hazardous waste standards. This amendment incorporates the language of 40 CFR §262.11 regarding the hazardous waste determination, and clarifies that an oil and gas waste generator must make a hazardous waste determination.

The Commission concurrently adopts the review of §3.98 in accordance with Texas Government Code §2001.039 (*as added by Acts 1999, 76th Leg., ch. 1499, §1.11(a)*).

The Commission adopts the amendments under Texas Natural Resources Code, §81.052, which authorizes the Commission to adopt all necessary rules for governing and regulating activities under its jurisdiction as set forth in Texas Natural Resources Code, §81.051; Texas Natural Resources Code, §85.042, which authorizes the Commission to make and enforce rules pertaining to field operations that pose a danger to life or property; Texas Natural Resources Code, §141.012, which authorizes the Commission to adopt rules relating to the exploration, production, and development of geothermal energy and associated resources; Texas Natural Resources Code, §91.101(4), which authorizes the Commission to adopt rules relating to the discharge, storage, handling, transportation, reclamation, or disposal of oil and gas waste, as well as any other substance or material associated with any operation regulated by the Commission under Texas Natural Resources Code, §91.101; Texas Natural Resources Code, §91.602, which authorizes the Commission to adopt rules relating to the generation, transportation, treatment, storage, or disposal of hazardous oil and gas waste; and Texas Water Code, §27.036, which authorizes the Commission to adopt rules relating to brine mining.

Texas Natural Resources Code, §§81.052, 85.042, 91.101, 91.601-605, and 141.001-141.018; and Texas Water Code §27.036, are affected by the adopted amendments.

Issued in Austin, Texas, on August 21, 2001.

§3.98. Standards for Management of Hazardous Oil and Gas Waste.

(a) Purpose. The purpose of this section is to establish standards for management of hazardous oil and gas waste.

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

(1) Activities associated with the exploration, development, and production of oil or gas or geothermal resources--Activities associated with:

(A) the drilling of exploratory wells, oil wells, gas wells, or geothermal resource wells;

(B) the production of oil, gas, or geothermal resources, including:

(i) activities associated with the drilling of injection water source wells that penetrate the base of usable quality water;

(ii) activities associated with the drilling of cathodic protection holes associated with the cathodic protection of wells and pipelines subject to the jurisdiction of the commission to regulate the production of oil, gas, or geothermal resources;

(iii) activities associated with natural gas or natural gas liquids processing plants or reservoir pressure maintenance or repressurizing plants;

(iv) activities associated with any underground natural gas storage facility, provided the terms "natural gas" and "storage facility" shall have the meanings set out in Texas Natural Resources Code, §91.173;

(v) activities associated with any underground hydrocarbon storage facility, provided the terms "hydrocarbons" and "underground hydrocarbon storage facility" shall have the meanings set out in Texas Natural Resources Code, §91.201; and

(vi) activities associated with the storage, handling, reclamation, gathering, transportation, or distribution of oil or gas prior to the refining of such oil or prior to the use of such gas in any manufacturing process or as a residential or industrial fuel;

(C) the operation, abandonment, and proper plugging of wells subject to the jurisdiction of the commission to regulate the exploration, development, and production of oil or gas or geothermal resources; and

(D) the discharge, storage, handling, transportation, reclamation, or disposal of waste or any other substance or material associated with any activity listed in subparagraphs (A)-(C) of this paragraph.

(2) Administrator--The administrator of the United States Environmental Protection Agency, or the administrator's designee.

(3) Authorized facility--Either:

(A) an authorized recycling or reclamation facility; or

(B) an authorized treatment, storage, or disposal facility.

(4) Authorized recycling or reclamation facility--A facility permitted in accordance with the requirements of 40 CFR, Parts 270 and 124 or Part 271, if required, at which hazardous waste that is to be recycled or reclaimed is managed and whose owner or operator is subject to regulation under:

(A) 40 CFR, §261.6(c) or an equivalent state program (concerning facilities that recycle recyclable materials); or

(B) 40 CFR, Part 266, Subparts C (concerning recyclable materials used in a manner constituting disposal), F (concerning recyclable materials used for precious metal recovery), or G (concerning spent lead-acid batteries being reclaimed), or an equivalent state program.

(5) Authorized representative--The person responsible for the overall operation of all or any part of a facility or generation site.

(6) Authorized treatment, storage, or disposal facility--A facility at which hazardous waste is treated, stored, or disposed of that:

(A) has received either:

(i) a permit (or interim status) in accordance with the requirements of 40 CFR, Parts 270 and 124 (EPA permit); or

(ii) a permit (or interim status) from a state authorized in accordance with 40 CFR, Part 271; and

(B) is authorized under applicable state or federal law to treat, store, or dispose of that type of hazardous waste. If a hazardous oil and gas waste is destined to a facility in an authorized state that has not yet obtained authorization from the EPA to regulate that particular hazardous waste, then the designated facility must be a facility allowed by the receiving state to accept such waste and the facility must have a permit issued by the EPA to manage that waste.

(7) Centralized Waste Collection Facility or CWCF--A facility that meets the requirements of subsection (m)(3) of this section.

(8) Certification--A statement of professional opinion based upon knowledge and belief.

(9) CFR--Code of Federal Regulations.

(10) CESQG--A conditionally exempt small quantity generator, as described in subsection (f)(1) of this section (relating to generator classification and accumulation time).

(11) Commission--The Railroad Commission of Texas or its designee.

(12) Container--Any portable device in which material is stored, transported, treated, disposed of, or otherwise handled.

(13) Contaminated media--Soil, debris, residues, waste, surface waters, ground waters, or other materials containing hazardous oil and gas waste as a result of a discharge or clean-up of a discharge.

(14) Department of Transportation or DOT--The United States Department of Transportation.

(15) Designated facility--An authorized facility that has been designated on the manifest by the generator pursuant to the provisions of subsection (o)(1) of this section (relating to general manifest requirements).

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

(17) Disposal--The discharge, deposit, injection, dumping, spilling, leaking, or placing of any hazardous waste into or on any land or water so that such waste or any constituent thereof may enter the environment or be emitted into the air or discharged into any waters, including ground waters.

(18) Disposal facility--A facility or part of a facility at which hazardous waste is intentionally placed into or on any land or water, and at which waste will remain after closure.

(19) Elementary neutralization unit--A device consisting of a tank, tank system, container, transport vehicle, or vessel that is used for neutralizing wastes that are hazardous wastes:

(A) only because they exhibit the characteristic of corrosivity under the test referred to in subsection (e)(1)(D)(ii) of this section (relating to characteristically hazardous wastes); or

(B) they are identified in subsection (e)(1)(D)(i) of this section (relating to listed hazardous wastes) only because they exhibit the corrosivity characteristic.

(20) Empty container--A container or an inner liner removed from a container that has held any hazardous waste and that meets the requirements of 40 CFR, §261.7(b).

(21) Environmental Protection Agency or EPA--The United States Environmental Protection Agency.

(22) EPA Acknowledgment of Consent--The cable sent to the 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.

(23) EPA hazardous waste number--The number assigned by the EPA to each hazardous waste listed in 40 CFR, Part 261, Subpart D, and to each characteristic identified in 40 CFR, Part 261, Subpart C.

(24) EPA identification number or EPA ID Number--The number assigned by the EPA to each hazardous waste generator, transporter, and treatment, storage, or disposal facility.

(25) EPA Form 8700-12--The EPA form that must be completed and delivered to the commission in order to obtain an EPA ID number.

(26) Executive director of the TNRCC--The executive director of the TNRCC or the executive director's designee.

(27) Facility--All contiguous land, including structures, other appurtenances, and improvements on the land, used for recycling, reclaiming, treating, storing, or disposing of hazardous waste. A facility may consist of several treatment, storage, or disposal operational units (e.g., one or more landfills, surface impoundments, or combinations thereof).

(28) Generate--To produce hazardous oil and gas waste or to engage in any activity (such as importing) that first causes a hazardous oil and gas waste to become subject to regulation under this section.

(29) Generation site--

(A) Excluding sites addressed in subparagraphs (B) (relating to pipelines) and (C) (relating to gas plants) of this paragraph, any of the following operational units that are owned or operated by one person and other sites at which hazardous oil and gas waste is generated or where actions first cause a hazardous oil and gas waste to become subject to regulation, including but not limited to:

(i) all oil and gas wells that produce to one set of storage or treatment vessels, such as a tank battery, the storage or treatment vessels, associated flowlines, and related land surface;

(ii) an injection or disposal site, that is not part of a generation site described in subparagraph (A)(i) of this paragraph, its related injection or disposal wells, associated injection lines, and related land surface;

(iii) an offshore platform; or

(iv) any other site, including all structures, appurtenances, or other improvements associated with that site that are geographically contiguous, but which may be divided by public or private right-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.

(B) In the case of a pipeline system (other than a field flowline or injection line system), an equipment station (such as a pump station, breakout station, or compressor station) or any other location along a pipeline (such as a drip pot, pigging station, or rupture), together with any and all structures, other appurtenances, and improvements:

(i) that are geographically contiguous with or are physically related to an equipment station or other location described in this paragraph, but excluding any pipeline that connects two or more such stations or locations;

(ii) that are owned or operated by one person; and

(iii) at which hazardous oil and gas waste is produced or where actions first cause a hazardous oil and gas waste to become subject to regulation.

(C) A natural gas treatment or processing plant or a natural gas liquids processing plant.

(30) Generator--Any person, by generation site, whose act or process produces hazardous oil and gas waste or whose act first causes a hazardous oil and gas waste to become subject to regulation under this section, or such person's authorized representative.

(31) Geothermal energy and associated resources Geothermal energy and associated resources as defined in Texas Natural Resources Code, §141.003(4).

(32) Hazardous oil and gas waste--Any oil and gas waste determined to be hazardous under the provisions of subsection (e) of this section (relating to hazardous waste determination).

(33) Hazardous oil and gas waste constituent--A hazardous waste constituent of hazardous oil and gas waste.

(34) Hazardous waste--A hazardous waste, as defined in 40 CFR, §261.3, including a hazardous oil and gas waste.

(35) Hazardous waste constituent--A constituent that caused the administrator to list a hazardous waste in 40 CFR, Part 261, Subpart D, or a constituent listed in table 1 of 40 CFR, §261.24.

(36) International shipment--The transportation of hazardous oil and gas waste into or out of the jurisdiction of the United States.

(37) Land disposal--The placement in or on the land, except as otherwise provided in 40 CFR, Part 268, including placement in a landfill, surface impoundment, waste pile, injection well, land treatment facility, salt dome formation, salt bed formation, or underground mine or cave, or placement in a concrete vault or bunker intended for disposal purposes.

(38) LQG--A large quantity generator, as described in subsection (f)(3) of this section (relating to generator classification and accumulation time).

(39) Management--The systematic control of the collection, source separation, storage, transportation, processing, treatment, recovery, and disposal of hazardous waste.

(40) Manifest--The shipping document required pursuant to the provisions of subsection (o) of this section (relating to manifests).

(41) Manifest document number--The 12-digit identification number assigned to a generator by the EPA, plus a unique five-digit document number assigned to the manifest by the generator, or preprinted on the manifest, for recording and reporting purposes.

(42) Oil and gas waste--Waste generated in connection with activities associated with the exploration, development, and production of oil or gas or geothermal resources, or the solution mining of brine. Until delegation of authority under RCRA to the commission by EPA, the term "oil and gas waste" shall exclude hazardous waste arising out of or incidental to activities associated with natural gas treatment or natural gas liquids processing plants and reservoir pressure maintenance or repressurizing plants.

(43) On-site--At the generation site.

(44) Operator--The person responsible for the overall operation of a facility.

(45) Owner--The person who owns a facility or part of a facility.

(46) P-5 operator number--The number assigned by the commission to each person who conducts any of the activities specified in §3.1 of this title (relating to Organization Name To Be Filed and Records Kept) within the State of Texas.

(47) Person--An individual, firm, joint stock company, corporation, organization, government, governmental subdivision or agency, business trust, estate, trust, partnership, association, or any other legal entity.

(48) Pressure maintenance plant or repressurizing plant--A plant for processing natural gas for reinjection (for reservoir pressure maintenance or repressurizing) in a natural gas recycling project. These terms do not include a compressor station along a natural gas pipeline system or a pump station along a crude oil pipeline system.

(49) Primary exporter--Any person who is required to originate the manifest for a shipment of hazardous waste in accordance with 40 CFR, Part 262, Subpart B, or equivalent state provision, that identifies 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.

(50) 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).

(51) Reclaim--To process to recover a usable product or to regenerate.

(52) Recycle--To beneficially use, reuse, or reclaim hazardous waste.

(53) Reportable quantity--The quantity of a hazardous substance released in a 24-hour period that must be reported under the provisions of 40 CFR, Part 117 (for spills to water) or Part 302 (any spill).

(54) Resource Conservation and Recovery Act or RCRA--The federal Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended, 42 USC §6901, et seq.

(55) Reuse--To employ hazardous waste as an ingredient in an industrial process to make a product (other than recovery of distinct components of hazardous waste as separate end products) or effective substitution of hazardous waste for a commercial product used in a particular function or application.

(56) Sludge--Any solid, semi-solid, or liquid waste generated from a wastewater treatment plant or water supply treatment plant, or air pollution control facility, exclusive of the treated effluent from a wastewater treatment plant.

(57) Solid waste--Any waste identified in 40 CFR, §261.2.

(58) Solution mined brine--Brine extracted from a subsurface salt formation through dissolution of salt in the formation.

(59) SQG--A small quantity generator, as described in subsection (f)(2) of this section (relating to generator classification and accumulation time).

(60) State--Any of the 50 states that compose the United States, the District of Columbia, the Commonwealth of Puerto Rico, the U.S. Virgin Islands, Guam, American Samoa, or the Commonwealth of the Northern Mariana Islands.

(61) Storage--The holding of hazardous waste for a temporary period (excluding storage at the site of generation during the applicable accumulation time period specified in subsection (f) of this section), at the end of which the hazardous waste is recycled, reclaimed, treated, disposed of, or stored elsewhere.

(62) Tank--A stationary device designed to contain an accumulation of hazardous waste that is constructed primarily of non-earthen materials (e. g., wood, concrete, steel, plastic) that provide structural support.

(63) Tank system--A tank and its associated ancillary equipment and containment system.

(64) TNRCC--The Texas Natural Resource Conservation Commission.

(65) Totally enclosed treatment facility--A facility for the treatment of hazardous waste that is directly connected to an industrial production process and that is constructed and operated in a manner that prevents the release of any hazardous waste or hazardous waste constituent into the environment during treatment (e.g., a pipe in which waste acid is neutralized).

(66) Transfer facility--Any transportation-related facility including loading docks, parking areas, storage areas, and other similar areas where shipments of hazardous waste are held during the normal course of transportation.

(67) Transport vehicle--A motor vehicle or rail car used for the transportation of cargo. Each cargo-carrying body (trailer, railroad freight car, etc.) is a separate transport vehicle.

(68) Transportation--The movement of hazardous waste by air, rail, highway, or water.

(69) Transporter--A person engaged in the off-site transportation of hazardous waste.

(70) Treatment--Any method, technique, or process, including neutralization, designed to change the physical, chemical, or biological character or composition of any hazardous waste so as to neutralize such waste, to recover energy or material resources from the waste, or to render such waste non-hazardous or less hazardous, safer to transport, store, or dispose of, amenable for recovery or storage, or reduced in volume. The term does not include any activity that might otherwise be considered treatment that is exempt from regulation under this section (such as neutralization of caustic or acidic fluids in an elementary neutralization unit).

(71) TNRCC-Form 0311--The TNRCC Uniform Hazardous Waste Manifest form. This form can be obtained from the commission.

(72) United States--The 50 states, the District of Columbia, the Commonwealth of Puerto Rico, the U.S. Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands.

(73) 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.

(74) Vessel--Every description of watercraft used or capable of being used as a means of transportation on the water. The term does not include a structure that is or is designed to be, permanently affixed to one location, or a drilling or workover vessel that is stationary or fixed for the performance of its primary function.

(75) Waste--Any solid waste, as that term is defined in 40 CFR, §261.2.

(76) Wastewater treatment unit--A device (such as a hydrostatic test water treatment unit) that:

(A) is a tank or tank system comprising part of a wastewater treatment facility that is subject to regulation under either §§402 or 307(b) of the Clean Water Act, 33 USC §§1342 or 1317(b); and

(B) receives and treats or stores an influent wastewater that is a hazardous waste, that generates and accumulates a wastewater treatment sludge that is a hazardous waste, or treats or stores a wastewater treatment sludge that is a hazardous waste.

(77) Water (bulk shipment)--The bulk transportation of hazardous waste that is loaded or carried on board a vessel without containers or labels.

(c) Applicability.

(1) General.

(A) This section applies to any person who generates hazardous oil and gas waste and to any person who transports hazardous oil and gas waste.

(B) An owner or operator of a treatment, storage, or disposal facility regulated by the TNRCC's industrial and hazardous waste program, shall be subject to the standards for generators of hazardous waste found in Title 30, Texas Administrative Code, Chapter 335, Subchapter C (TNRCC standards for generators) if the facility generates a new waste that contains hazardous oil and gas waste and waste regulated by the TNRCC's industrial and hazardous waste program.

(2) Requirements Cumulative. The provisions of this section are in addition to applicable provisions contained in any other section, order, policy, rule, or statutory authority of the commission. In the event of a conflict between this section and any other section, order, policy, or rule of the commission, this section shall control.

(d) General Prohibitions. No person may cause, suffer, allow, or permit the collection, handling, storage, transportation, treatment, or disposal of hazardous oil and gas waste in a manner that would violate the provisions of this section.

(e) Hazardous Waste Determination.

(1) Determination. A person who generates a waste shall determine if such waste is hazardous oil and gas waste as provided in this subsection. A hazardous oil and gas waste is a waste that:

(A) is defined in subsection (b) of this section (relating to definitions) as an oil and gas waste;

(B) is not described in 40 CFR, §261.4(a) (which describes wastes that are not considered solid wastes);

(C) is not described in 40 CFR, §261.4(b) (which describes solid wastes that are exempt from regulation under RCRA Subtitle C); and

(D) is identified as a hazardous waste either:

(i) in 40 CFR, Part 261, Subpart D (regarding listed hazardous wastes); or

(ii) in 40 CFR, Part 261, Subpart C (regarding characteristically hazardous wastes), as determined either:

(I) by testing the waste:

(-a-) in accordance with methods described in 40 CFR, Part 261, Subpart C; or

(-b-) in accordance with an equivalent method approved by the administrator under 40 CFR, §260.21; or

(II) by applying knowledge of the hazard characteristics of the waste in light of the materials or processes used.

(2) Land Ban. Each LQG and SQG shall determine whether the hazardous oil and gas waste it generates is prohibited from land disposal under the provisions of 40 CFR, Part 268. If the waste is prohibited from land disposal, the LQG or SQG must comply with all applicable provisions of 40 CFR, Part 268 (concerning management of land ban wastes) prior to disposing of such waste.

(3) Exclusions and Exemptions.

(A) Notwithstanding the provisions of subsection (e)(1) of this section, in the event the administrator determines, in accordance with the provisions of 40 CFR, §260.22, that a particular oil and gas waste that is considered a hazardous oil and gas waste because it meets criteria set out in subsection (e)(1)(D)(i) of this section (relating to listed hazardous wastes) should not be considered a hazardous waste, such waste shall be exempt from regulation under this section.

(B) Notwithstanding the provisions of subsection (e)(1) of this section the following are exempt from regulation under this section:

(i) any oil and gas waste described in 40 CFR, §261.6(a)(2) (concerning recyclable materials) that is managed as provided in applicable provisions of 40 CFR, Part 266, Subparts C-H, and 40 CFR, Parts 270 and 124;

(ii) any oil and gas waste described and recycled, reclaimed, or reused as provided in 40 CFR, §261.6(a)(3) (concerning recyclable materials);

(iii) used oil that is not considered a hazardous waste under the provisions of 40 CFR, §279.10(b) and that is managed as provided in 40 CFR, Part 279;

(iv) dielectric fluid containing polychlorinated biphenyls (PCBs) and electric equipment containing such fluid that are regulated under 40 CFR, Part 761 and that are hazardous only because they exhibit the characteristic of toxicity for D018-D043 under the test required under subsection (e)(1)(D)(ii) of this section (relating to characteristically hazardous wastes);

(v) debris, as that term is defined in 40 CFR, §268.2, that is an oil and gas waste:

(I) that contains or contained a hazardous oil and gas waste listed in 40 CFR, Part 261, Subpart D or that exhibits or exhibited a hazardous waste characteristic identified in 40 CFR, Part 261, Subpart C; and

(II) that has been treated using one of the required destruction technologies specified in Table 1 of 40 CFR, §268.45 or that is determined by the administrator to be no longer contaminated with hazardous oil and gas waste; and

(vi) hazardous oil and gas waste remaining in an empty container.

(f) Generator Classification and Accumulation Time.

(1) Conditionally Exempt Small Quantity Generator.

(A) To be classified as a conditionally exempt small quantity generator (CESQG) during any calendar month, a generator of hazardous oil and gas waste must:

(i) generate no more than 100 kilograms (220.46 pounds) of hazardous oil and gas waste in that calendar month; and

(ii) accumulate no more than 1,000 kilograms (2204.60 pounds) of hazardous oil and gas waste on-site at any one time.

(B) Except as provided in subsection (f)(5) of this section, a CESQG must comply with all requirements of this section applicable to CESQGs.

(C) If a CESQG generates in one calendar month, or accumulates on-site at any one time, more than a total of one kilogram (2.20 pounds) of any acute hazardous waste listed in 40 CFR, §261.31, 261.32 or 261.33(e) or a total of 100 kilograms (220.46 pounds) of contaminated media resulting from the clean up of a discharge into or on any land or water of any acute hazardous waste listed in 40 CFR, §261.31, 261.32, or 261.33(e), all such acute hazardous wastes must be managed as though generated by an LQG. The LQG accumulation time period for such acute hazardous wastes shall begin at such time as the maximum quantity specified in this subparagraph is exceeded.

(2) Small Quantity Generator.

(A) To be classified as a small quantity generator (SQG) in any calendar month, a generator of hazardous oil and gas waste must:

(i) generate less than 1,000 kilograms (2204.60 pounds) of hazardous oil and gas waste in that calendar month;

(ii) not allow any particular quantity of hazardous oil and gas waste to remain on-site for a period of more than:

(I) 180 days from the date that particular quantity was generated; or

(II) 270 days from the date that particular quantity was generated, but only if the waste must be transported or offered for transport to a treatment, storage, or disposal facility that is located a distance of 200 miles or more from the point of generation; and

(iii) not accumulate more than 6,000 kilograms (13,227.60 pounds) of hazardous oil and gas waste on-site at any one time.

(B) An SQG must accumulate all hazardous oil and gas waste in tanks or containers that meet the requirements of this section and, except as provided in subsection (f)(5) of this section, comply with all requirements of this section applicable to SQGs.

(C) The accumulation period specified in subsection (f)(2)(A)(ii) of this section may be extended an additional 30 days if the commission, at its sole discretion, determines that unforeseen, temporary, and uncontrollable circumstances require that hazardous oil and gas waste remain on-site for a longer time period.

(3) Large Quantity Generators.

(A) Any generator of hazardous oil and gas waste not classified as a CESQG or SQG is classified as a large quantity generator (LQG).

(B) An LQG must accumulate hazardous oil and gas waste in tanks or containers that meet the requirements of this section and, except as provided in subsection (f)(5) of this section, comply with all other requirements of this section applicable to LQGs.

(C) An LQG shall not accumulate any particular quantity of hazardous oil and gas waste on-site for more than 90 days from the date that particular quantity was generated, unless an extension to such 90-day period has been granted in accordance with the provisions of subsection (f)(4)(D) of this section.

(D) The 90-day accumulation period specified in subsection (f)(4)(C) of this section may be extended an additional 30 days if the commission, at its sole discretion, determines that unforeseen, temporary, and uncontrollable circumstances require that hazardous oil and gas waste remain on-site for longer than 90 days.

(4) Accumulation in Containers at the Point of Generation.

(A) Notwithstanding the foregoing provisions of subsection (f) of this section, an LQG or SQG may accumulate in containers up to 55 gallons of hazardous oil and gas waste or a total of one quart of acute hazardous wastes listed in 40 CFR, §261.33(e) without having to manage such hazardous oil and gas waste in accordance with the accumulation time limits applicable to LQGs or SQGs or with the provisions of subsections (q) (relating to preparedness and prevention), (r) (relating to contingency plan and emergency procedures), (s) (relating to personnel training), (t) (relating to standards for use of containers), and (u) (standards for use of tank systems) of this section, provided that the requirements of subsection (f)(4)(B) of this section are met.

(B) All hazardous oil and gas waste subject to the exemption of subsection (f)(4)(A) of this section must be accumulated in containers that:

(i) are at a location that is:

(I) under the control of the generator; and

(II) at or near the point of generation;

(ii) meet the applicable requirements of 40 CFR, §§265.171, 265.172, and 265.173(a) (concerning container condition, compatibility of waste with container, and closing containers); and

(iii) are marked with the words "Hazardous Waste" or with other words that identify the contents of the containers.

(C) If the amount of hazardous waste accumulated on-site at or near the point of generation exceeds the maximum amount specified in subsection (f)(4)(A) of this section, the generator must, with respect to such excess waste, comply with all applicable provisions of this section within three days of the date that such maximum amount is exceeded.

(5) Episodic Generation. Except as otherwise provided in this paragraph, if a generator's classification varies from one month to another, the hazardous oil and gas waste generated during any particular month shall be managed in accordance with the requirements applicable to the generator's classification for that month.

(A) If hazardous oil and gas waste generated by a generator who is classified as a CESQG during a particular month is mixed with waste generated in a month during which the generator is considered an LQG, the mixture shall be managed in accordance with the standards applicable to LQGs.

(B) If hazardous oil and gas waste generated by a generator who is classified as a CESQG during a particular month is mixed with waste generated in a month during which the generator is considered an SQG, the mixture shall be managed in accordance with the standards applicable to SQGs.

(C) If hazardous oil and gas waste generated by a generator who is classified as an SQG during a particular month is mixed with waste generated in a month during which the generator is considered an LQG, the mixture shall be managed in accordance with the standards applicable to LQGs.

(g) Notification. A person who is considered an LQG or SQG under the provisions of this section must notify the commission of the activities of such person that are subject to the provisions of this section and obtain an EPA ID number by filing the prescribed form (currently EPA Form 8700-12) with the commission. Such notification must be made upon the later of 90 days after the effective date of this section or within ten days of the date that the LQG or SQG becomes subject to the provisions of this section.

(h) Preparedness and Prevention.

(1) General. In addition to all other applicable requirements of this section, all generators of hazardous oil and gas waste shall employ reasonable and appropriate measures (considering the nature and location of the facility and the types and quantities of hazardous oil and gas waste maintained at the site) in the operation and maintenance of his or her generation site to minimize the possibility of a fire, explosion, or any unplanned sudden or non-sudden release of hazardous oil and gas wastes or hazardous oil and gas waste constituents to air, soil, or surface water that could threaten human health or the environment.

(2) LQGs and SQGs. LQGs and SQGs who accumulate hazardous oil and gas waste at the generation site must comply with the provisions applicable to owners or operators of 40 CFR, Part 265, Subpart C (concerning preparedness and prevention).

(i) Contingency Plan and Emergency Procedures.

(1) LQGs. LQGs who accumulate hazardous oil and gas waste at the generation site must comply with the provisions applicable to owners or operators of 40 CFR, Part 265, Subpart D (concerning contingency plan and emergency procedures).

(2) SQGs. SQGs who accumulate hazardous oil and gas waste at the generation site must comply with the provisions of 40 CFR, §262.34(d)(5) (concerning emergency response).

(j) Personnel Training. LQGs who accumulate hazardous oil and gas waste at the generation site must comply with the provisions applicable to owners or operators of 40 CFR, §265.16 (concerning personnel training).

(k) Standards for Use of Containers.

(1) LQGs. LQGs accumulating hazardous oil and gas waste in containers must:

(A) comply with the provisions applicable to owners or operators of 40 CFR, Part 265, Subpart I (concerning use and management of containers);

(B) clearly mark each container being used to accumulate hazardous oil and gas waste on-site, in a manner and location visible for inspection, with the date accumulation of such hazardous oil and gas waste begins; and

(C) clearly label or mark each container being used to accumulate hazardous oil and gas waste on-site with the words "Hazardous Waste."

(2) SQGs. SQGs accumulating hazardous oil and gas waste in containers must:

(A) comply with the provisions applicable to owners or operators of 40 CFR, Part 265, Subpart I, except §265.176 (concerning distance from property lines);

(B) clearly mark each container being used to accumulate hazardous oil and gas waste on-site, in a manner and location visible for inspection, with the date accumulation of such hazardous oil and gas waste begins; and

(C) clearly label or mark each container being used to accumulate hazardous oil and gas waste on-site with the words "Hazardous Waste."

(3) CESQGs. The provisions of this paragraph apply to CESQGs only.

(A) Hazardous oil and gas waste generated by a CESQG may be mixed with non-hazardous waste even though the resultant mixture exceeds the quantity limitations of subsection (f)(1) of this section, unless the mixture exhibits any of the hazardous waste characteristics of the hazardous oil and gas waste in the mixture, as determined under subsection (e)(1)(D)(ii) of this section.

(B) If a CESQG's wastes are mixed with used oil, the mixture is subject to the requirements 40 CFR, Part 279 if the mixture 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.

(l) Standards for Use of Tank Systems.

(1) LQGs. LQGs accumulating hazardous oil and gas waste in tanks must:

(A) comply with the provisions applicable to owners or operators of 40 CFR, Part 265, Subpart J, except §265.197(c) and §265.200;

(B) comply with the provisions applicable to owners or operators of 40 CFR, §265.111 and §265.114 (concerning closure performance standards and disposal of contaminated equipment and media); and

(C) clearly label or mark each tank being used to accumulate hazardous oil and gas waste with the words "Hazardous Waste."

(2) SQGs. SQGs accumulating hazardous oil and gas waste in tanks must:

(A) comply with the provisions of 40 CFR, §265.201 (concerning accumulation of waste in tanks by small quantity generators); and

(B) clearly label or mark each tank being used to accumulate hazardous oil and gas waste with the words "Hazardous Waste."

(m) Disposition of Hazardous Oil and Gas Waste.

(1) On-site Treatment, Storage, Disposal, Recycling, and Reclamation. Except as otherwise specifically provided in this section, no person may treat, store, dispose of, recycle, or reclaim any hazardous oil and gas waste on-site.

(2) Transport to Authorized Facility.

(A) Except as otherwise specifically provided in this section and subject to all other applicable requirements of state or federal law, a generator of hazardous oil and gas waste must send his or her waste to one of the following categories of facilities for treatment, storage, disposal, recycling, or reclamation:

(i) an authorized recycling or reclamation facility;

(ii) an authorized treatment, storage, or disposal facility;

(iii) a facility located outside the United States, provided that the requirements of subsection (v)(1) of this section (relating to exports of hazardous waste) are met;

(iv) a transfer facility, provided that the requirements of subsection (w)(3) of this section are met;

(v) if the waste is generated by a CESQG, a facility permitted, licensed, or registered by a state to manage municipal or industrial solid waste; or

(vi) if the waste is generated by a CESQG, a centralized waste collection facility (CWCF) that meets the requirements of subsection (m)(3) of this section.

(B) Notwithstanding any contrary provision of this subsection, hazardous oil and gas wastes may be treated or stored on-site

in an elementary neutralization unit or a totally enclosed treatment facility. If a hazardous oil and gas waste that is ignitable under 40 CFR, §261.21 (other than DOO1 High TOC Subcategory wastes defined in 40 CFR, §268.42, Table 2) or that is corrosive under 40 CFR, §261.22 is being treated in an elementary neutralization unit or a wastewater treatment unit to remove the characteristic before land disposal, the owner or operator must comply with the requirements of 40 CFR, §264.17(b).

(C) While waste is being accumulated on-site in accordance with the provisions of subsection (f) of this section, a generator may treat hazardous oil and gas waste on-site in tanks or containers that comply with the applicable provisions of subsections (k) and (l) of this section.

(D) For purposes of §3.8(f)(1)(C)(vi) of this title (relating to Oil and Gas Waste Haulers), the manifest for shipment of hazardous oil and gas waste to a designated facility (a facility designated on the manifest by the generator pursuant to the provisions of subsection (o)(1) of this section) shall be deemed commission authorization for disposal at a facility permitted by another agency or another state.

(3) Centralized Collection of Hazardous Oil and Gas Waste.

(A) Centralized Waste Collection Facility. Provided that the requirements of this paragraph are met, a person may maintain at a CWCF hazardous oil and gas waste that is generated:

(i) by that person; and

(ii) at sites where that person is considered a CESQG under the provisions of this section.

(B) Prior to receipt of oil and gas hazardous waste generated off-site, a person who operates a CWCF must register with the commission by filing with the commission a notice that includes the following information:

(i) a map showing the location of the CWCF and each individual hazardous oil and gas waste generation site that may contribute waste to the collection facility. In lieu a map, the person who operates the CWCF may provide to the commission the name and lease number, field name and number, or other identifying information acceptable to the commission, of the CWCF and each generation site that may contribute waste to the collection facility;

(ii) the person's P-5 operator number; and

(iii) the EPA ID number for the CWCF, if any.

(C) All hazardous oil and gas waste received at the CWCF must be kept in closed containers that are marked with the words "Hazardous Waste."

(D) A person operating a CWCF shall not maintain at the CWCF at any one time more than 5,000 kilograms of hazardous oil and gas waste or more than five quarts of any hazardous oil and gas waste that is listed in 40 CFR, §261.33(e) (acute hazardous waste).

(n) EPA ID Numbers.

(1) Generators. No LQG or SQG may transport or offer for transportation any hazardous oil and gas waste until such generator has obtained an EPA ID number by filing the prescribed form (currently EPA Form 8700-12) with the commission.

(2) Transporters. No LQG or SQG may allow his or her hazardous oil and gas waste to be transported by a transporter that does not have an EPA ID number.

(3) Treatment, Storage, or Disposal Facilities. Except in the case of facilities specified in subsection (m)(2)(A)(iii), (vi), and (v) of this section, no LQG or SQG may send his or her hazardous oil and gas waste to a treatment, storage, or disposal facility unless that facility:

(A) is a designated facility as defined in this section; and

(B) has an EPA ID number.

(o) Manifests.

(1) General Requirements.

(A) Except as provided in subsection (o)(1)(E) of this section, each time an LQG or SQG transports hazardous oil and gas waste or offers hazardous oil and gas waste for transportation to an authorized facility, such generator must prepare a manifest form. If the waste was generated in the State of Texas and is being transferred to an authorized facility located within the State of Texas, the generator shall use the form prescribed by the TNRCC. If the authorized facility is located outside the State of Texas, the generator must refer to subsection (o)(2) of this section to determine which manifest form to use.

(B) The generator must specify on the manifest one authorized facility to handle the hazardous oil and gas waste described on the manifest (the "primary designated facility").

(C) The generator may also specify on the manifest one alternate authorized facility to handle the hazardous oil and gas waste (the "alternate designated facility") in the event an emergency prevents delivery of the hazardous oil and gas waste to the primary designated facility.

(D) If the transporter is unable to deliver the hazardous oil and gas waste to the primary designated facility or the alternate designated facility, the generator must either specify another authorized facility to which the hazardous oil and gas waste can be delivered or instruct the transporter to return the hazardous oil and gas waste to the generator. If the generator specifies another authorized facility to which the hazardous oil and gas waste can be delivered, the generator shall instruct the transporter to revise the manifest to show this facility as the designated facility (see subsection (w)(6) of this section relating to transporter's inability to deliver waste).

(E) An SQG is not required to comply with the provisions of this subsection (relating to manifests) if:

(i) the SQG's hazardous oil and gas waste is reclaimed under a contractual agreement (the "hazardous waste reclamation agreement") pursuant to which:

(I) the type of hazardous oil and gas waste and frequency of shipments are specified in the agreement; and

(II) the vehicle used to transport the hazardous oil and gas waste to the hazardous waste reclamation facility and to deliver regenerated material back to the generator is owned and operated by the hazardous waste reclamation facility;

(ii) the SQG maintains a copy of the hazardous waste reclamation agreement in his or her files for a period of at least three years after termination or expiration of the reclamation agreement; and

(iii) the SQG complies with the provisions of 40 CFR, §268.7(a)(10) (concerning land ban wastes subject to tolling agreements) if the waste is determined to be prohibited from land disposal under subsection (e)(2) of this section (relating to land ban wastes).

(2) Manifests Required for Out-of-State Domestic Shipments.

(A) If the hazardous oil and gas waste was generated within the United States, but outside the State of Texas, and is being transported to an authorized facility located within the State of Texas, the generator must use the form prescribed by the TNRCC.

(B) If the hazardous oil and gas waste was generated within the State of Texas and is being transported to an authorized facility located within the United States but outside the State of Texas (the "consignment state"), the manifest specified by the consignment state shall be used. If the consignment state does not specify a particular manifest form for use, then the generator shall use the form prescribed by the TNRCC.

(3) Number of Copies. The manifest must consist of at least the number of copies that will provide the generator, each transporter, and the owner or operator of the designated facility with one copy each for their records and one additional copy to be returned to the generator by the owner or operator of the designated facility to which the waste was delivered (in accordance with the provisions of 40 CFR, §264.71 and §265.71, or state equivalent).

(4) Use of the Manifest.

(A) The generator must:

(i) sign the manifest certification by hand;

(ii) obtain the handwritten signature of the initial transporter and date of acceptance of the shipment by the initial transporter on the manifest;

(iii) retain one copy of the manifest signed by the initial transporter until the copy signed by the operator of the designated facility (in accordance with 40 Code of Federal Regulations §264.71, §265.71, or state equivalent) is received;

(iv) give the transporter the remaining copies of the manifest; and

(v) obtain one copy of the manifest, signed by the owner or operator of the designated facility that received the hazardous oil and gas waste, and retain that copy for three years from the date the hazardous oil and gas waste was accepted for shipment by the initial transporter.

(B) For shipments of hazardous oil and gas waste within the United States solely by water (bulk shipments only), the generator must send three copies of the manifest, dated and signed in accordance with the provisions of paragraph (4)(A) of this subsection (relating to use of the manifest), to either:

(i) the owner or operator of the designated facility; or

(ii) if exported by water, the last water transporter expected to handle the hazardous oil and gas waste in the United States. Copies of the manifest are not required for each transporter.

(C) For rail shipments of hazardous oil and gas waste within the United States that originate at the generation site, the generator must send at least three copies of the manifest, dated and signed in accordance with the provisions of paragraph (4)(A) of this subsection (relating to use of the manifest), to:

(i) the next non-rail transporter, if any;

(ii) the designated facility, if transported solely by rail; or

(iii) if exported by rail, the last rail transporter expected to handle the hazardous oil and gas waste in the United States.

(D) For shipments of hazardous oil and gas waste to a designated facility located outside the State of Texas and in an authorized state that has not yet obtained authorization from the EPA to regulate that particular waste as hazardous, the generator must determine that the owner or operator of the designated facility agrees to sign and return the manifest to the generator (in accordance with the applicable provisions of 40 CFR, §264.71 or §265.71), and that any out-of-state transporter agrees to comply with the applicable requirements of subsection (w)(4) of this section (relating to manifest requirements for transporters).

(p) Packaging. Before transporting hazardous oil and gas waste or offering hazardous oil and gas waste for transportation off-site, an LQG or SQG must package the hazardous oil and gas waste in accordance with the applicable DOT packaging regulations set out in 49 CFR, Parts 173, 178, and 179.

(q) Labeling. Before transporting hazardous oil and gas waste or offering hazardous oil and gas waste for transportation off-site, LQGs and SQGs must label each package that contains hazardous oil and gas waste in accordance with the applicable DOT regulations set out in 49 CFR, Part 172.

(r) Marking.

(1) General. Before transporting hazardous oil and gas waste or offering hazardous oil and gas waste for transportation off-site, LQGs and SQGs must mark each package that contains hazardous oil and gas waste in accordance with the applicable DOT regulations set out in 49 CFR, Part 172.

(2) Non-Bulk Packaging. Before transporting hazardous oil and gas waste or offering hazardous oil and gas waste for transportation off-site, LQGs and SQGs must mark each package that contains hazardous oil and gas waste and is of a size specified in 40 CFR, §262.32(b) (110 gallons or less), with the following words and information. Such words and information must be displayed in accordance with the applicable requirements of 49 CFR, 172.304. The generator must include his or her name and address and the manifest document number in the appropriate space: HAZARDOUS WASTE--Federal Law Prohibits Improper Disposal. If found, contact the nearest police or public safety authority or the U.S. Environmental Protection Agency. Generator's Name and Address:____________________ Manifest Document Number:_________________________

(s) Placarding. Before transporting hazardous oil and gas waste or offering hazardous oil and gas waste for transportation off-site, LQGs and SQGs must placard the vehicle or vehicles used to transport such hazardous oil and gas waste, or offer to the initial transporter the appropriate placards. Appropriate placards shall be determined according to DOT regulations set out in 49 CFR, Part 172, Subpart F.

(t) Recordkeeping.

(1) Waste Determination. Each LQG and SQG shall keep records of any and all test results, waste analyses, or other determinations made in accordance with subsection (e) of this section (relating to hazardous waste determination), for at least three years from the date that the waste was last sent to an authorized facility.

(2) Annual Reports. A copy of all reports required in subsection (u)(1) of this section (relating to annual reports), shall be retained by the generator for a period of at least three years from the due date of the report.

(3) Exception Reports. A copy of all reports required under subsection (u)(2) of this section (relating to exception reports), shall be

retained by the generator for a period of at least three years from the due date of the report.

(4) Inspection Reports. A copy of each inspection report required under this section shall be retained by the generator for a period of at least three years from the due date of the report.

(5) Extension. The periods of record retention specified in subsection (t)(1)-(4) of this section are extended automatically during the course of any unresolved enforcement action regarding the regulated activity or upon request by the commission.

(u) Reporting.

(1) Annual Reports. Any generator who is classified as an LQG or SQG during any calendar month of a calendar year shall prepare and submit a single copy of an annual report to the commission on the annual reporting form prescribed by the commission, Form H-21. The report shall be filed on or before the first day of March of the following calendar year and shall be accompanied by the fee assessed under the provisions of subsection (z) of this section. The annual report shall contain a certification signed by the generator. The annual report shall cover activities occurring at the generation site during the month(s) of the reporting year that the site was classified as a small or large quantity generation site, and shall include the following information:

(A) the name of the generator followed by the generator's P-5 operator number in parentheses, the EPA ID number for the generation site, and the address of the generation site or other site-identifying information (such as the lease number, unit number, or T-4 number (in the case of pipelines));

(B) the calendar year covered by the report;

(C) the name, EPA ID number, if any, and address for each authorized facility within the United States to which hazardous oil and gas waste was shipped during the year;

(D) the name and EPA ID number of each transporter used during the year for shipments to an authorized facility within the United States;

(E) a description, EPA hazardous waste number (from 40 CFR, Part 261, Subpart C or D), United States DOT hazard class, and quantity of each hazardous oil and gas waste shipped to an authorized facility within the United States. This information must be listed by the EPA ID number of each facility to which hazardous oil and gas waste was shipped. If the waste was shipped to an authorized facility that does not have an EPA ID number, the type of facility (reclamation or recycling) must be designated on the report;

(F) a description of the efforts undertaken during the year to reduce the volume and toxicity of hazardous oil and gas waste generated; and

(G) a description of the changes in volume and toxicity of hazardous oil and gas waste actually achieved during the year in comparison to previous years, to the extent such information is available.

(2) Exception Reports.

(A) An LQG who does not receive a copy of the manifest with the handwritten signature of the owner or operator of the designated facility within 35 days from the date the hazardous oil and gas waste was accepted by the initial transporter for shipment must contact the transporter and, if necessary, the owner or operator of the designated facility to determine the status of the hazardous oil and gas waste shipment.

(B) An LQG must submit an exception report to the commission if he or she has not received a copy of the manifest with the handwritten signature of the owner or operator of the designated facility within 45 days from the date the hazardous oil and gas waste was accepted by the initial transporter for shipment. The exception report must include:

(i) a legible copy of the manifest for that shipment of hazardous oil and gas waste for which the generator does not have confirmation of delivery; and

(ii) a letter signed by the generator explaining the efforts taken to locate the hazardous oil and gas waste and the results of those efforts.

(C) An SQG who does not receive confirmation of delivery of hazardous oil and gas waste by receipt of a copy of the manifest with the handwritten signature of the owner or operator of the designated facility within 60 days from the date the hazardous oil and gas waste was accepted by the initial transporter for shipment, must submit to the commission an exception report. The exception report must include:

(i) a legible copy of the manifest for which the generator does not have confirmation of delivery; and

(ii) a notation, either typed or handwritten, indicating that the generator has not received confirmation of delivery of the shipment to the designated facility.

(D) In the case of interstate shipments of hazardous oil and gas waste for which a manifest has not been returned within 45 days of acceptance of the hazardous oil and gas waste for shipment by the initial transporter, an LQG or SQG shall notify the appropriate regulatory agency of the state in which the designated facility is located, and the appropriate regulatory agency of each state in which the shipment may have been delivered, that the manifest has not been received. If a state required to be notified under this section has not received interim or final authorization pursuant to the RCRA, the LQG or SQG shall notify the administrator that the manifest has not been returned.

(3) Additional Reporting. The commission may require any generator of hazardous oil and gas waste to furnish additional reports concerning the quantities and disposition of hazardous oil and gas waste generated.

(v) Additional Requirements Applicable to International Shipments.

(1) Exports.

(A) Any person who exports hazardous oil and gas waste to a foreign country must comply with the requirements of 40 CFR, Part 262, Subpart E.

(B) Primary exporters of hazardous oil and gas waste generated within the State of Texas must submit to the commission a copy of the annual report submitted to the administrator in compliance with 40 CFR, §262.56.

(2) Imports. Any person who imports hazardous oil and gas waste generated outside the United States into the State of Texas shall be considered the generator of such hazardous oil and gas waste for the purposes of this section. Such person must comply with the applicable provisions of this section, except that:

(A) the name and address of the foreign generator and the importer's name, address, and EPA ID number shall be substituted on the manifest in place of the generator's name, address, and EPA ID number;

(B) the importer or the importer's agent must sign and date the certification and obtain the signature of the initial transporter in place of the generator's certification statement on the manifest; and

(C) the importer shall use the manifest form prescribed by the TNRCC, or its successor.

(w) Standards Applicable to Transporters of Hazardous Oil and Gas Waste. The following standards apply to persons who transport hazardous oil and gas waste generated by LQGs and SQGs. The requirements of this subsection do not apply in the case of hazardous oil and gas waste generated by CESQGs.

(1) Scope.

(A) This subsection establishes standards for persons transporting hazardous oil and gas waste from the generation site to any designated facility. The provisions of this section do not apply with respect to on-site movements of hazardous oil and gas waste.

(B) In addition to the provisions of this subsection, a transporter must comply with standards applicable to generators of hazardous oil and gas waste if he or she mixes hazardous oil and gas wastes of different DOT shipping descriptions by placing them into a single container. If a transporter mixes a hazardous oil and gas waste with a hazardous waste that is not considered a hazardous oil and gas waste, the transporter must comply with the standards applicable to generators of hazardous wastes found at Title 30, Texas Administrative Code, Chapter 335, Subchapter C (the TNRCC's standards for generators of hazardous waste).

(2) Permits and EPA ID Numbers. No transporter may transport hazardous oil and gas waste unless he or she has an EPA ID number. The transporter may obtain an EPA ID number by filing the prescribed form (currently EPA Form 8700-12) with the appropriate regulatory entity (either EPA, TNRCC, the commission, or another state).

(3) Transfer Facility Requirements. No transporter may store manifested hazardous oil and gas waste at a transfer facility for any period of time unless:

(A) the hazardous oil and gas waste is packaged in containers that meet the requirements of subsection (p) of this section (relating to packaging); and

(B) the hazardous oil and gas waste is stored at the transfer facility for no longer than ten days.

(4) Manifest Requirements.

(A) A transporter may not accept hazardous oil and gas waste for shipment from a generator unless it is accompanied by a manifest signed in accordance with the provisions of subsection (o)(4) of this section (relating to use of the manifest).

(B) Before transporting hazardous oil and gas waste, the transporter must sign and date the manifest acknowledging acceptance of the hazardous oil and gas waste from the generator. The transporter must return a signed copy of the manifest to the generator before leaving the generation site.

(C) The transporter must ensure that the manifest accompanies the shipment of hazardous oil and gas waste. In the case of exports, the transporter must ensure that a copy of the EPA Acknowledgment of Consent is attached to the manifest.

(D) A transporter may not accept hazardous oil and gas waste for export from a primary exporter or other person if:

(i) the transporter knows that the shipment does not conform to the EPA Acknowledgment of Consent; or

(ii) except in the case of shipments by rail, an EPA Acknowledgment of Consent is not attached to the manifest (or shipping paper in the case of exports by water (bulk shipment)).

(E) A transporter who delivers a hazardous oil and gas waste to another transporter or to the designated facility must:

(i) obtain the date of delivery and the handwritten signature of the other transporter or of the owner or operator of the designated facility on the manifest;

(ii) retain one copy of the manifest in accordance with the provisions of subsection (w)(7) of this section (relating to recordkeeping); and

(iii) give the remaining copies of the manifest to the accepting transporter or owner or operator of the designated facility.

(F) The requirements of subsection (w)(4)(C), (D), (E), and (G) of this section do not apply to water (bulk shipment) transporters if:

(i) the hazardous oil and gas waste is delivered by water (bulk shipment) to the designated facility;

(ii) a shipping paper containing all the information required on the manifest (excluding the EPA ID numbers, generator certification, and signatures) and, for exports, an EPA Acknowledgment of Consent, accompanies the hazardous oil and gas waste;

(iii) the delivering transporter obtains the date of delivery and handwritten signature of the owner or operator of the designated facility on either the manifest or the shipping paper;

(iv) the person delivering the hazardous oil and gas waste to the initial water (bulk shipment) transporter obtains the date of delivery and signature of the water (bulk shipment) transporter on the manifest and forwards it to the designated facility; and

(v) a copy of the shipping paper or manifest is retained by each water (bulk shipment) transporter in accordance with the provisions of subsection (w)(7) of this section (relating to recordkeeping).

(G) For shipments involving rail transportation, the requirements of subsection (w)(4)(C), (D), (E), and (F) of this section do not apply and the following requirements do apply:

(i) when accepting hazardous oil and gas waste from a non-rail transporter, the initial rail transporter must:

(I) sign and date the manifest acknowledging acceptance of the hazardous oil and gas waste;

(II) return a signed copy of the manifest to the non-rail transporter;

(III) forward at least three copies of the manifest to:

(-a-) the next non-rail transporter, if any;

(-b-) the designated facility, if the shipment is delivered to that facility by rail; or

(-c-) the last rail transporter designated to handle the hazardous oil and gas waste in the United States; and

(IV) retain one copy of the manifest and rail shipping paper in accordance with the provisions of subsection (w)(7) of this section (relating to recordkeeping);

(ii) rail transporters must ensure that a shipping paper containing all the information required on the manifest (excluding the EPA ID numbers, generator certification, and signatures) and, for

exports, an EPA Acknowledgment of Consent, accompanies the hazardous oil and gas waste at all times;

(iii) when delivering hazardous oil and gas waste to the designated facility, a rail transporter must:

(I) obtain the date of delivery and handwritten signature of the owner or operator of the designated facility on the manifest or the shipping paper (if the manifest has not been received by the facility); and

(II) retain a copy of the manifest or signed shipping paper in accordance with the provisions of subsection (w)(7) of this section (relating to recordkeeping);

(iv) when delivering hazardous oil and gas waste to a non-rail transporter, a rail transporter must:

(I) obtain the date of delivery and the handwritten signature of the next non-rail transporter on the manifest; and

(II) retain a copy of the manifest in accordance with the provisions of subsection (w)(7) of this section (relating to recordkeeping);

(v) before accepting hazardous oil and gas waste from a rail transporter, a non-rail transporter must sign and date the manifest and provide a copy to the rail transporter.

(H) Transporters who transport hazardous oil and gas waste out of the United States must:

(i) indicate on the manifest the date the hazardous oil and gas waste left the United States;

(ii) sign the manifest and retain one copy in accordance with the provisions of subsection (v)(1) of this section;

(iii) return a signed copy of the manifest to the generator; and

(iv) give a copy of the manifest to a United States customs official at the point of departure from the United States.

(I) A transporter accepting hazardous oil and gas waste for shipment from an SQG need not comply with the requirements of subsection (w)(4) and (7) of this section provided that:

(i) the hazardous oil and gas waste is being transported pursuant to a reclamation agreement that meets the requirements of subsection (o)(1)(E) of this section;

(ii) the transporter records, on a log or shipping paper, the following information for each shipment:

(I) the name, address, and EPA ID number of the generator of the hazardous oil and gas waste;

(II) the quantity of hazardous oil and gas waste accepted;

(III) all DOT required shipping information;

(IV) the date the hazardous oil and gas waste is accepted;

(iii) the transporter carries this record when transporting the hazardous oil and gas waste to the reclamation facility; and

(iv) the transporter retains these records for a period of at least three years after termination or expiration of the agreement.

(5) Delivery of Waste. The transporter must deliver the entire quantity of hazardous oil and gas waste accepted from a generator or a transporter to:

(A) the primary designated facility;

(B) the alternate designated facility, if the hazardous oil and gas waste cannot be delivered to the primary designated facility because an emergency prevents delivery;

(C) the next designated transporter; or

(D) for exports, the location designated in the EPA Acknowledgment of Consent.

(6) Inability to Deliver Waste. If the hazardous oil and gas waste cannot be delivered as provided in subsection (w)(5) of this section the transporter must contact the generator for further directions and must revise the manifest according to the generator's instructions.

(7) Recordkeeping.

(A) A transporter of hazardous oil and gas waste must keep a copy of the manifest signed by the generator, himself or herself, and the next transporter or the owner or operator of the designated facility for a period of three years from the date the hazardous oil and gas waste was accepted by the initial transporter.

(B) For shipments delivered to the designated facility by water (bulk shipment), each water (bulk shipment) transporter must retain a copy of the shipping paper containing all the information required in 40 CFR, §263.20(e)(2) for a period of three years from the date the hazardous oil and gas waste was accepted by the initial transporter.

(C) For shipments of hazardous oil and gas waste by rail within the United States:

(i) the initial rail transporter must keep a copy of the manifest and shipping paper with all the information required in 40 CFR, §263.20(f)(2) for a period of three years from the date the hazardous oil and gas waste was accepted by the initial transporter; and

(ii) 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 oil and gas waste was accepted by the initial transporter.

(D) A transporter who transports hazardous oil and gas waste out of the United States must keep, for a period of three years from the date the hazardous oil and gas waste was accepted by the initial transporter, a copy of the manifest indicating that the hazardous oil and gas waste left the United States.

(E) The periods of retention referred to in subsection (w)(7) of this section are extended automatically during the course of any unresolved enforcement action regarding the regulated activity or upon request by the commission.

(x) Discharges.

(1) Reporting Requirements.

(A) Commission. A person subject to regulation under this section shall immediately notify the commission upon discovery of any discharge in which a reportable quantity of a hazardous oil and gas waste is discharged. Such notification shall be made by contacting the appropriate commission district office.

(B) Federal. Persons subject to regulation under this section shall comply with applicable reporting requirements of 40 CFR, Parts 117, 263, and 302.

(2) Initial Response.

(A) Immediate Action. Upon discovery of a discharge of hazardous oil and gas waste, the generator or transporter must take

appropriate immediate action to protect human health and the environment (e.g., notify local authorities, where appropriate, and dike the discharge area).

(B) Permitting Exemption. The prohibition of on-site treatment, storage, disposal, recycling, or reclamation activities in subsection (m)(1) of this section does not apply to activities performed by a person engaged in treatment or containment activities during immediate response to a discharge of hazardous oil and gas waste; an imminent and substantial threat of a discharge of hazardous oil and gas waste; or a discharge of a substance which, when discharged, would become a hazardous oil and gas waste, provided that:

(i) any hazardous oil and gas waste associated with such discharge is managed in accordance with applicable provisions of subsections (h) (relating to preparedness and prevention), (i) (relating to personnel training), (k) (relating to standards for use of containers), and (l) (standards for use of tank systems) of this section; and

(ii) the applicable discharge reporting requirements of subsection (x) of this section are complied with.

(C) Continued Measures. The provisions of subparagraph (B) of this paragraph do not apply to activities that continue or are initiated after the immediate response is over. Such activities are subject to all applicable requirements of this section.

(3) Discharge Clean Up.

(A) The generator or transporter shall recover as much as of the spilled material as can be recovered by ordinary physical means as soon as possible after discovery of the spill.

(B) The generator or transporter shall clean up the site at which the discharge occurred to background levels as soon as reasonably possible. As an alternative to clean-up to background levels, the generator or transporter must take such action as may be required or approved by the commission so that the hazardous oil and gas waste discharge no longer presents a hazard to human health or the environment, taking into consideration the geology and hydrology of the discharge site, the nature and quantity of the hazardous oil and gas waste discharged, and the present and anticipated future use of the discharge site.

(C) If an official (state or local government or a federal agency) acting within the scope of his or her official responsibilities determines that immediate removal of the hazardous oil and gas waste associated with a discharge is necessary to protect human health or the environment, that official may authorize the removal of the hazardous oil and gas waste by transporters who do not have EPA ID numbers and without the preparation of a manifest.

(y) Emergency Permits.

(1) General. Notwithstanding any other provision of this section, the commission may authorize by emergency permit the treatment, storage, or disposal of hazardous oil and gas waste where the commission finds that a discharge of hazardous oil and gas waste poses a danger to life or property.

(2) Requirements. An emergency permit:

(A) may be oral or written. If oral, a written permit must be issued within five days of issuance of the oral permit;

(B) shall have a term of not more than 90 days;

(C) shall clearly specify the manner and location of authorized treatment, storage, and disposal activities;

(D) may be terminated by the commission without notice if the commission determines that termination is appropriate to protect human health and the environment;

(E) shall incorporate, to the extent possible and not inconsistent with the emergency situation, all applicable requirements of 40 CFR, Parts 264, 266, and 270; and

(F) shall be accompanied by a public notice published in a daily or local newspaper of general circulation in the area affected by the activity and broadcast over local radio stations. The notice shall include:

(i) the name and address of the office granting the emergency authorization;

(ii) the name and location at which the permitted activities will take place;

(iii) a brief description of the hazardous oil and gas wastes involved;

(iv) a brief description of the actions authorized and reasons for authorization of such actions; and

(v) the duration of the emergency permit.

(z) Fees.

(1) Base fee.

(A) Except as provided in subparagraph (B) of this paragraph:

(i) each generator who is classified as an LQG during any calendar month of a calendar year shall pay to the commission a base annual fee for generation of hazardous oil and gas waste of $1,000;

(ii) each generator who is not classified as an LQG during any calendar month of a calendar year, but is classified as an SQG during a calendar month of that calendar year, shall pay to the commission a base annual fee for generation of hazardous oil and gas waste of $200; and

(iii) no annual fee for generation of hazardous oil and gas waste shall be assessed against a generator who is classified as a CESQG during all months of the entire calendar year in which he or she generates hazardous oil and gas waste.

(B) For purposes of determining the base fee as provided in subparagraph (A) of this paragraph, generator classification shall be determined after excluding quantities of hazardous oil and gas waste generated in connection with a spill or discharge, including contaminated soil, media, and debris, if, within 30 days after discovery of such spill or discharge, the generator files a one-page typewritten report with the commission that describes:

(i) the nature and quantity of spilled or discharged material;

(ii) the reason for or cause of the spill or discharge; and

(iii) the steps that have been or will be taken by the generator to minimize the likelihood of a similar spill or discharge at that site.

(2) Additional fee. The base annual fee determined according to the provisions of paragraph (1) of this subsection shall be doubled if less than 50% of the hazardous oil and gas wastes generated at the site during the entire calendar year are recycled, reused or reclaimed. For purposes of calculating the percentage of hazardous oil and gas wastes that are recycled, reused, or reclaimed, hazardous oil and gas

wastes excluded from regulation under this section by the provisions of subsection (e)(3)(B)(i)-(iii) of this section (relating to exclusions and exemptions from hazardous oil and gas waste classification) and subsection (m)(2)(B) of this section (relating to elementary neutralization units, totally enclosed treatment facilities, and wastewater treatment units) shall be included in the quantity of hazardous oil and gas waste recycled, reused, or reclaimed. The wastes excluded from regulation under this section under the provisions of subsections (e)(3)(B)(i)-(iii) and (m)(2)(B) of this section shall not be included when calculating the quantity of waste generated for purposes of determining generator classification.

(3) Fee payment. The base fee and any additional fee assessed under this subsection shall be paid to the commission on or before the first day of March of the year following the calendar year in which the waste was generated. Fees assessed under this subsection shall be tendered to the commission with the annual report (see subsection (u)(1) of this section).

(aa) Penalties. A person subject to regulation under this section is subject to the penalties prescribed in the Texas Natural Resources Code if such person does not comply with the requirements of this section.

(bb) Federal Regulations. All references to the Code of Federal Regulations (CFR) in this section are references to the 1994 edition of the Code, as amended through November 7, 1995. The following federal regulations are adopted by reference and copies can be obtained at the William B. Travis Building, 1701 North Congress, Austin, Texas 78711: 40 CFR, Parts 116, 117, 124, 264, 266, 268, 270, 271, 279, and 302; 40 CFR, Part 261, Subparts A, C, and D; 40 CFR, Part 262, Subparts B and E; 40 CFR, Part 265, Subparts C, D, I, and J (except §265.197(c) and §265.200); 40 CFR, §§260.21, 260.22, 262. 34(d)(5), 265.16, 265.111, 265.114, and 265.201; 49 CFR, Parts 172, 173, 178, and 179; and 49 CFR, §171.15 and §171.16. Words and terms used in the federal regulations adopted by reference shall have the meanings given in the federal regulations adopted by reference or in 40 CFR, §260.10, unless otherwise specified. Where the term "State Director" is applicable in the federal regulations adopted by reference, it should be interpreted to mean "commission."

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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CHAPTER 9. LIQUEFIED PETROLEUM GAS DIVISION

The Railroad Commission of Texas adopts amendments to §§9.2, 9.7, 9.17, 9.26, 9.36, 9.136, 9.140, 9.142, 9.403, and 9.506, relating to Definitions; Application for License and License Renewal Requirements; Designation and Responsibilities of Company Representatives and Operations Supervisors; Insurance Requirements; Report of LP-Gas Incident/Accident; Filling of DOT Containers; Uniform Protection Standards; LP-Gas Container Storage and Installation Requirements; Sections in NFPA 58 Not Adopted by Reference, and Adopted with Changes, Additional Requirements, or Corrections; and Sections in NFPA 51 Adopted with Additional or Alternative Language. Section 9.17 is adopted with changes and the remaining sections are adopted without changes to the versions published in the July 6, 2001, issue of the *Texas Register* (26 TexReg 4956).

The main purpose of the adoption is to update the rules based on legislative changes to the Commission's authorizing statutes made during the 77th legislative session (2001). The adopted amendments in §§9.36, 9.136, 9.140, 9.142, 9.506 and some of the amendments to the table in §9.403 result from discussions at the Commission's meetings of the LP-Gas Advisory Committee and the Cylinder Exchange Task Force, held in December 2000 and January 2001, as well as recommendations from a member of the Commission's LP-Gas Welding Advisory Committee.

The Commission adopts two amendments in §9.2. The first amendment adds a definition for "categories of LPG activities," which is necessary because of statutory changes in Senate Bill (SB) 310 which removed the license categories and letter designations from the statute. This change allows the license categories described in §9.6 to remain as they are. The second amendment is in the definition of "company representative" and is necessary due to SB 1015 relating to Category P license operations which removed the requirement for a company representative of a Category P license to actively supervise the conduct of the licensee's LP-gas activities. This change will by definition exempt a company representative of a Category P license to actively supervise the conduct of the licensee's LP- gas activities.

The Commission's adopted amendments in §9.7 are necessary because of statutory changes in SB 310 and SB 1015 relating to license and license renewal requirements, as well as some grammatical changes and wording changes to bring the rule in line with the statutes. The first amendment adds a cross-reference to §9.17 to clarify management-level examination requirements. The second amendment, in subsection (f), reflects the statute and requires the notification in writing to the address on file with the Commission of the impending license expiration at least 30 days before the date a person's license is scheduled to expire, instead of 15 days currently in the rule. The remaining amendments reflect changes in SB 310. The amendment to §9.7(f)(1) requires a renewal fee of 1 1/2 times the renewal fee required by §9.6 if a person's license has expired for 90 calendar days or fewer and changes the time limit for license expiration, suspension, or revocation from two years to one year. The amendment in §9.7(f)(2) requires a renewal fee of two times the renewal fee required by §9.6 if a person's license has expired for more than 90 calendar days and also changes the time limit for license expiration, suspension, or revocation from two years to one year. The amendment in §9.7(f)(3) requires a person whose license has expired for more than one year, changed from two years, to comply with all requirements for issuance of a new license. The amendment in §9.7(f)(4) exempts a person previously licensed in this state but who currently lives in another state and is currently licensed and has been in practice in the other state for the two years preceding the date of application from reexamination for licensing, and requires the person to pay a fee to the Commission that is equal to two times the renewal fee required by §9.6.

The Commission's adopted amendments to §9.17 are necessary because of statutory changes in SB 1015 which change

current requirements for company representatives and operation supervisors for a Category P license. Subsection (a) exempts a Category P licensee from having one operations supervisor for each outlet as is currently required. Subsection (b)(2) exempts a company representative of a Category P licensee from being responsible for actively supervising all LP-gas activities conducted by the licensee. Subsection (c) exempts the Category P operations supervisor from being an owner of or employee of the Category P licensee, from examination, and from actively supervising the LP-gas activities at a designated outlet. New subsection (d) requires, in lieu of an operations supervisor for a Category P licensee, the Category E, J, or other licensee that provides the cylinders to the Category P licensee to prepare and file a manual covering proper procedures for handling LP-gas in the portable cylinder exchange process with the Commission for its approval, to provide a copy of the approved manual to each outlet of the Category P licensee, and to provide Commission-approved training regarding the contents of the manual and to maintain records regarding the individuals of the Category P licensee trained. This subsection also allows for a 45-day period with which to comply with all requirements of §9.17(d). New subsection (e) makes the Category P licensee responsible for compliance. Subsection (f) authorizes the company representative to assign or remove any employee of the Category P licensee who does not comply with the LP-gas safety rules or who performs any unsafe LP-gas activity from LP-gas related activities performed under the license.

The adopted amendment to §9.26 affects only the table and is necessary because of statutory changes in SB 1015. The change to the table, in the first row, exempts Category P licensees from the workers compensation insurance or alternative requirement as is currently required.

The adopted amendment to §9.36 adds new subsection (e) due to a request from the LP-Gas Advisory Committee at a meeting on January 11, 2001. New 9.36(e) requires the Category P licensee to immediately notify the Category E, J, or other licensee who supplies cylinders to the Category P licensee of any reportable accident or incident, and requires the Category E, J, or other licensee to report the accident or incident to the Commission.

The adopted amendment to §9.136(a) will increase the safety of filling DOT cylinders by weight. The amendment adds the accepted formula used for determining the setting of a scale when weighing a DOT cylinder of less than 101 pounds LP-gas capacity as required by current rule to be placed in the LP-gas safety rules. This formula was in a previous Commission rule and will provide the LP-gas industry and other interested parties with written instructions for setting a scale when filling a DOT cylinder of less than 101 pounds LP-gas capacity.

The adopted amendments to §9.140 will provide uniformity when exempting the guardrailing and fencing requirements for certain LP-gas installations as currently required in the LP-gas rules for fencing only, and to address recommendations from the Commission's Cylinder Exchange Task Force at its meeting held December 18, 2000, concerning certain protection requirements for retail portable cylinder exchange racks. The amendments pertaining to the exemption of certain LP-gas installations from the fencing requirements move the current exemptions from §9.140(d)(7) to §9.140(b) and results in the exemptions applying to both the fencing and guardrailing requirements. The amendments pertaining to the retail portable cylinder exchange racks are as follows. The wording in §9.140(h)(3)(A) currently exempts retail portable cylinder exchange racks from guardrail or guardpost requirements if the cylinder rack is located against a building. The amendment adds the wording "or attached structure" after the word building. This additional wording allows a cylinder rack to be exempt from the guardrail and guardpost requirements when located against a structure (such as a fenced- in garden center at a home improvement or other retail store) as well as a building which will allow for greater flexibility in the installation of the cylinder racks without compromising safety. The new wording in §9.140(h)(4) allows for the exemption of a wheelstop if a curb is at least six inches tall and the cylinder exchange rack is at least 48 inches away from the curb. The current rule requires a six-inch wheelstop to be installed 48 inches from a cylinder exchange rack when the rack is located on a walkway that is four inches in height above the grade of the parking space or driveway, installed against a building, and is not protected with guardrailing or guardposts. The adopted amendment will allow the exclusion of the wheelstop if the cylinder exchange rack is 48 inches away from the edge of a curb. This will allow greater flexibility for industry to install cylinder exchange racks without compromising safety.

The adopted amendment to §9.142 clarifies the current rule, which requires that containers shall be stored or installed in accordance with the distance requirements in NFPA 58, 3-2.2. This change was recommended by a member of the Commission's LP- Gas Welding Advisory Committee to clarify requirements for welding and cutting activities. Along with the amendment to §9.142, a section of NFPA 58 (3-4.5.1) is added to the table in §9.403; this clarifying change is discussed in the following explanation of changes to §9.403. Language is also added to §9.506 to refer to NFPA 58 3-4.5.1.

The adopted changes to the table in §9.403 will reduce the number of Texas exceptions to NFPA 58 and bring the Texas rules more in line with the 1998 edition of NFPA 58 which is a goal of the LP-Gas Section. In particular, the changes to the table are as follows:

1. A new entry for 3-2.2.7 is added to the table and has one change from the version in NFPA 58. The change will add a cross- reference to NFPA 58 5-4.1, also to be added to the table, to clarify some requirements for cylinder exchange racks recommended by the Commission's Cylinder Exchange Task Force.

2. A new entry for 3-4.5.1 is added to the table and has two changes from the NFPA 58 version. These changes are made in conjunction with changes to §§9.142 and 9.506 and clarify an exception for the use of LP-gas in welding or cutting applications. The language allows the use of LP-gas inside buildings for these specific applications and states that each LP-gas cylinder used for this purpose shall not exceed nominal 239 pound water capacity and that all other LP-gas safety rules, including those adopted in NFPA 58, shall apply.

3. A new entry for 5-4.1 is added to the table and has one change from the NFPA 58 version. The change adds a new subsection (f) to 5-4.1 to require combustible materials and sources of ignition to be at least five feet away from any cylinder exchange rack. This amendment was recommended by the Commission's LP-Gas Advisory Committee and addresses two situations not covered elsewhere in NFPA 58.

The Commission received one comment on the proposal from the Commission's Cylinder Exchange Task Force which met on July 12, 2001. The Commission adopts the language in §9.17 with one change from the proposed version, based on the Task

Force's comment. In subsection (b)(1), the wording "in the case of a licensee other than a Category P licensee" is added in the same manner as it was originally proposed in subsection (b)(2). The Task Force suggested the addition of this language in subsection (b) (1) to reflect the intent of SB 1015.

SUBCHAPTER A. GENERAL REQUIREMENTS

16 TAC §§9.2, 9.7, 9.17, 9.26, 9.36

The amendments are adopted, pursuant to the Texas Government Code, §2001.006 (*as added by Acts 1999, 76th Leg., ch. 558, §1*), and under the Texas Natural Resources Code, §113.051, which authorizes the commission to adopt rules relating to any and all aspects or phases of the LP-gas industry that will protect or tend to protect the health, welfare, and safety of the general public; §113.052, which authorizes the commission to adopt by reference the published codes of nationally recognized societies, including the National Fire Protection Association; and Senate Bills 310 and 1015, 77th Legislature (2001).

The Texas Natural Resources Code, §§113.051 and 113.052, and Senate Bills 310 and 1015 are affected by the adopted amendments.

Issued in Austin, Texas, on August 21, 2001.

§9.17. Designation and Responsibilities of Company Representatives and Operations Supervisors.

(a) Each licensee shall have at least one company representative for the license and, in the case of a licensee other than a Category P licensee, at least one operations supervisor for each outlet.

(1) A licensee maintaining one or more outlets shall file LPG Form 1 with the Commission designating the company representative for the license and/or LPG Form 1A designating the operations supervisor for each outlet.

(2) A licensee may have more than one company representative.

(3) An individual shall be operations supervisor at only one outlet.

(4) The company representative may also serve as operations supervisor for one of the licensee's outlets provided that the individual meets both the company representative and the operations supervisor requirements in this section.

(5) A licensee shall immediately notify the Commission in writing upon termination, for whatever reason, of its company representative or any operations supervisor and shall at the same time designate a replacement by submitting a new LPG Form 1 for a new company representative or a new LPG Form 1A for a new operations supervisor.

(A) A licensee shall cease all LP-gas activities if, at the termination of its company representative, there is no other qualified company representative of the licensee who has complied with the Commission's requirements. A licensee shall not resume LP-gas activities until such time as it has a properly qualified company representative or it has been granted an extension of time in which to comply as specified in subsection (f) of this section.

(B) A licensee shall cease LP-gas activities at an outlet if, at the termination of its operations supervisor for that outlet, there is no other qualified operations supervisor at that outlet who has complied with the Commission's requirements. A licensee shall not resume LP-gas activities at that outlet until such time as it has a properly qualified operations supervisor or it has been granted an extension of time in which to comply as specified in subsection (f) of this section.

(b) Company representative. A company representative shall comply with the following requirements:

(1) be an owner or employee of the licensed entity, in the case of a licensee other than a Category P licensee;

(2) be the licensee's principal individual in authority and, in the case of a licensee other than a Category P licensee, responsible for actively supervising all LP-gas activities conducted by the licensee, including all appliance, container, portable cylinder, product, and system activities;

(3) have a working knowledge of the licensee's LP-gas activities to insure compliance with the LP-Gas Safety Rules;

(4) pass the appropriate management-level rules examination and complete any required training specified in §9.52 of this title (relating to Training and Continuing Education Courses), or in the case of an applicant for a Category D license, obtain a General Installers and Repairman Exemption as specified in §9.13 of this title (relating to General Installers and Repairman Exemption);

(5) comply with the work experience or training requirements in subsection (e) of this section, if applicable;

(6) be directly responsible for all employees performing their assigned LP-gas activities, unless an operations supervisor is fulfilling this requirement; and

(7) submit any additional information as deemed necessary by the Commission.

(c) Operations supervisors. An operations supervisor, in the case of a licensee other than a Category P licensee, shall comply with the following requirements:

(1) be an owner or employee of the licensee;

(2) pass the applicable management-level rules examination and complete any required training specified in §9.52 of this title (relating to Training and Continuing Education Courses) or, in the case of a Category D license only, obtain a General Installers and Repairman Exemption as specified in §9.13 of this title (relating to General Installers and Repairman Exemption), before commencing or continuing the licensee's LP-gas activities at the outlet; and

(3) be directly responsible for actively supervising the LP-gas activities of the licensee at the designated outlet.

(d) In lieu of an operations supervisor requirement for a Category P license, the Category E, J, or other licensee providing the Category P licensee with portable cylinders for exchange shall be required to:

(1) prepare a manual containing, at a minimum, the following:

(A) a description of the basic characteristics and properties of LP-gas;

(B) an explanation of the various parts of an LP-gas cylinder, including what the purpose of each part is and how to operate the cylinder valve;

(C) complete instructions on how to properly transport cylinders in vehicles;

(D) a prohibition against moving or installing cylinder cages at any store location;

(E) a prohibition against taking or storing inside a building any cylinders that have or have had LP-gas in them;

(F) a requirement that all cylinders containing LP-gas be stored in a manner so that the relief valve is in the vapor space of the cylinder;

(G) a requirement that the employees who handle the cylinders know the location within the store of the manual and know the contents of the manual;

(H) instructions related to any potential hazards that may be specific to a location, including but not limited to the proper distancing of cylinders from combustible materials and sources of ignition;

(I) detailed emergency procedures regarding a leaking cylinder, including all applicable emergency contact numbers;

(J) a requirement that any accidents be reported to the Category E, J, or other licensee who prepares the manual, and detailed procedures for reporting any accidents;

(K) all Railroad Commission rules applicable to the Category P license, including the requirement that the Category P licensee is responsible for complying with all such rules;

(L) all provisions of Subchapter H ("Enforcement") of Chapter 113 of the Texas Natural Resources Code;

(M) a detailed description of the training provided to each employee of the Category P licensee who may be engaged in any activities covered by the Category P license; and

(N) a page for the signatures, printed names and dates of training for each individual trained at each outlet on this manual.

(2) provide a copy of the manual for display at each outlet or location of the Category P licensee;

(3) provide training as to the contents of the manual to each employee who may be engaged in any activities covered by the Category P license at all outlets or locations of the Category P licensee and maintain records regarding the employees of the Category P licensee who have been trained; and

(4) complete all three requirements of this subsection, for existing Category P licensees, prior to October 25, 2001, and within 45 days of any Category P license obtained on or after September 1, 2001.

(e) The Category P licensee is responsible for the following:

(1) insuring that each employee who is involved with the activities covered by the Category P license is knowledgeable about the contents of the manual and has signed and dated the signature page of the manual; and

(2) insuring that each such employee is aware of the location of the manual and can show the manual to employees of the Commission upon their request.

(f) Category P licensees. The company representative requirement for a Category P licensee may be satisfied by employing a Category E, J, or other licensee company representative if the Category E, J, or other company representative is authorized by the Category P licensee to assign and remove any employee who does not comply with the LP-Gas Safety Rules or who performs any unsafe LP-gas activities.

(g) Work experience substitution for Category E and I. The assistant director may, upon written request, allow a conditional qualification for a Category E or I company representative or operations supervisor who passes the applicable management-level rules examination provided that the individual attends and successfully completes the next available Category E or I training course, or one agreed on by the assistant director and the applicant. The written request shall include a description of the individual's LP-gas experience and other related information in order that the assistant director may properly evaluate the request. If the individual fails to complete the training requirements within the time granted by the assistant director, the conditional qualification shall immediately be voided and the conditionally qualified company representative or operations supervisor shall immediately cease all LP-gas activities. Applicants for company representative or operations supervisor who have less than three years' experience or experience which is not applicable to the category for which the individual is applying shall not be granted a conditional qualification and shall comply with the training requirements in §9.52 of this title (relating to Training and Continuing Education Courses) prior to the Commission issuing a certificate.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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SUBCHAPTER B. STATIONARY INSTALLATIONS AND CONTAINER REQUIREMENTS

16 TAC §§9.136, 9.140, 9.142

The amendments are adopted, pursuant to the Texas Government Code, §2001.006 (*as added by Acts 1999, 76th Leg., ch. 558, §1*), and under the Texas Natural Resources Code, §113.051, which authorizes the commission to adopt rules relating to any and all aspects or phases of the LP-gas industry that will protect or tend to protect the health, welfare, and safety of the general public; §113.052, which authorizes the commission to adopt by reference the published codes of nationally recognized societies, including the National Fire Protection Association; and Senate Bills 310 and 1015, 77th Legislature (2001).

The Texas Natural Resources Code, §§113.051 and 113.052, and Senate Bills 310 and 1015 are affected by the adopted amendments.

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SUBCHAPTER E. ADOPTION BY REFERENCE OF NFPA 58 (LP-GAS CODE)

16 TAC §9.403

The amendments are adopted, pursuant to the Texas Government Code, §2001.006 (*as added by Acts 1999, 76th Leg., ch. 558, §1*), and under the Texas Natural Resources Code, §113.051, which authorizes the commission to adopt rules relating to any and all aspects or phases of the LP-gas industry that will protect or tend to protect the health, welfare, and safety of the general public; §113.052, which authorizes the commission to adopt by reference the published codes of nationally recognized societies, including the National Fire Protection Association; and Senate Bills 310 and 1015, 77th Legislature (2001).

The Texas Natural Resources Code, §§113.051 and 113.052, and Senate Bills 310 and 1015 are affected by the adopted amendments.

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SUBCHAPTER F. ADOPTION BY REFERENCE OF NFPA 51 (STANDARD FOR THE DESIGN AND INSTALLATION OF OXYGEN-FUEL GAS SYSTEMS FOR WELDING, CUTTING, AND ALLIED PROCESSES)

16 TAC §9.506

The amendments are adopted, pursuant to the Texas Government Code, §2001.006 (*as added by Acts 1999, 76th Leg., ch. 558, §1*), and under the Texas Natural Resources Code, §113.051, which authorizes the commission to adopt rules relating to any and all aspects or phases of the LP-gas industry that will protect or tend to protect the health, welfare, and safety of the general public; §113.052, which authorizes the commission to adopt by reference the published codes of nationally recognized societies, including the National Fire Protection Association; and Senate Bills 310 and 1015, 77th Legislature (2001).

The Texas Natural Resources Code, §§113.051 and 113.052, and Senate Bills 310 and 1015 are affected by the adopted amendments.

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TITLE 22. EXAMINING BOARDS

PART 5. STATE BOARD OF DENTAL EXAMINERS

CHAPTER 102. FEES

22 TAC §102.1

The State Board of Dental Examiners adopts amendments to §102.1, Fee Schedule, without changes to the text published in the July 20, 2001 issue of the *Texas Register* (26 TexReg 5328).

The amendments are required to comply with funding requirements to implement new legislation passed by the 77th Legislature and a program to administer the permitting process for mobile and portable dental services. The fees for administration of the program for sedation/anesthesia permit applications were formerly found in the body of the anesthesia rules and the Board has decided that it is appropriate to place those fees with other fees in the Fee Schedule.

Licensing agencies are required to pass along increased operating expenses to the regulated individuals by increasing fees. Accordingly, subsection (a), paragraph (2) is amended to increase the annual dental registration fee from $71 to $88. Similarly, dental hygienists' annual fee is increased, in paragraph (b)(2), from $42 to $52.

The increases necessary for the 2002-2003 Biennium total $521, 048. Appropriations for one (1) additional FTE and increased payments to the Health Professions Council total $96,394. Employee salary increases total $67,396. Longevity increases total $14,800. Senate Bill 539 will require inspections of and advisory opinions about the procedures of those dental providers who administer sedation/anesthesia in their offices. The sum of those expenses is $20,000. House Bill 3507 will require two (2) additional FTE's, expenses for an advisory committee, extra meetings of the Board and Dental Hygiene Advisory Committee and upgrades to computer software programs. The increased expenses to develop this program are $171,965. House Bill 609 requires all state agencies, including smaller agencies, to retain internal auditors. That expense is estimated at $24,000. Direct

and Indirect Costs, such as employee benefits and bonded indebtedness will increase from the 2000-2001 Biennium by a total of $126, 493.

It is estimated that 10,916 dentists will renew their licenses in Fiscal Years 2002 and 2003. It is expected that 7, 865 dental hygienists will renew in the same time period. Revenue realized from the increased fees for those renewals will total $528, 444, more than enough to cover the increased expenses.

New rules 108.40 through 108.43 require that, effective September 1, 2001, every mobile dental facility and portable dental unit, with certain exceptions, must have a permit. Subsection (e) provides for an initial fee of $50.00 and renewal fee of $50, to recover the cost of administering the permitting program. Implementation will require enhanced databases and verification methods.

Application fees for sedation/anesthesia permits are presently found in rule §108.33(e). Moving the fees to rule §102.1 is appropriate, so that similar fees are located in the same chapter. Further, this will avoid the necessity of amending the anesthesia rules every time the fee for these permits changes.

The amended rule will ensure that new legislation intended for the protection of the public will be implemented in a cost-effective manner.

No comments were received regarding adoption of the proposal.

The amended rule is adopted under Texas Government Code §2001.021 et. seq.; Texas Civil Statutes, the Occupations Code §254.001 and §254.004 which provides that the Board shall establish reasonable and necessary fees, so the fees in the aggregate produce revenues sufficient to cover costs of administering the Dental Practice 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 August 27, 2001.

TRD-200105053
Jeffry R. Hill
Executive Director
State Board of Dental Examiners
Effective date: September 16, 2001
Proposal publication date: July 20, 2001
For further information, please call: (512) 463-7452

CHAPTER 108. PROFESSIONAL CONDUCT

SUBCHAPTER A. PROFESSIONAL RESPONSIBILITY

22 TAC §108.6

The State Board of Dental Examiners adopts amendments to §108.6, Report of Patient Death or Injury Requiring Hospitalization, without changes to the text published in the July 20, 2001 issue of the *Texas Register* (26 TexReg 5329).

The first amendment clarifies that the standard of care used to evaluate death or injury as a possible consequence of the receipt of dental services which involved the use of sedation/anesthesia will be the standard that applies to the patient's state of consciousness during the procedure. This language existed in the former Rule §109.177, which was supplanted by Rule §108.6 and was inadvertently omitted in the new rule. The states of consciousness are found in the definitions of the levels of sedation. Conscious sedation is a minimally depressed level of consciousness that retains the patient's ability to independently and continuously maintain an airway and respond appropriately to physical stimulation and verbal command. Deep sedation is an induced state of depressed consciousness accompanied by partial loss of protective reflexes, including the inability to continually maintain an airway independently and/or respond purposefully to verbal command. General anesthesia is an induced state of unconsciousness accompanied by partial or complete loss of protective reflexes, including inability to independently maintain an airway and respond purposefully to physical stimulation or verbal command. If a dentist administers anesthesia during the provision of dental services and death or injury occurs to the patient as a possible consequence of those services, then the dentist will be held to the standard of care that applies to the patient's state of consciousness by the reviewer who evaluates the dentist's conduct.

The amendment will provide a clearer understanding of the protocol for review of any incident involving injury or death of a dental patient as a possible consequence of the receipt of dental services when sedation/anesthesia is administered.

The second amendment is the elimination of language providing that self report would not be considered as a complaint unless the Board's Enforcement Committee determines that an investigation should be conducted. The former paragraph (3) was adopted to address a problem that did not exist, i.e., marring a dentist's record with a reported complaint when the doctor was not at fault. Complaints that are dismissed are reported in a fashion that does not identify the doctor; only complaints resulting in a board order are reported under a doctor's name.

No comments were received regarding adoption of the proposals.

The amended rule is adopted under Texas Government Code §2001.021 et. seq.; Texas Civil Statutes, the Occupations Code §254.001 which provides the State Board of Dental Examiners with the authority to adopt and promulgate rules consistent with the Dental Practice 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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Jeffry R. Hill
Executive Director
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PART 11. BOARD OF NURSE EXAMINERS

CHAPTER 219. ADVANCED NURSE PRACTITIONER PROGRAM

22 TAC §§219.1 - 219.18

The Board of Nurse Examiners for the State of Texas adopts the repeal of current 22 TAC §§219.1 - 219.18, relating to Advanced Practice Nursing Programs without changes to the proposed repeal published in the June 15, 2001, issue of the *Texas Register* (26 TexReg 4367).

The rules are repealed due to the adoption of new §§219.1 - 219.13 made in response to the Board's effort to implement the mandate of House Bill 1, §167, Article IX, passed by the 75th Legislative Session, that requires that each rule adopted by an agency be reviewed and revised, if necessary, within four years of the date of its adoption. Rules that were adopted prior to September 1, 1997 are required to be reviewed by August 31, 2001. The new rules are adopted simultaneously with this notice.

No comments were received concerning the repeal, and therefore the repeal will be adopted without changes and will not be republished.

The repeal is adopted under the authority of the Texas Occupations Code, §301.151 and §301.152 that authorize the Board of Nurse Examiners to adopt and enforce rules consistent with its legislative authority under the Nursing Practice Act including rules relating to registered nurses approved, or seeking approval, as an advanced practice nurse.

The repeal affects the Nursing Practice Act, Texas Occupations Code, §301.152 and §301.157 as they pertain to advanced practice nursing.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on August 24, 2001.

TRD-200105039

Katherine A. Thomas, MN, RN

Executive Director

Board of Nurse Examiners

Effective date: September 13, 2001

Proposal publication date: June 15, 2001

For further information, please call: (512) 305-6811

22 TAC §§219.1 - 219.13

The Board of Nurse Examiners for the State of Texas adopts new 22 TAC §§219.1 - 219.13, relating to Advanced Practice Nursing Programs. Section 219.9 is adopted with one change to the proposed text as published in the June 15 2001, issue of the *Texas Register* (26 TexReg 4368). Sections 219.1 - 219.8 and §§219.10 - 219.13 are adopted without changes and will not be republished.

Staff have amended §219.9(h)(1) after the discovery of a typographical error. Section 219.9(h)(1) relates to major curriculum changes and states, "Changes that require approval include; should not exceed one student per faculty during the clinical day." It is clear that the language after the semi-colon beginning with "should not exceed. . ." through the end of the sentence does not fit in the context of the sentence or the subsection, and it will be deleted in its entirety from the adopted rule. The correction of the typographical error does not reflect a substantive change from the proposed text, and therefore republication of the proposed amendment is not required.

House Bill 1, §167, Article IX, passed by the 75th Legislative Session required that each rule adopted by an agency be reviewed within four years of the date of its adoption to determine whether the reason for adopting the rule continues to exist. Rules that were adopted prior to September 1, 1997 are required to be reviewed by August 31, 2001. The adoption of new 22 TAC §§219.1 - 219.13 is the result of the Board's effort to implement the mandate of House Bill 1.

The Board's Advanced Practice Nursing Advisory Committee has been working since March 2000 to review the rules and recommend changes where necessary. The committee is comprised of Advanced Practice Nurse Educators, Advanced Practice Nurses in practice, and representatives from Advanced Practice Professional Organizations, including Texas Nurses Association. Texas Nurse Practitioners, Texas Association of Nurse Anesthetists, Consortium of Texas Certified Nurse Midwives, and Texas Organization of Nurse Executives. Committee members shared information regarding the current rules and how these rules have impacted their advanced educational programs. They worked to make the rules easier to use and understand. In addition, they tried to insure consistency between all the rules, especially where terms have been defined. The Committee finished discussion of Chapter 219 and made recommendations for the Board's consideration on April 26, 2001.

The new rules were not intended to make major substantive changes in the advanced practice nursing program rules of the Board. Rather the new rule provides clarification of the advanced practice rules in order to make them better understood by Advanced Practice Nurse Educators, Advanced Practice Nurses in Practice and applicants for advanced practice recognition. For example, many policies have been set by the Board over the several years since the rules were last reviewed and have now been included in the new rules for clarity and completeness (e.g., curricular requirements adopted by the Board in collaboration with the Texas Higher Education Coordinating Board). Many of these policies impact an advanced educational program's ability to obtain approval from the Board. In addition, rule content was reordered for more logical flow.

One comment from an educator in an advanced educational program approved by the Board was received and reviewed by the Board. The comment refers to §219.10(f)(1) which states: "If faculty are providing on-site clinical supervision of students, the ratio should not exceed two students to one faculty member during the clinical day." It was suggested that the subsection be deleted and that faculty-to-student ratio in the clinical setting be based on such factors as patient acuity and particulars related to the clinical setting. It was indicated the rule would place an undue burden on this individual's program without enhanced benefit to the public. Examples were provided demonstrating a situation in which the ratio could be exceeded. The Board disagrees with the comment. The subsection states what the ratio "should be" rather than what the ratio "must be." In §219.2(16), "should" has been defined as a recommendation. Thus, the language allows programs to exceed the ratio as long as the goals and objectives for the clinical learning experiences are achieved and the students' experiences are not compromised in any way. A specific ratio also provides a basic guideline for new programs to follow as well as a baseline recommendation for programs at risk.

The new sections are adopted under the authority of the Texas Occupations Code, §301.151 and §301.152 that authorize the Board of Nurse Examiners to adopt and enforce rules consistent

with its legislative authority under the Nursing Practice Act including rules relating to registered nurses approved, or seeking approval, as an advanced practice nurse.

The new sections affect the Nursing Practice Act, Texas Occupations Code, §301.152 and §301.157 as they pertain to advanced practice nursing.

§219.9. Program of Study.

(a) The program of study shall be:

(1) At least the equivalent of one academic year;

(2) Planned, implemented, and evaluated by the faculty;

(3) Based on the mission and goals (philosophy and outcomes);

(4) Organized logically and sequenced appropriately; and

(5) Based on educational principles acceptable to the Board.

(b) For clinical nurse specialist programs, the program of study must also qualify the graduate for a master's degree in nursing.

(c) The curriculum content shall include:

(1) Didactic and clinical learning experiences necessary to meet the goals or outcomes;

(2) Concepts and principles critical to advanced practice nursing;

(3) Professional and legal implications of the nurse in the advanced role;

(4) Knowledge and skills relevant to practice in the area of specialty; and

(5) Clinical nurse specialist and nurse practitioner course requirements published by the Texas Higher Education Coordinating Board in collaboration with the Board of Nurse Examiners that became effective in January 1997:

(A) Separate courses in pharmacotherapeutics, advanced assessment, and pathophysiology or psychopathology. These courses must be advanced level academic courses with a minimum of 45 clock hours per course;

(B) Evidence of theoretical and clinical role preparation;

(C) Evidence of clinical major courses in the specialty area;

(D) Evidence of a practicum/preceptorship/internship to integrate essential content and the clinical major courses.

(d) For clinical nurse specialist programs, the curriculum must also contain a minimum of nine semester credit hours or the equivalent in a specific clinical major. Clinical major courses must include didactic content and offer clinical experiences in a specific clinical specialty/practice area.

(e) If a clinical nurse specialist program has as a goal or outcome the preparation of graduates for approval for limited prescriptive authority, then the program must also include at a minimum a separate course in diagnosis and management of problems within the clinical specialty area. This course(s) must be an advanced level academic course(s) with a minimum of 45 clock hours.

(f) The program of study shall include a minimum of 500 clinical hours.

(g) Post-master's preparation may be offered as graduate level course work through certificate or master's level advanced educational programs that include the desired role and specialty and otherwise meet the standards in this chapter.

(1) Post-master's students are required to complete a minimum of 500 clinical hours and the equivalent of all of the role, clinical major, and Texas Higher Education Coordinating Board curricular requirements. Courses may be waived if an individual's transcript indicates that an equivalent course has been successfully completed or if the student demonstrates proficiency, validating program outcomes according to written program policies.

(2) Only registered nurses who hold master's degrees in nursing shall be eligible for post-master's preparation as clinical nurse specialists.

(h) Board staff approval is required prior to implementation of major curriculum changes. Proposed changes shall include information outlined in Board guidelines and shall be reviewed using Board standards.

(1) Changes that require approval include:

(A) Changes in program mission and goals (philosophy and outcomes) that result in a reorganization or reconceptualization of the entire curriculum, and/or

(B) An increase or decrease in program length by more than nine semester credit hours or 25%.

(2) All other revisions such as editorial updates of mission and goals or redistribution of course content or course hours shall be reported to the Board in the Annual Report.

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 August 24, 2001.

TRD-200105040
Katherine A. Thomas, MN, RN
Executive Director
Board of Nurse Examiners
Effective date: September 13, 2001
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For further information, please call: (512) 305-6811

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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 adopts new §281.19, concerning Restrictions on Assignment of Vehicles. The new rule is adopted without changes to the proposed text as published in the June 22, 2001, issue of the *Texas Register* (26 TexReg 4581), and will not be republished.

The new rule implements the rule-making provisions of the Texas Government Code, §2171.1045, concerning Restrictions on Assignment of Vehicles.

No comments were received.

The new section is adopted 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.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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TRD-200104982
Gay Dodson, R.Ph.
Executive Director/Secretary
Texas State Board of Pharmacy
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For further information, please call: (512) 305-8028

CHAPTER 291. PHARMACIES
SUBCHAPTER A. ALL CLASSES OF PHARMACIES

22 TAC §291.6

The Texas State Board of Pharmacy adopts amendments to §291.6, concerning Pharmacy License Fees. These amendments are adopted with changes to the proposed text as published in the June 22, 2001, issue of the *Texas Register* (26 TexReg 4582).

The adopted amendment deletes obsolete language, corrects citations to reflect the new codified Act, and increases 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.

After the Board proposed these amendments, the 77th Texas Legislature passed H.B. 2812, which codifies without substantive changes, portions of the Texas Pharmacy Act cited in these amendments. Non- substantive changes were made to the proposed rule language merely to change these citations to the codified Act. These changes occur in §291.6(a) and §291.6(a)(1) and (2).

One comment was received from the Texas Federation of Drugs Stores (TFDS). The TFDS supports the increase in fees to fund the Board's operations. However, they do no support surplus fees, that eventually go into the fund balance. The Board agrees with this comment, but the fee increase does not include a surplus to go into the fund balance. Consequently, no changes are needed to address this comment.

The amendments are adopted 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 shall require biennial renewal of all licenses provided under the Pharmacy Act, §561.002. 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, and a $10 surcharge to fund a program to aid impaired pharmacists and pharmacy students as authorized by the Act, §564.051); or

(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.)

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

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

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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

SUBCHAPTER B. COMMUNITY PHARMACY (CLASS A)

22 TAC §291.32, §291.36

The Texas State Board of Pharmacy adopts amendments to §291.32, concerning Personnel, and §291.36, concerning Class A Pharmacies Compounding Sterile Pharmaceuticals. These amendments are adopted with changes to the proposed text as

published in the June 22, 2001, issue of the *Texas Register* (26 TexReg 4583).

The amendments require certified pharmacy technicians to display their current certification certificates.

One comment was received from H.E.B. Grocery Company which requested that the Board clarify or expand the proposed rule regarding technicians who work in two or more pharmacy locations. Specifically, the question is asked whether copies of their certificates should be placed in secondary or other places in which they practice. The Board agrees that clarification of the rule is necessary. The rule language was altered to clarify that certified pharmacy technicians must publicly display the original, or a copy, of their current certification certificate, in every pharmacy where the technician performs the duties of a technician.

The amendments are adopted 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) Pharmacist-in-charge.

(1) General.

(A) Each Class A pharmacy shall have one pharmacist-in-charge who is employed on a full-time basis, who may be the pharmacist-in-charge for only one such pharmacy; provided, however, such pharmacist-in-charge may be the pharmacist-in-charge of more than one Class A pharmacy, if the additional Class A pharmacies are not open to provide pharmacy services simultaneously.

(B) The pharmacist-in-charge shall comply with the provisions of §291.17 of this title (relating to Inventory Requirements).

(2) Responsibilities. The pharmacist-in-charge shall have responsibility for, at a minimum, the following:

(A) dispensing of drugs, including:

(i) packaging, preparation, compounding, and labeling; and

(ii) ensuring that drugs are dispensed safely, and accurately as prescribed;

(B) delivery of drugs to the patient or the patient's agent, including ensuring that drugs are delivered safely, and accurately as prescribed;

(C) assuring that a pharmacist communicates to the patient or the patient's agent information about the prescription drug or device which in the exercise of the pharmacist's professional judgment, the pharmacist deems significant as specified in §291.33(c) of this title (relating to Operational Standards);

(D) assuring that a pharmacist communicates to the patient or the patient's agent on their request, information concerning any prescription drugs dispensed to the patient by the pharmacy;

(E) assuring that a reasonable effort is made to obtain, record, and maintain patient medication records;

(F) education and training of pharmacy technicians;

(G) establishment of policies for procurement of prescription drugs and devices and other products dispensed from the Class A pharmacy;

(H) disposal and distribution of drugs from the Class A pharmacy;

(I) bulk compounding of drugs;

(J) storage of all materials, including drugs, chemicals, and biologicals;

(K) maintaining records of all transactions of the Class A pharmacy necessary to maintain accurate control over and accountability for all pharmaceutical materials required by applicable state and federal laws and sections;

(L) establishment and maintenance of effective controls against the theft or diversion of prescription drugs, and records for such drugs;

(M) maintenance of records in a data processing system such that the data processing system is in compliance with Class A (community) pharmacy requirements;

(N) legal operation of the pharmacy, including meeting all inspection and other requirements of all state and federal laws or sections governing the practice of pharmacy; and

(O) effective September 1, 2000, if the pharmacy uses an automated pharmacy dispensing system, shall be responsible for the following:

(i) reviewing and approving all policies and procedures for system operation, safety, security, accuracy and access, patient confidentiality, prevention of unauthorized access, and malfunction;

(ii) inspecting medications in the automated pharmacy dispensing system, at least monthly, for expiration date, misbranding, physical integrity, security, and accountability;

(iii) assigning, discontinuing, or changing personnel access to the automated pharmacy dispensing system;

(iv) ensuring that pharmacy technicians and licensed healthcare professionals performing any services in connection with an automated pharmacy dispensing system have been properly trained on the use of the system and can demonstrate comprehensive knowledge of the written policies and procedures for operation of the system; and

(v) ensuring that the automated pharmacy dispensing system is stocked accurately and an accountability record is maintained in accordance with the written policies and procedures of operation.

(b) Pharmacists.

(1) General.

(A) The pharmacist-in-charge shall be assisted by sufficient number of additional licensed pharmacists as may be required to operate the Class A pharmacy competently, safely, and adequately to meet the needs of the patients of the pharmacy.

(B) All pharmacists shall assist the pharmacist-in-charge in meeting his or her responsibilities in ordering, dispensing, and accounting for prescription drugs.

(C) Pharmacists are solely responsible for the direct supervision of pharmacy technicians and for designating and delegating duties, other than those listed in paragraph (2) of this subsection, to pharmacy technicians. Each pharmacist:

(i) shall verify the accuracy of all acts, tasks, and functions performed by pharmacy technicians; and

(ii) shall be responsible for any delegated act performed by pharmacy technicians under his or her supervision.

(D) All pharmacists while on duty, shall be responsible for complying with all state and federal laws or rules governing the practice of pharmacy.

(E) A dispensing pharmacist shall ensure that the drug is dispensed and delivered safely, and accurately as prescribed. In addition, if multiple pharmacists participate in the dispensing process, each pharmacist shall ensure the safety and accuracy of the portion of the process the pharmacist is performing. The dispensing process shall include, but not be limited to, drug regimen review and verification of accurate prescription data entry, labeling and dispensing, and performance of the final check of the dispensed prescription.

(2) Duties. Duties which may only be performed by a pharmacist are as follows:

(A) receiving oral prescription drug orders and reducing these orders to writing, either manually or electronically;

(B) interpreting prescription drug orders;

(C) selection of drug products;

(D) performing the final check of the dispensed prescription before delivery to the patient to ensure that the prescription has been dispensed accurately as prescribed;

(E) communicating to the patient or patient's agent information about the prescription drug or device which in the exercise of the pharmacist's professional judgement, the pharmacist deems significant, as specified in §291.33(c) of this title;

(F) communicating to the patient or the patient's agent on his or her request information concerning any prescription drugs dispensed to the patient by the pharmacy;

(G) assuring that a reasonable effort is made to obtain, record, and maintain patient medication records;

(H) interpreting patient medication records and performing drug regimen reviews; and

(I) performing a specific act of drug therapy management for a patient delegated to a pharmacist by a written protocol from a physician licensed in this state in compliance with the Medical Practice Act.

(3) Special requirements for nonsterile compounding.

(A) All pharmacists engaged in compounding shall possess the education, training, and proficiency necessary to properly and safely perform compounding duties undertaken or supervised. Continuing education shall include training in the art and science of compounding and the legal requirements for compounding.

(B) A pharmacist shall inspect and approve all components, drug product containers, closures, labeling, and any other materials involved in the compounding process.

(C) A pharmacist shall review all compounding records for accuracy and conduct in-process and final checks to assure that errors have not occurred in the compounding process.

(D) A pharmacist is responsible for the proper maintenance, cleanliness, and use of all equipment used in the compounding process.

(c) Pharmacy technicians.

(1) Qualifications.

(A) General. All pharmacy technicians shall:

(i) have a high school or equivalent degree, e.g., GED, or be currently enrolled in a program which awards such a degree; and

(ii) complete a structured didactic and experiential training program, which provides instruction and experience in the areas listed in paragraph (4) of this subsection.

(iii) Effective January 1, 2001, all pharmacy technicians must 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.

(B) Pharmacy Technician Trainee.

(i) A person shall be designated as a pharmacy technician trainee while participating in a pharmacy's technician training program in preparation for the National Pharmacy Technician Certification Exam or other examination approved during an open meeting by the Board.

(ii) A person may be designated a pharmacy technician trainee for no more than one year. A person may not be a technician trainee if they fail to pass the certification exam within this one year training period. This clause does not apply to a pharmacy technician trainee working in a pharmacy as part of a training program accredited by the American Society of Health-System Pharmacists or an individual enrolled in a health science technology education program in a Texas high school.

(iii) Individuals enrolled in a health science technology education program in a Texas high school that is accredited by the Texas Education Agency, may be designated as a pharmacy technician trainee for up to two years provided:

(I) the work as a pharmacy technician is concurrent with enrollment in a health science technology education program, which may include:

(-a-) partial semester breaks such as spring breaks;

(-b-) between semesters; and

(-c-) whole semester breaks provided the individual was enrolled in the health science technology education program in the immediate preceding semester and is scheduled with the high school to attend in the immediate subsequent semester;

(II) the individual is under the direct supervision of and responsible to a pharmacist; and

(III) the supervising pharmacist verifies the accuracy of all acts, tasks, or functions performed by the individual.

(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 and a copy of their current certification certificate in all other pharmacies where the technician performs the duties of a technician.

(2) Duties.

(A) Pharmacy technicians may not perform any of the duties listed in subsection (b)(2) of this section.

(B) A pharmacist may delegate to pharmacy technicians any nonjudgmental technical duty associated with the preparation and distribution of prescription drugs provided:

(i) a pharmacist verifies the accuracy of all acts, tasks, and functions performed by pharmacy technicians;

(ii) pharmacy technicians are under the direct supervision of and responsible to a pharmacist; and

(iii) effective September 1, 2000, only pharmacy technicians who have been properly trained on the use of an automated pharmacy dispensing system and can demonstrate comprehensive knowledge of the written policies and procedures for the operation of the system may be allowed access to the system; and

(C) Pharmacy technicians may perform only nonjudgmental technical duties associated with the preparation and distribution of prescription drugs, including but not limited to the following:

(i) initiating and receiving refill authorization requests;

(ii) entering prescription data into a data processing system;

(iii) taking a stock bottle from the shelf for a prescription;

(iv) preparing and packaging prescription drug orders (i.e., counting tablets/capsules, measuring liquids and placing them in the prescription container);

(v) affixing prescription labels and auxiliary labels to the prescription container provided:

(I) the pharmacy technician has completed the education and training requirements outlined in paragraphs (1) and (4) of this subsection; and

(II) effective January 1, 2001, only certified pharmacy technicians may affix a label to a prescription container.

(vi) reconstituting medications;

(vii) prepackaging and labeling prepackaged drugs;

(viii) loading bulk unlabeled drugs into an automated dispensing system provided a pharmacist verifies that the system is properly loaded prior to use;

(ix) compounding non-sterile prescription drug orders; and

(x) bulk compounding.

(3) Ratio of pharmacist to pharmacy technicians.

(A) The ratio of pharmacists to pharmacy technicians may not exceed 1:2

(B) The ratio of pharmacists to pharmacy technicians may be 1:3 provided that at least one of the three technicians is certified.

(4) Training.

(A) pharmacy technicians shall complete initial training as outlined by the pharmacist-in-charge in a training manual. Such training:

(i) shall include training and experience as outlined in paragraph (5) of this subsection; and

(ii) may not be transferred to another pharmacy unless:

(I) the pharmacies are under common ownership and control and have a common training program; and

(II) the pharmacist-in-charge of each pharmacy in which the pharmacy technician works certifies that the pharmacy technician is competent to perform the duties assigned in that pharmacy.

(B) A pharmacy technician shall be designated a pharmacy technician trainee until completing the full training program. A pharmacy technician trainee:

(i) may perform all of the duties of a pharmacy technician except affix a label to a prescription container;

(ii) may be designated a pharmacy technician trainee for no longer than one year except as specified in paragraph (1)(B) of this subsection; and

(iii) shall be counted in the pharmacist to pharmacy technician ratio.

(C) The pharmacist-in-charge shall assure the continuing competency of pharmacy technicians through in-service education and training to supplement initial training.

(D) The pharmacist-in-charge shall document the completion of the training program and certify the competency of pharmacy technicians completing the training. A written record of initial and in-service training of pharmacy technicians shall be maintained and contain the following information:

(i) name of the person receiving the training;

(ii) date(s) of the training;

(iii) general description of the topics covered;

(iv) a statement or statements that certifies that the pharmacy technician is competent to perform the duties assigned;

(v) name of the person supervising the training; and

(vi) signature of the pharmacy technician and the pharmacist-in-charge or other pharmacist employed by the pharmacy and designated by the pharmacist-in-charge as responsible for training of pharmacy technicians.

(E) A person who has previously completed training as a pharmacy technician, or a licensed nurse or physician assistant is not required to complete the entire training program if the person is able to show competency through a documented assessment of competency. Such competency assessment may be conducted by personnel designated by the pharmacist-in-charge, but the final acceptance of competency must be approved by the pharmacist-in-charge.

(5) Training program. Pharmacy technician training shall be outlined in a training manual. Such training manual shall, at a minimum, contain the following:

(A) written procedures and guidelines for the use and supervision of pharmacy technicians. Such procedures and guidelines shall:

(i) specify the manner in which the pharmacist responsible for the supervision of pharmacy technicians will supervise such personnel and verify the accuracy and completeness of all acts, tasks, and functions performed by such personnel; and

(ii) specify duties which may and may not be performed by pharmacy technicians; and

(B) instruction in the following areas and any additional areas appropriate to the duties of pharmacy technicians in the pharmacy:

(i) Orientation;

(ii) Job descriptions;

(iii) Communication techniques;

(iv) Laws and rules;

(v) Security and safety;

(vi) Prescription drugs:

(I) Basic pharmaceutical nomenclature;

(II) Dosage forms;

(vii) Prescription drug orders:

(I) Prescribers;

(II) Directions for use;

(III) Commonly-used abbreviations and symbols;

(IV) Number of dosage units;

(V) Strengths and systems of measurement;

(VI) Routes of administration;

(VII) Frequency of administration;

(VIII) Interpreting directions for use;

(viii) Prescription drug order preparation:

(I) Creating or updating patient medication records;

(II) Entering prescription drug order information into the computer or typing the label in a manual system;

(III) Selecting the correct stock bottle;

(IV) Accurately counting or pouring the appropriate quantity of drug product;

(V) Selecting the proper container;

(VI) Affixing the prescription label;

(VII) Affixing auxiliary labels, if indicated; and

(VIII) Preparing the finished product for inspection and final check by pharmacists;

(ix) Other functions;

(x) Drug product prepackaging;

(xi) Compounding of non-sterile pharmaceuticals;

(xii) Written policy and guidelines for use of and supervision of pharmacy technicians.

(d) Identification of pharmacy personnel. All pharmacy personnel shall be identified as follows.

(1) Pharmacy technicians. All pharmacy technicians shall wear an identification tag or badge which bears the person's name and identifies him or her as a pharmacy technician trainee, pharmacy technician, or a certified pharmacy technician.

(2) Pharmacist interns. All pharmacist interns shall wear an identification tag or badge which bears the person's name and identifies him or her as a pharmacist intern.

(3) Pharmacists. All pharmacists shall wear an identification tag or badge which bears the person's name and identifies him or her as a pharmacist.

§291.36. Class A Pharmacies Compounding Sterile Pharmaceuticals.

(a) Purpose. The purpose of this section is to provide standards for the preparation, labeling, and distribution of compounded sterile pharmaceuticals by licensed pharmacies, pursuant to a prescription drug order. The intent of these standards is to provide a minimum level of pharmaceutical care to the patient so that the patient's health is protected while striving to produce positive patient outcomes.

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

(1) ACPE--The American Council on Pharmaceutical Education.

(2) Act--The Texas Pharmacy Act, Chapter 551-556, Occupations Code, as amended.

(3) Accurately as prescribed--Dispensing, delivering, and/or distributing a prescription drug order:

(A) to the correct patient (or agent of the patient) for whom the drug or device was prescribed;

(B) with the correct drug in the correct strength, quantity, and dosage form ordered by the practitioner; and

(C) with correct labeling (including directions for use) as ordered by the practitioner. Provided, however, that nothing herein shall prohibit pharmacist substitution if substitution is conducted in strict accordance with applicable laws and rules, including Chapters 562 and 563 of the Texas Pharmacy Act.

(4) Advanced practice nurse--A registered nurse approved by the Texas State Board of Nurse Examiners to practice as an advanced practice nurse on the basis of completion of an advanced education program. The term includes a nurse practitioner, a nurse midwife, a nurse anesthetist, and a clinical nurse specialist.

(5) Airborne particulate cleanliness class--The level of cleanliness specified by the maximum allowable number of particles per cubic foot of air as specified in Federal Standard 209E, et seq. For example:

(A) Class 100 is an atmospheric environment which contains less than 100 particles 0.5 microns in diameter per cubic foot of air;

(B) Class 10,000 is an atmospheric environment which contains less than 10,000 particles 0.5 microns in diameter per cubic foot of air; and

(C) Class 100,000 is an atmospheric environment which contains less than 100,000 particles 0.5 microns in diameter per cubic foot of air.

(6) Ancillary supplies--Supplies necessary for the administration of compounded sterile pharmaceuticals.

(7) Aseptic preparation--The technique involving procedures designed to preclude contamination of drugs, packaging, equipment, or supplies by microorganisms during processing.

(8) Automated compounding or counting device--An automated device that compounds, measures, counts, and or packages a specified quantity of dosage units for a designated drug product.

(9) Batch preparation compounding--Compounding of multiple sterile-product units, in a single discrete process, by the same individual(s), carried out during one limited time period. Batch preparation/compounding does not include the preparation of multiple sterile-product units pursuant to patient specific medication orders.

(10) Biological Safety Cabinet--Containment unit suitable for the preparation of low to moderate risk agents where there is a need for protection of the product, personnel, and environment, according to National Sanitation Foundation (NSF) Standard 49.

(11) Board--The Texas State Board of Pharmacy.

(12) Carrying out or signing a prescription drug order--The completion of a prescription drug order presigned by the delegating physician, or the signing of a prescription by an advanced practice nurse or physician assistant after the person has been designated with the Texas State Board of Medical Examiners by the delegating physician as a person delegated to sign a prescription. The following information shall be provided on each prescription:

(A) patient's name and address;

(B) name, strength, and quantity of the drug to be dispensed;

(C) directions for use;

(D) the intended use of the drug, if appropriate;

(E) the name, address, and telephone number of the physician;

(F) the name, address, telephone number, and identification number of the advanced practice nurse or physician assistant completing the prescription drug order;

(G) the date; and

(H) the number of refills permitted.

(13) Certified Pharmacy Technician--A pharmacy technician who:

(A) has completed the pharmacy technician training program of the pharmacy;

(B) has taken and passed the National Pharmacy Technician Certification Exam or other examination approved during an open meeting by the Board; and

(C) maintains a current certification with the Pharmacy Technician Certification Board or any other entity providing an examination approved by the Board.

(14) Clean room--A room in which the concentration of airborne particles is controlled and there are one or more clean zones according to Federal Standard 209E, et seq.

(15) Clean zone--A defined space in which the concentration of airborne particles is controlled to meet a specified airborne particulate cleanliness class.

(16) Compounding--The preparation, mixing, assembling, packaging, or labeling of a drug or device:

(A) as the result of a practitioner's prescription drug or medication order or initiative based on the practitioner-patient pharmacist relationship in the course of professional practice;

(B) in anticipation of prescription drug or medication orders based on routine, regularly observed prescribing patterns; or

(C) for the purpose of or as an incident to research, teaching, or chemical analysis and not for sale or dispensing.

(17) Confidential record--Any health related record that contains information that identifies an individual and that is maintained by a pharmacy or pharmacist such as a patient medication record, prescription drug order, or medication drug order.

(18) Controlled area--A controlled area is the area designated for preparing sterile pharmaceuticals.

(19) Controlled substance--A drug, immediate precursor, or other substance listed in Schedules I - V or Penalty Groups 1-4 of the Texas Controlled Substances Act, as amended, or a drug, immediate precursor, or other substance included in Schedule I, II, III, IV, or V of the Federal Comprehensive Drug Abuse Prevention and Control Act of 1970, as amended (Public Law 91-513).

(20) Critical areas--Any area in the controlled area where products or containers are exposed to the environment.

(21) Cytotoxic--A pharmaceutical that has the capability of killing living cells.

(22) Dangerous drug--Any drug or device that is not included in Penalty Groups 1-4 of the Controlled Substances Act and that is unsafe for self-medication or any drug or device that bears or is required to bear the legend:

(A) "Caution: federal law prohibits dispensing without prescription"; or

(B) "Caution: federal law restricts this drug to use by or on the order of a licensed veterinarian."

(23) Data communication device--An electronic device that receives electronic information from one source and transmits or routes it to another (e.g., bridge, router, switch or gateway).

(24) Deliver or delivery--The actual, constructive, or attempted transfer of a prescription drug or device or controlled substance from one person to another, whether or not for a consideration.

(25) Designated agent--

(A) a licensed nurse, physician assistant, pharmacist, or other individual designated by a practitioner, and for whom the practitioner assumes legal responsibility, who communicates prescription drug orders to a pharmacist;

(B) a licensed nurse, physician assistant, or pharmacist employed in a health care facility to whom the practitioner communicates a prescription drug order;

(C) an advanced practice nurse or physician assistant authorized by a practitioner to carry out or sign a prescription drug order for dangerous drugs under Chapter 157 of the Medical Practice Act (Subtitle B, Occupations Code); or

(D) a person who is a licensed vocational nurse or has an education equivalent to or greater than that required for a licensed vocational nurse designated by the practitioner to communicate prescriptions for an advanced practice nurse or physician assistant authorized by the practitioner to sign prescription drug orders under Chapter 157 of the Medical Practice Act (Subtitle B, Occupations Code).

(26) Device--An instrument, apparatus, implement, machine, contrivance, implant, in vitro reagent, or other similar or related article, including any component part or accessory, that is required under federal or state law to be ordered or prescribed by a practitioner.

(27) Dispense--Preparing, packaging, compounding, or labeling for delivery a prescription drug or device in the course of professional practice to an ultimate user or his agent by or pursuant to the lawful order of a practitioner.

(28) Dispensing pharmacist--The pharmacist responsible for the final check of the dispensed prescription before delivery to the patient.

(29) Distribute--The delivery of a prescription drug or device other than by administering or dispensing.

(30) Downtime--Period of time during which a data processing system is not operable.

(31) Drug regimen review--An evaluation of prescription drug or medication orders and patient medication records for:

(A) known allergies;

(B) rational therapy--contraindications;

(C) reasonable dose and route of administration;

(D) reasonable directions for use;

(E) duplication of therapy;

(F) drug-drug interactions;

(G) drug-food interactions;

(H) drug-disease interactions;

(I) adverse drug reactions; and

(J) proper utilization, including overutilization or underutilization.

(32) Electronic prescription drug order--A prescription drug order which is transmitted by an electronic device to the receiver (pharmacy).

(33) Electronic signature--A unique security code or other identifier which specifically identifies the person entering information into a data processing system. A facility which utilizes electronic signatures must:

(A) maintain a permanent list of the unique security codes assigned to persons authorized to use the data processing system; and

(B) have an ongoing security program which is capable of identifying misuse and/or unauthorized use of electronic signatures.

(34) Expiration date--The date (and time, when applicable) beyond which a product should not be used.

(35) Full-time pharmacist--A pharmacist who works in a pharmacy from 30 to 40 hours per week or if the pharmacy is open less than 60 hours per week, one-half of the time the pharmacy is open.

(36) Hard copy--A physical document that is readable without the use of a special device (i.e., cathode ray tube (CRT), microfiche reader, etc.).

(37) Medical Practice Act--The Texas Medical Practice Act, Subtitle B, Occupations Code, as amended.

(38) New prescription drug order--A prescription drug order that:

(A) has not been dispensed to the patient in the same strength and dosage form by this pharmacy within the last year;

(B) is transferred from another pharmacy; and/or

(C) is a discharge prescription drug order. (Note: furlough prescription drug orders are not considered new prescription drug orders.)

(39) Original prescription--The:

(A) original written prescription drug orders; or

(B) original verbal or electronic prescription drug orders reduced to writing either manually or electronically by the pharmacist.

(40) Part-time pharmacist--A pharmacist who works less than full-time.

(41) Patient counseling--Communication by the pharmacist of information to the patient or patient's agent, in order to improve therapy by ensuring proper use of drugs and devices.

(42) Pharmacist-in-charge--The pharmacist designated on a pharmacy license as the pharmacist who has the authority or responsibility for a pharmacy's compliance with laws and rules pertaining to the practice of pharmacy.

(43) Pharmaceutical care--The provision of drug therapy and other pharmaceutical services intended to assist in the cure or prevention of a disease, elimination or reduction of a patient's symptoms, or arresting or slowing of a disease process.

(44) Pharmacy technicians--Those individuals utilized in pharmacies whose responsibility it shall be to provide technical services that do not require professional judgment concerned with the preparation and distribution of drugs under the direct supervision of and responsible to a pharmacist. Pharmacy technician includes certified pharmacy technicians, pharmacy technicians, and pharmacy technician trainees.

(45) Pharmacy technician trainee--a pharmacy technician:

(A) participating in a pharmacy's technician training program; or

(B) a person currently enrolled in a technician training program accredited by the American Society of Health-System Pharmacists provided:

(i) the person is working during times the individual is assigned to a pharmacy as a part of the experiential component of the American Society of Health-System Pharmacists training program;

(ii) the person is under the direct supervision of and responsible to a pharmacist; and

(iii) the supervising pharmacist conducts in-process and final checks.

(46) Physician assistant--A physician assistant recognized by the Texas State Board of Medical Examiners as having the specialized education and training required under Subtitle B, Chapter 157, Occupations Code, and issued an identification number by the Texas State Board of Medical Examiners.

(47) Practitioner--

(A) a physician, dentist, podiatrist, veterinarian, or other person licensed or registered to prescribe, distribute, administer, or dispense a prescription drug or device in the course of professional practice in this state;

(B) a person licensed by another state in a health field in which, under Texas law, licensees in this state may legally prescribe dangerous drugs or a person practicing in another state and licensed by another state as a physician, dentist, veterinarian, or podiatrist, having a current federal Drug Enforcement Administration registration number, and who may legally prescribe Schedule II, III, IV, or V controlled substances in such other state; or

(C) a person licensed in the Dominion of Canada or the United Mexican States in a health field in which, under the laws of this state, a licensee may legally prescribe dangerous drugs;

(D) does not include a person licensed under the Texas Pharmacy Act.

(48) Prepackaging--The act of repackaging and relabeling quantities of drug products from a manufacturer's original commercial container into a prescription container for dispensing by a pharmacist to the ultimate consumer.

(49) Prescription drug--

(A) a substance for which federal or state law requires a prescription before it may be legally dispensed to the public;

(B) a drug or device that under federal law is required, prior to being dispensed or delivered, to be labeled with either of the following statements:

(i) "Caution: federal law prohibits dispensing without prescription"; or

(ii) "Caution: federal law restricts this drug to use by or on order of a licensed veterinarian"; or

(C) a drug or device that is required by any applicable federal or state law or regulation to be dispensed on prescription only or is restricted to use by a practitioner only.

(50) Prescription drug order--

(A) an order from a practitioner or a practitioner's designated agent to a pharmacist for a drug or device to be dispensed; or

(B) an order pursuant to the Subtitle B, Chapter 157, Occupations Code.

(51) Process validation--Documented evidence providing a high degree of assurance that a specific process will consistently produce a product meeting its predetermined specifications and quality attributes.

(52) Quality assurance--The set of activities used to assure that the process used in the preparation of sterile drug products lead to products that meet predetermined standards of quality.

(53) Quality control--The set of testing activities used to determine that the ingredients, components (e.g., containers), and final sterile pharmaceuticals prepared meet predetermined requirements with respect to identity, purity, non-pyrogenicity, and sterility.

(54) Sample--A prescription drug which is not intended to be sold and is intended to promote the sale of the drug.

(55) State--One of the 50 United States of America, a U.S. territory, or the District of Columbia.

(56) Sterile pharmaceutical--A dosage form free from living micro-organisms.

(57) Texas Controlled Substances Act--The Texas Controlled Substances Act, Health and Safety Code, Chapter 481, as amended.

(58) Unit-dose packaging--The ordered amount of drug in a dosage form ready for administration to a particular patient, by the prescribed route at the prescribed time, and properly labeled with name, strength, and expiration date of the drug.

(59) Unusable drugs--Drugs or devices that are unusable for reasons such as they are adulterated, misbranded, expired, defective, or recalled.

(60) Written protocol--A physicians order, standing medical order, standing delegation order, or other order or protocol as defined by rule of the Texas State Board of Medical Examiners under the Texas Medical Practice Act.

(c) Personnel.

(1) Pharmacist-in-charge.

(A) General.

(i) Each Class A pharmacy compounding sterile pharmaceuticals shall have one pharmacist-in-charge who is employed on a full-time basis, who may be the pharmacist-in-charge for only one such pharmacy; provided, however, such pharmacist-in-charge may be the pharmacist-in-charge of more than one Class A pharmacy, if the additional Class A pharmacies are not open to provide pharmacy services simultaneously.

(ii) The pharmacist-in-charge shall comply with the provisions of §291.17 of this title (relating to Inventory Requirements).

(B) Responsibilities. The pharmacist-in-charge shall have the responsibility for, at a minimum, the following:

(i) ensuring that drugs and/or devices are dispensed and delivered safely and accurately as prescribed;

(ii) that a pharmacist communicates to the patient or the patient's agent information about the prescription drug or device which in the exercise of the pharmacist's professional judgment, the pharmacist deems significant as specified in subsection (d)(3) of this section;

(iii) assuring that a pharmacist communicates to the patient or the patient's agent on his or her request, information concerning any prescription drugs dispensed to the patient by the pharmacy;

(iv) assuring that a reasonable effort is made to obtain, record, and maintain patient medication records;

(v) developing a system to assure that all pharmacy personnel responsible for compounding and/or supervising the compounding of sterile pharmaceuticals within the pharmacy receive appropriate education and training and competency evaluation;

(vi) establishing policies for procurement of drugs and devices and storage of all pharmaceutical materials including pharmaceuticals, components used in the compounding of pharmaceuticals, and drug delivery devices;

(vii) developing a system for the disposal and distribution of drugs from the Class A pharmacy;

(viii) developing a system for bulk compounding or batch preparation of drugs;

(ix) developing a system for the compounding, sterility assurance, quality assurance and quality control of sterile pharmaceuticals;

(x) participating in those aspects of the patient care evaluation program relating to pharmaceutical material utilization and effectiveness;

(xi) implementing the policies and decisions relating to pharmaceutical services;

(xii) maintaining records of all transactions of the Class A pharmacy necessary to maintain accurate control over and accountability for all pharmaceutical materials required by applicable state and federal laws and rules;

(xiii) developing a system to assure the maintenance of effective controls against the theft or diversion of prescription drugs, and records for such drugs;

(xiv) assuring that records in a data processing system are maintained such that the data processing system is in compliance with this section;

(xv) assuring that the pharmacy has a system to dispose of cytotoxic waste in a manner so as not to endanger the public health; and

(xvi) legal operation of the pharmacy, including meeting all inspection and other requirements of all state and federal laws or rules governing the practice of pharmacy.

(2) Pharmacists.

(A) General.

(i) The pharmacist-in-charge shall be assisted by sufficient number of additional licensed pharmacists as may be required to operate the pharmacy competently, safely, and adequately to meet the needs of the patients of the pharmacy.

(ii) All pharmacists shall assist the pharmacist-in-charge in meeting his or her responsibilities in ordering, dispensing, and accounting for prescription drugs.

(iii) Pharmacists are solely responsible for the direct supervision of pharmacy technicians and for designating and delegating duties, other than those listed in subparagraph (B) of this paragraph, to pharmacy technicians. Each pharmacist:

(I) shall verify the accuracy of all acts, tasks, and functions performed by pharmacy technicians; and

(II) shall be responsible for any delegated act performed by pharmacy technicians under his or her supervision.

(iv) All pharmacists while on duty, shall be responsible for complying with all state and federal laws or rules governing the practice of pharmacy.

(v) A pharmacist shall be accessible at all times to respond to patients' and other health professionals' questions and needs. Such access may be through a telephone which is answered 24 hours a day.

(vi) A dispensing pharmacist shall ensure that the drug is dispensed and delivered safely, and accurately as prescribed.

(B) Duties. Duties which may only be performed by a pharmacist are as follows:

(i) receiving verbal prescription drug orders and reducing these orders to writing, either manually or electronically;

(ii) interpreting and evaluating prescription drug orders;

(iii) selection of drug products;

(iv) interpreting patient medication records and performing drug regimen reviews;

(v) performing the final check of the dispensed prescription before delivery to the patient to ensure that the prescription has been dispensed accurately as prescribed;

(vi) communicating to the patient or patient's agent information about the prescription drug or device which in the exercise of the pharmacist's professional judgment, the pharmacist deems significant as specified in paragraph (3) of this subsection;

(vii) communicating to the patient or the patient's agent on his or her request, information concerning any prescription drugs dispensed to the patient by the pharmacy;

(viii) assuring that a reasonable effort is made to obtain, record, and maintain patient medication records; and

(ix) performing a specific act of drug therapy management for a patient delegated to a pharmacist by a written protocol from a physician licensed in this state in compliance with the Medical Practice Act.

(3) Pharmacy technicians.

(A) Qualifications.

(i) General. All pharmacy technicians shall:

(I) have a high school or equivalent degree, e.g., GED, or be currently enrolled in a program which awards such a degree; and

(II) complete a structured didactic and experiential training program, which provides instruction and experience in the areas listed in subparagraph (D) of this paragraph.

(III) Effective January 1, 2001, all pharmacy technicians must 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.

(ii) Pharmacy Technician Trainee.

(I) A person shall be designated as a pharmacy technician trainee while participating in a pharmacy's technician training program in preparation for the National Pharmacy Technician Certification Exam or other examination approved during an open meeting by the Board.

(II) A person may be designated a pharmacy technician trainee for no more than one year. A person may not be a technician trainee if they fail to pass the certification exam within this one year training period. This subclause does not apply to a pharmacy technician trainee working in a pharmacy as part of a training program accredited by the American Society of Health-System Pharmacists or an individual enrolled in a health science technology education program in a Texas high school.

(III) Individuals enrolled in a health science technology education program in a Texas high school that is accredited by the Texas Education Agency, may be designated as a pharmacy technician trainee for up to two years provided:

(-a-) the work as a pharmacy technician is concurrent with enrollment in a health science technology education program, which may include:

(-1-) partial semester breaks such as spring breaks;

(-2-) between semesters; and

(-3-) whole semester breaks provided the individual was enrolled in the health science technology education program in the immediate preceding semester and is

scheduled with the high school to attend in the immediate subsequent semester;

(-b-) the individual is under the direct supervision of and responsible to a pharmacist; and

(-c-) the supervising pharmacist verifies the accuracy of all acts, tasks, or functions performed by the individual.

(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 and a copy of their current certification certificate in all other pharmacies where the technician performs the duties of a technician.

(B) Duties.

(i) pharmacy technicians may not perform any of the duties listed in paragraph (2)(B) of this subsection.

(ii) A pharmacist may delegate to pharmacy technicians any nonjudgmental technical duty associated with the preparation and distribution of prescription drugs provided:

(I) a pharmacist verifies the accuracy of all acts, tasks, and functions performed by pharmacy technicians; and

(II) pharmacy technicians are under the direct supervision of and responsible to a pharmacist.

(iii) Pharmacy technicians may perform only nonjudgmental technical duties associated with the preparation and distribution of prescription drugs, including but not limited to the following.

(I) initiating and receiving refill authorization requests;

(II) entering prescription data into a data processing system;

(III) taking a stock bottle from the shelf for a prescription;

(IV) preparing and packaging prescription drug orders (i.e., counting tablets/capsules, measuring liquids and placing them in the prescription container);

(V) affixing prescription labels and auxiliary labels to the prescription container provided:

(-a-) the pharmacy technician has completed the education and training requirements outlined in subparagraphs (A) and (D) of this paragraph; and

(-b-) effective January 1, 2001, only certified pharmacy technicians may affix a label to a prescription container.

(VI) reconstituting medications;

(VII) prepackaging and labeling prepackaged drugs;

(VIII) loading bulk unlabeled drugs into an automated dispensing system provided a pharmacist verifies that the system is properly loaded prior to use;

(IX) compounding sterile pharmaceuticals provided:

(-a-) the pharmacy technician has completed the education and training specified in paragraph (4) of this subsection and the pharmacy technician is supervised by a pharmacist who has completed the training specified in paragraph (4) of this subsection; and

(-b-) effective January 1, 2001, the pharmacy technicians:

(-1-) are either certified pharmacy technicians or technician trainees;

(-2-) have completed the training specified in paragraph (4) of this subsection; and

(-3-) are supervised by a pharmacist who has completed the training specified in paragraph (4) of this subsection, conducts in-process and final checks, and affixes his or her initials to the appropriate quality control records.

(X) compounding non-sterile prescription drug orders; and

(XI) bulk compounding.

(iv) Certified pharmacy technicians. Effective January 1, 2001, only certified pharmacy technicians may:

(I) affix a label to a prescription container; and

(II) compound sterile pharmaceuticals.

(C) Ratio of pharmacist to pharmacy technicians.

(i) The ratio of pharmacists to pharmacy technicians may not exceed 1:2 provided that only one pharmacy technician may be engaged in the compounding of sterile pharmaceuticals.

(ii) The ratio of pharmacists to pharmacy technicians may be 1:3 provided that at least one of the three technicians is certified and only one may be engaged in the compounding of sterile pharmaceuticals.

(D) Training.

(i) pharmacy technicians shall complete initial training as outlined by the pharmacist-in-charge in a training manual which includes training and experience as outlined in subparagraph (E) of this paragraph prior to the regular performance of their duties. Such training:

(I) shall include training and experience as outlined in subparagraph (E) of this paragraph; and

(II) may not be transferred to another pharmacy unless:

(-a-) the pharmacies are under common ownership and control and have a common training program; and

(-b-) the pharmacist-in-charge of each pharmacy in which the pharmacy technician works certifies that the pharmacy technician is competent to perform the duties assigned in that pharmacy.

(ii) A pharmacy technician shall be designated a pharmacy technician trainee until completing the full training program. A pharmacy technician trainee:

(I) may perform all of the duties of a pharmacy technician except affix a label to a prescription;

(II) may be designated a pharmacy technician trainee for no longer than one year except as specified in subparagraph (A)(ii) of this paragraph; and

(III) shall be counted in the pharmacist to pharmacy technician ratio.

(iii) The pharmacist-in-charge shall assure the continuing competency of pharmacy technicians through-in-service education and training to supplement initial training.

(iv) The pharmacist-in-charge shall document the completion of the training program and certify the competency of pharmacy technicians completing the training. A written record of initial and in-service training of pharmacy technicians shall be maintained and contain the following information:

(I) name of the person receiving the training;

(II) date(s) of the training;

(III) general description of the topics covered;

(IV) a statement or statements that certifies that the pharmacy technician is competent to perform the duties assigned;

(V) name of the person supervising the training; and

(VI) signature of the pharmacy technician and the pharmacist-in-charge or other pharmacist employed by the pharmacy and designated by the pharmacist-in-charge as responsible for training of pharmacy technicians.

(v) A person who has previously completed training as a pharmacy technician, or a licensed nurse or physician assistant is not required to complete the entire training program if the person is able to show competency through a documented assessment of competency. Such competency assessment may be conducted by personnel designated by the pharmacist-in-charge, but the final acceptance of competency must be approved by the pharmacist-in-charge.

(E) Training program. Pharmacy technicians training shall be outlined in a training manual. Such training manual shall, at a minimum, contain the following:

(i) written procedures and guidelines for the use and supervision of pharmacy technicians. Such procedures and guidelines shall:

(I) specify the manner in which the pharmacist responsible for the supervision of pharmacy technicians will supervise such personnel and verify the accuracy and completeness of all acts, task and functions performed by such personnel; and

(II) specify duties which may and may not be performed by pharmacy technicians; and

(ii) instruction in the following areas and any additional areas appropriate to the duties of pharmacy technicians in the pharmacy:

(I) Orientation;

(II) Job descriptions;

(III) Communication techniques;

(IV) Laws and rules;

(V) Security and safety;

(VI) Prescription drugs:
(-a-) Basic pharmaceutical nomenclature;
(-b-) Dosage forms;

(VII) Prescription drug orders:
(-a-) Prescribers;
(-b-) Directions for use;
(-c-) Commonly-used abbreviations and symbols;
(-d-) Number of dosage units;
(-e-) Strength and systems of measurement;
(-f-) Route of administration;
(-g-) Frequency of administration;
(-h-) Interpreting directions for use;

(VIII) Prescription drug order preparation:
(-a-) Creating or updating patient medication records;
(-b-) Entering prescription drug order information into the computer or typing the label in a manual system;
(-c-) Selecting the correct stock bottle;
(-d-) Accurately counting or pouring the appropriate quantity of drug product;
(-e-) Selecting the proper container;
(-f-) Affixing the prescription label;
(-g-) Affixing auxiliary labels, if indicated; and
(-h-) Preparing the finished product for inspection and final check by pharmacists;

(IX) Other functions;

(X) Drug product prepackaging;

(XI) Compounding of non-sterile pharmaceuticals;

(XII) Written policy and guidelines for use of and supervision of pharmacy technicians.

(4) Special education, training, and evaluation requirements for pharmacy personnel compounding or responsible for the direct supervision of pharmacy personnel compounding sterile pharmaceuticals.

(A) General.

(i) All pharmacy personnel preparing sterile pharmaceuticals shall receive didactic and experiential training and competency evaluation through demonstration, testing (written or practical) as outlined by the pharmacist-in-charge and described in the policy and procedure or training manual. Such training shall include instruction and experience in the following areas:

(I) aseptic technique;

(II) critical area contamination factors;

(III) environmental monitoring;

(IV) facilities;

(V) equipment and supplies;

(VI) sterile pharmaceutical calculations and terminology;

(VII) sterile pharmaceutical compounding documentation;

(VIII) quality assurance procedures;

(IX) aseptic preparation procedures including proper gowning and gloving technique;

(X) handling of cytotoxic and hazardous drugs, if applicable; and

(XI) general conduct in the controlled area.

(ii) The aseptic technique of each person compounding or responsible for the direct supervision of personnel compounding sterile pharmaceuticals shall be observed and evaluated as satisfactory through written or practical tests and process validation and such evaluation documented.

(iii) Although process validation may be incorporated into the experiential portion of a training program, process validation must be conducted at each pharmacy where an individual compounds sterile pharmaceuticals. No product intended for patient use shall be compounded by an individual until the on-site process validation test indicates that the individual can competently perform aseptic procedures, except that a pharmacist may temporarily compound sterile pharmaceuticals and supervise pharmacy technicians compounding sterile pharmaceuticals without process validation provided the pharmacist:

(I) has completed a recognized course in an accredited college of pharmacy or a course sponsored by an American Council on Pharmaceutical Education approved provider which provides 20 hours of instruction and experience in the areas listed in this subparagraph; and

(II) completes the on-site process validation within seven days of commencing work at the pharmacy.

(iv) Process validation procedures for assessing the preparation of specific types of sterile pharmaceuticals shall be representative of all types of manipulations, products, and batch sizes that personnel preparing that type of pharmaceutical are likely to encounter.

(v) The pharmacist-in-charge shall assure continuing competency of pharmacy personnel through in-service education, training, and process validation to supplement initial training. Personnel competency shall be evaluated:

(I) during orientation and training prior to the regular performance of those tasks;

(II) whenever the quality assurance program yields an unacceptable result;

(III) whenever unacceptable techniques are observed; and

(IV) at least on an annual basis.

(B) Pharmacists.

(i) All pharmacists who compound sterile pharmaceuticals or supervise pharmacy technicians compounding sterile pharmaceuticals shall:

(I) complete through a single course, a minimum of 20 hours of instruction and experience in the areas listed in subparagraph (A) of this paragraph. Such training may be through:

(-a-) completion of a structured on-the-job didactic and experiential training program at this pharmacy which provides 20 hours of instruction and experience in the areas listed in paragraph (1) of this subsection. Such training may not be transferred to another pharmacy unless the pharmacies are under common ownership and control and use a common training program; or

(-b-) completion of a recognized course in an accredited college of pharmacy or a course sponsored by an American Council on Pharmaceutical Education approved provider which provides 20 hours of instruction and experience in the areas listed in subparagraph (A) of this paragraph; and

(II) possess knowledge about:

(-a-) aseptic processing;

(-b-) quality control and quality assurance as related to environmental, component, and end-product testing;

(-c-) chemical, pharmaceutical, and clinical properties of drugs;

(-d-) container, equipment, and closure system selection; and

(-e-) sterilization techniques.

(ii) The required experiential portion of the training programs specified in this subparagraph must be supervised by an individual who has already completed training as specified in subparagraph (B) or (C) of this paragraph.

(C) Pharmacy technicians. In addition to the qualifications and training outlined in paragraph (3) of this subsection, all pharmacy technicians who compound sterile pharmaceuticals shall:

(i) have a high school or equivalent education;

(ii) either:

(I) complete through a single course, a minimum of 40 hours of instruction and experience in the areas listed in subparagraph (A) of this paragraph. Such training may be obtained through the:

(-a-) completion of a structured on-the-job didactic and experiential training program at this pharmacy which provides 40 hours of instruction and experience in the areas listed in subparagraph (A) of this paragraph. Such training may not be transferred to another pharmacy unless the pharmacies are under common ownership and control and use a common training program; or

(-b-) completion of a course sponsored by an ACPE approved provider which provides 40 hours of instruction and experience in the areas listed in subparagraph (A) of this paragraph; or

(II) completion of a training program which is accredited by the American Society of Health-System Pharmacists (formerly the American Society of Hospital Pharmacists). Individuals enrolled in training programs accredited by the American Society of Health-System Pharmacists may compound sterile pharmaceuticals in a licensed pharmacy provided:

(-a-) the compounding occurs only during times the individual is assigned to a pharmacy as a part of the experiential component of the American Society of Health-System Pharmacists training program;

(-b-) the individual is under the direct supervision of and responsible to a pharmacist who has completed training as specified in subparagraph (B) of this paragraph; and

(-c-) the supervising pharmacist conducts in-process and final checks; and

(iii) on January 1, 2001, discontinue preparation of sterile pharmaceuticals if the technician has not taken and passed the National Pharmacy Technician Certification Exam or other examination approved during an open meeting by the Board. Such pharmacy technicians may continue to compound sterile pharmaceuticals during the interim between the effective date of these rules and January 1, 2001, if they maintain documentation of completion of the training specified in clause (ii) of this subparagraph.

(iv) acquire the required experiential portion of the training programs specified in this subparagraph under the supervision of an individual who has already completed training as specified in subparagraph (B) or (C) of this paragraph.

(D) Documentation of Training. A written record of initial and in-service training and the results of written or practical testing and process validation of pharmacy personnel shall be maintained and contain the following information:

(i) name of the person receiving the training or completing the testing or process validation;

(ii) date(s) of the training, testing, or process validation;

(iii) general description of the topics covered in the training or testing or of the process validated;

(iv) name of the person supervising the training, testing, or process validation; and

(v) signature (first initial and last name or full signature) of the person receiving the training or completing the testing or process validation and the pharmacist-in-charge or other pharmacist employed by the pharmacy and designated by the pharmacist-in-charge as responsible for training, testing, or process validation of personnel.

(5) Identification of pharmacy personnel. Pharmacy personnel shall be identified as follows.

(A) Pharmacy technicians. All pharmacy technicians shall wear an identification tag or badge which bears the person's name and identifies him or her as a pharmacy technician trainee, pharmacy technician, or a certified pharmacy technician.

(B) Pharmacist interns. All pharmacist interns shall wear an identification tag or badge which bears the person's name and identifies him or her as a pharmacist intern.

(C) Pharmacists. All pharmacists shall wear an identification tag or badge which bears the person's name and identifies him or her as a pharmacist.

(d) Operational standards.

(1) Licensing requirements.

(A) A Class A pharmacy compounding sterile pharmaceuticals shall register annually or biennially with the board on a pharmacy license application provided by the board, following the procedures specified in §291.1 of this title (relating to Pharmacy License Application).

(B) A Class A pharmacy compounding sterile pharmaceuticals which changes ownership shall notify the board within ten days of the change of ownership and apply for a new and separate license as specified in §291.4 of this title (relating to Change of Ownership).

(C) A Class A pharmacy compounding sterile pharmaceuticals which changes location and/or name shall notify the board within ten days of the change and file for an amended license as specified in §291.2 of this title (relating to Change of Location and/or Name).

(D) A Class A pharmacy compounding sterile pharmaceuticals owned by a partnership or corporation which changes managing officers shall notify the board in writing of the names of the new managing officers within ten days of the change, following the procedures in §291.3 of this title (relating to Change of Managing Officers).

(E) A Class A pharmacy compounding sterile pharmaceuticals shall notify the board in writing within ten days of closing, following the procedures in §291.5 of this title (relating to Closed Pharmacies).

(F) A separate license is required for each principal place of business and only one pharmacy license may be issued to a specific location.

(G) A fee as specified in §291.6 of this title (relating to Pharmacy License Fees) will be charged for the issuance and renewal of a license and the issuance of an amended license.

(H) A Class A pharmacy compounding sterile pharmaceuticals, licensed under the provisions of the Act, §560.051(a)(1), which also operates another type of pharmacy which would otherwise be required to be licensed under the Act, §560.051(a)(2), concerning nuclear pharmacy (Class B), is not required to secure a license for such other type of pharmacy; provided, however, such licensee is required to comply with the provisions of §291.51 of this title (relating to Purpose), §291.52 of this title (relating to Definitions), §291.53 of this title (relating to Personnel), §291.54 of this title (relating to Operational Standards), and §291.55 of this title (relating to Records), contained in Nuclear Pharmacy (Class B), to the extent such sections are applicable to the operation of the pharmacy.

(I) A Class A pharmacy engaged in nonsterile compounding of drug products shall comply with the provisions of §§291.31 - 291.34 of this title (relating to Definitions, Personnel, Operational Standards, and Records for Class A (Community) Pharmacies) to the extent such rules are applicable to nonsterile compounding of drug products.

(2) Environment.

(A) General requirements.

(i) The pharmacy shall be enclosed and lockable.

(ii) The pharmacy shall have adequate space necessary for the storage, compounding, labeling, dispensing, and sterile preparation of drugs prepared in the pharmacy, and additional space, depending on the size and scope of pharmaceutical services.

(iii) The pharmacy shall be arranged in an orderly fashion and shall be kept clean. All required equipment shall be clean and in good operating condition.

(iv) A sink with hot and cold running water, exclusive of restroom facilities, designated primarily for use of admixtures, shall be available within the pharmacy facility to all pharmacy personnel and shall be maintained in a sanitary condition at all times.

(v) The pharmacy shall be properly lighted and ventilated.

(vi) The temperature of the pharmacy shall be maintained within a range compatible with the proper storage of drugs; the temperature of the refrigerator shall be maintained within a range compatible with the proper storage of drugs requiring refrigeration.

(vii) If prescription drug orders are delivered to the patient at the pharmacy, the pharmacy shall contain an area which is suitable for confidential patient counseling.

(I) Such counseling area shall:

(-a-) be easily accessible to both patient and pharmacists and not allow patient access to prescription drugs;

(-b-) be designed to maintain the confidentiality and privacy of the pharmacist/patient communication.

(II) In determining whether the area is suitable for confidential patient counseling and designed to maintain the confidentiality and privacy of the pharmacist/patient communication, the board may consider factors such as the following:

(-a-) the proximity of the counseling area to the check-out or cash register area;

(-b-) the volume of pedestrian traffic in and around the counseling area;

(-c-) the presence of walls or other barriers between the counseling area and other areas of the pharmacy; and

(-d-) any evidence of confidential information being overheard by persons other than the patient or patient's agent or the pharmacist or agents of the pharmacist.

(viii) Animals, including birds and reptiles, shall not be kept within the pharmacy and in immediately adjacent areas under the control of the pharmacy. This provision does not apply to fish in aquariums, guide dogs accompanying disabled persons, or animals for sale to the general public in a separate area that is inspected by local health jurisdictions.

(B) Special requirements for the compounding of sterile pharmaceuticals. When the pharmacy compounds sterile pharmaceuticals, the following is applicable.

(i) Aseptic environment control device(s). The pharmacy shall prepare sterile pharmaceuticals in an appropriate aseptic environmental control device(s) or area, such as a laminar air flow hood, biological safety cabinet, or clean room which is capable of maintaining at least Class 100 conditions during normal activity. The aseptic environmental control device(s) shall:

(I) be certified by an independent contractor according to Federal Standard 209E, et seq, for operational efficiency at least every six months or when it is relocated; and

(II) have pre-filters inspected periodically and replaced as needed, in accordance with written policies and procedures, and the inspection and/or replacement date documented.

(ii) Controlled area. The pharmacy shall have a designated controlled area for the compounding of sterile pharmaceuticals that is functionally separate from areas for the preparation of non-sterile pharmaceuticals and is constructed to minimize the opportunities for particulate and microbial contamination. This controlled area for the preparation of sterile pharmaceuticals shall:

(I) have a controlled environment that is aseptic or contains an aseptic environmental control device(s);

(II) be clean, well lighted, and of sufficient size to support sterile compounding activities;

(III) be used only for the compounding of sterile pharmaceuticals;

(IV) be designed to avoid outside traffic and air flow;

(V) have non-porous and washable floors or floor covering to enable regular disinfection;

(VI) be ventilated in a manner not interfering with aseptic environmental control conditions;

(VII) have hard cleanable walls and ceilings (acoustical ceiling tiles that are coated with an acrylic paint are acceptable);

(VIII) have drugs and supplies stored on shelving areas above the floor to permit adequate floor cleaning;

(IX) contain only the appropriate compounding supplies and not be used for bulk storage for supplies and materials.

(iii) End-product evaluation.

(I) The responsible pharmacist shall verify that the sterile pharmaceutical was compounded accurately with respect to the use of correct ingredients, quantities, containers, and reservoirs.

(II) end product sterility testing according to policies and procedures, which include a statistically valid sampling plan and acceptance criteria for the sampling and testing, shall be performed if deemed appropriate by the pharmacist-in-charge;

(III) the pharmacist-in-charge shall establish a mechanism for recalling all products of a specific batch if end-product testing procedures yield unacceptable results.

(iv) Automated compounding or counting device. If automated compounding or counting devices are used, the pharmacy shall have a method to calibrate and verify the accuracy of automated compounding or counting devices used in aseptic processing and document the calibration and verification on a routine basis.

(v) Cytotoxic drugs. In addition to the requirements specified in clause (i) of this subparagraph, if the product is also cytotoxic, the following is applicable.

(I) General.

(-a-) All personnel involved in the compounding of cytotoxic products shall wear appropriate protective apparel, such as masks, gloves, and gowns or coveralls with tight cuffs.

(-b-) Appropriate safety and containment techniques for compounding cytotoxic drugs shall be used in conjunction with aseptic techniques required for preparing sterile pharmaceuticals.

(-c-) Disposal of cytotoxic waste shall comply with all applicable local, state, and federal requirements.

(-d-) Prepared doses of cytotoxic drugs must be dispensed, labeled with proper precautions inside and outside, and distributed in a manner to minimize patient contact with cytotoxic agents.

(II) Aseptic environment control device(s).

(-a-) Cytotoxic drugs must be prepared in a vertical flow biological safety cabinet.

(-b-) If the vertical flow biological safety cabinet is also used to prepare non-cytotoxic sterile pharmaceuticals, the cabinet must be thoroughly cleaned prior to its use to prepare non-cytotoxic sterile pharmaceuticals.

(C) Security requirements.

(i) The pharmacy shall have locked storage for Schedule II controlled substances and other controlled drugs requiring additional security.

(ii) All areas occupied by a pharmacy shall be capable of being locked by key or combination, so as to prevent access by unauthorized personnel when a pharmacist is not on-site.

(iii) The pharmacy may authorize personnel to gain access to that area of the pharmacy containing dispensed sterile pharmaceuticals, in the absence of the pharmacist, for the purpose of retrieving dispensed prescriptions to deliver to patients. If the pharmacy allows such after-hours access, the area containing the dispensed sterile pharmaceuticals shall be an enclosed and lockable area separate from the area containing undispensed prescription drugs. A list of the authorized personnel having such access shall be in the pharmacy's policy and procedure manual.

(iv) Each pharmacist while on duty shall be responsible for the security of the prescription department, including provisions for effective control against theft or diversion of prescription drugs, and records for such drugs.

(D) Temporary absence of pharmacist.

(i) If a pharmacy is staffed by a single pharmacist, the pharmacist may leave the prescription department for breaks and meal periods without closing the prescription department and removing pharmacy technicians and other pharmacy personnel from the prescription department provided the following conditions are met:

(I) at least one certified pharmacy technician remains in the prescription department;

(II) the pharmacist remains on-site at the licensed location of the pharmacy and available for an emergency;

(III) the absence does not exceed 30 minutes at a time and a total of one hours in a 12 hour period;

(IV) the pharmacist reasonably believes that the security of the prescription department will be maintained in his or her absence. If in the professional judgment of the pharmacist, the pharmacist determines that the prescription department should close during his or her absence, then the pharmacist shall close the prescription department and remove the pharmacy technicians and other pharmacy personnel from the prescription department during his or her absence; and

(V) a notice is posted which includes the following information:

(-a-) the fact that pharmacist is on a break and the time the pharmacist will return; and

(-b-) the fact that pharmacy technicians may begin the processing of prescription drug orders or refills brought in during the pharmacist absence but the prescription or refill may not be delivered to the patient or the patient's agent until the pharmacist returns and verifies the accuracy of the prescription.

(ii) During the time a pharmacist is absent from the prescription department, only pharmacy technicians who have completed the pharmacy's training program may perform the following duties, provided a pharmacist verifies the accuracy of all acts, tasks, and functions performed by the pharmacy technicians prior to delivery of the prescription to the patient or the patient's agent:

(I) initiating and receiving refill authorization requests;

(II) entering prescription data into a data processing system;

(III) taking a stock bottle from the shelf for a prescription;

(IV) preparing and packaging prescription drug orders (i.e., counting tablets/capsules, measuring liquids and placing them in the prescription container);

(V) affixing prescription labels and auxiliary labels to the prescription container. After January 1, 2001, only certified pharmacy technicians may affix prescription labels to prescription containers; and

(VI) prepackaging and labeling prepackaged drugs.

(iii) Upon return to the prescription department, the pharmacist shall:

(I) conduct a drug regimen review as specified in paragraph (4)(A)(ii) of this subsection; and

(II) verify the accuracy of all acts, tasks, and functions performed by pharmacy technicians prior to delivery of the prescription to the patient or the patient's agent.

(iv) An agent of the pharmacist may deliver a prescription drug order to the patient or his or her agent provided a record of the delivery is maintained containing the following information:

(I) date of the delivery;

(II) unique identification number of the prescription drug order;

(III) patient's name;

(IV) patient's phone number or the phone number of the person picking up the prescription; and

(V) signature of the person picking up the prescription.

(v) Any prescription delivered to a patient when a pharmacist is not in the prescription department must meet the requirements for a prescription delivered to a patient as described in paragraph (3)(A)(v) of this subsection.

(vi) During the times a pharmacist is absent from the prescription department a pharmacist intern shall be considered a certified pharmacy technician and may perform only the duties of a certified pharmacy technician.

(vii) In pharmacies with two or more pharmacists on duty, the pharmacists shall stagger their breaks and meal periods so that the prescription department is not left without a pharmacist on duty.

(3) Prescription dispensing and delivery.

(A) Patient counseling and provision of drug information.

(i) To optimize drug therapy, a pharmacist shall communicate to the patient or the patient's agent, information about the prescription drug or device which in the exercise of the pharmacist's professional judgment the pharmacist deems significant, such as the following:

(I) the name and description of the drug or device;

(II) dosage form, dosage, route of administration, and duration of drug therapy;

(III) special directions and precautions for preparation, administration, and use by the patient;

(IV) common severe side or adverse effects or interactions and therapeutic contraindications that may be encountered, including their avoidance, and the action required if they occur;

(V) techniques for self monitoring of drug therapy;

(VI) proper storage;

(VII) refill information; and

(VIII) action to be taken in the event of a missed dose.

(ii) Such communication:

(I) shall be provided with each new prescription drug order, once yearly on maintenance medications, and if the pharmacist deems appropriate, with prescription drug order refills. (For the purposes of this clause, maintenance medications are defined as any medication the patient has taken for one year or longer);

(II) shall be provided for any prescription drug order dispensed by the pharmacy on the request of the patient or patient's agent;

(III) shall be communicated orally in person unless the patient or patient's agent is not at the pharmacy or a specific communication barrier prohibits such oral communication; and

(IV) shall be reinforced with written information. The following is applicable concerning this written information.

(-a-) Written information designed for the consumer such as the USP DI Patient Information Leaflets shall be provided.

(-b-) When a compounded product is dispensed, information shall be provided for the major active ingredient(s), if available.

(-c-) For new drug entities, if no written information is initially available, the pharmacist is not required to provide information until such information is available, provided:

(-1-) the pharmacist informs the patient or the patient's agent that the product is a new drug entity and written information is not available;

(-2-) the pharmacist documents the fact that no written information was provided; and

(-3-) if the prescription is refilled after written information is available, such information is provided to the patient or patient's agent.

(iii) Only a pharmacist may verbally provide drug information to a patient or patient's agent and answer questions concerning prescription drugs. Non-pharmacist personnel may not ask questions of a patient or patient's agent which are intended to screen and/or limit interaction with the pharmacist.

(iv) Nothing in this subparagraph shall be construed as requiring a pharmacist to provide consultation when a patient or patient's agent refuses such consultation. The pharmacist shall document such refusal for consultation.

(v) In addition to the requirements of clauses (i) - (iv) of this subparagraph, if a prescription drug order is delivered to the patient at the pharmacy, the following is applicable.

(I) So that a patient will have access to information concerning his or her prescription, a prescription may not be delivered to a patient unless a pharmacist is in the pharmacy, except as provided in paragraph (2)(D) of this subsection or subclause (II) of this clause.

(II) An agent of the pharmacist may deliver a prescription drug order to the patient or his or her agent during short periods of time when a pharmacist is absent from the pharmacy, provided the short periods of time do not exceed two hours, and provided a record of the delivery is maintained containing the following information:

(-a-) date of the delivery;

(-b-) unique identification number of the prescription drug order;

(-c-) patient's name;

(-d-) patient's phone number or the phone number of the person picking up the prescription; and

(-e-) signature of the person picking up the prescription.

(III) Any prescription delivered to a patient when a pharmacist is not in the pharmacy must meet the requirements described in clause (vi) of this subparagraph.

(IV) A Class A pharmacy compounding sterile pharmaceuticals that delivers prescriptions to patients or their agents on-site shall make available for use by the public a current or updated edition of the United States Pharmacopeia Dispensing Information, Volume II (Advice to the Patient), or another source of such information, such as patient information leaflets.

(vi) In addition to the requirements of clauses (i) - (iv) of this subparagraph, if a prescription drug order is delivered to the patient or his or her agent at the patient's residence or other designated location, the following is applicable.

(I) The information specified in clause (i) of this subparagraph shall be delivered with the dispensed prescription in writing.

(II) If prescriptions are routinely delivered outside the area covered by the pharmacy's local telephone service, the pharmacy shall provide a toll-free telephone line which is answered during normal business hours to enable communication between the patient and a pharmacist.

(III) The pharmacist shall place on the prescription container or on a separate sheet delivered with the prescription container in both English and Spanish the local and if applicable, toll-free telephone number of the pharmacy and the statement: "Written information about this prescription has been provided for you. Please read this information before you take the medication. If you have questions concerning this prescription, a pharmacist is available during normal business hours to answer these questions at (insert the pharmacy's local and toll-free telephone numbers)."

(IV) The pharmacist-in-charge shall assure that:

(-a-) the pharmacy maintain and use adequate storage or shipment containers and shipping processes to ensure drug stability and potency. Such shipping processes shall include the use of appropriate packaging material and/or devices to ensure that the drug is maintained at an appropriate temperature range to maintain the integrity of the medication throughout the delivery process; and

(-b-) the pharmacy uses a delivery system which is designed to assure that the drugs are delivered to the appropriate patient.

(vii) The provisions of this subparagraph do not apply to patients in facilities where drugs are administered to patients by a person authorized to do so by the laws of the state (i.e., nursing homes).

(B) Prescription containers.

(i) A drug dispensed pursuant to a prescription drug order shall be dispensed in an appropriate container as specified on the manufacturer's container.

(ii) Prescription containers or closures shall not be re-used.

(C) Labeling.

(i) At the time of delivery of the drug, the dispensing container of a sterile pharmaceutical shall bear a label with at least the following information:

(I) name, address and phone number of the pharmacy, including a phone number which is answered 24 hours a day;

(II) date dispensed;

(III) name of prescribing practitioner;

(IV) name of patient;

(V) directions for use, including infusion rate and directions to the patient for the addition of additives, if applicable;

(VI) unique identification number of the prescription;

(VII) name and amount of the base solution and of each drug added unless otherwise directed by the prescribing practitioner;

(VIII) initials or identification code of the person preparing the product and the pharmacist who checked and released the final product;

(IX) expiration date of the preparation based on published data;

(X) appropriate ancillary instructions, such as storage instructions or cautionary statements, including cytotoxic/biohazardous warning labels where applicable;

(XI) if the prescription is for a Schedule II-IV controlled substance, the statement "Caution: Federal law prohibits the transfer of this drug to any person other than the patient for whom it was prescribed";

(XII) if the pharmacist has selected a generically equivalent drug pursuant to the provisions of the Act, Chapters 562 and 563, the statement "Substituted for Brand Prescribed" or "Substituted for 'Brand Name'" where "Brand Name" is the actual name of the brand name product prescribed; and

(XIII) the name of the advanced practice nurse or physician assistant, if the prescription is carried out by an advanced practice nurse or physician assistant in compliance with Subtitle B, Chapter 157, Occupations Code.

(ii) The dispensing container is not required to bear the label specified in subparagraph (A) of this paragraph if:

(I) the drug is prescribed for administration to an ultimate user who is institutionalized in a licensed health care facility (e.g., nursing home, hospice, hospital);

(II) no more than a 34-day supply or 100 dosage units, whichever is less, is dispensed at one time;

(III) the drug is not in the possession of the ultimate user prior to administration;

(IV) the pharmacist-in-charge has determined that the institution:

(-a-) maintains medication administration records which include adequate directions for use for the drug(s) prescribed;

(-b-) maintains records of ordering, receipt, and administration of the drug(s); and

(-c-) provides for appropriate safeguards for the control and storage of the drug(s);

(V) the system employed by the pharmacy in dispensing the prescription drug order adequately identifies the:

(-a-) pharmacy by name and address;

(-b-) unique identification number of the prescription;

(-c-) name and strength of the drug dispensed;

(-d-) the name of the patient;

(-e-) name of the prescribing practitioner; and

(VI) the system employed by the pharmacy in dispensing the prescription drug order adequately sets forth the directions for use and cautionary statements, if any, contained on the prescription drug order or required by law.

(4) Pharmaceutical care services.

(A) The following pharmaceutical care services shall be provided by pharmacists of the pharmacy.

(i) Drug utilization review. A systematic ongoing process of drug utilization review shall be designed, followed, and documented to increase the probability of desired patient outcomes and decrease the probability of undesired outcomes from drug therapy.

(ii) Drug regimen review.

(I) For the purpose of promoting therapeutic appropriateness, a pharmacist shall evaluate prescription drug orders and patient medication records for:

(-a-) known allergies;

(-b-) rational therapy--contraindications;

(-c-) reasonable dose and route of administration;

(-d-) reasonable directions for use;

(-e-) duplication of therapy;

(-f-) drug-drug interactions;

(-g-) drug-food interactions;

(-h-) drug-disease interactions;

(-i-) adverse drug reactions;

(-j-) proper utilization, including overutilization or underutilization; and

(-k-) clinical laboratory or clinical monitoring methods to monitor and evaluate drug effectiveness, side effects, toxicity, or adverse effects, and appropriateness to continued use of the drug in its current regimen.

(II) Upon identifying any clinically significant conditions, situations, or items listed in subclause (I) of this clause, the pharmacist shall take appropriate steps to avoid or resolve the problem including consultation with the prescribing practitioner. The pharmacist shall document such occurrences.

(iii) Patient care guidelines.

(I) Primary provider. There shall be a designated physician primarily responsible for the patient's medical care. There shall be a clear understanding between the physician, the patient, and the pharmacy of the responsibilities of each in the areas of the delivery of care, and the monitoring of the patient. This shall be documented in the patient medication record (PMR).

(II) Patient training. The pharmacist-in-charge shall develop policies that assure that the patient and/or patient's caregiver receives information regarding drugs and their safe and appropriate use, including instruction regarding:

(-a-) appropriate disposition of hazardous solutions and ancillary supplies;

(-b-) proper disposition of controlled substances in the home;

(-c-) self-administration of drugs, where appropriate;

(-d-) emergency procedures, including how to contact an appropriate individual in the event of problems or emergencies related to drug therapy; and

(-e-) if the patient or patient's caregiver prepares sterile preparations in the home, the following additional information shall be provided:

(-1-) safeguards against microbial contamination, including aseptic techniques for compounding intravenous admixtures and aseptic techniques for injecting additives to premixed intravenous solutions;

(-2-) appropriate storage methods, including storage durations for sterile pharmaceuticals and expirations of self-mixed solutions;

(-3-) handling and disposition of premixed and self-mixed intravenous admixtures; and

(-4-) proper disposition of intravenous admixture compounding supplies such as syringes, vials, ampules, and intravenous solution containers.

(III) Pharmacist-patient relationship. It is imperative that a pharmacist-patient relationship be established and maintained throughout the patient's course of therapy. This shall be documented in the patient's medication record (PMR).

(IV) Patient monitoring. The pharmacist-in-charge shall develop policies to ensure that:
(-a-) the patient's response to drug therapy is monitored and conveyed to the appropriate health care provider; and
(-b-) the first dose of any new drug therapy is administered in the presence of an individual qualified to monitor for and respond to adverse drug reactions.

(B) Other pharmaceutical care services which may be provided by pharmacists include, but are not limited to, the following:

(i) managing drug therapy as delegated by a practitioner as allowed under the provisions of the Medical Practice Act;

(ii) administering immunizations and vaccinations under written protocol of a physician;

(iii) managing patient compliance programs;

(iv) providing preventative health care services; and

(v) providing case management of patients who are being treated with high-risk or high-cost drugs, or who are considered "high risk" due to their age, medical condition, family history, or related concern.

(5) Equipment and supplies. Class A pharmacies compounding sterile pharmaceuticals shall have the following equipment and supplies:

(A) typewriter or comparable equipment;

(B) refrigerator and, if sterile pharmaceuticals are stored in the refrigerator, a system or device (i.e., thermometer) to monitor the temperature daily to ensure that proper storage requirements are met;

(C) adequate supply of prescription, poison, and other applicable labels;

(D) appropriate equipment necessary for the proper preparation of prescription drug orders;

(E) metric-apothecary weight and measure conversion charts;

(F) if the pharmacy compounds prescription drug orders which require the use of a balance, a Class A prescription balance, or analytical balance and weights. Such balance shall be properly maintained and inspected at least every three years by the appropriate authority as prescribed by local, state, or federal law or regulations.

(G) appropriate disposal containers for used needles, syringes, etc., and if applicable, cytotoxic waste from the preparation of chemotherapeutic agents, and/or biohazardous waste;

(H) temperature controlled delivery containers;

(I) infusion devices, if applicable;

(J) all necessary supplies, including:

(i) disposable needles, syringes, and other aseptic mixing;

(ii) disinfectant cleaning solutions;

(iii) hand washing agents with bacteriocidal action;

(iv) disposable, lint free towels or wipes;

(v) appropriate filters and filtration equipment;

(vi) cytotoxic spill kits, if applicable; and

(vii) masks, caps, coveralls or gowns with tight cuffs, shoe covers, and gloves, as applicable.

(6) Library. A reference library shall be maintained which includes the following in hard-copy or electronic format:

(A) current copies of the following:

(i) Texas Pharmacy Act and rules;

(ii) Texas Dangerous Drug Act and rules;

(iii) Texas Controlled Substances Act and rules; and

(iv) Federal Controlled Substances Act and rules (or official publication describing the requirements of the Federal Controlled Substances Act and rules);

(B) at least one current or updated reference from each of the following categories:

(i) patient information (if prescriptions are delivered to patients or their agents on-site):

(I) United States Pharmacopeia Dispensing Information, Volume II (Advice to the Patient); or

(II) a reference text or information leaflets which provide patient information;

(ii) drug interactions. A reference text on drug interactions, such as Hansten's and Horn's Drug Interactions;

(iii) a general information reference text, such as:

(I) Facts and Comparisons with current supplements;

(II) United States Pharmacopeia Dispensing Information, Volume I (Drug Information for the Healthcare Provider);

(III) AHFS Drug Information with current supplements;

(IV) Remington's Pharmaceutical Sciences; or

(V) Micromedex;

(iv) sterile pharmaceuticals. A current or updated reference text on injectable drug products, such as Handbook on Injectable Drug Products;

(C) a specialty reference appropriate for the scope of pharmacy services provided by the pharmacy, e.g., if the pharmacy prepares cytotoxic drugs, a reference text on the preparation of cytotoxic drugs, such as Procedures for Handling Cytotoxic Drugs;

(D) patient education manuals; and

(E) basic antidote information and the telephone number of the nearest regional poison control center.

(7) Drugs.

(A) Procurement and storage.

(i) The pharmacist-in-charge shall have the responsibility for the procurement and storage of drugs, but may receive input from other appropriate staff relative to such responsibility.

(ii) Prescription drugs and devices shall be stored within the prescription department or a locked storage area.

(iii) All drugs shall be stored at the proper temperature, as defined by the following terms.

(I) Cold--Any temperature not exceeding 8 degrees Centigrade (46 degrees Fahrenheit). A refrigerator is a cold place in which the temperature is maintained thermostatically between 2 and 8 degrees Centigrade (36 and 46 degrees Fahrenheit). A freezer is a cold place in which the temperature is maintained thermostatically between -20 and -10 degrees Centigrade (-4 and -14 degrees Fahrenheit).

(II) Cool--Any temperature between 8 and 15 degrees Centigrade (46 and 59 degrees Fahrenheit). An article for which storage in a cool place is directed may, alternatively, be stored in a refrigerator unless otherwise specified in the labeling.

(III) Room temperature--The temperature prevailing in a working area. Controlled room temperature is a temperature thermostatically between 15 and 30 degrees Centigrade (59 and 86 degrees Fahrenheit).

(IV) Warm--Any temperature between 30 and 40 degrees Centigrade (86 and 104 degrees Fahrenheit).

(V) Excessive heat--Temperature above 40 degrees Centigrade (104 degrees Fahrenheit).

(VI) Protection from freezing where, in addition to the risk of breakage of the container, freezing subjects a product to loss of strength or potency, or to destructive alteration of the dosage form, the container label bears an appropriate instruction to protect the product from freezing.

(B) Out-of-date and other unusable drugs or devices.

(i) Any drug or device bearing an expiration date shall not be dispensed beyond the expiration date of the drug or device.

(ii) Outdated and other unusable drugs or devices shall be removed from dispensing stock and shall be quarantined together until such drugs or devices are disposed of properly.

(C) Class A Pharmacies may not sell, purchase, trade or possess prescription drug samples, unless the pharmacy meets all of the following conditions:

(i) the pharmacy is owned by a charitable organization described in the Internal Revenue Code of 1986, or by a city, state or county government;

(ii) the pharmacy is a part of a health care entity which provides health care primarily to indigent or low income patients at no or reduced cost;

(iii) the samples are for dispensing or provision at no charge to patients of such health care entity; and

(iv) the samples are possessed in compliance with the federal Prescription Drug Marketing Act of 1986.

(8) Prepackaging of drugs and loading bulk drugs into automated compounding or counting devices.

(A) Prepackaging of drugs.

(i) Drugs may be prepackaged in quantities suitable for internal distribution only by a pharmacist or by pharmacy technicians under the direction and direct supervision of a pharmacist.

(ii) The label of a prepackaged unit shall indicate:

(I) brand name and strength of the drug; or if no brand name then the generic name, strength, and name of the manufacturer or distributor;

(II) facility's unique lot number;

(III) expiration date based on currently available literature; and

(IV) quantity of the drug, if the quantity is greater than one.

(iii) Records of prepackaging shall be maintained to show:

(I) name of the drug, strength, and dosage form;

(II) facility's unique lot number;

(III) manufacturer or distributor;

(IV) manufacturer's lot number;

(V) expiration date;

(VI) quantity per prepackaged unit;

(VII) number of prepackaged units;

(VIII) date packaged;

(IX) name, initials, signature, or electronic signature of the prepacker; and

(X) signature or electronic signature of the responsible pharmacist.

(iv) Stock packages, repackaged units, and control records shall be quarantined together until checked/released by the pharmacist.

(B) Loading bulk drugs into automated compounding or counting devices.

(i) Automated compounding or counting devices may be loaded with bulk drugs only by a pharmacist or by pharmacy technicians under the direction and direct supervision of a pharmacist.

(ii) The label of an automated compounding or counting device container shall indicate the brand name and strength of the drug; or if no brand name, then the generic name, strength, and name of the manufacturer or distributor.

(iii) Records of loading bulk drugs into an automated compounding or counting device shall be maintained to show:

(I) name of the drug, strength, and dosage form;

(II) manufacturer or distributor;

(III) manufacturer's lot number;

(IV) expiration date;

(V) date of loading;

(VI) name, initials, signature, or electronic signature of the person loading the automated compounding or counting device; and

(VII) signature or electronic signature of the responsible pharmacist.

(iv) The automated compounding or counting device shall not be used until a pharmacist verifies that the system is properly loaded and affixes his or her signature or electronic signature to the record specified in clause (iii) of this subparagraph.

(9) Sterile pharmaceuticals.

(A) Batch preparation.

(i) Master work sheet. A master work sheet shall be developed and approved by a pharmacist for each batch of sterile pharmaceuticals to be prepared. Once approved, a duplicate of the master work sheet shall be used as the preparation work sheet from which each batch is prepared and on which all documentation for that batch occurs. The master work sheet shall contain at a minimum:

(I) the formula;

(II) the components;

(III) the compounding directions;

(IV) a sample label;

(V) evaluation and testing requirements;

(VI) sterilization method(s);

(VII) specific equipment used during aseptic preparation (e.g., specific automated compounding or counting device); and

(VIII) storage requirements.

(ii) Preparation work sheet. The preparation work sheet for each batch of sterile pharmaceuticals shall document the following:

(I) identity of all solutions and ingredients and their corresponding amounts, concentrations, or volumes;

(II) manufacturer lot number for each component;

(III) component manufacturer or suitable identifying number;

(IV) container specifications (e.g., syringe, pump cassette);

(V) unique lot or control number assigned to batch;

(VI) expiration date of batch-prepared products;

(VII) date of preparation;

(VIII) name, initials, or electronic signature of the person(s) involved in the preparation;

(IX) name, initials, or electronic signature of the responsible pharmacist;

(X) end-product evaluation and testing specifications, if applicable; and

(XI) comparison of actual yield to anticipated yield, when appropriate.

(iii) Label. The label of each batch prepared sterile pharmaceutical shall bear at a minimum:

(I) the unique lot number assigned to the batch;

(II) all solution and ingredient names, amounts, strengths, and concentrations, when applicable;

(III) quantity;

(IV) expiration date and time, when applicable;

(V) appropriate ancillary instructions, such as storage instructions or cautionary statements, including cytotoxic warning labels where appropriate; and

(VI) device-specific instructions, when appropriate.

(B) Expiration date.

(i) The expiration date assigned shall be based on currently available drug stability information and sterility considerations or appropriate in-house or contract service stability testing.

(ii) Sources of drug stability information shall include the following:

(I) references (e.g., Remington's Pharmaceutical Sciences, Handbook on Injectable Drugs);

(II) manufacturer recommendations; and

(III) reliable, published research.

(iii) When interpreting published drug stability information, the pharmacist shall consider all aspects of the final sterile product being prepared (e.g., drug reservoir, drug concentration, storage conditions).

(iv) Methods used for establishing expiration dates shall be documented.

(C) Quality control. There shall be a documented, ongoing quality control program that monitors and evaluates personnel performance, equipment and facilities. Procedures shall be in place to assure that the pharmacy is capable of consistently preparing pharmaceuticals which are sterile and stable. Quality control procedures shall include, but are not limited to, the following:

(i) recall procedures;

(ii) storage and dating;

(iii) documentation of appropriate functioning of refrigerator, freezer, and other equipment;

(iv) documentation of aseptic environmental control device(s) certification at least every six months and the regular replacement of pre-filters as necessary; and

(v) a process to evaluate and confirm the quality of the prepared pharmaceutical product.

(D) Quality assurance.

(i) There shall be a documented, ongoing quality assurance program for monitoring and evaluating personnel performance and patient outcomes to assure an efficient drug delivery process, patient safety, and positive clinical outcomes.

(ii) There shall be documentation of quality assurance audits at regular, planned intervals including infection control, sterile technique, delivery systems/times, order transcription accuracy, drug administration systems, adverse drug reactions, and drug therapy appropriateness.

(iii) A plan for corrective action of program of problems identified by quality assurance audits shall be developed which includes procedures for documentation of identified problems and action taken.

(iv) A periodic evaluation of the effectiveness of the quality assurance activities shall be completed and documented.

(e) Records.

(1) Maintenance of records.

(A) Every inventory or other record required to be kept under this section shall be kept by the pharmacy and be available, for at least two years from the date of such inventory or record, for inspecting and copying by the board or its representative, and other authorized local, state, or federal law enforcement agencies.

(B) Records of controlled substances listed in Schedules I and II shall be maintained separately from all other records of the pharmacy.

(C) Records of controlled substances, other than original prescription drug orders, listed in Schedules III - V shall be maintained separately or readily retrievable from all other records of the pharmacy. For purposes of this subsection, "readily retrievable" means that the controlled substances shall be asterisked, red-lined, or in some other manner readily identifiable apart from all other items appearing on the record.

(D) Records, except when specifically required to be maintained in original or hard-copy form, may be maintained in an alternative data retention system, such as a data processing system or direct imaging system provided:

(i) the records maintained in the alternative system contain all of the information required on the manual record; and

(ii) the data processing system is capable of producing a hard copy of the record upon the request of the board, its representative, or other authorized local, state, or federal law enforcement or regulatory agencies.

(2) Prescriptions.

(A) Professional responsibility.

(i) Pharmacists shall exercise sound professional judgment with respect to the accuracy and authenticity of any prescription drug order they dispense. If the pharmacist questions the accuracy or authenticity of a prescription drug order, he/she shall verify the order with the practitioner prior to dispensing.

(ii) Prior to dispensing a prescription, pharmacists shall determine, in the exercise of sound professional judgment, that the prescription is a valid prescription. A pharmacist may not dispense a prescription drug if the pharmacist knows or should have known that the prescription was issued on the basis of an Internet-based or telephonic consultation without a valid patient-practitioner relationship.

(iii) Clause (ii) of this subparagraph does not prohibit a pharmacist from dispensing a prescription when a valid patient-practitioner relationship is not present in an emergency situation (e.g. a practitioner taking calls for the patient's regular practitioner).

(B) Written prescription drug orders.

(i) Practitioner's signature.

(I) Except as noted in subclause (II) of this clause, written prescription drug orders shall be:

(-a-) manually signed by the practitioner; or

(-b-) electronically signed by the practitioner using a system which electronically replicates the practitioner's manual signature on the written prescription, provided that security features of the system require the practitioner to authorize each use.

(II) Prescription drug orders for Schedule II controlled substances shall be issued on an official prescription form as required by the Texas Controlled Substances Act, §481.075, and be manually signed by the practitioner.

(III) A practitioner may sign a prescription drug order in the same manner as he would sign a check or legal document, e.g., J.H. Smith or John H. Smith.

(IV) Rubber stamped or otherwise reproduced signatures may not be used except as authorized in subclause (I) of this clause.

(V) The prescription drug order may not be signed by a practitioner's agent but may be prepared by an agent for the signature of a practitioner. However, the prescribing practitioner is responsible in case the prescription drug order does not conform in all essential respects to the law and regulations.

(ii) Required prescription drug order format.

(I) A pharmacist may not dispense a written prescription drug order issued in Texas unless it is ordered on a form containing two signature lines of equal prominence, side by side, at the bottom of the form. Under either signature line shall be printed clearly the words "product selection permitted," and under the other signature line shall be printed clearly the words "dispense as written."

(II) The two signature line requirement does not apply to the following types of prescriptions drug orders:

(-a-) prescription drug orders issued by a practitioner in a state other than Texas;

(-b-) prescription drug orders for dangerous drugs issued by a practitioner in the United Mexican States or the Dominion of Canada; and

(-c-) prescription drug orders issued by practitioners practicing in a federal facility provided they are acting in the scope of their employment.

(iii) Preprinted prescription drug order forms. No prescription drug order form furnished to a practitioner shall contain a preprinted order for a drug product by brand name, generic name, or manufacturer.

(iv) Prescription drug orders written by practitioners in another state.

(I) Dangerous drug prescription orders. A pharmacist may dispense a prescription drug order for dangerous drugs issued by practitioners in a state other than Texas in the same manner as prescription drug orders for dangerous drugs issued by practitioners in Texas are dispensed.

(II) Controlled substance prescription drug orders.

(-a-) A pharmacist may dispense prescription drug order for controlled substances in Schedule II issued by a practitioner in another state provided:

(-1-) the prescription is filled in compliance with a written plan approved by the Director of the Texas Department of Public Safety in consultation with the Board, which provides the manner in which the dispensing pharmacy may fill a prescription for a Schedule II controlled substance;

(-2-) the prescription drug order is an original written prescription issued by a person practicing in another state and licensed by another state as a physician, dentist, veterinarian, or podiatrist, who has a current federal Drug Enforcement Administration (DEA) registration number, and who may legally prescribe Schedule II controlled substances in such other state; and

(-3-) the prescription drug order is not dispensed after the end of the seventh day after the date on which the prescription is issued.

(-b-) A pharmacist may dispense prescription drug orders for controlled substances in Schedule III, IV, or V issued by a practitioner in another state provided:

(-1-) the prescription drug order is an original written prescription issued by a person practicing in another state and licensed by another state as a physician, dentist, veterinarian, or podiatrist, who has a current federal Drug Enforcement Administration registration number, and who may legally prescribe Schedule III, IV, or V controlled substances in such other state;

(-2-) the prescription drug order is not dispensed or refilled more than six months from the initial date of issuance and may not be refilled more than five times; and

(-3-) if there are no refill instructions on the original written prescription drug order (which shall be interpreted as no refills authorized) or if all refills authorized on the original written prescription drug order have been dispensed, a new written prescription drug order is obtained from the prescribing practitioner prior to dispensing any additional quantities of controlled substances.

(v) Prescription drug orders written by practitioners in the United Mexican States or the Dominion of Canada.

(I) Controlled substance prescription drug orders. A pharmacist may not dispense a prescription drug order for a Schedule II, III, IV, or V controlled substance issued by a practitioner licensed in the Dominion of Canada or the United Mexican States.

(II) Dangerous drug prescription drug orders. A pharmacist may dispense a dangerous drug prescription issued by a person licensed in the Dominion of Canada or the United Mexican States as a physician, dentist, veterinarian, or podiatrist provided:

(-a-) the prescription drug order is an original written prescription; and

(-b-) if there are no refill instructions on the original written prescription drug order (which shall be interpreted as no refills authorized) or if all refills authorized on the original written prescription drug order have been dispensed, a new written prescription drug order shall be obtained from the prescribing practitioner prior to dispensing any additional quantities of dangerous drugs.

(vi) Prescription drug orders carried out or signed by an advanced practice nurse or physician assistant.

(I) A pharmacist may dispense a prescription drug order for a dangerous drug which is carried out or signed by an advanced practice nurse or physician assistant provided:

(-a-) the prescription is for a dangerous drug and not for a controlled substance; and

(-b-) the advanced practice nurse or physician assistant is practicing in accordance with Subtitle B, Chapter 157, Occupations Code.

(II) Each practitioner shall designate in writing the name of each advanced practice nurse or physician assistant authorized to carry out or sign a prescription drug order pursuant to Subtitle B, Chapter 157, Occupations Code. A list of the advanced practice nurses or physician assistants designated by the practitioner must be maintained in the practitioner's usual place of business. On request by a pharmacist, a practitioner shall furnish the pharmacist with a copy of the written authorization for a specific advanced practice nurse or physician assistant.

(vii) Prescription drug orders for Schedule II controlled substances. No Schedule II controlled substance may be dispensed without a written prescription drug order of a practitioner on an official prescription form as required by the Texas Controlled Substances Act, §481.075.

(C) Verbal prescription drug orders.

(i) A verbal prescription drug order from a practitioner or a practitioner's designated agent may only be received by a pharmacist or a pharmacist-intern under the direct supervision of a pharmacist.

(ii) A practitioner shall designate in writing the name of each agent authorized by the practitioner to communicate prescriptions verbally for the practitioner. The practitioner shall maintain at the practitioner's usual place of business a list of the designated agents. The practitioner shall provide a pharmacist with a copy of the practitioner's written authorization for a specific agent on the pharmacist's request.

(iii) If a prescription drug order is transmitted to a pharmacist verbally, the pharmacist shall note any substitution instructions by the practitioner or practitioner's agent on the file copy of the prescription drug order. Such file copy may follow the two-line format indicated in subparagraph (B)(ii) of this paragraph, or any other format that clearly indicates the substitution instructions.

(iv) A pharmacist may not dispense a verbal prescription drug order for a Schedule III, IV, or V controlled substance issued by a practitioner licensed in another state unless the practitioner is also registered under the Texas Controlled Substances Act.

(v) A pharmacist may not dispense a verbal prescription drug order for a dangerous drug or a controlled substance issued by a practitioner licensed in the Dominion of Canada or the United Mexican States unless the practitioner is also licensed in Texas.

(D) Electronic prescription drug orders. For the purpose of this subparagraph, electronic prescription drug orders shall be considered the same as verbal prescription drug orders.

(i) An electronic prescription drug order may be transmitted by a practitioner or a practitioner's designated agent:

(I) directly to a pharmacy; or

(II) through the use of a data communication device provided:

(-a-) the prescription information is not altered during transmission; and

(-b-) confidential patient information is not accessed or maintained by the operator of the data communication device unless the operator is authorized to receive the confidential information as specified in paragraph (11) of this subsection.

(ii) A practitioner shall designate in writing the name of each agent authorized by the practitioner to electronically transmit prescriptions for the practitioner. The practitioner shall maintain at the practitioner's usual place of business a list of the designated agents. The practitioner shall provide a pharmacist with a copy of the practitioner's written authorization for a specific agent on the pharmacist's request.

(iii) A pharmacist may not dispense an electronic prescription drug order for a:

(I) Schedule II controlled substance;

(II) Schedule III, IV, or V controlled substance issued by a practitioner licensed in another state unless the practitioner is also registered under the Texas Controlled Substances Act; or

(III) dangerous drug or controlled substance issued by a practitioner licensed in the Dominion of Canada or the United Mexican States unless the practitioner is also licensed in Texas.

(iv) The practitioner or practitioner's agent shall note any substitution instructions on the electronic prescription drug order. Such electronic prescription drug order may follow the two-line format indicated in subparagraph (B)(ii) of this paragraph or any other format that clearly indicated the substitution instructions.

(E) Authorization for generic substitution.

(i) A pharmacist may dispense a generically equivalent drug product if:

(I) the generic product cost the patient less than the prescribed drug product;

(II) the patient does not refuse the substitution; and

(III) the prescribing practitioner authorizes the substitution of a generically equivalent product; or

(IV) the practitioner or practitioner's agent does not clearly indicate that the verbal or electronic prescription drug order shall be dispensed as ordered.

(ii) Practitioners shall indicate their dispensing instructions by signing on either the "Dispense as Written" or "Product Selection Permitted" line on the prescription drug order. If the practitioner's signature does not clearly indicate the prescription drug order shall be dispensed as written, the pharmacist may substitute a generically equivalent drug product.

(iii) A pharmacist may not substitute on prescription drug orders identified in subparagraph (B)(iv) and (v) of this paragraph unless the practitioner has authorized substitution on the prescription drug order.

(iv) If the practitioner has not authorized substitution on the written prescription drug order, a pharmacist shall not substitute a generically equivalent drug product unless:

(I) the pharmacist obtains verbal or written authorization from the practitioner (such authorization shall be noted on the original prescription drug order); or

(II) the pharmacist obtains written documentation regarding substitution requirements from the State Board of Pharmacy in the state, other than Texas, in which the prescription drug order was issued. The following is applicable concerning this documentation.

(-a-) The documentation shall state that a pharmacist may substitute on a prescription drug order issued in such other state unless the practitioner prohibits substitution on the original prescription drug order.

(-b-) The pharmacist shall note on the original prescription drug order the fact that documentation from such other state board of pharmacy is on file.

(-c-) Such documentation shall be updated yearly.

(F) Substitution of dosage form.

(i) A pharmacist may dispense a dosage form of a drug product different from that prescribed, such as a tablet instead of a capsule or liquid instead of tablets, provided:

(I) the patient consents to the dosage form substitution;

(II) the pharmacist notifies the practitioner of the dosage form substitution; and

(III) the dosage form so dispensed:

(-a-) contains the identical amount of the active ingredients as the dosage prescribed for the patient;

(-b-) is not an enteric-coated or time release product; and

(-c-) does not alter desired clinical outcomes.

(ii) Substitution of dosage form may not include the substitution of a product that has been compounded by the pharmacist unless the pharmacist contacts the practitioner prior to dispensing and obtains permission to dispense the compounded product.

(G) Therapeutic Drug Interchange. A switch to a drug providing a similar therapeutic response to the one prescribed shall not be made without prior approval of the prescribing practitioner. This subparagraph does not apply to generic substitution. For generic substitution, see the requirements of subparagraphs (E) and (F) of this paragraph.

(i) The patient shall be notified of the therapeutic drug interchange prior to, or upon delivery, of the dispensed prescription to the patient. Such notification shall include:

(I) a description of the change;

(II) the reason for the change;

(III) whom to notify with questions concerning the change; and

(IV) instructions for return of the drug if not wanted by the patient.

(ii) The pharmacy shall maintain documentation of patient notification of therapeutic drug interchange which shall include:

(I) the date of the notification;

(II) the method of notification;

(III) a description of the change; and

(IV) the reason for the change.

(H) Original prescription drug order records.

(i) Original prescriptions shall be maintained by the pharmacy in numerical order and remain legible for a period of two years from the date of filling or the date of the last refill dispensed.

(ii) If an original prescription drug order is changed, such prescription order shall be invalid and of no further force and effect; if additional drugs are to be dispensed, a new prescription drug order with a new and separate number is required.

(iii) Original prescriptions shall be maintained in one of the following formats:

(I) in three separate files as follows:

(-a-) prescriptions for controlled substances listed in Schedule II;

(-b-) prescriptions for controlled substances listed in Schedule III - V; and

(-c-) prescriptions for dangerous drugs and nonprescription drugs; or

(II) within a patient medication record system provided that original prescriptions for controlled substances are maintained separate from original prescriptions for noncontrolled substances and official prescriptions for Schedule II controlled substances are maintained separate from all other original prescriptions.

(iv) Original prescription records other than prescriptions for Schedule II controlled substances may be stored on microfilm, microfiche, or other system which is capable of producing a direct image of the original prescription record, e.g., digitalized imaging system. If original prescription records are stored in a direct imaging system, the following is applicable.

(I) The record of refills recorded on the original prescription must also be stored in this system.

(II) The original prescription records must be maintained in numerical order and as specified in clause (iii) of this subparagraph.

(III) The pharmacy must provide immediate access to equipment necessary to render the records easily readable.

(I) Prescription drug order information.

(i) All original prescriptions shall bear:

(I) name of the patient;

(II) address of the patient, provided, however, a prescription for a dangerous drug is not required to bear the address of the patient if such address is readily retrievable on another appropriate, uniformly maintained pharmacy record, such as medication records;

(III) name, and if for a controlled substance, the address and DEA registration number of the practitioner;

(IV) name and strength of the drug prescribed;

(V) quantity prescribed;

(VI) directions for use;

(VII) intended use for the drug unless the practitioner determines the furnishing of this information is not in the best interest of the patient;

(VIII) date of issuance; and

(IX) if telephoned to the pharmacist by a designated agent, the full name of the designated agent.

(ii) All original prescriptions for dangerous drugs carried out by an advanced practice nurse or physician assistant in accordance with Subtitle B, Chapter 157, Occupations Code, shall bear:

(I) name and address of the patient;

(II) name, address, and telephone number of the practitioner;

(III) name, address, telephone number, identification number, and original signature of the advanced practice nurse or physician assistant;

(IV) name, strength, and quantity of the dangerous drug;

(V) directions for use;

(VI) the intended use of the drug, if appropriate;

(VII) date of issuance; and

(VIII) number of refills authorized.

(iii) All original electronic prescription drug orders shall bear:

(I) name of the patient;

(II) address of the patient, provided, however, a prescription for a dangerous drug is not required to bear the address of the patient if such address is readily retrievable on another appropriate, uniformly maintained pharmacy record, such as patient medication records;

(III) name and strength of the drug prescribed;

(IV) quantity prescribed;

(V) directions for use;

(VI) intended use for the drug unless the practitioner determines the furnishing of this information is not in the best interest of the patient;

(VII) date of issuance;

(VIII) a statement which indicates that the prescription has been electronically transmitted (e.g., Faxed to or electronically transmitted to:);

(IX) name, address, and electronic access number of the pharmacy to which the prescription was transmitted;

(X) telephone number of the prescribing practitioner;

(XI) date the prescription drug order was electronically transmitted to the pharmacy, if different from the date of issuance of the prescription; and

(XII) if transmitted by a designated agent, the full name of the designated agent.

(iv) At the time of dispensing, a pharmacist is responsible for the addition of the following information to the original prescription:

(I) unique identification number of the prescription drug order;

(II) initials or identification code of the person who compounded the sterile pharmaceutical and the pharmacist who checked and released the product;

(III) name, quantity, lot number, and expiration date of each product used in compounding the sterile pharmaceutical; and

(IV) date of dispensing, if different from the date of issuance.

(J) Refills.

(i) Refills may be dispensed only in accordance with the prescriber's authorization as indicated on the original prescription drug order. Such refills may be indicated as authorization to refill the prescription drug order a specified number of times or for a specified period of time period, such as the duration of therapy.

(ii) If there are no refill instructions on the original prescription drug order (which shall be interpreted as no refills authorized) or if all refills authorized on the original prescription drug order have been dispensed, authorization from the prescribing practitioner shall be obtained prior to dispensing any refills.

(iii) Refills of prescription drug orders for dangerous drugs or nonprescription drugs shall be dispensed as follows.

(I) Prescription drug orders for dangerous drugs or nonprescription drugs may not be refilled after one year from the date of issuance of the original prescription order.

(II) If one year has expired from the date of issuance of an original prescription drug order for a dangerous drug or nonprescription drug, authorization shall be obtained from the prescribing practitioner prior to dispensing any additional quantities of the drug.

(iv) Refills of prescription drug orders for Schedule III - V controlled substances shall be dispensed as follows.

(I) Prescription drug orders for Schedule III - V controlled substances may not be refilled more than five times or after six months from the date of issuance of the original prescription drug order, whichever occurs first.

(II) If a prescription drug order for a Schedule III, IV, or V controlled substance has been refilled a total of five times or if six months have expired from the date of issuance of the original prescription drug order, whichever comes first, a new and separate prescription drug order shall be obtained from the prescribing practitioner prior to dispensing any additional quantities of controlled substances.

(v) A pharmacist may exercise his professional judgment in refilling a prescription drug order for a drug, other than a controlled substance listed in Schedule II, without the authorization of the prescribing practitioner, provided:

(I) failure to refill the prescription might result in an interruption of a therapeutic regimen or create patient suffering;

(II) either:

(-a-) a natural or manmade disaster has occurred which prohibits the pharmacist from being able to contact the practitioner; or

(-b-) the pharmacist is unable to contact the practitioner after a reasonable effort;

(III) the quantity of prescription drug dispensed does not exceed a 72-hour supply;

(IV) the pharmacist informs the patient or the patient's agent at the time of dispensing that the refill is being provided without such authorization and that authorization of the practitioner is required for future refills;

(V) the pharmacist informs the practitioner of the emergency refill at the earliest reasonable time;

(VI) the pharmacist maintains a record of the emergency refill containing the information required to be maintained on a prescription as specified in this paragraph;

(VII) the pharmacist affixes a label to the dispensing container as specified in this paragraph; and

(VIII) if the prescription was initially filled at another pharmacy, the pharmacist may exercise his professional judgment in refilling the prescription provided:

(-a-) the patient has the prescription container, label, receipt or other documentation from the other pharmacy which contains the essential information;

(-b-) after a reasonable effort, the pharmacist is unable to contact the other pharmacy to transfer the remaining prescription refills or there are no refills remaining on the prescription;

(-c-) the pharmacist, in his professional judgment, determines that such a request for an emergency refill is appropriate and meets the requirements of subclauses (I) and (II) of this clause; and

(IX) the pharmacist complies with the requirements of subclauses (III) - (V) of this clause.

(3) Prescription drug order records maintained in a manual system.

(A) Original prescriptions. Original prescriptions shall be maintained in three files as specified in paragraph (2)(H)(iii) of this subsection.

(B) Refills.

(i) Each time a prescription drug order is refilled, a record of such refill shall be made:

(I) on the back of the prescription by recording the date of dispensing, the written initials or identification code of the dispensing pharmacist and the amount dispensed. (If the pharmacist merely initials and dates the back of the prescription drug order, he or she shall be deemed to have dispensed a refill for the full face amount of the prescription drug order); or

(II) on another appropriate, uniformly maintained, readily retrievable record, such as patient medication records, which indicates by patient name the following information:

(-a-) unique identification number of the prescription;

(-b-) name, strength, and lot number of each drug product used in compounding the sterile pharmaceutical;

(-c-) date of each dispensing;

(-d-) quantity dispensed at each dispensing;

(-e-) initials or identification code of person who compounded the sterile pharmaceutical and the pharmacist who checks and releases the final product; and

(-f-) total number of refills for the prescription.

(ii) If refill records are maintained in accordance with clause (i)(II) of this subparagraph, refill records for controlled substances in Schedule III - V shall be maintained separately from refill records of dangerous drugs and nonprescription drugs.

(C) Authorization of refills. Practitioner authorization for additional refills of a prescription drug order shall be noted on the original prescription, in addition to the documentation of dispensing the refill.

(D) Transfer of prescription drug order information. For the purpose of refill or initial dispensing, the transfer of original prescription drug order information is permissible between pharmacies, subject to the following requirements.

(i) The transfer of original prescription drug order information for controlled substances listed in Schedules III, IV, or V is permissible between pharmacies on a one-time basis.

(ii) The transfer of original prescription drug order information for dangerous drugs is permissible between pharmacies without limitation up to the number of originally authorized refills.

(iii) The transfer is communicated directly between pharmacists and/or pharmacist interns.

(iv) Both the original and the transferred prescription drug order are maintained for a period of two years from the date of last refill.

(v) The pharmacist or pharmacist intern transferring the prescription drug order information shall:

(I) write the word "void" on the face of the invalidated prescription drug order; and

(II) record on the reverse of the invalidated prescription drug order the following information:

(-a-) the name, address, and, if a controlled substance, the DEA registration number of the pharmacy to which such prescription drug order is transferred;

(-b-) the name of the pharmacist or pharmacist intern receiving the prescription drug order information;

(-c-) the name of the pharmacist or pharmacist intern transferring the prescription drug order information; and

(-d-) the date of the transfer.

(vi) The pharmacist or pharmacist intern receiving the transferred prescription drug order information shall:

(I) write the word "transfer" on the face of the transferred prescription drug order; and

(II) record on the transferred prescription drug order the following information:

(-a-) original date of issuance and date of dispensing or receipt, if different from date of issuance;

(-b-) original prescription number and the number of refills authorized on the original prescription drug order;

(-c-) number of valid refills remaining and the date of last refill, if applicable;

(-d-) name, address, and, if a controlled substance, the DEA registration number of the pharmacy from which such prescription information is transferred; and

(-e-) name of the pharmacist or pharmacist intern transferring the prescription drug order information.

(E) A pharmacist or pharmacist intern may not refuse to transfer original prescription information to another pharmacist or pharmacist intern who is acting on behalf of a patient and who is making a request for this information as specified in subparagraph (D) of this paragraph.

(4) Prescription drug order records maintained in a data processing system.

(A) General requirements for records maintained in a data processing system.

(i) Compliance with data processing system requirements. If a pharmacy's data processing system is not in compliance with this subsection, the pharmacy must maintain a manual recordkeeping system as specified in paragraph (3) of this subsection.

(ii) Original prescriptions. Original prescriptions shall be maintained as specified in paragraph (2)(F)(iii) of this subsection.

(iii) Requirements for backup systems.

(I) The pharmacy shall maintain a backup copy of information stored in the data processing system using disk, tape, or other electronic backup system and update this backup copy on a regular basis, at least monthly, to assure that data is not lost due to system failure.

(II) Data processing systems shall have a workable (electronic) data retention system which can produce an audit trail of drug usage for the preceding two years as specified in subparagraph (B)(vii) of this paragraph.

(iv) Change or discontinuance of a data processing system.

(I) Records of dispensing. A pharmacy that changes or discontinues use of a data processing system must:

(-a-) transfer the records of dispensing to the new data processing system; or

(-b-) purge the records of dispensing to a printout which contains the same information required on the daily printout as specified in subparagraph (B) of this paragraph. The information on this hard-copy printout shall be sorted and printed by prescription number and list each dispensing for this prescription chronologically.

(II) Other records. A pharmacy that changes or discontinues use of a data processing system must:

(-a-) transfer the records to the new data processing system; or

(-b-) purge the records to a printout which contains all of the information required on the original document.

(III) Maintenance of purged records. Information purged from a data processing system must be maintained by the pharmacy for two years from the date of initial entry into the data processing system.

(v) Loss of data. The pharmacist-in-charge shall report to the board in writing any significant loss of information from the data processing system within 10 days of discovery of the loss.

(B) Records of dispensing.

(i) Each time a prescription drug order is filled or refilled, a record of such dispensing shall be entered into the data processing system.

(ii) The data processing system shall have the capacity to produce a daily hard-copy printout of all original prescriptions dispensed and refilled. This hard-copy printout shall contain the following information:

(I) unique identification number of the prescription;

(II) date of dispensing;

(III) patient name;

(IV) prescribing practitioner's name;

(V) name and amount of each drug product used in compounding the sterile pharmaceutical;

(VI) total quantity dispensed;

(VII) initials or an identification code of the dispensing pharmacist; and

(VIII) if not immediately retrievable via CRT display, the following shall also be included on the hard-copy printout:

(-a-) patient's address;

(-b-) prescribing practitioner's address;

(-c-) practitioner's DEA registration number, if the prescription drug order is for a controlled substance;

(-d-) quantity prescribed, if different from the quantity dispensed;

(-e-) date of issuance of the prescription drug order, if different from the date of dispensing; and

(-f-) total number of refills dispensed to date for that prescription drug order.

(iii) The daily hard-copy printout shall be produced within 72 hours of the date on which the prescription drug orders were dispensed and shall be maintained in a separate file at the pharmacy. Records of controlled substances shall be readily retrievable from records of noncontrolled substances.

(iv) Each individual pharmacist who dispenses or refills a prescription drug order shall verify that the data indicated on the daily hard-copy printout is correct, by dating and signing such document in the same manner as signing a check or legal document (e.g., J.H. Smith or John H. Smith) within seven days from the date of dispensing.

(v) In lieu of the printout described in clause (ii) of this subparagraph, the pharmacy shall maintain a log book in which each individual pharmacist using the data processing system shall sign a statement each day, attesting to the fact that the information entered into the data processing system that day has been reviewed by him or her and is correct as entered. Such log book shall be maintained at the pharmacy employing such a system for a period of two years after the date of dispensing; provided, however, that the data processing system can produce the hard-copy printout on demand by an authorized agent of the Texas State Board of Pharmacy, Texas Department of Public Safety, or Drug Enforcement Administration. If no printer is available on site, the hard-copy printout shall be available within 48 hours with a certification by the individual providing the printout which states that the printout is true and correct as of the date of entry and such information has not been altered, amended, or modified.

(vi) The pharmacist-in-charge is responsible for the proper maintenance of such records and responsible that such data processing system can produce the records outlined in this section and that such system is in compliance with this subsection.

(vii) The data processing system shall be capable of producing a hard-copy printout of an audit trail for all dispensings (original and refill) of any specified strength and dosage form of a drug (by either brand or generic name or both) during a specified time period.

(I) Such audit trail shall contain all of the information required on the daily printout as set out in clause (ii) of this subparagraph.

(II) The audit trail required in this subparagraph shall be supplied by the pharmacy within 48 hours, if requested by an authorized agent of the Texas State Board of Pharmacy, Texas Department of Public Safety, or Drug Enforcement Administration.

(viii) Failure to provide the records set out in this paragraph, either on site or within 48 hours for whatever reason, constitutes prima facie evidence of failure to keep and maintain records.

(ix) The data processing system shall provide on-line retrieval (via CRT display or hard-copy printout) of the information set out in clause (ii) of this subparagraph of:

(I) the original controlled substance prescription drug orders currently authorized for refilling; and

(II) the current refill history for Schedule III - V controlled substances for the immediately preceding six-month period.

(x) In the event that a pharmacy which uses a data processing system experiences system downtime, the following is applicable:

(I) an auxiliary procedure shall ensure that refills are authorized by the original prescription drug order and that the maximum number of refills has not been exceeded or authorization from the prescribing practitioner shall be obtained prior to dispensing a refill; and

(II) all of the appropriate data shall be retained for on-line data entry as soon as the system is available for use again.

(C) Authorization of refills. Practitioner authorization for additional refills of a prescription drug order shall be noted as follows:

(i) on the hard-copy prescription drug order;

(ii) on the daily hard-copy printout; or

(iii) via the CRT display.

(D) Transfer of prescription drug order information. For the purpose of refill or initial dispensing, the transfer of original prescription drug order information is permissible between pharmacies, subject to the following requirements.

(i) The transfer of original prescription drug order information for controlled substances listed in Schedules III, IV, or V is permissible between pharmacies on a one-time basis only. However, pharmacies electronically sharing a real-time, on-line database may transfer up to the maximum refills permitted by law and the prescriber's authorization.

(ii) The transfer of original prescription drug order information for dangerous drugs is permissible between pharmacies without limitation up to the number of originally authorized refills.

(iii) The transfer is communicated directly between pharmacists and/or pharmacist interns or as authorized in paragraph (3)(D) of this subsection.

(iv) Both the original and the transferred prescription drug orders are maintained for a period of two years from the date of last refill.

(v) The pharmacist or pharmacist intern transferring the prescription drug order information shall:

(I) write the word "void" on the face of the invalidated prescription drug order; and

(II) record on the reverse of the invalidated prescription drug order the following information:

(-a-) the name, address, and, if a controlled substance, the DEA registration number of the pharmacy to which such prescription is transferred;

(-b-) the name of the pharmacist or pharmacist intern receiving the prescription drug order information;

(-c-) the name of the pharmacist or pharmacist intern transferring the prescription drug order information; and

(-d-) the date of the transfer.

(vi) The pharmacist or pharmacist intern receiving the transferred prescription drug order information shall:

(I) write the word "transfer" on the face of the transferred prescription drug order; and

(II) record on the transferred prescription drug order the following information:

(-a-) original date of issuance and date of dispensing or receipt, if different from date of issuance;

(-b-) original prescription number and the number of refills authorized on the original prescription drug order;

(-c-) number of valid refills remaining and the date of last refill, if applicable;

(-d-) name, address, and, if a controlled substance, the DEA registration number of the pharmacy from which such prescription drug order information is transferred; and

(-e-) name of the pharmacist or pharmacist intern transferring the prescription drug order information.

(vii) Prescription drug orders may not be transferred by non-electronic means during periods of downtime except on consultation with and authorization by a prescribing practitioner; provided however, during downtime, a hard copy of a prescription drug order may be made available for informational purposes only, to the patient, a pharmacist or pharmacist intern, and the prescription may be read to a pharmacist or pharmacist intern by telephone.

(viii) The original prescription drug order shall be invalidated in the data processing system for purposes of filling or refilling, but shall be maintained in the data processing system for refill history purposes.

(ix) If the data processing system has the capacity to store all the information required in clause (v) and (vi) of this subparagraph, the pharmacist is not required to record this information on the original or transferred prescription drug order.

(x) The data processing system shall have a mechanism to prohibit the transfer or refilling of controlled substance prescription drug orders which have been previously transferred.

(E) Electronic transfer of prescription drug order information between pharmacies. Pharmacies electronically accessing the same prescription drug order records may electronically transfer prescription information if the following requirements are met.

(i) The original prescription is voided and the following information is documented in the records of the transferring pharmacy;

(I) the name, address, and if a controlled substance, the DEA registration number of the pharmacy to which such prescription is transferred;

(II) the name of the pharmacist or pharmacist intern receiving the prescription drug order information; and

(III) the date of the transfer.

(ii) Pharmacies not owned by the same person may electronically access the same prescription drug order records, provided the owner or chief executive officer of each pharmacy signs an agreement allowing access to such prescription drug order records.

(F) A pharmacist or pharmacist intern may not refuse to transfer original prescription information to another pharmacist or pharmacist intern who is acting on behalf of a patient and who is making a request for this information as specified in subparagraph (D) of this paragraph.

(5) Limitation to one type of recordkeeping system. When filing prescription drug order information a pharmacy may use only one of the two systems described in paragraph (3) or (4) of this subsection.

(6) Policy and procedure manual. A policy and procedure manual as it relates to the sterile pharmaceuticals shall be maintained at the pharmacy and be available for inspection. The manual shall include policies and procedures for:

(A) pharmaceutical care services;

(B) handling, storage, and disposal of cytotoxic/biohazardous drugs and waste;

(C) disposal of unusable drugs, supplies, and returns;

(D) security;

(E) equipment;

(F) sanitation;

(G) reference materials;

(H) drug selection and procurement;

(I) drug storage;

(J) drug administration to include infusion devices, drug delivery systems, and first dose monitoring;

(K) drug labeling;

(L) delivery of drugs;

(M) recordkeeping;

(N) controlled substances;

(O) investigational drugs, including the obtaining of protocols from the principal investigator;

(P) quality assurance/quality control;

(Q) duties and education and training of professional and nonprofessional staff; and

(R) emergency preparedness plan, to include continuity of patient and public safety.

(7) Patient Medication Record (PMR). A PMR shall be maintained for each patient of the pharmacy. The PMR shall contain at a minimum the following.

(A) Patient information:

(i) patient's full name, gender, and date of birth;

(ii) weight and height;

(iii) known drug sensitivities and allergies to drugs and/or food;

(iv) primary diagnosis and chronic conditions;

(v) other drugs the patient is receiving;

(vi) documentation of patient training;

(vii) pharmacist's comments relevant to the individual's drug therapy, including any other information unique to the specific patient or drug.

(B) Prescription drug order information:

(i) date of dispensing each sterile pharmaceutical;

(ii) unique identification number of the prescription;

(iii) physician's name;

(iv) name, quantity, and lot number of each product used in compounding the sterile pharmaceutical;

(v) quantity dispensed; and

(vi) directions for use and method of administration, including infusion rate if applicable.

(C) Nothing in this paragraph shall be construed as requiring a pharmacist to obtain, record, and maintain patient information other than prescription drug order information when a patient or patient's agent refuses to provide the necessary information for such patient medication records.

(8) Distribution of controlled substances to another registrant. A pharmacy may distribute controlled substances to a practitioner, another pharmacy or other registrant, without being registered to distribute, under the following conditions.

(A) The registrant to whom the controlled substance is to be distributed is registered under the Controlled Substances Act to dispense that controlled substance.

(B) The total number of dosage units of controlled substances distributed by a pharmacy may not exceed 5.0% of all controlled substances dispensed and distributed by the pharmacy during each calendar year in which the pharmacy is registered; if during the same calendar year it does exceed 5.0%, the pharmacy is required to obtain an additional registration to distribute controlled substances.

(C) If the distribution is for a Schedule III, IV, or V controlled substance, a record shall be maintained which indicates:

(i) the actual date of distribution;

(ii) the name, strength, and quantity of controlled substances distributed;

(iii) the name, address, and DEA registration number of the distributing pharmacy; and

(iv) the name, address, and DEA registration number of the pharmacy, practitioner, or other registrant to whom the controlled substances are distributed.

(D) If the distribution is for a Schedule I or II controlled substance, the following is applicable.

(i) The pharmacy, practitioner or other registrant who is receiving the controlled substances shall issue copy 1 and copy 2 of a DEA order form (DEA 222) to the distributing pharmacy.

(ii) The distributing pharmacy shall:

(I) complete the area on the DEA order form (DEA 222) titled TO BE FILLED IN BY SUPPLIER;

(II) maintain copy 1 of the DEA order form (DEA 222) at the pharmacy for two years; and

(III) forward copy 2 of the DEA order form (DEA 222) to the divisional office of the Drug Enforcement Administration at the close of the month during which the order is filled.

(9) Other records. Other records to be maintained by a pharmacy:

(A) a permanent log of the initials or identification codes which will identify each dispensing pharmacist by name (the initials or identification code shall be unique to ensure that each pharmacist can be identified, i.e., identical initials or identification codes shall not be used);

(B) copy 3 of DEA order form (DEA 222) which has been properly dated, initialed, and filed, and all copies of each unaccepted or defective order form and any attached statements or other documents;

(C) a hard copy of the power of attorney to sign DEA 222 order forms (if applicable);

(D) suppliers' invoices of dangerous drugs and controlled substances; pharmacists or other responsible individuals shall verify that the controlled drugs listed on the invoices were actually received by clearly recording their initials and the actual date of receipt of the controlled substances;

(E) suppliers' credit memos for controlled substances and dangerous drugs;

(F) a hard copy of inventories required by §291.17 of this title (relating to Inventory Requirements);

(G) hard-copy reports of surrender or destruction of controlled substances and/or dangerous drugs to an appropriate state or federal agency;

(H) records of distribution of controlled substances and/or dangerous drugs to other pharmacies, practitioners, or registrants; and

(I) a hard copy of any notification required by the Texas Pharmacy Act or these sections, including, but not limited to, the following:

(i) reports of theft or significant loss of controlled substances to DEA, DPS, and the board;

(ii) notifications of a change in pharmacist-in-charge of a pharmacy; and

(iii) reports of a fire or other disaster which may affect the strength, purity, or labeling of drugs, medications, devices, or other materials used in the diagnosis or treatment of injury, illness, and disease.

(10) Permission to maintain central records. Any pharmacy that uses a centralized recordkeeping system for invoices and financial data shall comply with the following procedures.

(A) Controlled substance records. Invoices and financial data for controlled substances may be maintained at a central location provided the following conditions are met.

(i) Prior to the initiation of central recordkeeping, the pharmacy submits written notification by registered or certified mail to the divisional director of the Drug Enforcement Administration as required by the Code of Federal Regulations, Title 21, §1304.04(a), and submits a copy of this written notification to the Texas State Board of Pharmacy. Unless the registrant is informed by the divisional director of the Drug Enforcement Administration that permission to keep central records is denied, the pharmacy may maintain central records commencing 14 days after receipt of notification by the divisional director.

(ii) The pharmacy maintains a copy of the notification required in clause (i) of this subparagraph.

(iii) The records to be maintained at the central record location shall not include executed DEA order forms, prescription drug orders, or controlled substance inventories, which shall be maintained at the pharmacy.

(B) Dangerous drug records. Invoices and financial data for dangerous drugs may be maintained at a central location.

(C) Access to records. If the records are kept on microfilm, computer media, or in any form requiring special equipment to render the records easily readable, the pharmacy shall provide access to such equipment with the records.

(D) Delivery of records. The pharmacy agrees to deliver all or any part of such records to the pharmacy location within two business days of written request of a board agent or any other authorized official.

(E) Ownership of pharmacy records. For purposes of these sections, a pharmacy licensed under the Act is the only entity which may legally own and maintain prescription drug records.

(11) Confidentiality.

(A) A pharmacist shall provide adequate security of prescription drug order and patient medication records to prevent indiscriminate or unauthorized access to confidential health information. If prescription drug orders, requests for refill authorization, or other confidential health information are not transmitted directly between a pharmacy and a physician but are transmitted through a data communication device, confidential health information may not be accessed or maintained by the operator of the data communication device unless specifically authorized to obtain the confidential information by this subsection.

(B) Confidential records are privileged and may be released only to:

(i) the patient or the patient's agent;

(ii) a practitioner or another pharmacist if, in the pharmacist's professional judgement, the release is necessary to protect the patient's health and well being;

(iii) the board or to a person or another state or federal agency authorized by law to receive the confidential record;

(iv) a law enforcement agency engaged in investigation of a suspected violation of Chapter 481 or 483, Health and Safety Code, or the Comprehensive Drug Abuse Prevention and Control Act of 1970 (21 U.S.C. Section 801 et seq.);

(v) a person employed by a state agency that licenses a practitioner, if the person is performing the person's official duties; or

(vi) an insurance carrier or other third party payor authorized by a patient to receive such information.

(f) Triplicate prescription requirements. The Texas State Board of Pharmacy adopts by reference the rules promulgated by the Texas Department of Public Safety, which are set forth in Subchapter F of 37 TAC §§13.101 - 13.113 concerning triplicate prescriptions.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Texas State Board of Pharmacy
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SUBCHAPTER C. NUCLEAR PHARMACY (CLASS B)

22 TAC §291.53

The Texas State Board of Pharmacy adopts amendments to §291.53, concerning Personnel. These amendments are adopted with changes to the proposed text as published in the June 22, 2001, issue of the *Texas Register* (26 TexReg 4584).

The amendments require certified pharmacy technicians to maintain current certification and display their current certification certificates.

No comments were received on this rule. However, a comment was received from H.E.B. Grocery Company concerning related changes to an amendment for Class A (Community) Pharmacies. The comment from H.E.B. Grocery Company requested that the Board clarify or expand the proposed rule regarding technicians who work in two or more pharmacy locations. Specifically, the question is asked whether copies of their certificates should be placed in secondary or other places in which they practice. The Board agrees that clarification of the rule is necessary. The rule language was altered to clarify that certified pharmacy technicians must publicly display the original, or a copy, of their current certification certificate, in every pharmacy where the technician performs the duties of a technician.

Since it was the intent that changes in this amendment mirror those in the Class A rules, a similar change was made to this amendment.

The amendments are adopted 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) Pharmacists-in-Charge.

(1) General.

(A) Every nuclear pharmacy shall have an authorized nuclear pharmacist designated on the nuclear pharmacy license as the pharmacist-in-charge who shall be responsible for a nuclear pharmacy's compliance with laws and regulations, both state and federal, pertaining to the practice of nuclear pharmacy.

(B) The nuclear pharmacy pharmacist-in-charge shall see that directives from the board are communicated to the owner(s), management, other pharmacists, and interns of the nuclear pharmacy.

(C) An authorized nuclear pharmacist may be pharmacist-in-charge for no more than one nuclear pharmacy at any one given time.

(2) Responsibilities. The pharmacist-in-charge shall have the responsibility for, at a minimum, the following:

(A) ensuring that radiopharmaceuticals are dispensed and delivered safely and accurately as prescribed;

(B) developing a system to assure that all pharmacy personnel responsible for compounding and/or supervising the compounding of radiopharmaceuticals within the pharmacy receive appropriate education and training and competency evaluation;

(C) establishing policies for procurement of drugs and devices and storage of all pharmaceutical materials including radiopharmaceuticals, components used in the compounding of radiopharmaceuticals, and drug delivery devices;

(D) developing a system for the disposal and distribution of drugs from the Class B pharmacy;

(E) developing a system for the compounding, sterility assurance, and quality control of sterile radiopharmaceuticals;

(F) maintaining records of all transactions of the Class B pharmacy necessary to maintain accurate control over and accountability for all pharmaceutical materials including radiopharmaceuticals, required by applicable state and federal laws and rules;

(G) developing a system to assure the maintenance of effective controls against the theft or diversion of prescription drugs, and records for such drugs;

(H) assuring that the pharmacy has a system to dispose of radioactive and cytotoxic waste in a manner so as not to endanger the public health; and

(I) legal operation of the pharmacy, including meeting all inspection and other requirements of all state and federal laws or rules governing the practice of pharmacy.

(b) Authorized nuclear pharmacists.

(1) General.

(A) The pharmacist-in-charge shall be assisted by a sufficient number of additional authorized nuclear pharmacists as may be required to operate the pharmacy competently, safely, and adequately to meet the needs of the patients of the pharmacy.

(B) All personnel performing tasks in the preparation and distribution of radiopharmaceuticals shall be under the direct supervision of an authorized nuclear pharmacist. General qualifications for an authorized nuclear pharmacist are the following. A pharmacist shall:

(i) meet minimal standards of training and experience in the handling of radioactive materials in accordance with the requirements of the Texas Regulations for Control of Radiation of the Bureau of Radiation Control, Texas Department of Health;

(ii) be a pharmacist licensed by the board to practice pharmacy in Texas; and

(iii) submit to the board either:

(I) written certification that he or she has current board certification as a nuclear pharmacist by the Board of Pharmaceutical Specialties; or

(II) written certification signed by preceptor authorized nuclear pharmacist that he or she has achieved a level of competency sufficient to independently operate as an authorized nuclear pharmacist and has satisfactorily completed 700 hours in a structured educational program consisting of both:

(-a-) 200 hours of didactic training in a program accepted by the Bureau of Radiation Control, Texas Department of Health in the following areas:

(-1-) radiation physics and instrumentation;

(-2-) radiation protection;

(-3-) mathematics pertaining to the use and measurement of radioactivity;

(-4-) radiation biology; and

(-5-) chemistry of radioactive material for medical use; and

(-b-) 500 hours of supervised experience in a nuclear pharmacy involving the following:

(-1-) shipping, receiving, and performing related radiation surveys;

(-2-) using and performing checks for proper operation of dose calibrators, survey meters, and, if appropriate, instruments used to measure alpha- or beta-emitting radionuclides;

(-3-) calculating, assaying, and safely preparing dosages for patients or human research subjects;

(-4-) using administrative controls to avoid mistakes in the administration of radioactive material; and

(-5-) using procedures to prevent or minimize contamination and using proper decontamination procedures.

(C) The board may issue a letter of notification that the evidence submitted by the pharmacist meets the requirements of subparagraph (B)(i) - (iii) of this paragraph and has been accepted by the board and that, based thereon, the pharmacist is recognized as an authorized nuclear pharmacist.

(D) Authorized nuclear pharmacists are solely responsible for the direct supervision of pharmacy technicians and for delegating nuclear pharmacy techniques and additional duties, other than those listed in paragraph (2) of this subsection, to pharmacy technicians. Each authorized nuclear pharmacist:

(i) shall verify the accuracy of all acts, tasks, or functions performed by pharmacy technicians; and

(ii) shall be responsible for any delegated act performed by pharmacy technicians under his or her supervision.

(E) All authorized nuclear pharmacists while on duty, shall be responsible for complying with all state and federal laws or rules governing the practice of pharmacy.

(F) The dispensing pharmacist shall ensure that the drug is dispensed and delivered safely and accurately as prescribed.

(2) Duties. Duties which may only be performed by an authorized nuclear pharmacist are as follows:

(A) receiving verbal therapeutic prescription drug orders and reducing these orders to writing, either manually or electronically;

(B) receiving verbal, diagnostic prescription drug orders in instances where patient specificity is required for patient safety (e.g., radiolabeled blood products, radiolabeled antibiodies) and reducing these orders to writing, either manually or electronically;

(C) interpreting and evaluating radioactive prescription drug orders;

(D) selection of drug products; and

(E) performing the final check of the dispensed prescription before delivery to the patient to ensure that the radioactive prescription drug order has been dispensed accurately as prescribed.

(c) Pharmacy Technicians.

(1) General.

(A) Pharmacy technicians in a nuclear pharmacy shall possess sufficient education and training to qualify such individual to perform assigned tasks including nuclear pharmacy techniques.

(B) The pharmacist-in-charge shall document the training and certify the competency of pharmacy technicians completing the training. A written record of initial and in-service training of pharmacy technicians shall be maintained and contain the following information:

(i) name of the person receiving the training;

(ii) date(s) of the training;

(iii) general description of the topics covered;

(iv) a statement or statements that certifies that the pharmacy technician is competent to perform the duties assigned;

(v) name of the person supervising the training; and

(vi) signature of the pharmacy technician and the pharmacist-in-charge or other pharmacist employed by the pharmacy and designated by the pharmacist-in-charge as responsible for training of pharmacy technicians.

(C) A pharmacy technician shall be designated a pharmacy technician trainee until completing the full training program. A pharmacy technician trainee:

(i) may perform all of the duties of a pharmacy technician except affixing a label to a prescription container and routinely compounding sterile radiopharmaceuticals;

(ii) may be designated a pharmacy technician trainee for no longer than one year. A person may not be a technician trainee if they fail to pass the certification exam within this one year training period. This clause does not apply to a pharmacy technician trainee working in a pharmacy as part of a training program accredited by the American Society of Health-System Pharmacists; and

(iii) shall be counted in the pharmacist to pharmacy technician ratio.

(D) A person who has previously completed training as a pharmacy technician, or a licensed nurse or physician assistant is not required to complete the entire training program if the person is able to show competency through a documented assessment of competency. Such competency assessment may be conducted by personnel designated by the pharmacist-in-charge, but the final acceptance of competency must be approved by the pharmacist-in-charge.

(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 and a copy of their current certification certificate in all other pharmacies where the technician performs the duties of a technician.

(2) Duties.

(A) General. Pharmacy technicians may perform any nuclear pharmacy technique delegated by an authorized nuclear pharmacist which is associated with the preparation and distribution of radiopharmaceuticals other than those duties listed in subsection (b)(2) of this section provided:

(i) an authorized nuclear pharmacist conducts in-process and final checks; and

(ii) pharmacy technicians are under the direct supervision of and responsible to an authorized nuclear pharmacist.

(B) Labeling. Effective January 1, 2001, only certified pharmacy technicians may affix a label to a prescription container.

(3) Ratio of authorized nuclear pharmacist to pharmacy technicians.

(A) The ratio of authorized nuclear pharmacists to pharmacy technicians may not exceed 1:2, provided that only one pharmacy technician may be engaged in the compounding of a sterile radiopharmaceutical.

(B) The ratio of authorized nuclear pharmacists to pharmacy technicians may be 1:3 provided that at least one of the three technicians is certified and only one may be engaged in the compounding of a sterile radiopharmaceutical.

(d) Special education, training, and evaluation requirements for pharmacy personnel compounding or responsible for the direct supervision of pharmacy personnel compounding sterile radiopharmaceuticals.

(1) General.

(A) All pharmacy personnel preparing sterile radiopharmaceuticals shall receive didactic and experiential training and competency evaluation through demonstration, testing (written or practical) as outlined by the pharmacist-in-charge and described in the policy and procedure or training manual. Such training shall include instruction and experience in the following areas:

(i) aseptic technique;

(ii) critical area contamination factors;

(iii) environmental monitoring;

(iv) facilities;

(v) equipment and supplies;

(vi) sterile pharmaceutical and radiopharmaceutical calculations and terminology;

(vii) sterile radiopharmaceutical compounding documentation;

(viii) quality assurance procedures;

(ix) aseptic preparation procedures including proper gowning and gloving technique;

(x) handling of hazardous drugs, if applicable; and

(xi) general conduct in the controlled area.

(B) The aseptic technique of each person compounding or responsible for the direct supervision of personnel compounding sterile radiopharmaceuticals shall be observed, evaluated, and documented as satisfactory through written or practical tests and process validation.

(C) Although process validation may be incorporated into the experiential portion of a training program, process validation must be conducted at each pharmacy where an individual compounds sterile radiopharmaceuticals. No product intended for patient use shall be compounded by an individual until the on-site process validation test indicates that the individual can competently perform aseptic procedures, except that an authorized nuclear pharmacist may temporarily compound sterile radiopharmaceuticals and supervise pharmacy technicians compounding sterile radiopharmaceuticals without process validation provided the authorized nuclear pharmacist:

(i) has completed a recognized course in an accredited college of pharmacy or a course sponsored by an American Council on Pharmaceutical Education approved provider which provides 20 hours of instruction and experience in the areas listed in this paragraph; and

(ii) completes the on-site process validation within seven days of commencing work at the pharmacy.

(D) Process validation procedures for assessing the preparation of specific types of sterile radiopharmaceuticals shall be representative of all types of manipulations, products, and batch sizes that personnel preparing that type of radioradiopharmaceutical are likely to encounter.

(E) The pharmacist-in-charge shall assure continuing competency of pharmacy personnel through in-service education, training, and process validation to supplement initial training. Personnel competency shall be evaluated:

(i) during orientation and training prior to the regular performance of those tasks;

(ii) whenever the quality assurance program yields an unacceptable result;

(iii) whenever unacceptable techniques are observed; and

(iv) at least on an annual basis.

(2) Pharmacists.

(A) All pharmacists who compound sterile radiopharmaceuticals or supervise pharmacy technicians compounding sterile radiopharmaceuticals shall:

(i) effective January 1, 2000, complete a recognized course in an accredited college of pharmacy or a course sponsored by an American Council on Pharmaceutical Education approved provider which provides 20 hours of instruction and experience in the areas listed in paragraph (1) of this subsection; and

(ii) possess knowledge about:

(I) aseptic processing;

(II) quality control as related to environmental, component, and end-product testing;

(III) chemical, pharmaceutical, and clinical properties of drugs;

(IV) container, equipment, and closure system selection; and

(V) sterilization techniques.

(B) Pharmacists shall discontinue preparation of sterile radiopharmaceuticals if the training specified in subparagraph (A) of this paragraph is not completed by January 1, 2000.

(C) The required experiential portion of the training programs specified in this paragraph must be supervised by an individual who has already completed training in the compounding of sterile pharmaceuticals.

(3) Pharmacy technicians. In addition to the qualifications and training outlined in subsection (c) of this section, all pharmacy technicians who compound sterile radiopharmaceuticals shall:

(A) have a high school or equivalent education;

(B) complete through a single course, a structured on-the-job didactic and experiential training program at this pharmacy which provides 40 hours of instruction and experience in the areas listed in paragraph (1) of this subsection. Such training may not be transferred to another pharmacy unless the pharmacies are under common ownership and control and use a common training program;

(C) acquire the required experiential portion of the training programs specified in this paragraph under the supervision of an individual who has already completed training in the compounding of sterile pharmaceuticals.

(D) effective January 1, 2001, be certified pharmacy technicians.

(E) on January 1, 2001, discontinue preparation of sterile pharmaceuticals if the technician has not taken and passed the National Pharmacy Technician Certification Exam or other examination approved during an open meeting by the Board. Such pharmacy technicians may continue to compound sterile pharmaceuticals during the interim between the effective date of these rules and January 1, 2001, if they maintain documentation of completion of the training specified in subparagraph (B) of this paragraph.

(4) Documentation of Training. A written record of initial and in-service training and the results of written or practical testing and process validation of pharmacy personnel shall be maintained and contain the following information:

(A) name of the person receiving the training or completing the testing or process validation;

(B) date(s) of the training, testing, or process validation;

(C) general description of the topics covered in the training or testing or of the process validated;

(D) name of the person supervising the training, testing, or process validation; and

(E) signature (first initial and last name or full signature) of the person receiving the training or completing the testing or process validation and the pharmacist-in-charge or other pharmacist employed by the pharmacy and designated by the pharmacist-in-charge as responsible for training, testing, or process validation of 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 August 23, 2001.

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Excavate Director/Secretary
Texas State Board of Pharmacy
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Proposal publication date: June 22, 2001
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SUBCHAPTER D. INSTITUTIONAL PHARMACY (CLASS C)

22 TAC §291.73

The Texas State Board of Pharmacy adopts amendments to §291.73, concerning Personnel. These amendments are adopted with changes to the proposed text as published in the June 22, 2001, issue of the *Texas Register* (26 TexReg 4584).

The amendments require certified pharmacy technicians to display their current certification certificates.

No comments were received on this rule. However, a comment was received from H.E.B. Grocery Company concerning related

changes to an amendment for Class A (Community) Pharmacies. The comment from H.E.B. Grocery Company requested that the Board clarify or expand the proposed rule regarding technicians who work in two or more pharmacy locations. Specifically, the question is asked whether copies of their certificates should be placed in secondary or other places in which they practice. The Board agrees that clarification of the rule is necessary. The rule language was altered to clarify that certified pharmacy technicians must publicly display the original, or a copy, of their current certification certificate, in every pharmacy where the technician performs the duties of a technician.

Since it was the intent that changes in this amendment mirror those in the Class A rules, a similar change was made to this amendment.

The amendments are adopted 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.

§291.73. Personnel.

(a) Requirements for pharmacist services.

(1) A Class C pharmacy in a facility licensed for 101 beds or more shall be under the continuous on-site supervision of a pharmacist during the time it is open for pharmacy services; provided, however, that pharmacy technicians may distribute prepackaged and prelabeled drugs from a satellite pharmacy in the absence of on-site supervision of a pharmacist, under the following conditions:

(A) the distribution is under the control of a pharmacist; and

(B) a pharmacist is on duty in the facility.

(2) A Class C pharmacy in a facility licensed for 100 beds or less shall have the services of a pharmacist at least on a part-time or consulting basis according to the needs of the facility.

(3) A pharmacist shall be accessible at all times to respond to other health professional's questions and needs. Such access may be through a telephone which is answered 24 hours a day, e.g., answering or paging service, a list of phone numbers where the pharmacist may be reached, or any other system which accomplishes this purpose.

(b) Pharmacist-in-charge.

(1) General.

(A) Each institutional pharmacy in a facility with 101 beds or more shall have one full-time pharmacist-in-charge, who may be pharmacist-in-charge for only one such pharmacy.

(B) Each institutional pharmacy in a facility with 100 beds or less shall have one pharmacist-in-charge who is employed or under contract, at least on a consulting or part-time basis, but may be employed on a full-time basis, if desired, and who may be pharmacist-in-charge for no more than three facilities or 150 beds.

(C) The pharmacist-in-charge shall be assisted by additional pharmacists and pharmacy technicians commensurate with the scope of services provided.

(D) If the pharmacist-in-charge is employed on a part-time or consulting basis, a written agreement shall exist between the facility and the pharmacist, and a copy of the written agreement shall be made available to the board upon request.

(2) Responsibilities. The pharmacist-in-charge shall have the responsibility for, at a minimum, the following:

(A) providing the appropriate level of pharmaceutical care services to patients of the facility;

(B) ensuring that drugs and/or devices are prepared for distribution safely, and accurately as prescribed;

(C) developing a system for the compounding, sterility assurance, quality assurance and quality control of sterile pharmaceuticals compounded within the institutional pharmacy;

(D) developing a system to assure that all pharmacy personnel responsible for compounding and/or supervising the compounding of sterile pharmaceuticals within the pharmacy receive appropriate education and training and competency evaluation;

(E) providing written guidelines and approval of the procedure to assure that all pharmaceutical requirements are met when any part of preparing, sterilizing, and labeling of sterile pharmaceuticals is not performed under direct pharmacy supervision;

(F) developing a system for bulk compounding or batch preparation of drugs;

(G) establishing specifications for procurement and storage of all pharmaceutical materials including pharmaceuticals, components used in the compounding of pharmaceuticals, and drug delivery devices;

(H) participating in the development of a formulary for the facility, subject to approval of the appropriate committee of the facility;

(I) developing a system to assure that drugs to be administered to inpatients are distributed pursuant to an original or direct copy of the practitioner's medication order;

(J) developing a system for the filling and labeling of all containers from which drugs are to be distributed or dispensed;

(K) assuring that the pharmacy maintains and makes available a sufficient inventory of antidotes and other emergency drugs as well as current antidote information, telephone numbers of regional poison control center and other emergency assistance organizations, and such other materials and information as may be deemed necessary by the appropriate committee of the facility;

(L) maintaining records of all transactions of the institutional pharmacy as may be required by applicable law, state and federal, and as may be necessary to maintain accurate control over and accountability for all pharmaceutical materials including pharmaceuticals, components used in the compounding of pharmaceuticals, and drug delivery devices;

(M) participating in those aspects of the facility's patient care evaluation program which relate to pharmaceutical utilization and effectiveness;

(N) participating in teaching and/or research programs in the facility;

(O) implementing the policies and decisions of the appropriate committee(s) relating to pharmaceutical services of the facility;

(P) providing effective and efficient messenger or delivery service to connect the institutional pharmacy with appropriate areas of the facility on a regular basis throughout the normal workday of the facility;

(Q) developing a system for the labeling, storage, and distribution of investigational new drugs, including maintenance of information in the pharmacy and nursing station where such drugs are being administered, concerning the dosage form, route of administration, strength, actions, uses, side effects, adverse effects, interactions and symptoms of toxicity of investigational new drugs;

(R) assuring that records in a data processing system are maintained such that the data processing system is in compliance with Class C (Institutional) pharmacy requirements;

(S) assuring that a reasonable effort is made to obtain, record, and maintain patient medication records;

(T) assuring the legal operation of the pharmacy, including meeting all inspection and other requirements of all state and federal laws or rules governing the practice of pharmacy; and

(U) if the pharmacy uses an automated medication supply system, shall be responsible for the following:

(i) reviewing and approving all policies and procedures for system operation, safety, security, accuracy and access, patient confidentiality, prevention of unauthorized access, and malfunction;

(ii) inspecting medications in the automated medication supply system, at least monthly, for expiration date, misbranding, physical integrity, security, and accountability;

(iii) assigning, discontinuing, or changing personnel access to the automated medication supply system;

(iv) ensuring that pharmacy technicians and licensed healthcare professionals performing any services in connection with an automated medication supply system have been properly trained on the use of the system and can demonstrate comprehensive knowledge of the written policies and procedures for operation of the system; and

(v) ensuring that the automated medication supply system is stocked accurately and an accountability record is maintained in accordance with the written policies and procedures of operation.

(c) Consultant pharmacist.

(1) The consultant pharmacist may be the pharmacist-in-charge.

(2) A written agreement shall exist between the facility and any consultant pharmacist, and a copy of the written agreement shall be made available to the board upon request.

(d) Pharmacists.

(1) General.

(A) The pharmacist-in-charge shall be assisted by a sufficient number of additional licensed pharmacists as may be required to operate the institutional pharmacy competently, safely, and adequately to meet the needs of the patients of the facility.

(B) All pharmacists shall assist the pharmacist-in-charge in meeting the responsibilities as outlined in subsection (b)(2) of this section and in ordering, administering, and accounting for pharmaceutical materials.

(C) All pharmacists shall be responsible for any delegated act performed by pharmacy technicians under his or her supervision.

(D) All pharmacists while on duty, shall be responsible for complying with all state and federal laws or rules governing the practice of pharmacy.

(E) A distributing pharmacist shall ensure that the drug is prepared for distribution safely, and accurately as prescribed. In addition, if multiple pharmacists participate in the preparation of medication orders for distribution, each pharmacist shall ensure the safety and accuracy of the portion of the process the pharmacist is performing. The preparation and distribution process for medication orders shall include, but not be limited to, drug regimen review, and verification of accurate medication order data entry, preparation, and distribution, and performance of the final check of the prepared medication.

(2) Duties. Duties of the pharmacist-in-charge and all other pharmacists shall include, but need not be limited to the following:

(A) providing those acts or services necessary to provide pharmaceutical care;

(B) receiving, interpreting, and evaluating prescription drug orders, and reducing verbal medication orders to writing either manually or electronically;

(C) participating in drug and/or device selection as authorized by law, drug and/or device supplier selection, drug administration, drug regimen review, or drug or drug-related research;

(D) performing a specific act of drug therapy management for a patient delegated to a pharmacist by a written protocol from a physician licensed in this state in compliance with the Medical Practice Act Subtitle B, Chapter 157, Occupations Code;

(E) accepting the responsibility for:

(i) distributing drugs and devices pursuant to medication orders;

(ii) compounding and labeling of drugs and devices;

(iii) proper and safe storage of drugs and devices; and

(iv) maintaining proper records for drugs and devices.

(e) Pharmacy technicians.

(1) Qualifications.

(A) General.

(i) All pharmacy technicians shall:

(I) have a high school or equivalent degree, e.g., GED, or be currently enrolled in a program which awards such a degree; and

(II) complete a structured didactic and experiential training program, which provides instruction and experience in the areas listed in paragraph (4) of this subsection.

(III) Effective January 1, 2001, all pharmacy technicians must 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.

(ii) For the purpose of this section, pharmacy technicians are those persons who perform nonjudgmental technical duties associated with the distribution of a medication drug order.

(B) Pharmacy Technician Trainee.

(i) A person shall be designated as a pharmacy technician trainee while participating in a pharmacy's technician training program in preparation for the National Pharmacy Technician Certification Exam or other examination approved during an open meeting by the Board.

(ii) A person may be designated a pharmacy technician trainee for no more than one year. A person may not be a technician trainee if they fail to pass the certification exam within this one year training period. This clause does not apply to a pharmacy technician trainee working in a pharmacy as part of a training program accredited by the American Society of Health-System Pharmacists or an individual enrolled in a health science technology education program in a Texas high school.

(iii) Individuals enrolled in a health science technology education program in a Texas high school that is accredited by the Texas Education Agency, may be designated as a pharmacy technician trainee for up to two years provided:

(I) the work as a pharmacy technician is concurrent with enrollment in a health science technology education program, which may include:

(-a-) partial semester breaks such as spring breaks;

(-b-) between semesters; and

(-c-) whole semester breaks provided the individual was enrolled in the health science technology education program in the immediate preceding semester and is scheduled with the high school to attend in the immediate subsequent semester;

(II) the individual is under the direct supervision of and responsible to a pharmacist; and

(III) the supervising pharmacist verifies the accuracy of all acts, tasks, or functions performed by the individual.

(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 and a copy of their current certification certificate in all other pharmacies where the technician performs the duties of a technician.

(2) Duties.

(A) General. Duties may include, but need not be limited to, the following functions under the direct supervision of and responsible to a pharmacist:

(i) pre-packing and labeling unit and multiple dose packages, provided a pharmacist supervises and conducts in-process and final checks and affixes his or her signature (first initial and last name or full signature) or electronic signature to the appropriate quality control records;

(ii) preparing, packaging, compounding, or labeling prescription drugs pursuant to medication orders, provided a pharmacist supervises and checks the preparation;

(iii) bulk compounding or batch preparation provided a pharmacist supervises and conducts in-process and final checks and affixes his or her initials to the appropriate quality control records;

(iv) distributing routine orders for stock supplies to patient care areas;

(v) entering medication order and drug distribution information into a data processing system, provided judgmental decisions are not required and a pharmacist checks the accuracy of the information entered into the system prior to releasing the order or in compliance with the absence of pharmacist requirements contained in §291.74(e) of this title (relating to Operational Standards);

(vi) loading bulk unlabeled drugs into an automated compounding or counting device provided a pharmacist supervises, verifies that the system was properly loaded prior to use, and affixes his or her signature (first initial and last name or full signature) or electronic signature to the appropriate quality control records; and

(vii) may be allowed access to automated medication supply systems after proper training on the use of the automated medication supply system and demonstration of comprehensive knowledge of the written policies and procedures for its operation.

(B) Sterile pharmaceuticals.

(i) Only pharmacy technicians who have completed the training specified in subsection (f) of this section may compound sterile pharmaceuticals pursuant to medication orders providing a pharmacist who has completed the training specified in subsection (f) of this section supervises, conducts in-process and final checks, and affixes his or her initials to the label or if batch prepared, to the appropriate quality control records. (The initials are not required on the label if it is maintained in a permanent record of the pharmacy).

(ii) Effective January 1, 2001, pharmacy technicians may compound sterile pharmaceuticals pursuant to medication orders provided the pharmacy technicians:

(I) are either certified pharmacy technicians or technician trainees;

(II) have completed the training specified in subsection (f) of this section; and

(III) are supervised by a pharmacist who has completed the training specified in subsection (f) of this section, conducts in-process and final checks, and affixes his or her initials to the label or if batch prepared, to the appropriate quality control records. (The initials are not required on the label if it is maintained in a permanent record of the pharmacy).

(3) Procedures.

(A) pharmacy technicians shall handle medication orders in accordance with standard, written procedures and guidelines.

(B) pharmacy technicians shall handle prescription drug orders in the same manner as those working in a Class A pharmacy.

(4) Training.

(A) pharmacy technicians shall complete initial training as outlined by the pharmacist-in-charge in a training manual, prior to the regular performance of their duties. Such training:

(i) shall include training and experience as outlined in paragraph (5) of this subsection; and

(ii) may not be transferred to another pharmacy unless:

(I) the pharmacies are under common ownership and control and have a common training program; and

(II) the pharmacist-in-charge of each pharmacy in which the pharmacy technician works certifies that the pharmacy technician is competent to perform the duties assigned in that pharmacy.

(B) A pharmacy technician shall be designated a pharmacy technician trainee until completing the full training program. A pharmacy technician trainee:

(i) may perform all of the duties of a pharmacy technician including the compounding of sterile pharmaceuticals provided the pharmacy technician trainee complies with the provisions of paragraph (2)(B) of this subsection; and

(ii) may be designated a pharmacy technician trainee for no longer than one year except as specified in paragraph (1)(B) of this subsection.

(C) The pharmacist-in-charge shall assure the continuing competency of pharmacy technicians through in-service education and training to supplement initial training.

(D) The pharmacist-in-charge shall document the completion of the training program and certify the competency of pharmacy technicians completing the training. A written record of initial and in-service training of pharmacy technicians shall be maintained and contain the following information:

(i) name of the person receiving the training;

(ii) date(s) of the training;

(iii) general description of the topics covered;

(iv) a statement or statements that certifies that the pharmacy technician is competent to perform the duties assigned;

(v) name of the person supervising the training; and

(vi) signature of the pharmacy technician and the pharmacist-in-charge or other pharmacist employed by the pharmacy and designated by the pharmacist-in-charge as responsible for training of pharmacy technicians.

(E) A person who has previously completed training as a pharmacy technician, or a licensed nurse or physician assistant is not required to complete the entire training program if the person is able to show competency through a documented assessment of competency. Such competency assessment may be conducted by personnel designated by the pharmacist-in-charge, but the final acceptance of competency must be approved by the pharmacist-in-charge.

(5) Training program. Pharmacy technician training shall be outlined in a training manual. Such training manual shall, at a minimum, contain the following:

(A) written procedures and guidelines for the use and supervision of pharmacy technicians. Such procedures and guidelines shall:

(i) specify the manner in which the pharmacist responsible for the supervision of pharmacy technicians will supervise such personnel and verify the accuracy and completeness of all acts, tasks, and functions performed by such personnel; and

(ii) specify duties which may and may not be performed by pharmacy technicians; and

(B) instruction in the following areas and any additional areas appropriate to the duties of pharmacy technicians in the pharmacy:

(i) Orientation;

(ii) Job descriptions;

(iii) Communication techniques;

(iv) Laws and rules;

(v) Security and safety;

(vi) Prescription drugs:

(I) Basic pharmaceutical nomenclature;

(II) Dosage forms;

(vii) Medication drug orders:

(I) Prescribers;

(II) Directions for use;

(III) Commonly-used abbreviations and symbols;

(IV) Number of dosage units;

(V) Strength and systems of measurement;

(VI) Route of administration;

(VII) Frequency of administration;

(VIII) Interpreting directions for use;

(viii) Medication drug order preparation:

(I) Creating or updating patient medication records;

(II) Entering medication drug order information into the computer or typing the label in a manual system;

(III) Selecting the correct stock bottle;

(IV) Accurately counting or pouring the appropriate quantity of drug product;

(V) Selecting the proper container;

(VI) Affixing the prescription label;

(VII) Affixing auxiliary labels, if indicated;

(VIII) Preparing the finished product for inspection and final check by pharmacists;

(ix) Other functions;

(x) Drug product Prepackaging;

(xi) Compounding of Non-sterile pharmaceuticals;

(xii) Written policy and guidelines for use of and supervision of pharmacy technicians.

(f) Special education, training, and evaluation requirements for pharmacy personnel compounding or responsible for the direct supervision of pharmacy personnel compounding sterile pharmaceuticals.

(1) General.

(A) All pharmacy personnel preparing sterile pharmaceuticals shall receive didactic and experiential training and competency evaluation through demonstration, testing (written or practical) as outlined by the pharmacist-in-charge and described in the policy and

procedure or training manual. Such training shall include instruction and experience in the following areas:

(i) aseptic technique;

(ii) critical area contamination factors;

(iii) environmental monitoring;

(iv) facilities;

(v) equipment and supplies;

(vi) sterile pharmaceutical calculations and terminology;

(vii) sterile pharmaceutical compounding documentation;

(viii) quality assurance procedures;

(ix) aseptic preparation procedures, including proper gowning and gloving technique;

(x) the handling of cytotoxic and hazardous drugs; and

(xi) general conduct in the controlled area.

(B) The aseptic technique of each person compounding or responsible for the direct supervision of personnel compounding sterile pharmaceuticals shall be observed and evaluated as satisfactory through written or practical tests and process validation and such evaluation documented.

(C) Although process validation may be incorporated into the experiential portion of a training program, process validation must be conducted at each pharmacy where an individual compounds sterile pharmaceuticals. No product intended for patient use shall be compounded by an individual until the on-site process validation test indicates that the individual can competently perform aseptic procedures, except that a pharmacist may compound sterile pharmaceuticals and supervise pharmacy technicians compounding sterile pharmaceuticals without process validation provided the pharmacist:

(i) has completed a recognized course in an accredited college of pharmacy or a course sponsored by an American Council on Pharmaceutical Education approved provider which provides 20 hours of instruction and experience in the areas listed in this paragraph; and

(ii) completes the on-site process validation within seven days of commencing work at the pharmacy.

(D) Process validation procedures for assessing the preparation of specific types of sterile pharmaceuticals shall be representative of all types of manipulations, products, and batch sizes that personnel preparing that type of pharmaceutical are likely to encounter.

(E) The pharmacist-in-charge shall assure continuing competency of pharmacy personnel through in-service education, training, and process validation to supplement initial training. Personnel competency shall be evaluated:

(i) during orientation and training prior to the regular performance of those tasks;

(ii) whenever the quality assurance program yields an unacceptable result;

(iii) whenever unacceptable techniques are observed; and

(iv) at least on an annual basis.

(2) Pharmacists.

(A) All pharmacists who compound sterile pharmaceuticals or supervise pharmacy technicians compounding sterile pharmaceuticals shall:

(i) complete through a single course, a minimum 20 hours of instruction and experience in the areas listed in paragraph (1) of this subsection. Such training may be evidenced by either:

(I) completion of a structured on-the-job didactic and experiential training program at this pharmacy which provides 20 hours of instruction and experience in the areas listed in paragraph (1) of this subsection. Such training may not be transferred to another pharmacy unless the pharmacies are under common ownership and control and use a common training program; or

(II) completion of a recognized course in an accredited college of pharmacy or a course sponsored by an American Council on Pharmaceutical Education approved provider which provides 20 hours of instruction and experience in the areas listed in paragraph (1) of this subsection; and

(ii) possess knowledge about:

(I) aseptic processing;

(II) quality control and quality assurance as related to environmental, component, and end-product testing;

(III) chemical, pharmaceutical, and clinical properties of drugs;

(IV) container, equipment, and closure system selection; and

(V) sterilization techniques.

(B) The required experiential portion of the training programs specified in this paragraph must be supervised by an individual who has already completed training as specified in paragraph (2) or (3) of this subsection.

(3) Pharmacy technicians. In addition to the qualifications and training outlined in subsection (e) of this section, all pharmacy technicians who compound sterile pharmaceuticals shall:

(A) have a high school or equivalent education;

(B) either:

(i) complete through a single course, a minimum of 40 hours of instruction and experience in the areas listed in paragraph (1) of this subsection. Such training may be obtained through the:

(I) completion of a structured on-the-job didactic and experiential training program at this pharmacy which provides 40 hours of instruction and experience in the areas listed in paragraph (1) of this subsection. Such training may not be transferred to another pharmacy unless the pharmacies are under common ownership and control and use a common training program; or

(II) completion of a course sponsored by an ACPE approved provider which provides 40 hours of instruction and experience in the areas listed in paragraph (1) of this subsection; or

(ii) complete a training program which is accredited by the American Society of Health-System Pharmacists (formerly the American Society of Hospital Pharmacists). Individuals enrolled in training programs accredited by the American Society of Health-System Pharmacists may compound sterile pharmaceuticals in a licensed pharmacy provided:

(I) the compounding occurs only during times the individual is assigned to a pharmacy as a part of the experiential component of the American Society of Health-System Pharmacists training program;

(II) the individual is under the direct supervision of and responsible to a pharmacist who has completed training as specified in paragraph (2) of this subsection; and

(III) the supervising pharmacist conducts in-process and final checks; and

(C) on January 1, 2001, discontinue preparation of sterile pharmaceuticals if the technician has not taken and passed the National Pharmacy Technician Certification Exam or other examination approved during an open meeting by the Board. Such pharmacy technicians may continue to compound sterile pharmaceuticals during the interim between the effective date of these rules and January 1, 2001, if they maintain documentation of completion of the training specified in subparagraph (B) of this paragraph.

(D) acquire the required experiential portion of the training programs specified in this paragraph under the supervision of an individual who has already completed training as specified in this paragraph or paragraph (2) of this subsection.

(4) Documentation of Training. A written record of initial and in-service training and the results of written or practical testing and process validation of pharmacy personnel shall be maintained and contain the following information:

(A) name of the person receiving the training or completing the testing or process validation;

(B) date(s) of the training, testing, or process validation;

(C) general description of the topics covered in the training or testing or of the process validated;

(D) name of the person supervising the training, testing, or process validation; and

(E) signature (first initial and last name or full signature) of the person receiving the training or completing the testing or process validation and the pharmacist-in-charge or other pharmacist employed by the pharmacy and designated by the pharmacist-in-charge as responsible for training, testing, or process validation of personnel.

(g) Identification of pharmacy personnel. All pharmacy personnel shall wear an identification tag or badge which bears the person's name and identifies him or her by title or function as follows:

(1) Pharmacy technicians. All pharmacy technicians shall wear an identification tag or badge which bears the person's name and identifies him or her as a pharmacy technician trainee, pharmacy technician, or a certified pharmacy technician.

(2) Pharmacist interns. All pharmacist interns shall wear an identification tag or badge which bears the person's name and identifies him or her as a pharmacist intern.

(3) Pharmacists. All pharmacists shall wear an identification tag or badge which bears the person's name and identifies him or her as a pharmacist.

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 August 23, 2001.

TRD-200104985

Gay Dodson, R.Ph.
Executive Director/Secretary
Texas State Board of Pharmacy
Effective date: September 12, 2001
Proposal publication date: June 22, 2001
For further information, please call: (512) 305-8028

CHAPTER 295. PHARMACISTS

22 TAC §295.5

The Texas State Board of Pharmacy adopts amendments to §295.5, concerning Pharmacist License or Renewal Fees. These amendments are adopted with changes to the proposed text as published in the June 22, 2001, issue of the *Texas Register* (26 TexReg 4585).

The adopted amendment deletes obsolete language, corrects citations to reflect the new codified Act, and increases 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.

After the Board proposed these amendments, the 77th Texas Legislature passed H.B. 2812, which codifies without substantive changes, portions of the Texas Pharmacy Act cited in these amendments. Non- substantive changes were made to the proposed rule language merely to change these citations to the codified Act. These changes occur in §295.5(a) and (2).

One comment was received from the Texas Federation of Drugs Stores (TFDS). The TFDS supports the increase in fees to fund the Board's operations. However, they do no support surplus fees, that eventually go into the fund balance. The Board agrees with this comment, but the fee increase does not include a surplus to go into the fund balance. Consequently, no changes are needed to address this comment.

The amendments are adopted 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.

§295.5. Pharmacist License or Renewal Fees.

(a) The Texas State Board of Pharmacy shall require biennial renewal of all licenses provided under the Pharmacy Act, §559.002. 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, and a $10 surcharge to fund a program to aid

impaired pharmacists and pharmacy students as authorized by the Act, §564.051); or

(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.)

(b) 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 adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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PART 21. TEXAS STATE BOARD OF EXAMINERS OF PSYCHOLOGISTS

CHAPTER 461. GENERAL RULINGS

22 TAC §461.7

The Texas State Board of Examiners of Psychologists adopts amendments to §461.7, concerning License Statuses, without changes to the proposed text as published in the July 6, 2001, issue of the *Texas Register* (26 *TexReg* 4964).

The amendments are being adopted to allow persons with a pending CE complaint who have a documented medical hardship to claim retired status.

The adopted rule will make the rules easier for the general public and licensees to follow and understand.

No comments were received regarding the adoption of the amendments.

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

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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TRD-200105034
Sherry L. Lee
Executive Director
Texas State Board of Examiners of Psychologists
Effective date: September 13, 2001
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For further information, please call: (512) 305-7700

CHAPTER 465. RULES OF PRACTICE

22 TAC §465.2, §465.3

The Texas State Board of Examiners of Psychologists adopts amendments to §465.2, concerning Supervision, and §465.3, concerning Providers of Psychological Services, without changes to the proposed text as published in the July 6, 2001, issue of the *Texas Register* (26 TexReg 4965).

The amendments are being adopted in order to organize the rules so that they are easier for the licensees and public to understand.

The adopted rule will make the rules easier for the general public and licensees to follow and understand.

No comments were received regarding the adoption of the amendments.

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

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Sherry L. Lee
Executive Director
Texas State Board of Examiners of Psychologists
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For further information, please call: (512) 305-7700

22 TAC §§465.5, 465.25 - 465.31

The Texas State Board of Examiners of Psychologists adopts the repeal of §§465.5, 465.25 - 465.31 concerning Rules of Practice, without changes to the proposed text as published in the July 6, 2001, issue of the *Texas Register* (26 TexReg 4965).

The repeal is being adopted because the rules have been condensed into other existing rules.

The adopted repeal will make the rules easier for the general public and licensees to follow and understand.

No comments were received regarding the adoption of the repeal.

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

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Sherry L. Lee
Executive Director
Texas State Board of Examiners of Psychologists
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For further information, please call: (512) 305-7700

22 TAC §465.5

The Texas State Board of Examiners of Psychologists adopts new rule §465.5, concerning Practice of Psychology, without changes to the proposed text as published in the July 6, 2001, issue of the *Texas Register* (26 TexReg 4966).

The new rule is being adopted in order to organize and clarify the rules regarding multiple licensure and the practice of psychology.

The adopted new rule will make the rules easier for the general public and licensees to follow and understand.

No comments were received regarding the adoption of the rule.

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

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Sherry L. Lee
Executive Director
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For further information, please call: (512) 305-7700

TITLE 30. ENVIRONMENTAL QUALITY

PART 1. TEXAS NATURAL RESOURCE CONSERVATION COMMISSION

CHAPTER 101. GENERAL AIR QUALITY RULES

SUBCHAPTER A. GENERAL RULES

30 TAC §101.27

The Texas Natural Resource Conservation Commission (commission) adopts an amendment to §101.27, Emissions Fees. The commission adopts the amendment to Chapter 101, General Air Quality Rules; Subchapter A, General Rules, in order to implement Senate Bill 1 (General Appropriations Act), Article VI (Natural Resources), Rider 30 (Appropriation: Operating Permit Fees), as passed by the 77th Texas Legislature, 2001 (SB 1, Article VI, Rider 30). Section 101.27 is adopted *with changes* to the proposed text as published in the July 20, 2001 issue of the *Texas Register* (26 TexReg 5347).

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE ADOPTED RULE

The commission collects operating permit fees (emissions fees) from sources that are subject to the permitting requirements of Title IV or V of the Federal Clean Air Act Amendments of 1990 (FCAA) as required by Texas Health and Safety Code, Texas Clean Air Act (TCAA), §382.0621, Operating Permit Fee. The current rule language in §101.27 only includes emissions during normal operations in the calculation of the total emissions from an account upon which the fee is based. Upset, maintenance, start-up, and shutdown emissions are not currently included in the basis for calculating the fee due. Senate Bill 1, Article VI, Rider 30 requires that these emissions be included in the total emissions for each account. The commission believes that the fee basis should include emissions from all operational conditions in order to represent the total emissions for each source. Funds generated by the inclusion of these emissions shall be used for enforcement and monitoring activities for air quality permitting, air quality assessment and planning, and enforcement and compliance support.

SECTION DISCUSSION

Section 101.27(c), concerning basis for fees, currently states that the fee applies to emissions during normal operations. These amendments state that emissions during all operational conditions will be included in the fee basis. These amendments also specifically state that all emission events and all emissions from them, including upset, maintenance, start-up, and shutdown conditions are to be included in the fee basis. The intent of these amendments is to include the total of both reportable and non-reportable quantities under commission requirements related to these conditions for the purpose of calculating the total emissions fees owed to the commission.

The amendments also add a sentence to clarify that the emissions fee basis is never less than the actual emissions at an account during the basis year.

The amendments reformat the fee table and delete the definition of "normal operations," which is no longer needed.

FINAL REGULATORY IMPACT ANALYSIS DETERMINATION

The commission reviewed the rulemaking action considering the regulatory analysis requirements of Texas Government Code, §2001.0225, and determined that the amendments do not meet

the definition of a "major environmental rule" as defined in that statute. A "major environmental rule" is a rule that: 1) has the specific intent to protect the environment or reduce risks to human health from environmental exposure; and 2) 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. While the amendments are not specifically intended to protect the environment or reduce risks to human health from environmental exposure, there could be a benefit to the environment from both how the fees are utilized (for enforcement monitoring activities) and some deterrent effect for companies who desire to avoid increased fees, where possible. The intent of the amendments is to include the total of both reportable and non-reportable quantities under commission requirements related to upset and maintenance conditions for the purpose of calculating the total emissions fees owed to the commission. While this may result in a larger amount of fees collected by the commission, fee collection does not provide protection for the environment nor reduce risks to human health from environmental exposure. The commission does not believe that these rule amendments will adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state, because the amendments do not change the existing provision "capping" the total fees owed to the agency.

Additionally, even if the amendments did meet the definition of a major environmental rule, the requirement to conduct a regulatory analysis would not apply. A regulatory analysis is only required if an agency adopts a major environmental rule: 1) which exceeds a standard set by federal law, unless the rule is specifically required by state law; 2) which exceeds an express requirement of state law, unless the rule is specifically required by federal law; 3) which 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) solely under the general powers of the agency instead of under a specific state law.

Title V of the FCAA contains the statutory requirements for the federal operating permit program, which these fees are collected to support. The commission collects emissions fees under the specific authority in the TCAA, §382.0621, Operating Permit Fee. The expansion of the fees to include upset, maintenance, start-up, and shutdown conditions will meet the requirement contained in SB 1, Article VI, Rider 30. The requirements of the federal operating permit program, 40 Code of Federal Regulations (CFR) Part 70, for which the commission has been granted interim approval, do not contain any requirement prohibiting the collection of fees for emissions from all operational conditions. Therefore, the amendments do not exceed a standard set by federal law; do not exceed an express requirement of state law; do not exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; and are not proposed solely under the general powers of the agency instead of under a specific state law.

The commission invited public comment on the draft regulatory impact analysis determination, but received no comment.

TAKINGS IMPACT ASSESSMENT

The commission reviewed the amendments considering the requirements of Texas Government Code, Chapter 2007. The following assessment is provided in compliance with the requirements of Chapter 2007. The intent of the amendments is to include the total emissions of both reportable and non-reportable quantities under commission requirements related to upset and maintenance conditions for the purpose of calculating the total emissions fees owed to the commission. The expansion of the fees to include upset, maintenance, start-up, and shutdown conditions will meet the requirement contained in SB 1, Article VI, Rider 30. There are no alternative actions that would meet the requirement contained in SB 1, Article VI, Rider 30. The calculation of total emissions upon which fees must be based will not burden private real property, because it does not affect private real property, and therefore does not constitute a taking under 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)). The specific purpose of this rulemaking action is to include the total emissions of both reportable and non-reportable quantities under commission requirements related to upset and maintenance conditions for the purpose of calculating the total emissions fees owed to the commission. The expansion of the fees to include upset, maintenance, start-up, and shutdown conditions will meet the requirement contained in SB 1, Article VI, Rider 30. No new sources of air contaminants will be authorized as a result of this rule. The CMP policy applicable to this rulemaking action is the policy that commission rules comply with regulations in 40 CFR, to protect and enhance air quality in the coastal area (31 TAC §501.14(q)). This rulemaking action complies with 40 CFR. Therefore, in compliance with 31 TAC §505.22(e), the commission affirms that this rulemaking action is consistent with CMP goals and policies.

The commission solicited comments on the consistency of the proposed rule with the CMP during the public comment period, but received no comments.

HEARING AND COMMENTERS

The commission scheduled a public hearing in Austin on August 13, 2001, and the comment period closed on August 13, 2001. The hearing was not opened because there was no one in attendance who wanted to speak. Written comments were received from the Sierra Club, Houston Regional Group (Sierra-Houston); the TXU Business Services Company (TXU); and the United States Environmental Protection Agency, Region 6 (EPA).

RESPONSE TO COMMENTS

The EPA and Sierra-Houston generally supported the proposal. TXU neither supported nor opposed the proposal, but submitted suggested changes to the rule language.

The EPA indicated that §101.27 does not need to be submitted as a part of the SIP because this rule will be used as the basis for fees under the Operating Permit Program under 30 TAC Chapter 122.

The commission agrees. Because this rule supports the Operating Permit Program under Chapter 122, this rule does not need to be part of the SIP. Therefore, the commission will not be submitting this adopted rule as a SIP revision.

The EPA also commented that 30 TAC §101.24, regarding Inspection Fees, and §101.27 require only the payment of the higher fee, should both apply. The EPA expressed a concern that the fees collected under §101.24 or §101.27 should be used towards Title V program costs, regardless of where they originate.

The funding mechanism for the Operating Permit Program is the emissions fee, 101.27. As required by the Federal Operating Permit Program regulation, 40 CFR Part 70, the commission collects fees in an amount sufficient to support the Operating Permit Program. The commission submittal request to EPA for full program approval of the Operating Permit Program contains additional detail regarding the sufficiency of the fees collected to support the Operating Permit Program.

TXU commented that the proposal preamble did not mention start-up and shutdown, and the proposed rule language should not include a requirement for emissions from start-ups and shutdowns to be included in the fee basis. TXU stated that the rider language only mentions upset and maintenance emissions, and that the commission sunset bill, House Bill 2912, included start-up and shutdown emissions when discussing upet and maintenance emissions, and therefore is distinguishable. Sierra- Houston stated a belief that industry should have to pay for all releases to the air.

The commission disagrees with this suggested TXU change and the TXU comments. As noted in the proposal preamble, the commission believes that the fee basis should include emissions from all operational conditions in order to represent the total emissions for each source. Additionally, the proposal preamble noted that the intent of the rule was to include the total of both reportable and non-reportable quantities under commission requirements related to upset and maintenance. The commission requirements relating to upset and maintenance are located at 30 TAC §101.6 and §101.7, which include start-up and shutdown emissions. The commission has historically categorized emissions from start-ups and shutdowns as maintenance emissions for emissions inventory and emission event reporting purposes. For example, the Emissions Inventory Questionnaire Package 2000 (Agency Publication RG-360/00, page 3-69, the commission guidance for the completion of emissions inventories) provides that all emissions from start-ups and shutdowns be included in the annual maintenance emissions category reported to the commission as required by the TCAA. The commission believes that the legislature intended for the fee basis to include emissions that occur during all operational conditions. Start-up and shutdown events are a necessary part of the activity needed to rectify an upset event or as part of planned maintenance activities. SB 1, Article VI, Rider 30 makes reference to these emissions as being in addition to the current fee basis so as to represent the total emissions for each source. The commission believes that the legislative intent of Rider 30 is to no longer exclude any emission types from the fee basis; therefore, to exclude emissions from start-ups and shutdowns would not be consistent with this goal. The commission agrees with Sierra-Houston that it is appropriate to include emissions from all operational conditions in the fee basis.

STATUTORY AUTHORITY

The amendment is adopted under Texas Water Code (TWC), §5.103, concerning Rules, and §5.105, concerning General Policy, which authorize the commission to adopt rules necessary to carry out its powers and duties under the TWC; and under 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 amendment is also adopted 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; §382.0335, concerning Air Control Account, which authorizes the commission to collect money from any source to carry out its duties under TCAA; and §382.0621, concerning Operating Permit Fee, which requires the commission to adopt, charge, and collect an annual fee based on emissions for each source; and SB 1, Article VI, Rider 30, which requires upset and maintenance emissions be included in the calculation of fees collected under TCAA, §382.0621.

§101.27. Emissions Fees.

(a) Applicability. The owner or operator of each account to which this rule applies shall remit to the commission an emissions fee each fiscal year. A fiscal year is defined as the period from September 1 through August 31. A fiscal year, having the same number as the next calendar year, begins on the September 1 prior to that calendar year. An account subject to both an emissions fee and an inspection fee, under §101.24 of this title (relating to Inspection Fees), is required to pay only the greater of the two fees. Each account will be assessed a separate emissions fee. Provisions of this section apply to all accounts, including accounts which have not been assigned specific commission account numbers. The owner or operator of an account subject to an emissions fee requirement is responsible for contacting the appropriate commission regional office to obtain an account number. The commission will not initiate the combination or separation of accounts solely for fee assessment purposes. If an account is operated at any time during the fiscal year for which the fee is assessed, a full emissions fee is due. If the commission is notified in writing that the plant is not and will not be in operation during that fiscal year, a fee will not be due. All regulated air pollutants, as defined in subsection (c)(4) of this section, including, but not limited to, those emissions from point and fugitive sources during normal operations with the exception of (for applicability purposes only) hydrogen, oxygen, carbon dioxide, water, nitrogen, methane, and ethane, are used to determine applicability of this section. In accordance with rules promulgated by EPA at 40 Code of Federal Regulations (CFR) 70, concerning the use of fugitive emissions in major source determinations, fugitive emissions shall be considered toward applicability of this section only for those source categories listed at 40 CFR §51.166(b)(1)(iii). For purposes of this section, an affected account shall have met one or more of the following conditions:

(1) the account has the potential to emit, at maximum operational or design capacity, 100 tons per year (tpy) or more of any single air pollutant;

(2) the account has the potential to emit, at maximum operational or design capacity, 50 tpy or more of volatile organic compounds (VOC) or nitrogen oxides (NO_x) and is located in any serious

ozone nonattainment area listed in §101.1 of this title (relating to Definitions);

(3) the account has the potential to emit, at maximum operational or design capacity, 25 tpy or more of VOC or NO_x and is located in any severe ozone nonattainment area listed in §101.1 of this title;

(4) the account emits ten tpy or more of a hazardous air pollutant, as defined in the FCAA, §112;

(5) the account emits an aggregate of 25 tpy or more of hazardous air pollutants, as defined in the FCAA, §112;

(6) the account is subject to the National Emission Standards for Hazardous Air Pollutants (40 CFR 61) that apply to nontransitory sources;

(7) the account is subject to New Source Performance Standards (40 CFR 60);

(8) the account is subject to Prevention of Significant Deterioration (40 CFR 52) requirements; or

(9) the account is subject to Acid Deposition provisions in the FCAA Amendments of 1990, Title IV.

(b) Payment. Fees shall be remitted by check, electronic funds transfer, or money order made payable to the Texas Natural Resource Conservation Commission (TNRCC) and sent to the TNRCC address printed on the fee return form. A completed fee return form shall accompany fees remitted. The fee return form shall include, at least, the company name, mailing address, site name, air emissions inventory account number, Standard Industrial Classification (SIC) category, the allowable levels and/or actual emissions of all regulated air pollutants at the account for the reporting period, and the name and telephone number of the person to contact in case questions arise regarding the fee payment.

(c) Basis for fees.

(1) The emissions fee shall be based on allowable levels and/or actual emissions at the account during the last full calendar year preceding the beginning of the fiscal year for which the fee is assessed. For purposes of this section, the term "allowable levels" are those limits as specified in an enforceable document such as a permit or Commission Order which are in effect on the date the fee is due. Under no circumstances shall the fee basis be less than the actual emissions at the account. The fee applies to the tonnage of regulated pollutant emissions at the account, including those emissions from point and fugitive sources. The fee basis shall include emissions during all operational conditions. For upset, maintenance, start-up, and shutdown conditions, the basis shall include all events and all quantities. Although certain fugitive emissions are excluded for applicability determination purposes under subsection (a) of this section, all fugitive emissions must be considered for fee calculations after applicability of the fee has been established. A maximum of 4,000 tons of each regulated pollutant will be used for fee calculations except as provided in paragraph (2) of this subsection. The fee for each fiscal year is set at the following rates.
Figure: 30 TAC §101.27(c)(1)

(2) On and after September 1, 2001, a grandfathered facility, as defined in §116.10(6) of this title (relating to General Definitions) that does not have a permit application pending under Chapter 116 of this title (relating to Control of Air Pollution by Permits for New Construction or Modification) shall use all emissions, including emissions in excess of 4,000 tons per pollutant, for fee calculations. For the first 4,000 tons per pollutant, the rate in paragraph (1) of this subsection shall apply. For emissions in excess of 4,000 tons per pollutant, the rate will be $78 per ton for fiscal year 2002 and will triple, each fiscal year thereafter.

(3) The emissions tonnage for the account for fee calculation purposes will be the sum of those allowable levels and/or actual emissions for individual emission points or process units at the account rounded up to the nearest whole number, as follows.

(A) Where there is an enforceable document, such as a permit or Commission Order, establishing allowable levels, actual emissions may be used only if a completed Emissions Inventory Questionnaire for the account is submitted with the fee payment. For stacks or vents, the inventory must include verifiable data based on continuous emission monitor measurements, other continuously monitored values, such as fuel usage and fuel analysis, or stack testing performed during normal operations using EPA-approved methods and quality-assured by the executive director. All measurements, monitored values, or testing must have been performed during the basis year as defined in paragraph (1) of this subsection or if not performed during the basis year, must be representative of the basis year as defined in paragraph (1) of this subsection. Actual emission rates may be based upon calculations for fugitive sources, flares, and storage tanks. Actual production, throughput, and measurement records must be submitted, along with complete documentation of calculation methods. Thorough justification is required for all assumptions made and factors used in such calculations. If the actual emissions rate submitted for fee purposes is less than 60% of the allowable emission rate, an explanation of the discrepancy must be submitted. Where inadequate or incomplete documentation is submitted, the executive director may direct that the fee be based on allowable levels. Where a complete and verifiable inventory is not submitted, allowable levels shall be used.

(B) Where there is not an enforceable document, such as a permit or a Commission Order, establishing allowable levels actual emissions shall be used. Actual production, throughput, or measurement records must be submitted along with complete documentation of calculation methods. Thorough justification is required for all assumptions made and factors used in such calculations.

(4) For purposes of this section, the term "regulated pollutant" shall include any VOC, any pollutant subject to the FCAA, §111, any pollutant listed as a hazardous air pollutant under the FCAA, §112, each pollutant for which a national primary ambient air quality standard has been promulgated (including carbon monoxide), and any other air pollutant subject to requirements under commission rules, regulations, permits, orders of the commission, or court orders.

(d) Due date. Fee payments shall be made annually and must be received by the TNRCC or postmarked no later than November 1 of the fiscal year in which the fee is assessed. If an account commences or resumes operation after November 1 of the fiscal year in which the fee is assessed, the full emissions fee will be due prior to commencement or resumption of operations.

(e) Nonpayment of fees. Each emissions fee payment must be received by the due date specified in subsection (d) of this section. Failure to remit the full emissions fee by the due date shall result in enforcement action under the Texas Health and Safety Code, Texas Clean Air Act (TCAA), §382.082 or §382.088. In addition, the TCAA, §382.091(a)(2), makes it a criminal offense to intentionally or knowingly fail to pay a required fee. The provisions of this section, as first adopted and amended thereafter, are and shall remain in effect for purposes of any unpaid fee assessments, and the fees assessed pursuant to such provisions as adopted or as amended remain a continuing obligation.

(f) Late payment penalties. The owner or operator of an account failing to make payment of emissions fees when due shall be assessed late payment penalties and interest in accordance with Chapter 12 of this title (relating to Payment of Fees).

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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CHAPTER 114. CONTROL OF AIR POLLUTION FROM MOTOR VEHICLES

The Texas Natural Resource Conservation Commission (commission) adopts the repeal of Subchapter I, Non-Road Engines; Division 2, Heavy Equipment Fleets - Compression-Ignition Engines; §§114.410, 114.412, 114.416, 114.417, and 114.419; Division 4, Construction Equipment Operating Limitations; §§114.432, 114.436, 114.437, and 114.439; Division 8, Houston/Galveston Heavy Equipment Fleets - Compression-Ignition Engines; §§114.470, 114.472, 114.476, 114.477, and 114.479; Division 9, Houston/Galveston Construction Equipment Operating Restrictions; §§114.482, 114.486, 114.487, and 114.489; and corresponding revisions to the state implementation plan (SIP). These repeals are being adopted as part of the implementation of Senate Bill (SB) 5 (relating to the Texas Emission Reduction Plan) of the 77th Texas Legislature, 2001. Sections 114.410, 114.412, 114.416, 114.417, 114.419, 114.432, 114.436, 114.437, 114.439, 114.470, 114.472, 114.476, 114.477, 114.479, 114.482, 114.486, 114.487, and 114.489 are adopted *without changes* to the proposal as published in the July 20, 2001 issue of the *Texas Register* (26 TexReg 5350).

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE RULE REPEALS

The rules under Divisions 2 and 4 being repealed were originally adopted on April 19, 2000 as part of the SIP control strategy for the Dallas/Fort Worth (DFW) ozone nonattainment area to achieve attainment with the national ambient air quality standard (NAAQS) for ozone. The rules under Divisions 8 and 9 being repealed were originally adopted on December 6, 2000 as part of the SIP control strategy for the Houston/Galveston (HGA) ozone nonattainment area to achieve attainment with the ozone NAAQS. The purpose of the rules in Divisions 4 and 9 was to establish a restriction on the use of construction and industrial equipment (non-road, heavy-duty diesel equipment rated at 50 horsepower (hp) and greater) as an air pollution control strategy to delay the emissions of nitrogen oxides (NO_x), a key ozone precursor, until later in the day, thus limiting ozone formation. By delaying the hours of operation during the effective time period, the NO_x emissions would not mix in the atmosphere with other ozone-causing compounds until later in the day. The critical time for the mixing (chemical reactions) of NO_x and volatile organic compounds (VOC) is early in the day, and thus, higher ozone levels occur most frequently on hot summer afternoons. By delaying the operation of the affected equipment, the NO_x emissions are less likely to mix in the atmosphere with other ozone-forming compounds until after the critical mixing time has passed. Therefore, production of ozone would be stalled until later in the day when optimum ozone formation conditions no longer exist, ultimately minimizing the peak level of ozone produced.

The purpose of the rules in Divisions 2 and 8 was to achieve a reduction of ozone levels by requiring the owners or operators of diesel-powered construction, industrial, commercial, and lawn and garden equipment 50 hp and above to replace their affected equipment with newer Tier 2 and Tier 3 equipment. The rules would have required that the portion of the fleet with affected equipment in the range from 50 hp to 100 hp would be 100% Tier 2 by the end of the calendar year 2007. For the portion of the fleet in the 100 hp to 750 hp range, 50% of such equipment would be Tier 3 and the remaining Tier 2 by the end of the calendar year 2007. Finally, for the portion of the fleet greater than 750 hp, 100% of such equipment would be Tier 2 by the end of calendar year 2007. Tier 2 and Tier 3 equipment emit less NO_x and VOC than Tier 1 and unregulated equipment, therefore formation of ozone would be reduced.

Recently, the 77th Texas Legislature passed SB 5. Section 18 of SB 5 requires the commission to submit a SIP revision to the United States Environmental Protection Agency (EPA) deleting the requirements of these rules from the SIP no later than October 1, 2001. These rule repeals will be submitted to EPA as a SIP revision, thus implementing this legislative requirement.

The diesel emission reduction incentive program contained in SB 5 will replace the existing rules and result in a similar level of emission reductions. Therefore, the NO_x reductions previously claimed in the DFW Attainment Demonstration SIP will, as a result of this rulemaking, be achieved through an alternate, but equivalent federally enforceable mechanism.

FINAL REGULATORY IMPACT ANALYSIS DETERMINATION

The commission reviewed the rulemaking action 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. A "major environmental rule" is 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 rules being repealed were intended to protect the environment and reduce risks to human health from environmental exposure to ozone and would have affected, in a material way, a sector of the economy, competition, and the environment.

This rulemaking action is not subject to the regulatory analysis provisions of Texas Government Code, §2001.0225(b), because the repealed rules are being replaced by a reduction strategy which will result in NO_x emission reductions similar to the NO_x reductions that would have been achieved by the rules. These agreements will protect the environment and reduce risks to human health from environmental exposure to ozone. However, this rulemaking action will not adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state.

TAKINGS IMPACT ASSESSMENT

The commission prepared a takings impact assessment for these repeals under Texas Government Code, §2007.043. The following is a summary of that assessment. The specific purpose of this rulemaking action is to repeal Subchapter I,

Non-Road Engines; Division 2, Heavy Equipment Fleets - Compression-Ignition Engines; §§114.400, 114.412, 114.416, 114.417, and 114.419; Division 4, Construction Equipment Operating Limitations; §§114.432, 114.436, 114.437, and 114.439; Division 8, Houston/Galveston Heavy Equipment Fleets - Compression-Ignition Engines; §§114.470, 114.472, 114.476, 114.477, and 114.479; Division 9, Houston/Galveston Construction Equipment Operating Restrictions; §§114.482, 114.486, 114.487, and 114.489; and to make corresponding revisions to the SIP. These repealed rules will be replaced by reductions resulting from voluntary and incentive programs authorized by SB 5 which will obtain the similar NO_x reductions necessary for the DFW and HGA ozone nonattainment areas to meet the NAAQS established under federal law. These repeals do not burden private real property.

CONSISTENCY WITH THE COASTAL MANAGEMENT PROGRAM

When HGA and DFW rules regarding heavy equipment fleets with compression-ignition engines and the rules regarding construction equipment operating restrictions were originally adopted, the commission determined that the rulemaking related 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 the previous adoption action for consistency with the CMP goals and policies in accordance with the rules of the Coastal Coordination Council, and determined that the action was consistent with the applicable CMP goals and policies. The CMP goal applicable to the rulemaking action was 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 were authorized and NO_x air emissions were anticipated to be reduced as a result of these rules. The CMP policy applicable to the rulemaking action was 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)). The rulemaking action complied with 40 CFR 50, National Primary and Secondary Ambient Air Quality Standards, and 40 CFR 51, Requirements for Preparation, Adoption, and Submittal Of Implementation Plans. Therefore, in compliance with 31 TAC §505.22(e), these rulemaking actions were determined to be consistent with CMP goals and policies.

The repeal of these rules will not invalidate the determination that the previous rulemaking actions were consistent with CMP goals and policies, because the repealed rules are being replaced by voluntary and incentive programs authorized by SB 5, which will result in NO_x emission reductions similar to the NO_x reductions that would have been achieved by the rules. Therefore, this rulemaking action is also consistent with CMP goals and policies.

The commission solicited comments on the consistency of the proposed repeals with the CMP during the public comment period but no comments were received.

HEARINGS AND COMMENTERS

The commission held public hearings on this proposal on August 13, 2001 in Houston; on August 14, 2001 in Austin and in Arlington. The comment period closed on August 14, 2001. Comments were received from the Association of Automotive Service Providers (AASP); Behthul & Kean, LLP on behalf of the Associated Builders and Contractors of Greater Houston (Associated-Houston); Business Coalition for Clean Air (BCCA); City of Fort Worth (Fort Worth); City of Houston (Houston); Galveston-Houston Association for Smog Prevention (GHASP); Good Company (Good); Houston Sierra Club (Sierra-Houston); Alliance of Automobile Manufacturers (AAM); JMS Ventures (JMS); Metron Management (Metron); Metropolitan Transit Authority (Metro-Houston); Port of Houston (POH); Power Systems Associates on behalf of Darr Equipment Company, Holt Power Systems, and Mustang Power Systems (PSA); Public Citizen, Texas Office on behalf of the Texas Campaign for the Environment, SEED Coalition, Clean Water Action, Environmental Defense, and Sierra Club - Texas/Arkansas Field Office (Public Citizen); Sierra Club Texas/Arkansas Field Office (Sierra-TX/AR); Sneed Institute (Sneed); Texas Campaign for the Environment (TCE); TXU Business Services (TXU); Texas Clean Air Working Group (TCAWG); Texas Department of Transportation (TxDOT); Texas State Inspection Association (TSIA); TranStar Energy Company (TranStar); EPA; and seven individuals.

RESPONSE TO COMMENTS

All the commenters were generally supportive of the repeals of the construction shift rules and Tier 2/Tier 3 rules, with some exceptions. Sierra-Houston did not support the repeal of the Tier 2/Tier 3 rules.

The commission has no choice other than to follow direction given by the Texas Legislature. Senate Bill 5 specified that the Tier 2/Tier 3 rules will be removed from the SIP.

BCCA, Houston, and TCAWG commented that they support the repeals of the construction shift rules and Tier 2/Tier 3 rules and recommend that the commission fund projects in HGA so as to replace all of the reductions that would have been achieved with these two rules in place. In addition, BCCA suggested funding an additional 20 tons per day (tpd) to partially make up the remaining 56 tpd gap in the HGA SIP. Houston commented that the commission should maximize emission reductions and should facilitate the development and implementation of new technologies.

The commission agrees with the comments and plans to allocate funding of the SB 5 program, to the extent possible, to first cover the repealed rules and then 20 tpd of the gap. Further, the commission will attempt to maximize the emission reductions from this program and aggressively encourage the development of new technology. The commission may reassess the funding levels after the first year of the program.

SUBCHAPTER I. NON-ROAD ENGINES

DIVISION 2. HEAVY EQUIPMENT FLEETS - COMPRESSION-IGNITION ENGINES

30 TAC §§114.410, 114.412, 114.416, 114.417, 114.419

STATUTORY AUTHORITY

The repeals are adopted under Texas Water Code (TWC), §5.102, which provides the commission with the general powers to carry out its duties under TWC; §5.103, which authorizes the commission to adopt any rules necessary to carry out the

powers and the duties under the provisions of TWC and other laws of this state; and §5.105, which authorizes the commission by rule to establish and approve all general policy of the commission. These repeals are also adopted under Texas Health and Safety Code, Texas Clean Air Act (TCAA), §382.017, which authorizes the commission to adopt rules consistent with the policy and purposes of TCAA; §382.011, which authorizes the commission to establish the level of quality to be maintained in the state's air and to control the quality of the state's air; and §382.012, which authorizes the commission to prepare and develop a general, comprehensive plan for the control of the state's air. Finally, these repeals are required as part of the implementation of SB 5, §18, 77th Legislature, 2001.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Ramon Dasch
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DIVISION 4. CONSTRUCTION EQUIPMENT OPERATING LIMITATIONS

30 TAC §§114.432, 114.436, 144.437, 114.439

STATUTORY AUTHORITY

The repeals are adopted under Texas Water Code (TWC), §5.102, which provides the commission with the general powers to carry out its duties under TWC; §5.103, which authorizes the commission to adopt any rules necessary to carry out the powers and the duties under the provisions of TWC and other laws of this state; and §5.105, which authorizes the commission by rule to establish and approve all general policy of the commission. These repeals are also adopted under Texas Health and Safety Code, TCAA, §382.017, which authorizes the commission to adopt rules consistent with the policy and purposes of TCAA; §382.011, which authorizes the commission to establish the level of quality to be maintained in the state's air and to control the quality of the state's air; and §382.012, which authorizes the commission to prepare and develop a general, comprehensive plan for the control of the state's air. Finally, these repeals are required as part of the implementation of SB 5, §18, 77th Legislature, 2001.

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DIVISION 8. HOUSTON/GALVESTON HEAVY EQUIPMENT FLEETS - COMPRESSION-IGNITION ENGINES

30 TAC §§114.470, 114.472, 114.476, 114.477, 114.479

STATUTORY AUTHORITY

The repeals are adopted under Texas Water Code (TWC), §5.102, which provides the commission with the general powers to carry out its duties under TWC; §5.103, which authorizes the commission to adopt any rules necessary to carry out the powers and the duties under the provisions of TWC and other laws of this state; and §5.105, which authorizes the commission by rule to establish and approve all general policy of the commission. These repeals are also adopted under Texas Health and Safety Code, TCAA, §382.017, which authorizes the commission to adopt rules consistent with the policy and purposes of TCAA; §382.011, which authorizes the commission to establish the level of quality to be maintained in the state's air and to control the quality of the state's air; and §382.012, which authorizes the commission to prepare and develop a general, comprehensive plan for the control of the state's air. Finally, these repeals are required as part of the implementation of SB 5, §18, 77th Legislature, 2001.

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DIVISION 9. HOUSTON/GALVESTON CONSTRUCTION EQUIPMENT OPERATING RESTRICTIONS

30 TAC §§114.482, 114.486, 114.487, 114.489

STATUTORY AUTHORITY

The repeals are adopted under Texas Water Code (TWC), §5.102, which provides the commission with the general powers to carry out its duties under TWC; §5.103, which authorizes the commission to adopt any rules necessary to carry out the powers and the duties under the provisions of TWC and other laws of this state; and §5.105, which authorizes the commission by rule to establish and approve all general policy of the

commission. These repeals are also adopted under Texas Health and Safety Code, TCAA, §382.017, which authorizes the commission to adopt rules consistent with the policy and purposes of TCAA; §382.011, which authorizes the commission to establish the level of quality to be maintained in the state's air and to control the quality of the state's air; and §382.012, which authorizes the commission to prepare and develop a general, comprehensive plan for the control of the state's air. Finally, these repeals are required as part of the implementation of SB 5, §18, 77th Legislature, 2001.

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SUBCHAPTER K. MOBILE SOURCE INCENTIVE PROGRAMS

The Texas Natural Resource Conservation Commission (commission) adopts new §§114.600 - 114.602, and 114.609 in new Division 1, On-Road Diesel Vehicle Purchase or Lease Incentive Program; and new §§114.610 - 114.612, 114.616, 114.618, and 114.619 in new Division 2, Light-Duty Motor Vehicle Purchase or Lease Incentive Program. These new sections and new divisions are in new Subchapter K, Mobile Source Incentive Programs, of Chapter 114 as part of the implementation of Senate Bill (SB) 5 (relating to the Texas Emission Reduction Plan), 77th Texas Legislature, 2001. Sections 114.601, 114.609, 114.611, and 114.618 are adopted *with changes* to the proposed text as published in the July 20, 2001 issue of the *Texas Register* (26 TexReg 5355). Sections 114.600, 114.602, 114.610, 114.612, 114,616, and 114.619 are adopted *without changes* to the proposal and will not be published.

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE ADOPTED RULES

The 77th Legislature adopted SB 5 establishing the Texas Emission Reduction Plan (TERP) which provides financial incentives for reducing emissions of on-road and non-road motor vehicles and equipment, grants for the development of new emission control technology, new building energy efficiency standards, and research and development programs. The program is funded through surcharges and fees established in the bill. Senate Bill 5 also required that the commission delete the operating restriction on construction equipment rules and the Tier 2/Tier 3 accelerated purchase rules on construction equipment from the Dallas/Fort Worth and Houston/Galveston (HGA) state implementation plans (SIP) and replace them with programs from SB 5. The SB 5 programs are estimated to achieve reductions in excess of the reductions expected from the rules that are being repealed. In accordance with SB 5, the SIP will be revised to replace these rules with TERP.

The adopted rules will establish a state-wide incentive program for the purchase or lease of new on-road diesel vehicles and light-duty motor vehicles that meet emission standards more stringent than those required by federal requirements. The incentive for eligible on-road diesel vehicles will be the reimbursement of incremental costs to purchase the cleaner vehicle, and the incentive for eligible light- duty motor vehicles will be an award of a specified dollar amount. Both incentives will be based on the emission standard to which the vehicle is certified. The implementation and administration of the new on-road diesel vehicle purchase or lease incentive program will be performed by the commission. However, implementation and administration of the incentive awards associated with the light-duty motor vehicle purchase or lease incentive program will be the responsibility of the state comptroller's office.

SECTION BY SECTION DISCUSSION

The new Subchapter K includes two new divisions which will establish the rules concerning motor vehicle purchasing and leasing incentives. The new Division 1 includes the new on-road diesel vehicle purchase or lease incentive program rules found in new §§114.600 - 114.602, and 114.609. The new Division 2 includes the new light-duty motor vehicle purchase or lease incentive program rules found in new §§114.610 - 114.612, 114.616, 114.618, and 114.619.

The new §114.600 contains definitions applicable to the on-road diesel vehicle purchase or lease incentive program rules. These definitions include: incremental costs, lease, lessee, motor vehicle, new on-road diesel vehicle, and on-road diesel. The definitions of motor vehicle and on-road diesel are as specified under SB 5, §1. The other definitions listed were added for clarity.

The new §114.601 establishes the state-wide applicability of §§114.600, 114.602, and 114.609. All incentives are subject to the availability of funding for this program. Because the funding for these incentives is from surcharges which will be collected throughout the lifetime of the program, and because there are statutory caps on the amount of funding for this program, funding for incentives for eligible vehicles may be delayed or unavailable. Incentives will be funded in the order of the submission of a completed certification. In addition, in response to public comment, the proposed §114.601 has been amended to include a new subsection (b) which prohibits eligibility if the purchase or lease of the new on-road diesel motor vehicle is required by any other federal, state, or local regulations or agreements.

The new §114.602 establishes the eligibility requirements for the on-road diesel vehicle purchase or lease incentive to reimburse the incremental costs of purchasing or leasing an on-road diesel vehicle that is certified by the United States Environmental Protection Agency (EPA) to meet an emission standard more stringent than that of a conventional on-road diesel vehicle. The new §114.602 also specifies that only one incentive will be provided for each eligible new on-road diesel vehicle purchased or leased in the state and that the incentive shall be provided to the lessee and not to the purchaser if the on-road diesel vehicle is purchased for the purpose of leasing the on-road diesel vehicle to another person. In addition, new §114.602 specifies that the incentive for the lease of an eligible new on-road diesel vehicle must be prorated based on an eight-year lease term. This provision will likely prevent the excessive use of short term leases in acquiring incentive funding.

The new §114.609 establishes the schedule of emission standards and incentive amounts from which the incremental cost reimbursement incentives will be based. In response to comment and to reflect the requirements of the statute, new §114.609(b) establishes the ability of the commission, in consultation with the TERP Advisory Board (Advisory Board), to evaluate new technologies and to change, if necessary, the incentive emissions standards established under this section, to improve the ability of the program to achieve its goals.

The new §114.610 contains definitions applicable to the light-duty motor vehicle purchase or lease incentive program rules. These definitions include: bin or emissions bin, lease, lessee, light-duty motor vehicle, and new light-duty motor vehicle. The definitions of bin or emissions bin, light-duty motor vehicle, and motor vehicle are as specified under SB 5, §1. The other definitions listed were added for clarity.

The new §114.611 establishes the state-wide applicability of §§114.610, 114.612, 114.616, 114.618, and 114.619. All incentives are subject to the availability of funding for this program. Because the funding for these incentives is from surcharges which will be collected during the pendency of the program, and because there are statutory caps on the amount of funding for this program, funding for incentives for eligible vehicles may be delayed or unavailable. Incentives established by these rules will be funded in accordance with rules and procedures adopted by the state comptroller's office. In addition, in response to public comment, §114.611 has been amended to include a new subsection (b) which prohibits eligibility if the purchase or lease of the new light-duty motor vehicle is required by any other federal, state, or local regulations or agreements.

The new §114.612 establishes the eligibility requirements for the new light-duty purchase or lease incentive for the purchase or lease of a new light-duty motor vehicle that is certified by the EPA to meet the Tier 2 - Bin 4, Bin 3, Bin 2, or Bin 1 emission standards or to an emissions standard that is at least as stringent. The new §114.612 also specifies that only one incentive will be provided for each eligible new light-duty motor vehicle purchased or leased in the state and that the incentive shall be provided to the lessee and not to the purchaser if the new light-duty motor vehicle is purchased for the purpose of leasing the light-duty motor vehicle to another person. In addition, new §114.612 specifies that the incentive for the lease of an eligible new light-duty motor vehicle must be prorated based on an four-year lease term. This provision will likely prevent the excessive use of short-term leases in acquiring incentive funding.

The new §114.616 establishes the requirements for a list of eligible vehicles that vehicle manufacturers will be required to provide to the executive director, or his designee, at the beginning, but no later than July 1, of each year preceding the next new vehicle model year, beginning January 1, 2002. The information to be included on this list will provide the commission with sufficient data to verify the emission certification of vehicles listed. The new §114.616 will also allow the manufacturer to supplement the list as necessary to include additional new light-duty motor vehicle models that the manufacturer intends to sell in this state during the model year. In addition, new §114.616 will require that all dealers and leasing agents of new light-duty motor vehicles statewide make copies of this list available to their prospective purchasers or lessees. This provision will help provide awareness of this incentive program to dealers statewide and provide additional information to customers in making purchase selection decisions.

The new §114.618 establishes the requirements for a vehicle emissions brochure that vehicle manufacturers will be required to publish by September 1 of each year and distribute to customers regarding the vehicles eligible to receive an incentive, beginning September 1, 2002. The dimensions of the brochure are also established by the new §114.618 for the sake of uniformity in printing styles and so that the brochure may be easily recognized by prospective purchasers and lessees. The new §114.618 will also require each manufacturer to submit a copy of the brochure to the executive director, or his designee, by September 1 of each year, beginning September 1, 2002. In addition, new §114.618 will require manufacturers that do not intend to sell new light-duty motor vehicles in the state that may be eligible for the incentive to publish a brochure that states a notice of that fact. Finally, new §114.618(a)(5) has been added to require that the brochure include, at a minimum, not only the commission's website, but also information that a complete list of all eligible motor vehicles that manfacturers intend to sell in this state is available at this website.

The new §114.619 establishes the schedule of emission standards and corresponding incentive amounts from which the incentives will be based.

FINAL REGULATORY IMPACT ANALYSIS DETERMINATION

The commission reviewed the rulemaking action in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and determined that the rulemaking action does not meet the definition of a "major environmental rule" as defined in that statute. A major environmental rule is 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 or a sector of the economy; productivity; competition; jobs; the environment; or the public health and safety of the state or a sector of the state. These rules are intended to protect the environment or reduce risks to human health from environmental exposure to ozone by providing financial incentives for the purchase of cleaner on-road diesel vehicles and light-duty motor vehicles. As such, these rules will not adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state.

Additionally, Texas Government Code, §2001.0225 only applies to a major environmental rule, the result of which is to: 1.) exceed a standard set by federal law, unless the rule is specifically required by state law; 2.) exceed an express requirement of state law, unless the rule is specifically required by federal law; 3.) exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or 4.) adopt a rule solely under the general powers of the agency instead of under a specific state law. This rulemaking action does not meet any of these four applicability requirements because the rulemaking is specifically required by state law in SB 5.

TAKINGS IMPACT ASSESSMENT

The commission assessed the takings impact for these rules in accordance with Texas Government Code, §2007.043. The following is a summary of that assessment. The specific purpose of this rulemaking action is to provide financial incentives for the purchase of cleaner on-road diesel vehicles and light-duty motor vehicles. These rules will not burden private real property because they implement a voluntary program and do not involve

changes to private real property. These rules only affect motor vehicles which are not considered to be private real property.

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)). The specific purpose of this rulemaking action is to provide financial incentives for the purchase of cleaner on-road diesel vehicles and light-duty motor vehicles. No new sources of air contaminants will be authorized and nitrogen oxides (NO_x) air emissions will be reduced as a result of these rules. 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.

The commission solicited comments on the consistency of the proposed rules with the CMP during the public comment period, but received no comments.

HEARINGS AND COMMENTERS

The commission held public hearings on this proposal on August 13, 2001 in Houston; on August 14, 2001 in Austin and in Arlington. The comment period closed on August 14, 2001. The following commenters provided oral testimony and/or submitted written testimony: Hughes and Luce, LLP, on behalf of the Alliance of Automotive Manufacturers (AAM); Association of Automotive Service Providers (AASP); Business Coalition for Clean Air (BCAA); City of Houston (Houston); Public Citizen's Texas Office on behalf of the Texas Campaign for the Environment, SEED Coalition, Clean Water Action, Environmental Defense, and Sierra Club - Texas/Arkansas Field Office (Public Citizen); Sierra Club - Texas/Arkansas Field Office (Sierra-TX/AR); Sierra Club Houston Regional Group (Sierra-Houston); Texas Campaign for the Environment (TCE); Texas Clean Air Working Group (TCAWG); Texas State Inspection Association (TSIA); TranStar Energy Company (TranStar); EPA; and four individuals.

RESPONSE TO COMMENTS

AAM, BCCA, EPA, Sierra-Houston, Public Citizen, Sierra-TX/AR, TCAWG, TCE, and TranStar generally supported the proposal. The commission did not receive any comments in opposition to the proposal. AAM, BCCA, EPA, Sierra-Houston, Public Citizen, Sierra-TX/AR, TCAWG, TCE, and TranStar suggested changes to the rules.

BCCA, Houston, TCAWG commented that the reimbursements to the purchasers of new, on- road heavy-duty diesel vehicles are limited to the reductions authorized by the Texas Health and Safety Code (THSC), §386.113, in the proposed rules and this limitation should be evaluated by August 31, 2002 to determine if it should be revised and/or if such purchaser's reimbursements should be based on a per ton basis as is the case under the Diesel Emission Reduction Incentive Program.

Subject to the provisions of SB 5 and in consultation with the Advisory Board, the commission intends to regularly review the incentive amounts and qualification criteria set out in THSC, §386.113 to determine whether changes are needed to improve the program.

AASP and TSIA commented that the increase in the fee for the out-of-state motor vehicle safety inspection form, "green sheet," from $1.00 to $225 may be unconstitutional, difficult to enforce, and prove to be very difficult to implement.

The comment is beyond the scope of this rulemaking. This rulemaking does not address the collection of fees under SB 5, only the eligibility for receiving incentives. The Department of Public Safety has jurisdiction over the collection of the $225 fee.

TranStar commented that all heavy-duty motor vehicles with engine technologies operating on a "qualifying fuel" and meeting the NO_x grams per brake horsepower-hour standard, as defined by SB 5, should be eligible for the incentives established. TranStar further commented that they believe this was the intent of the Texas Legislature and that errors in editing during the chaotic legislative process should not stand in the way of good public policy, or the intent of the legislature. BCCA recommended that the commission authorize reimbursements for the purchase or lease of any low-emitting vehicles, equipment, and alternative fuels (as defined by SB 5) as long as the overall emission reduction and cost- effectiveness requirements of the program are met. TCAWG recommended that the commission take into account the clear intent of the legislation, which is to include all "qualifying fuels" as defined by SB 5 in eligibility for this program, not just diesel, as the language of the bill incorrectly suggests.

The commission agrees with these comments and the guidance document is currently drafted to allow a vehicle using any fuel to qualify for an on-road heavy-duty vehicle purchase incentive. The commission does not feel it is appropriate to modify the rules at this time to reflect this understanding. However, the commission is planning to consult with the Advisory Board at the earliest possible point in time to get their opinion on this issue. If the Advisory Board agrees with this interpretation, the commission will modify the rules to reflect this decision.

BCCA supported the development of a federal program to provide financial incentives toward retirement and recycling of pre-1988 commercial diesel trucks as these vehicle emit nearly three times the NO_x of today's modern electronically-controlled diesel engines and are substantially less fuel efficient. BCCA further commented that a federal truck incentive program would augment the provisions in SB 5 to accelerate the reduction of emission and fuel consumption of these vehicles.

The commission appreciates the comment; however, the commission cannot take any action as part of this rulemaking regarding implementation of a federal incentive program.

TranStar recommended that the commission include the Inherently Low Emission Vehicle (ILEV) emission standard designation in the light-duty motor vehicle rules for an incentive amount in the $3,500 - $4,000 range because to include dedicated clean vehicles that produce no evaporation emissions (such as ILEV certified vehicles) in the incentive program would add significantly to the benefits of the legislation and would further encourage the fueling infrastructure development that is critical to the success of this program.

The ILEV standard is not considered eligible for an incentive as part of the SB 5 program. ILEV vehicles are cleaner for evaporative volatile organic compounds; however, they do not meet a NO_x standard that is at least as stringent as the bin standards identified in the rules.

One individual requested more information be provided about the proposed incentive programs.

The commission is developing guidance documents that will provide more detailed information about the incentive programs. The commission will have these guidance documents and other additional information available on its internet website at *www.tnrcc.state.tx.us/oprd/sips/terp.html*.

One individual commented in opposition to reducing highway speed limits in the Houston area as a tactic to improve air quality since the area does not even have a good system to identify and keep the vehicles with inordinately high emission levels off the road.

This comment does not specifically address issues associated with this rulemaking. The commission made no changes in the rule language in response to this comment.

Sierra-Houston requested that the commission consider the removal of leasing from these rules, because leasing suggests that emission reductions may not be permanent.

SB 5 specifically includes leased vehicles in the program. The commission does not have the authority to modify the legislation to exclude leases.

Sierra-Houston commented that the commission needs oversight and auditing of each rebate to ensure that the public is not paying for reductions that never occur. Public Citizen commented that the commission should bulletproof the program against criticism by assuring that there are audits built in. The fear of audit will assure the people that the state means business and that there is retribution.

The commission will take every available action to insure the integrity of the program while ensuring the program remains simple, effective, and emissions efficient.

Sierra-TX/AR commented that the commission must have a dedicated alternative fuel vehicles (AFV) so that consumers can't purchase an AFV, receive the credit, and then fill the automobile with gasoline which will do nothing to improve air quality or reduce carbon dioxide emissions. Sierra- TX/AR further commented that is also necessary to require that a hybrid get a mile per gallon (mpg) standard significantly above the 27.5 mpg standard for cars.

The commission agrees with the commenter and will require that dual-fueled vehicles be operated only on a fuel which allows the vehicle to meet the eligibility criteria. This requirement will be included within the incentive agreement itself. Fuel efficiency is not addressed as part of SB 5. In addition, fuel efficiency is not an indicator of emissions performance. As part of SB 5, THSC, §386.157, fuel efficiency was specifically omitted as part of the brochure requirements.

Public Citizen commented that the commission should establish procedures for gathering information, on both the grant from the comptroller and registration data on qualified vehicles through TxDOT, so that information can be compiled, because it is critical both for the EPA credibility of the program and for sales data to be used for program evaluation.

The commission will be establishing internal methodologies to track the emission reductions generated as part of this program and will make every effort to have these counted towards the EPA required SIP. The commission will work with all other agencies involved in the implementation of SB 5 to ensure an effective and creditable program.

Public Citizen and Sierra-TX/AR commented that the commission should re-evaluate the light- duty program each year, and establish a regular calendar to review and adjust the incentive program, in consultation with the Advisory Board, to assure that the greatest number of low-emission vehicles are given the biggest incentives, and announce it early. Public Citizen also stated that diesel hybrid engine vehicles should not be eligible for these incentives due to the potential for them to emit high levels of particulate matter (PM) emissions. In addition, Public Citizen commented that the commission should use the incentive program to address global warming emissions.

The commission will review the program on an as needed basis, and will recommend changes to the Advisory Board when warranted. The statute does not specifically address PM or global warming emissions; however, it does allow the commission to consider reductions of other types of emission in conjunction with the reduction of NO_x. If PM or global warming emissions become a significant threat to air quality in the future, the commission will consult with the Advisory Board as needed to make changes to the program. Currently, the statute does not address fuel type as part of the light-duty program.

Public Citizen commented that entities affected by the Texas Clean Fleet (TCF) program should not be eligible to receive incentives under the purchase or lease incentive program, because these entities are required to purchase cleaner vehicles to comply with the TCF program.

The commission agrees with this comment and has added language to the rules to clarify that purchases or leases otherwise required by state or federal law, rule or regulation, memorandum of agreement, or other legally binding document are ineligible for funding under this program.

Sierra-TX/AR commented that there should be a dedicated person to administer the program. Public Citizen commented that the commission should add to its rules a dedicated ombudsman for the clean car program.

The commission was allocated a portion of the administration budget and will have adequate staff assigned to implement this program. However, the commission disagrees that an ombudsman is necessary in order to administer this program. Therefore, the commission has made no changes to the rule language in response to this comment.

Sierra-TX/AR commented that education is paramount to any incentive program and that public educational materials should be developed and should include, but not be limited to, radio and television announcements, posters, and brochures. Sierra-TX/AR further commented that there should be a person who is

able to go to the business community and host town hall meeting, etc. to promote the program and explain how it works. Similarly, BCCA also urged the commission to conduct an open, stakeholder-based rule and guidance development process for this program.

The commission will make every effort to promote this program as it has the potential to be one of the most effective programs for improving air quality around the state. The commission will do all that it can, within its budget, for getting the word out regarding the TERP program. The commission has also made every effort to conduct an open rule and guidance development process for this program and will continue to do so. Currently, the guidance documents are available on the commission website and the commission encourages all those concerned to submit comments.

EPA commented that the proposed §114.609 needs further clarification in regard to reimbursement amounts being "up to" $15,000 and $25,000, respectively. EPA further asked whether this is a prorated amount for vehicles that are better than the levels required in federal regulations, but greater than the levels in this rule.

The commission interprets this part of the legislation to be a straight forward, simple rebate program. With that in mind, the commission will rebate up to $15,000 or $25,000 for the incremental cost of a cleaner vehicle. In other words, the actual amount of the rebate will be based upon the incremental cost related to the particular vehicle with a cap of $15,000 or $25,000. The commission does not believe it is appropriate to prorate rebates based on emissions level beyond what is already identified in statute.

AAM submitted sample paragraphs to be used in the manufacturer's brochure.

The commission has not specified the exact wording to be used by manufacturers in their individual brochures. The layout of the brochure is at the discretion of the manufacturer. However, the brochures must conform to the requirements of §114.618 in regard to the contextual information.

EPA commented that §114.616 should be revised to require manufacturers to "inform" the commission of which new vehicles meet the incentive emission standard instead of producing a report. EPA further suggested that the commission not require manufacturers to put together a list, but rather require that for a manufacturer's engine model to be eligible for the incentive. Finally, EPA stated that the manufacturer must list the engine model in the report detailed in §114.616.

The commission disagrees with these comments. The requirements in §114.616 implement the mandates provided in SB 5, §1, which require manufacturers to provide a list of eligible vehicles that the manufacturer intends to sell in the state each year to the commission. The commission made no changes in the rule language in response to these comments.

EPA commented that they do not understand how the EPA "Green Vehicle Guide" would be used for the proper crediting of emission reductions in the HGA SIP. EPA further commented that while EPA makes every effort to assure that this data is complete and accurate, EPA cannot guarantee this accuracy.

The statute clearly indicates that the purpose of using data from the EPA "Green Vehicle Guide" is not for calculating emission reductions, but to enable consumers to make informed purchase decisions based on the relative amount of emissions produced by motor vehicles within each vehicle class. The commission understands that the EPA is not able to guarantee the accuracy of the data; however, the statute specifically requires manufacturers to publish a brochure that includes emission and air pollution ratings for each eligible motor vehicle based on data from this guide.

EPA commented that requiring manufacturers to produce reports could possibly be pre-empted under the Federal Clean Air Act, §209(a), especially since the brochures must be "approved" by the state. EPA also commented that the requirements in §114.618 that manufacturers provide new car buyers with an emission brochure describing which of their models are eligible for incentive, or explain that none of their vehicles are eligible, seems to go beyond the "voluntary" spirit of the program.

The commission disagrees that requiring manufacturers to produce reports is pre-empted under the Federal Clean Air Act, §209(a). The reporting requirement is not a condition precedent to an initial retail sale, titling (if any), or registration. In addition, the statute clearly requires each manufacturer to publish and make available to its dealers a brochure that includes, at a minimum, the vehicles that would be eligible for incentives under this program. This rulemaking is designed to implement the statute. The commission has also determined that all manufacturers that intend to sell vehicles in the state participate in this program, regardless of whether they intend to sell eligible vehicles. This action should provide consumers with sufficient information to make informed purchases.

EPA commented that it appears that vehicles not meeting the incentive thresholds are somehow being taxed an additional amount because of their emission levels and that the EPA would not encourage any language that suggests that certain vehicles are being taxed more because of their status. EPA believes that there may be language in the preamble that may suggest this is happening.

The commission did not intend to suggest in the proposal preamble that certain vehicles are being taxed more because of their status. The PUBLIC BENEFITS AND COSTS section of the preamble to the proposed rules, which may include confusing statements on this issue, is not included in the preamble to the adopted rules.

EPA also commented that it appears to them that the tax incentive level is based partially on the difference in the manufacturer's suggested retail price between a model certified to Bin 4 or cleaner and the same model certified to a higher level. This may mean that manufacturers may choose to distribute the costs of its cleaner vehicles so there is no price difference between the two models.

The commission does not have authority to regulate manufacturers in their business decisions related to pricing. However, the light-duty motor vehicle program will provide a rebate at the level specified in statute regardless of the difference in price between a conventional vehicle and a cleaner vehicle. The commission encourages the commenter to provide comments to the Texas Comptroller of Public Accounts who will be implementing the major portion of this part of SB 5.

EPA commented that it cannot predict the availability of the cleaner vehicles produced by manufacturers during the 2002 - 2003 time frame because the federal Tier 2 program begins later.

The commission understands that the EPA cannot predict the availability of the cleaner vehicles, but the commission hopes that the state incentive program will encourage manufacturers to produce vehicles which meet the cleaner incentive emissions standards.

EPA commented that it does not know the proper accounting of the emission reductions resulting from the incentive program, but that EPA will work with the commission to develop SIP credit protocols.

The commission appreciates the EPA comment, and will work with the EPA to develop SIP credit protocols.

EPA commented that the regulations ought to take into consideration the fact that there may be different emission levels for vehicles within a model, and provided the example that some Honda Accords may be certified to Bin 4 or cleaner, while other Accords may be Bin 5 or dirtier depending on their configuration.

The rules do take into consideration that there may be different emission levels for vehicles within a model. The statute and the rules specifically include the requirement that it is the light- duty vehicle, and not the model that must be certified by the EPA to meet an emissions standard that is at least as stringent as the incentive emission standards provided in the rules. Thus, in the example provided by the EPA, state-wide incentives for the purchase or lease of light-duty motor vehicles would apply only for those Honda Accords that are certified to Bin 4 or cleaner.

TxDOT commented that, although the commission will require manufacturers to report on the types of equipment available for rebates and grants, it may take them a while to provide this information to the commission, reducing the TxDOT ability to take advantage of the program.

The commission will use every means possible to get information out regarding vehicles and equipment which are eligible for grants. The commission notes that only manufacturers of light-duty vehicles are required to report eligible vehicles to the commission. If a manufacturer is late in reporting, the commission will seek to get the information through other means, such as inquiring of the EPA which engine families are eligible for rebates.

TxDOT commented that the reference to truck-trailers should be corrected to truck-tractors.

The commission agrees with TxDOT. The reference to truck-trailers was a typographical error and all references to truck-trailers have been removed.

Public Citizen disagrees with the commission interpretation of what is required to be a part of the manufacturer's brochure. Public Citizen expressed a belief that the manufacturer should be required to list in the brochure all eligible vehicles, regardless of who the manufacturer is. Public Citizen suggested that as an alternative, the commission develop a generic brochure to be distributed to all dealers. In addition, the commission should create its own clean car web site and assure that it is linked to the EPA and comptroller.

The commission disagrees with the comment about requiring manufacturers to publish brochures containing information about competitors' vehicles. THSC, §386.157, requires that a motor vehicle manufacturer shall publish and make available to the dealers a brochure that includes the list of eligible motor vehicles prepared under THSC, §386.156. Section 386.156 requires the commission to publish and provide to the comptroller a list of the new motor vehicles as listed under THSC, §386.155, which requires the manufacturer to provide to the commission a list of the new motor vehicles that the manufacturer intends to sell in this state. Therefore, the commission interprets the statute to only require manufacturers to publish a brochure that includes the list of eligible motor vehicles that the manufacturer intends to sell in this state. However, the commission will require that each brochure include the commission web address for this program so potential purchasers will have access to additional information. Also, §114.618, relating to brochure requirements, has been amended to require that the brochure include, at a minimum, not only the commission's website, but also information specifying that a complete list of all eligible motor vehicles that manufacturers intend to sell in this state is available at this website.

Public Citizen commented that if the commission allowed a manufacturer to publish a brochure covering only its vehicles, the commission should require a manufacturer to list on its brochure all vehicles it manufactures, including all its associated companies.

The commission disagrees with the comment. Section 386.155 provides that a manufacturer of a motor vehicle shall provide to the commission a list of the new motor vehicle models the manufacturer will provide for a sale in the state. The term "manufacturer" is not defined in the statute, however, at a minimum, the manufacturer must make available to the dealerships a brochure regarding their product lines offered by that dealer. The commission's interpretation of the brochure requirements is that it is left to the manufacturers to decide what car lines should be included in brochures at their dealerships.

Public Citizen commented that the commission needs to develop in its rules the type of brochure that TxDOT will distribute with the annual vehicle registration.

The commission disagrees with this comment. The commission does not have the statuatory authority to develop rules governing TxDOT's development of their annual vehicle registration program. However, the commission will provide input if requested by TxDOT.

Public Citizen commented that the commission should develop a brochure for the heavy-duty incentive program.

The commission was not required as part of the SB 5 statute to develop a brochure for the heavy-duty incentive program. However, the commission will make every effort to get the word out about the program through website postings and public workshops.

Public Citizen commented that §114.611(a) and (b) contain no enforcement mechanism to ensure that vehicles be used 75% of the time in Texas, and urged that the commission and TxDOT enter into an interagency agreement to allow tracking of these vehicles through a four-year period, and further that the commission should request a refund of the incentive money if the vehicle is removed from the targeted areas. Along these same lines the commenter requested additional oversight through TxDOT inspections of dealerships.

The commission will require as part of getting an incentive that the participant sign a document as part of receiving a grant that requires them to operate a minimum of 75% in an affected area. In addition, the document will include a provision allowing the state to demand money back if this requirement is not met. The commission will consult with the comptroller and TxDOT on their

ability to implement and enforce these measures through inspection of dealerships.

Public Citizen commented that regarding §114.611(c), purchasers should only be able to buy one vehicle per year. An individual opposed this position and recommended that if a limit had to be established, it should be as high as 50 to encourage small business owners who operate from a central fleet location to take advantage of all incentives available to them. This individual commented that a balance needs to be struck between limiting it to one person and allowing one fleet to take advantage of the whole program.

The commission disagrees with the comment that purchasing limits should be set. The statute does not limit, in any way, the number of vehicles eligible for purchase by any one single individual and the commission does not think it is appropriate to do so.

Public Citizen commented that regarding §114.611(c), the commission should clarify in the rules and materials that an eligible entity may also qualify for additional benefits, such as federal tax incentives or local assistance programs, and receipt of benefits under this program does not limit eligibility of these programs. In addition, the commission and comptroller should keep their web pages updated regarding these programs.

The commission appreciates the comment, however, it is the responsibility of other agencies, such as the Internal Revenue Service, to make the public aware of their incentives. However, the commission is not opposed to creating links on its website to other agencies which may also offer incentives. The commission does not have the authority to determine eligibility for other agency programs. The commission will make every effort to keep its website updated with the most recent information. Regarding the on-road diesel rebate program, additional benefits such as federal tax incentives or local assistance programs would not automatically disqualify a vehicle from eligibility, however such incentives could reduce the amount of funding for which the vehicle is eligible.

An individual expressed the hope that the commission is able to develop a successful program, especially given the challenges, such as the need to reduce emissions through new purchases of vehicles under the incentive program, given that many low-income earners keep their cars longer with increased pollution levels from those cars.

The commission appreciates this comment and is working towards developing a successful program.

DIVISION 1. ON-ROAD DIESEL VEHICLE PURCHASE OR LEASE INCENTIVE PROGRAM

30 TAC §§114.600 - 114.602, 114.609

STATUTORY AUTHORITY

These new sections are adopted under Texas Water Code (TWC), §5.102, which provides the commission with the general powers to carry out its duties under TWC; §5.103, which authorizes the commission to adopt any rules necessary to carry out the powers and duties under the provisions of TWC and other laws of this state; and §5.105, which authorizes the commission by rule to establish and approve all general policy of the commission. These new sections are also adopted under THSC, Texas Clean Air Act (TCAA), §382.017, which authorizes the commission to adopt rules consistent with the policy and purposes of TCAA; §382.011, which authorizes the commission to establish the level of quality to be maintained in the state's air and 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 control of the state's air; and Chapter 386, which establishes the TERP. Finally, these adopted new sections are required as part of the implementation of SB 5, acts of the 77th Legislature, 2001.

§114.601. Applicability.

(a) The provisions of §§114.600, 114.602, 114.604, and 114.609 of this title (relating to Definitions; On-Road Diesel Vehicle Purchase or Lease Incentive Requirements; On-Road Diesel Purchase or Lease Incentive Reporting Requirements; and On-Road Diesel Vehicle Purchase or Lease Incentive Schedule) apply statewide subject to the availability of funding.

(b) A purchase or lease of an on-road diesel motor vehicle is not eligible if it is required by any state or federal law, rule or regulation, memorandum of agreement, or other legally binding document. This subsection does not apply to:

(1) an otherwise qualified purchase or lease, regardless of the fact that the state implementation plan assumes that the change in vehicles will occur, if on the date the incentive is awarded the change is not required by any state or federal law, rule or regulation, memorandum of agreement, or other legally binding document; or

(2) the purchase or lease of an on-road diesel motor vehicle required only by local law or regulation or by corporate or controlling board policy of a public or private entity.

§114.609. On-Road Diesel Vehicle Purchase or Lease Incentive Schedule.

(a) The incentives provided under §114.602 of this title (relating to On-Road Diesel Vehicle Purchase or Lease Incentive Requirements) for new on-road diesel vehicles manufactured on or after January 1, 2001 until September 30, 2002 shall be based on the following emission standards for oxides of nitrogen (NO_x) and accompanying reimbursement amounts:

(1) 2.5 grams per brake horsepower-hour (g/bhp-hr) of NO_x or less is eligible for up to $15,000; and

(2) 1.5 g/bhp-hr of NO_x or less is eligible for up to $25,000.

(b) The incentives provided under §114.602 of this title for new on-road diesel vehicles manufactured on or after October 1, 2002 until September 30, 2006 shall be based on the following emission standards for NO_x and accompanying reimbursement amounts:

(1) 1.2 g/bhp-hr of NO_x or less is eligible for up to $15,000; and

(2) 0.5 g/bhp-hr of NO_x or less is eligible for up to $25,000.

(c) After evaluating new technologies and after public notice and comment, the commission, in consultation with the Texas Emission Reduction Plan Advisory Board, may change the incentive emissions standards established under this section to improve the ability of the program to achieve its goals.

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 August 24, 2001.

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Ramon Dasch
Acting Director, Environmental Law Division
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For further information, please call: (512) 239-0348

DIVISION 2. LIGHT-DUTY MOTOR VEHICLE PURCHASE OR LEASE INCENTIVE PROGRAM

30 TAC §§114.610 - 114.612, 114.616, 114.618, 114.619

STATUTORY AUTHORITY

These new sections are adopted under Texas Water Code (TWC), §5.102, which provides the commission with the general powers to carry out its duties under TWC; §5.103, which authorizes the commission to adopt any rules necessary to carry out the powers and duties under the provisions of TWC and other laws of this state; and §5.105, which authorizes the commission by rule to establish and approve all general policy of the commission. These new sections are also adopted under THSC, TCAA, §382.017, which authorizes the commission to adopt rules consistent with the policy and purposes of TCAA; §382.011, which authorizes the commission to establish the level of quality to be maintained in the state's air and 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 control of the state's air; and Chapter 386, which establishes the TERP. Finally, these adopted new sections are required as part of the implementation of SB 5, acts of the 77th Legislature, 2001.

§114.611. Applicability.

(a) The provisions of §§114.610, 114.612, 114.616, 114.618, and 114.619 of this title (relating to Definitions; Light-Duty Motor Vehicle Purchase or Lease Incentive Requirements; Manufacturer's Report; Vehicle Emissions Information Brochure; and Light-Duty Motor Vehicle Purchase or Lease Incentive Schedule) apply statewide subject to the availability of funding.

(b) A purchase or lease of a light-duty motor vehicle is not eligible if it is required by any state or federal law, rule or regulation, memorandum of agreement, or other legally binding document. This subsection does not apply to:

(1) an otherwise qualified purchase or lease, regardless of the fact that the state implementation plan assumes that the change in vehicles will occur, if on the date the incentive is awarded the change is not required by any state or federal law, rule or regulation, memorandum of agreement, or other legally binding document; or

(2) the purchase or lease of a light-duty motor vehicle required only by local law or regulation or by corporate or controlling board policy of a public or private entity.

§114.618. Vehicle Emissions Information Brochure.

(a) Beginning September 1, 2002, a manufacturer of new light-duty motor vehicles sold in the state covered under §114.616 of this title (relating to Manufacturer's Report) shall publish and make available to its dealers for distribution to the dealers' customers by September 1 of each year, a brochure that includes at a minimum:

(1) a list of eligible new light-duty motor vehicles as required under §114.616 of this title;

(2) the emissions and air pollution ratings, not including fuel efficiency, for each eligible new light- duty motor vehicle listed under paragraph (1) of this subsection based on data from the EPA Green Vehicle Guide (http://www.epa.gov/greenvehicles/index.htm) and the light-duty motor vehicle Bin certification number;

(3) an indication of where the Bin certification information is located on each new light-duty motor vehicle listed under paragraph (1) of this subsection and a clear explanation of how to interpret that information; and

(4) information on how the consumer may obtain further information from the EPA Green Vehicle Guide; and

(5) the web address of the commission's Texas Emission Reduction Plan (TERP) program and specific information that the commission's website will include a complete list of all eligible light-duty motor vehicles that manufacturers intend to sell in this state.

(b) The brochure required under subsection (a) or (d) of this section shall be placed in a location within the dealer's showroom or sales area so that it is clearly visible and available for distribution to the dealer's customers.

(c) The brochure required under subsection (a) or (d) of this section shall have a page size no smaller than 8.5 inches by 11 inches and the information required under subsection (a)(1) - (4) of this section shall be printed in no less than 12-point type in a color contrasting with the intended background.

(d) Beginning September 1, 2002, a manufacturer of new light-duty motor vehicles sold in this state not covered under §114.616 of this title must publish a brochure that indicates that no eligible new light-duty motor vehicles will be available for purchase or lease within the state from the manufacturer for the upcoming new model year.

(e) Beginning September 1, 2002, a manufacturer of new light-duty motor vehicles sold in the state shall submit a copy of the brochure required under subsection (a) or (d) of this section to the executive director, or his designee, by September 1 of each year.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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DIVISION 3. DIESEL EMISSIONS REDUCTION INCENTIVE PROGRAM FOR ON-ROAD AND NON-ROAD VEHICLES

30 TAC §§114.620 - 114.622, 114.626, 114.629

The Texas Natural Resource Conservation Commission (commission) adopts new §114.620, Definitions; §114.621, Applicability; §114.622, Incentive Program Requirements; §114.626, Monitoring, Recordkeeping, and Reporting Requirements; and §114.629, Affected Counties and Implementation

Schedule, in new Division 3, Diesel Emissions Reduction Incentive Program for On-Road and Non-Road Vehicles. These new sections and new division are being adopted in new Subchapter K, Mobile Source Incentive Programs, of Chapter 114 as part of the implementation of Senate Bill (SB) 5 (relating to the Texas Emission Reduction Plan), 77th Texas Legislature, 2001. Sections 114.620 and 114.622 are adopted *with changes* to the proposed text as published in the July 20, 2001 issue of the *Texas Register* (26 TexReg 5362). Sections 114.621, 114.626, and 114.629 are adopted *without changes* to the proposed text and will not be republished.

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE ADOPTED RULES

The 77th Legislature adopted SB 5 establishing the Texas Emission Reduction Plan (TERP) which provides financial incentives for reducing emissions of on-road and non-road motor vehicles and equipment, grants for the development of new emission control technology, new building energy efficiency standards, and research and development programs. The program is funded through surcharges and fees established in the bill. Senate Bill 5 also requires that the commission delete the operating restriction on construction equipment rules and the Tier 2/Tier 3 accelerated purchase rules on construction equipment from the Dallas/Fort Worth and Houston/Galveston (HGA) state implementation plans (SIP) and replace them with programs from SB 5. The SB 5 programs are estimated to achieve emissions reductions in excess of the reductions expected from the rules that are being repealed. In accordance with SB 5, the SIP will be revised to replace these rules with the TERP.

These rules will establish an incentive program for the repower, retrofit or add-on, use of a qualifying fuel, and the development and demonstration of new technologies in engines used in on-road and non-road diesel equipment that will reduce nitrogen oxides (NO_x) emissions not otherwise required by federal requirements. These rules also establish incentives for the purchase or lease of new non-road equipment and for the implementation of infrastructure projects. The implementation and administration of the incentive programs will be performed by the commission and implemented through establishment of guidelines and criteria for eligible projects. The incentive programs established by these rules are available for use in the nonattainment areas of Texas and other affected areas of the state.

SECTION BY SECTION DISCUSSION

The new Subchapter K includes a new Division 3 which will establish a new Diesel Emissions Reduction Incentive Program for On-Road and Non-Road Vehicles with rules found in the new §§114.620 - 114.622, 114.626, and 114.629. Except where noted in the discussion that follows, the requirements in the new rules are taken from requirements in SB 5. Also, criteria and requirements will be further refined through the guidelines and criteria that will be developed as part of the incentive program, as provided for in SB 5.

The new §114.620 contains definitions applicable to the diesel emission reduction incentive program for on-road and non-road vehicles. These definitions include: cost-effectiveness, incremental cost, motor vehicle, non-road diesel, non-road engine, on-road diesel, qualifying fuel, repower, and retrofit. Administrative changes were made to indent the first paragraph and to capitalize the first word of the definitions in (3) - (5) and (7) - (9) to conform to *Texas Register* format and style.

The new §114.621 establishes the applicability of persons applying for grants from the diesel emission reduction incentive program for on-road and non-road vehicles. This provision will allow for potential future, as well as current, owners and operators to be eligible for grants from the program.

The new §114.622 establishes the eligibility requirements for the incentive program. The new §114.622(a) lists projects that are eligible for funding which include the following: purchase or lease of non-road diesels; emissions-reducing retrofit projects for on-road or non-road diesels; emissions-reducing repower projects for on-road or non-road diesels; purchase and use of emissions- reducing add-on equipment for on-road or non-road diesels; development and demonstration of practical, low-emissions retrofit technologies, repower options, and advanced technologies for on-road or non-road diesels with lower NO_x emissions; use of qualifying fuels; implementation of infrastructure projects; and other projects with the potential to reduce NO_x emissions from diesel engines. The new §114.622(b) requires that, if a project is funded under this incentive program, at least 75% of the vehicle miles traveled or the hours of operation must take place in a nonattainment or affected county for five years following the grant. It is important that reductions be achieved for purposes of demonstrating attainment by 2007, and the agency will develop guidance accordingly. Furthermore, the new §114.622(c) requires that: old equipment or engines that are replaced must be recycled, scrapped, or otherwise removed from all affected counties. New §114.622(d) states that grants can only be awarded to projects that have a cost-effectiveness not exceeding $13,000 per ton of NO_x emissions reduced. The phrase "subsection (a)(1) - (7) at this section" was changed to "subsection (a) of this section," to include all eight eligible projects. New §114.622(e) specifies that projects funded with this grant money cannot be used to generate emission credits. New §114.622(f) specifies that projects are not eligible if required by a state or federal law, rule or regulation, memorandum of agreement, or other legally binding document. New §114.622(g) states that a retrofit, repower, or add-on equipment project must achieve a reduction of at least 30%. Finally, new §114.622(h) states that if a grant recipient fails to meet the terms of a project grant or the conditions of this division, the grant recipient may be required to return some or all of the funding. All of these requirements are found in SB 5 except the requirement that old equipment or engines must be recycled, scrapped, or removed from the affected counties. The commission included this requirement so that these older equipment and engines are truly replaced with newer ones in order to ensure that all of the estimated emission reductions are actually achieved.

The new §114.626 establishes that grant recipients must meet the reporting requirements of the grant and that reports will not be required more than once in a 12-month period. General reporting requirements may be detailed in guidance that is being developed for this incentive program in addition to project-specific reporting requirements which may be included in the grant terms.

The new §114.629 lists the affected counties in which this program applies. The new §114.629 also establishes that equipment purchased before September 1, 2001 are not eligible for funding. This list of counties includes the nonattainment area counties of Texas as well as other counties which could potentially become nonattainment counties in the near future.

FINAL REGULATORY IMPACT ANALYSIS DETERMINATION

The commission reviewed the rulemaking action in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and determined that the rulemaking action does not meet the definition of a "major environmental rule" as defined in that statute. A major environmental rule is 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 or a sector of the economy; productivity; competition; jobs; the environment; or the public health and safety of the state or a sector of the state. These rules are intended to protect the environment or reduce risks to human health from environmental exposure to ozone by providing financial incentives for reducing diesel emissions through the repower, retrofit, or add-on; use of a qualifying fuel; and the development and demonstration of new technologies in engines used in on-road and non-road diesel equipment that would reduce NO_x emissions not otherwise required by federal requirements. These rules also establish incentives for the purchase or lease of new non-road equipment and for the implementation of infrastructure projects. As such, the rules will not adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state.

Additionally, Texas Government Code, §2001.0225 only applies to a major environmental rule, the result of which is to: 1.) exceed a standard set by federal law, unless the rule is specifically required by state law; 2.) exceed an express requirement of state law, unless the rule is specifically required by federal law; 3.) exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or 4.) adopt a rule solely under the general powers of the agency instead of under a specific state law. This rulemaking action does not meet any of these four applicability requirements because the rulemaking action is specifically required by SB 5.

TAKINGS IMPACT ASSESSMENT

The commission assessed the takings impact for this rulemaking action in accordance with Texas Government Code, §2007.043. The following is a summary of that assessment. The specific purpose of this rulemaking action is to implement a diesel emissions reduction incentive program. The rules will not burden private real property, because they implement a voluntary program and do not involve changes to private real property. These rules only affect motor vehicles which are not considered to be private real property.

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)). The specific purpose of this rulemaking action is to implement a diesel emission reduction incentive program. No new sources of air contaminants will be authorized and NO_x air emissions will be reduced as a result of these rules. 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.

The commission solicited comments on the consistency of the proposed rules with the CMP during the public comment period and received none.

HEARINGS AND COMMENTERS

The commission held public hearings on this proposal on August 13, 2001 in Houston; on August 14, 2001 in Austin and in Arlington. The comment period closed on August 14, 2001. Comments were received from the Association of Automotive Service Providers (AASP); Behthul & Kean, LLP on behalf of Associated Builders and Contractors of Greater Houston (Associated-Houston); Business Coalition for Clean Air (BCCA); City of Fort Worth (Fort Worth); City of Houston (Houston); Galveston-Houston Association for Smog Prevention (GHASP); Good Company (Good); Houston Sierra Club (Sierra-Houston); Hughes and Luce, LLP, on behalf of the Alliance of Automobile Manufacturers (AAM); JMS Ventures (JMS); Metron Management (Metron); Metropolitan Transit Authority (Metro-Houston); Port of Houston (POH); Power Systems Associates on behalf of Darr Equipment Company, Holt Power Systems, and Mustang Power Systems (PSA); Public Citizen - Texas Office on behalf of the Texas Campaign for the Environment, SEED Coalition, Clean Water Action, Environmental Defense, and Sierra Club, Texas/Arkansas Field Office (Public Citizen); Sierra Club Texas/Arkansas Field Office (Sierra-TX/AR); Sneed Institute (Sneed); Texas Campaign for the Environment (TCE); TXU Business Services (TXU); Texas Clean Air Working Group (TCAWG); Texas Department of Transportation (TxDOT); Texas State Inspection Association (TSIA); TranStar Energy Company (TranStar); United States Environmental Protection Agency (EPA); and seven individuals.

RESPONSE TO COMMENTS

All the commenters were generally supportive of SB 5 and the associated rules with some exceptions. Most commenters suggested changes.

BCCA, Houston, TCAWG, Public Citizen, and Good suggested that the repowering provisions of the proposed regulations are not feasible. BCCA advised the commission to consult the TERP Advisory Board (Advisory Board) to ensure that all projects can be reimbursed, providing repower projects achieve a net NO_x reduction of at least 30%.

The rules for repower projects mirror the provisions of SB 5. The commission understands that the intent of the legislature in adopting the repower provisions was to measure the reduction against the engine being removed instead of the replacement engine. The commission has proposed such an interpretation of the statute and rules in the proposed TERP guidelines. The guidelines require a 30% reduction from the original engine's emissions if repowering with an engine manufactured later than

1987, and a 50% reduction from the original engine's emissions if repowering with an 1987 or earlier engine. The guidelines and criteria are currently available for public comment. After receiving public comment and in consultation with the Advisory Board, the commission will consider approval of the guidelines.

Sierra-Houston commented that a minimum 30% reduction is not enough for retrofit, repower, and add-on projects.

The commission is not recommending a change at this time. The statute itself, §386.104(f), sets the minimum reduction at 30%. If after the first year of the program an alternative percentage needs to be evaluated, the commission, in consultation with the Advisory Board, may make a recommendation to change the minimum percentage.

BCCA, Houston, and TCAWG commented that infrastructure projects should apply to marine vessels.

The rules allow marine infrastructure projects to be considered for grants.

BCCA, Houston, and TCAWG commented that the infrastructure projects should not be subject to the $13,000/ton cost effectiveness threshold.

The commission interprets the legislation to require all projects to have the cost effectiveness threshold of $13,000/ton applied and will initially require the $13,000/ton to apply to infrastructure projects. However, after study of available emission reduction technologies and costs and after public notice and comment, the commission, in consultation with the Advisory Board, may change the values of the maximum grant award criteria to account for inflation or to improve the ability of the program to achieve its goals.

Public Citizen commented that the infrastructure program should be fleshed out by the commission. For example, infrastructure programs at ports, large warehouse operations, and truck stops should include electric outlets so that vehicle equipment that has been modified to run on electricity, such as truck cab air conditioning, have a place to plug in. This will reduce emissions because the engines do not have to idle 24 hours a day to keep the driver who is sleeping in the back cool.

The commission has a more detailed discussion of infrastructure projects contained within the draft guidelines document. The commission will be completing guidelines and criteria for infrastructure programs concurrent with all the other grant programs, and expects to have these finalized by mid-October.

EPA commented that infrastructure projects could promote the use of diesel emulsions. These fuels have been identified by commission and the Houston-Galveston Area Council as one of the innovative measures for future development and SIP credit. EPA pointed out that they have not approved diesel emulsions for on-highway use, and therefore would oppose the state funding this as an on-road NO_x reduction strategy unless it was considered for a voluntary mobile source emissions reduction program or a demonstration program. EPA expressed concern that an infrastructure project for fueling non-road and on-road engines could result in the illegal use of an unapproved fuel for on-road sources.

The commission would appreciate the EPA expediting the approval process of new innovative fuels such as diesel emulsion. Until these fuels are approved for on-road use, projects for on-road infrastructure involving those fuels will be segregated to ensure that on-highway fueling does not occur.

Public Citizen, Good, and an individual commented that the commission should consider funding low-sulfur diesel programs as some of the low-emissions technology may require such fuel to be effective.

The commission agrees with the commenter and will consider funding projects to supply low-sulfur diesel under the TERP grant program to the extent it is not already mandated by federal law. It must also meet the $13,000/ton cost effectiveness threshold, however.

Public Citizen suggested the commission require a minimum of three bids for cost reimbursement of low-sulfur diesel.

The commission will consider this comment as part of the guidelines documents which are expected to be adopted in mid-October.

BCCA commented that the commission should specify parameters for the evaluation of demonstration projects as well as clarify the Advisory Board role in regard to the Texas Council on Environmental Technology and the commission overall.

The commission has proposed parameters for demonstration projects as part of its guidelines documents, and encourages the commenter to submit comments on these documents. This issue will be addressed outside this rulemaking process.

BCCA commented that clarifications should be made regarding the price of qualifying fuels and diesel fuel.

The commission appreciates the comment and has addressed these issues as part of its guidelines documents. The comment period for those documents closes on September 28, 2001, and the commission would appreciate the commenters thoughts on the draft interpretation of the issues contained in these documents.

BCCA commented that the commission should clarify applicability of the new equipment conditions and requested input on how the program is going to be enforced. Associated-Houston commented similarly that the commission should examine its approach to recovery of grant funds where projects do not achieve or demonstrate emission reductions. Sierra-Houston commented that the commission should request all the money back if the recipient does not reduce emissions as required. Public Citizen commented that the commission should require logbooks to be kept for auditing and that grant recipients should reimburse the commission if they don't meet the 75% use factor.

The commission will make every effort to ensure grant funds are only allocated for projects with a high degree of certainty of success and has the ability to pursue reimbursement for those projects which fall short. The commission plans to include provision for reimbursement within the grant contract itself.

Sierra-Houston commented that many of the programs funded under the TERP will not make sufficient emission reductions to make a difference in the HGA area attainment by the 2007 deadline. Sierra-Houston further commented that the commission should not use a large portion of the money for research and development programs as these programs will not lead to any real reductions.

The commission disagrees with the comment. The commission will be able to directly link dollars spent under the TERP program to emission reductions achieved in the HGA area. The commission will evaluate closely the amount money spent solely on development-type programs and make efforts to maximize commercialization of successful demonstration programs.

BCCA, Houston, and TCAWG observed that the incentives as provided as part of this rulemaking do not apply to engines less than 50 horsepower (hp), agricultural pumps, and landscape equipment. BCCA suggested the commission complete a study regarding these sources by September 1, 2002 for review by the Advisory Board, TCAWG, state leaders, and the Texas Legislature.

The commission is obligated to coordinate a report to the legislature each biennium. The commission agrees that part of this report may include ways to improve the program and could include the items listed by the commenter. If it is determined the program can be improved by including the above categories, the commission will make such recommendations to the Advisory Board, state leaders, and the legislature.

Good commented that the 50 hp minimum for grant projects be considered to allow for more than one engine less than 50 hp such that two 25 hp engines could qualify for a grant.

There is no 50 hp minimum in these rules and therefore this comment is beyond the scope of this rulemaking. The draft guidance document does propose a 50 hp minimum and this comment will be considered as part of the guidelines and criteria document development.

BCCA, Houston, TCAWG, and an individual commented specifically on the funding allocation structure proposed elsewhere by the commission.

The commission appreciates the comments and will keep them in mind when it determines the allocation for the first year. That determination is not being made as part of this rulemaking or the guidelines and criteria.

Houston and TCAWG commented that they support the commission's intent to require removed engines and replaced equipment to be removed from the affected areas and further recommended that the commission go further and require the engines/vehicles to be scrapped or identify penalties to apply to grant recipients who do not comply.

The commission will make every effort to enforce the requirement that engines either be scrapped or removed from the affected areas. Penalties can be assessed in the form of requiring that the grant be returned if the provisions of the contract are not met. However, the commission disagrees that all engines/vehicles should be scrapped as part of being eligible for a grant.

Houston and TCAWG commented that the new purchase of on-road equipment is limited to the Texas Health and Safety Code, §386.113, and that this is reflected in the commission's proposed rules and guidance. Houston suggested that this provision should be evaluated to determine if such purchases can be calculated on a cost-per-basis and be eligible under the Diesel Emission Reduction Incentive Program.

The commission disagrees with the comment. It is the commission's understanding that new purchases of on-road diesel vehicles are only eligible for the On-Road Diesel Purchase or Lease Incentive Program and cannot be included under the Diesel Emission Reduction Incentive Program.

Associated-Houston commented that should be no barriers imposed to the adaptability of potential retrofit candidates and that development of retrofit devices must be encouraged. Associated-Houston and TCAWG commented that the commission should strongly encourage EPA to expedite the certification process.

The commission agrees in principal with the comment. The commission will make every effort to ensure retrofit devices are identified which can be used as part of the TERP program. However, the commission will continue to require a high standard of certification for devices deemed eligible for the TERP program; requiring EPA or California Air Resources Board certification or possibly, commission acceptance before a device will be deemed eligible. The commission will continue to encourage the EPA to complete a streamlined certification process.

TCAWG commented that the TERP program needs to be structured to help existing Texas nonattainment areas meet federal health-based standards in accordance with established time frames; to assist Texas' near-nonattainment areas avoid nonattainment status; to maximize emission reductions, particularly for ozone and its precursors, fine particulates (PM), and toxics; and to facilitate the development of new technologies.

The commission agrees that these are all objectives of the TERP program. Further, the commission will make every effort to ensure these objectives are met subject to the funding levels generated by the TERP program.

TCAWG commented that the commission should clarify the proposed rules and guidance documents to make clear that generators that satisfy the definition of being a mobile source are eligible to be purchased, leased, retrofitted, or repowered with financial support from the TERP program.

The commission agrees with the commenter that only on-road and non-road engines are eligible for the grant program. Generators which satisfy the definition of non-road engines are eligible to be considered for funding. The commission guidelines documents will explain in greater detail the requirement for sources to be mobile or moveable in order to be eligible for a grant.

TCAWG commented that the commission should favorably consider funding for engine retrofit technologies that meet the NO_x reduction targets and also provide PM reductions with a nominal increase in cost. The commenter pointed out that the Carl Moyer program in California funds PM reduction technologies when they are associated with NO_x reduction strategies. Public Citizen commented that the commission should fund engine retrofits that also provide PM benefits if they are within 20% of the cost of a NO_x-only retrofit. An individual and Good also commented that PM should be looked at as a targeted pollutant.

The commission will review the program on an as needed basis, and will agressively recommend changes to the Advisory Board when warranted. The statute does not specifically address PM emissions, however, it does allow the commission to consider reductions of other types of emission in conjunction with the reduction of NO_x. If PM emissions become a significant threat to air quality in the future, the commission will consult with the Advisory Board as needed to make changes to the program.

POH commented that the commission should not require marine projects to have a minimum of 75% operation in affected county waters. Instead, POH suggested that the commission require a sufficient amount of use to demonstrate the cost-effectiveness criteria.

The commission has proposed in the guidelines and criteria that vessels operate a minimum of 75% of the time in the intercoastal waterway and/or the bays adjacent to an affected county. This comment will be considered when the commission considers the guidelines and criteria for adoption.

POH commented that MARPOL 73/78, as mentioned in the guidelines documents, has been subject to legal challenge.

The commission will confirm the status of this legal challenge and will make appropriate changes to the guidelines documents upon adoption, which is which is expected to be in mid- October.

TxDOT commented that it will be difficult to for state agencies to plan for grants if they are administered on a first come first served basis.

The commission understands the concern. The grant program will not be operated on a first come first served basis, but will be selected based upon their potential to reduce emission in the most cost effective manner. In any event, due to the unpredictable nature of the funding mechanisms for this program, the commission cannot guarantee approval of any project prior to receiving funding.

TxDOT commented that the commission should allow for electronic reporting. Sierra-Houston commented that there should be more reporting requirements as part of the rulemaking.

Minimum reporting requirements are contained in the rules and will be elaborated upon in the guidelines documents. The commission would like to allow electronic reporting and will take steps to have electronic reporting in place in the future.

TxDOT commented that penalties for failure to meet usage goals would undermine the intention of actually reducing emissions.

The commission disagrees and believes that the ability to penalize grant recipients for failure to comply with grant terms is essential in assuring that emissions are actually reduced. The commission does anticipate requiring an estimate of usage as part of being deemed eligible for a grant. If the actual usage falls significantly short of the estimate, then penalties will be considered. The commissions recognizes the cyclical nature of construction processes which can be sometimes dominated by economic ups and downs. With this in mind, the commission will use discretion when considering penalties for overestimates of usage.

TxDOT commented that, although the commission will require manufacturers to report on the types of equipment available for rebates and grants, it may take them a while to provide this information to the commission, reducing TxDOT's ability to take advantage of the program.

The commission will use every means possible to get information out regarding vehicles and equipment which are eligible for grants. The commission notes that only manufacturers of light-duty vehicles are required to report eligible vehicles to the commission. If a manufacturer is late in reporting, the commission will seek to get the information through other means such as inquiring of EPA regarding engine families which are eligible for rebates.

TxDOT commented regarding the provision requiring old engines, equipment, and vehicles to be removed as a requirement of being granted money under this program. TxDOT suggested a provision be made for short-term emergency use.

The commission disagrees with the comment. If the equipment is replaced, newer or cleaner equipment will take its place, which can then be used in the event of an emergency. The commission is cognizant of major disasters and can employ some type of enforcement discretion if absolutely necessary.

TxDOT commented that truck trailers appear to be subject to collection of fees to pay for the TERP program, and disagreed that this is the case.

The commission will not be collecting fees as part of this program. It is the responsibility of other state agencies to determining how fees are assessed and collected as part of this program.

EPA commented that the state rules must explicitly provide or be interpreted to provide that any credits from projects receiving SB 5 incentives must comply with state rules such as the discrete emission reduction credit (DERC) or the mobile discrete emission reduction credit (MDERC) rules, and that those rules must be approved by the EPA.

The commission will require all incentives purchased under §386.056 to comply fully with the commission's DERC and MDERC rules. The commission has submitted the DERC and MDERC rules to EPA as part of the SIP and looks forward to approval of those rules.

JMS commented that the rules should allow sources to qualify for more than one emission reduction program and have incentives defined for each area. As JMS read the rules, equipment participating in another program is excluded from participating in the TERP program.

The commission is not opposed in general from allowing participants to participate in multiple programs. However, when calculating the cost effectiveness of projects, the commission is only concerned about the costs that will be used for cost effectiveness and incremental cost calculations. Incentives received from other programs must be included in these calculations.

JMS commented regarding contracted use of equipment inside chemical factories and requested to know who owns the credits generated from any clean projects there and who is eligible for a grant: the chemical plant, the contractor, or the leasing company that owns the equipment.

Based upon the limited information provided by the commenter, it appears that the entity leasing the equipment would eligible for a grant. The state would get the entire amount of credit to be retired towards the SIP.

An individual commented that the commission should rely on the EPA NONROAD model to establish load factors. Further, the commenter suggested that the guidance should be updated as new information becomes available.

This issue is addressed as part of the guidelines documents. If alternative load factors can be scientifically justified, the commission is open to considering them. The commission appreciates the comment and will make efforts to keep its guidance document current.

An individual commented that the commission should require fuel consumption meters if using fuel consumption as a gage of emissions.

The commission appreciates the comment. The commission will make every effort to optimize the program such that it is as flexible as possible, while achieving emission reductions that are enforceable, quantifiable, and real. Details such as this will be handled either through the guidance document or in the grant agreement itself.

An individual commented that recreational equipment should qualify for a grant if used for commercial purposes.

The legislature specifically excluded recreational equipment. If equipment can be demonstrated to be used for commercial purposes, the commission will consider that portion of use as being eligible for a grant. However, equipment used solely for commercial purposes will likely have a better cost effectiveness calculation and would qualify first before partial commercial equipment.

An individual commented that equipment purchased prior to September 2001 is not eligible for a grant and that equipment is not defined and could mean non-road engine, motor vehicle, repower, or retrofit. The commenter expressed the belief that the commission means the latter, however, the commenter considered the rules to mean no retrofits for engines built before the 2002 model year.

The commission agrees that the September 2001 limit applies to those devices (repowers, retrofits, new vehicles/engines, etc.) which would be reimbursed as part of the grant program. It is not the original purchase of the equipment that is limited, but the purchase by the grantee as part of an eligible project.

An individual commented that the grant program should cover diesel-powered generator replacement with fuel cells. Public Citizen and Good commented that moveable equipment, even if it stays in place for more than one year, should be eligible for grants if it is stationary for a defined amount of time. Good commented that stationary agriculture pumps be considered for grants.

The commission agrees that backup diesel generators can be replaced with fuel cells, provided they meet the definition of non-road engines. Generally non-road engines include equipment that moves within the period of one year. The purpose of the program was to fund reductions from non-road and on-road sources of emissions. The commission disagrees, at this time, that it should consider funding moveable equipment that is immobile for more than one year. Agriculture pumps which do not move are not considered eligible for grant consideration due to their immobile nature. The commission is, however, open to bringing these types of equipment before the Advisory Board if there is significant demand for these types of grants.

Good commented that the commission should make it clear that electric generators are eligible for funding.

The commission agrees that diesel-powered electric generators are eligible, provided they are moveable and move within a year.

Good commented that grants should be considered for replacement of gasoline engines as well as diesel engines.

The commission disagrees with the comment. The grant program is set up for the improvement of diesel emissions.

Sneed commented that they will be seeking funding for a fuel cell locomotive project, and that the rule should be clarified to include eligible entities that may partner with the owner or operator of a piece of equipment.

The commission has drafted the guidance document to allow demonstration projects to be granted to entities that do not own or operate the equipment. However, in general, due to the ongoing operational requirements that will become part of the grant agreement, the commission is requiring that other types of grants be awarded only to the owner or lessee. As long as one partner is eligible to apply for the grant, the commission will leave the distribution of the grant money up to the partners through private agreement.

An individual commented requesting additional information about the program.

The commission has posted all the relevant information on its website at *http://home.tnrcc.state.tx.us/oprd/sips/terp.html*.

Sierra-TX/AR and Public Citizen commented that the program should also address greenhouse gases and fuel efficiency. An individual and TranStar commented the program should also address other pollutants such as global warming gases and volatile organic compounds.

The commission will review the program on an as needed basis, and will agressively recommend changes to the Advisory Board when warranted. The statute does not specifically address PM or global warming emissions, however, it does allow the commission to consider reductions of other types of emission in conjunction with the reduction of NO_x. If PM or global warming emissions become a significant threat to air quality in the future, the commission will consult with the Advisory Board as needed to make changes to the program. Currently the statute does not address fuel type as part of the light-duty program.

Sierra-TX/AR commented that the TERP program should have a dedicated person to administer the program.

The commission has assigned dedicated staff to implement the TERP program and will continue to allot adequate staff to continue its success.

Sierra-TX/AR commented that there should be much publicity associated with the TERP program, including television and radio spots. Public Citizen commented that there needs to be more public education and information about this program provided.

The commission will make every effort to promote this program as it has the potential to be one of the most effective programs for improving air quality around the state. The commission will do all it can within its budget for getting the word out regarding the TERP program.

An individual submitted information on the effects of diesel exhaust and the Carl Moyer program in California.

The commission appreciates the information.

AASP, TSIA, and Metron commented that the collection of the green sheet fee will be difficult and likely cause lawsuits.

The comment is beyond the scope of this rulemaking. This rulemaking does not address the collection of fees under SB 5, only the eligibility for receiving incentives. The Texas Department of Public Safety has jurisdiction over the collection of the $225 fee.

STATUTORY AUTHORITY

These new sections are adopted under Texas Water Code (TWC), §5.102, which provides the commission with the general powers to carry out its duties under TWC; §5.103, which authorizes the commission to adopt any rules necessary to carry out the powers and duties under the provisions of TWC and other laws of this state; and §5.105, which authorizes the commission by rule to establish and approve all general policy of the commission. These new sections are also adopted under Texas Health and Safety Code, Texas Clean Air Act (TCAA), §382.017, which authorizes the commission to adopt rules consistent with the policy and purposes of TCAA; §382.011, which authorizes the commission to establish the level of quality to be maintained in the state's air and 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 control of the state's air; and Chapter 386, which establishes

the TERP. Finally, these adopted new sections are part of the implementation of SB 5, acts of the 77th Legislature, 2001.

§114.620. Definitions.

Unless specifically defined in the TCAA or in the rules of the commission, the terms used in this subchapter have the meanings commonly ascribed to them in the field of air pollution control. In addition to the terms which are defined by the TCAA; and §§3.2, 101.1, and 114.1 of this title (relating to Definitions), the following words and terms, when used in this division shall have the following meanings, unless the context clearly indicates otherwise.

(1) Cost-effectiveness -- The total dollar amount expended divided by the total number of tons of nitrogen oxides emissions reduction attributable to that expenditure.

(2) Incremental cost -- The cost of an applicant's project less a baseline cost that would otherwise be incurred by an applicant in the normal course of business and may include added lease or fuel costs as well as additional capital costs.

(3) Motor vehicle -- A self-propelled device designed for transporting persons or property on a public highway that is required to be registered under Texas Transportation Code, Chapter 502.

(4) Non-road diesel -- A piece of equipment, excluding a motor vehicle or on-road diesel, that is powered by a non-road engine, including: non-road non-recreational equipment and vehicles; construction equipment; locomotives; marine vessels; and other high-emitting diesel engine categories.

(5) Non-road engine -- An internal combustion engine that is in or on a piece of equipment that is self- propelled or that propels itself and performs another function, excluding a vehicle that is used solely for competition, or a piece of equipment this is intended to be propelled while performing its function, or a piece of equipment designed to be and capable of being carried or moved from one location to another.

(6) On-road diesel -- An on-road diesel-powered motor vehicle that has a gross vehicle weight rating of 10,000 pounds or more.

(7) Qualifying fuel -- Any liquid or gaseous fuel or additives registered or verified by the EPA that is ultimately dispensed into a motor vehicle or on-road or non-road diesel that provides reductions of nitrogen oxides emissions beyond reductions required by state or federal law.

(8) Repower -- To replace an old engine powering an on-road or non-road diesel with:

(A) a new engine that emits at least 30% less than the nitrogen oxides (NO_x) emissions standard required by federal regulation for the current model year for that engine;

(B) an engine manufactured later than 1987 that emits at least 30% less than the NO_x emissions standard emitted by a new engine certified to the baseline NO_x emissions standard for that engine;

(C) an engine manufactured before 1988 that emits not more than 50% of the NO_x emissions standard emitted by a new engine certified to the baseline NO_x emissions standard for that engine; or

(D) electric motors, drives, or fuel cells.

(9) Retrofit -- To equip an engine and fuel system with new emissions-reducing parts or technology verified by the EPA after manufacture of the original engine and fuel system.

§114.622. Incentive Program Requirements.

(a) Eligible projects include:

(1) purchase or lease of non-road diesels;

(2) emissions-reducing retrofit projects for on-road or non-road diesels;

(3) emissions-reducing repower projects for on-road or non-road diesels;

(4) purchase and use of emissions-reducing add-on equipment for on-road or non-road diesels;

(5) development and demonstration of practical, low-emissions retrofit technologies, repower options, and advanced technologies for on-road or non-road diesels with lower nitrogen oxides (NO_x) emissions;

(6) use of qualifying fuel;

(7) implementation of infrastructure projects; and

(8) other projects that have the potential to reduce anticipated NO_x emissions from diesel engines.

(b) For a proposed project as listed in subsection (a) of this section, other than a project involving a marine vessel or engine, not less than 75% of vehicle miles traveled or hours of operation projected for the five years immediately following the award of a grant must be projected to take place in a nonattainment area or affected county of this state.

(c) For a proposed project that includes a replacement of equipment or a repower, the old equipment or engine must be recycled, scrapped, or otherwise removed from all affected counties as defined by §114.629 of this title (relating to Affected Counties and Implementation Schedule).

(d) To be eligible for a grant, the cost-effectiveness of a proposed project as listed in subsection (a) of this section must not exceed $13,000 per ton of NO_x emissions.

(e) Projects funded with a grant from this program may not be used for credit under any state or federal emissions reduction credit averaging, banking, or trading program except as provided under Texas Health and Safety Code, §386.056.

(f) A proposed project as listed in subsection (a) of this section is not eligible if it is required by any state or federal law, rule or regulation, memorandum of agreement, or other legally binding document. This subsection does not apply to:

(1) an otherwise qualified project, regardless of the fact that the state implementation plan assumes that the change in equipment, vehicles, or operations will occur, if on the date the grant is awarded the change is not required by any state or federal law, rule or regulation, memorandum of agreement, or other legally binding document; or

(2) the purchase of an on-road diesel or equipment required only by local law or regulation or by corporate or controlling board policy of a public or private entity.

(g) A proposed retrofit, repower, or add-on equipment project must achieve a reduction in NO_x emissions of at least 30% compared with the baseline emissions adopted by the commission for the relevant engine year and application.

(h) If a grant recipient fails to meet the terms of a project grant or the conditions of this division, the executive director can require that the grant recipient return some or all of the grant funding to the extent that emission reductions are not achieved or cannot be demonstrated.

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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Ramon Dasch

Acting Director, Environmental Law Division

Texas Natural Resource Conservation Commission

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For further information, please call: (512) 239-0348

TITLE 34. PUBLIC FINANCE

PART 4. EMPLOYEES RETIREMENT SYSTEM OF TEXAS

CHAPTER 67. HEARINGS ON DISPUTED CLAIMS

34 TAC §67.47

The Employees Retirement System of Texas (ERS) adopts amendments to §67.47, concerning continuances, without changes to the proposed text as published in the July 20, 2001, issue of the *Texas Register* (26 TexReg 5367).

Section 67.47 is amended in order to clarify deadlines for filing continuances.

No comments were received concerning these amendments.

The amendments are adopted under Tex. Gov't Code §815.102, which provides authorization for the board to adopt rules for the transaction of any other business of the board.

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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Sheila W. Beckett

Executive Director

Employees Retirement System of Texas

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For further information, please call: (512) 867-7125

CHAPTER 71. CREDITABLE SERVICE

34 TAC §71.17

The Employees Retirement System of Texas (ERS) adopts amendments to §71.17, concerning credit for unused accumulated leave, without changes to the proposed text as published in the *Texas Register* (26 TexReg 5367).

This section is amended in order to implement the provisions of §4 and §5 of Senate Bill 292, 77th Texas Legislature, 2001, involving the conversion of sick and annual leave to service credit in certain situations.

No comments were received concerning these amendments.

The amendments are adopted under Tex. Gov't Code §815.102, which provides that the board may adopt rules for the transaction of any business of the board.

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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Sheila W. Beckett

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CHAPTER 73. BENEFITS

34 TAC §73.11, §73.17

The Employees Retirement System of Texas (ERS) adopts amendments to §73.11, concerning the supplemental retirement program, and §73.17, concerning disability retirement eligibility, without changes to the proposed text as published in the July 20, 2001, issue of the *Texas Register* (26 TexReg 5368).

Section 73.11 is amended to clarify how a member qualifies for the supplemental benefit and implements §16 of Senate Bill 292, 77th Texas Legislature, 2001, by clarifying when the supplemental benefit goes into effect. Section 73.17 is amended to clarify eligibility requirements for disability retirement.

No comments were received concerning these amendments.

The amendments are adopted under Tex. Gov't Code §815.102, which provides that the board may adopt rules for the transaction of any business of the Board.

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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34 TAC §73.19

The Employees Retirement System of Texas (ERS) adopts new §73.19, concerning limitation of disability claims, without changes to the proposed text as published in the July 20, 2001, issue of the *Texas Register* (26 TexReg 5368).

This new section is adopted in order to reflect the statute of limitations on disability claims in accordance with Tex. Gov't Code Ann., §814.201(c), as provided by §12 of Senate Bill 292, 77th Texas Legislature, 2001.

No comments were received concerning adoption of this new rule.

This new rule is adopted under Tex. Gov't Code §815.102, which provides that the board may adopt rules for the transaction of any business of the board.

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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Sheila W. Beckett
Executive Director
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For further information, please call: (512) 867-7125

CHAPTER 75. HAZARDOUS PROFESSION DEATH BENEFITS

34 TAC §75.2

The Employees Retirement System of Texas (ERS) adopts new §75.2, concerning benefit claims, without changes to the proposed text as published in the July 20, 2001, issue of the *Texas Register* (26 TexReg 5369).

This new rule is adopted in order to reflect the additional documentation required in connection with a claim for benefits under Tex. Gov't Code Chapter 615, Subchapter F. The new section also establishes a limit for certain benefits under Tex. Gov't Code Chapter 615, Subchapter F.

No comments were received regarding adoption of this new rule.

This new rule is adopted under Tex. Gov't Code §615.002, §815.102 and as provided under §615.121, House Bill 877, §7, 77th Texas Legislature, 2001.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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CHAPTER 81. INSURANCE

34 TAC §81.1, §81.7

The Employees Retirement System of Texas (ERS) adopts §§81.1 and 81.7, concerning the Texas Employees Uniform Group Insurance Program, with changes to the proposed text as published in the July 20, 2001, issue of the *Texas Register* (26 TexReg 5369).

Section 81.1 is amended to revise the definitions of "dependent" and "retiree." Subsection 28(C) of §81.1 is being adopted with changes in order to further clarify who qualifies for the exception. Section 81.7 is amended to clarify conditions and coverage effective dates for employees re-enrolling after a lapse in coverage. Subsection (k)(2) of §81.7 is being adopted with changes in order to clarify that existing requirements remain in effect.

No comments were received concerning these amendments.

The amendments are adopted under Tex. Ins. Code, art. 3.50-2, §4A, which provides authorization for the board to adopt rules necessary to carry out its statutory duties and responsibilities.

§81.1. Definitions.

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

(1) Accelerated life benefit - An amount of term life insurance to be paid in advance of the death of an insured employee, annuitant, or dependent, as requested by the employee or annuitant and approved by the carrier, in accordance with the terms of the group term life plan as permitted by Article 3.50-6, Insurance Code. Accelerated life benefit payment may be requested only upon diagnosis of a terminal condition and only once during the lifetime of the insured employee, annuitant, or dependent. A terminal condition is a non-correctable health condition that with reasonable medical certainty will result in the death of the insured within 12 months.

(2) Act - The Texas Employees Uniform Group Insurance Benefits Act, Chapter 79, Acts of the 64th Legislature, 1975, as amended (the Insurance Code, Article 3.50-2).

(3) Active duty - The expenditure of time and energy in the service of the State of Texas. An employee will be considered to be on active duty on each day of a regular paid vacation or regular paid sick leave or on a non-working day, if the employee was on active duty on the last preceding working day.

(4) AD&D - Accidental death and dismemberment.

(5) Age of employee - The age to be used for determining optional term life and voluntary AD&D insurance premiums will be the employee's attained age as of the employee's first day of active duty within a contract year.

(6) Annuitant - A person authorized by the Act to participate in the program as an annuitant.

(7) Basic plan - The program of group insurance determined by the trustee in which every full-time employee or retiree is automatically enrolled, unless participation is specifically waived.

(8) Board or trustee - The board of trustees of the Employees Retirement System of Texas.

(9) Committee or GBAC - The Group Benefits Advisory Committee as established by the Act, §18.

(10) Contract year - A contract year begins on the first day of September and ends on the last day of the following August.

(11) Department - Commission, board, agency, division, institution of higher education, or department of the State of Texas created as such by the constitution or statutes of this state, or other governmental entity whose employees or retirees are authorized by the Act to participate in the program.

(12) Dependent - The spouse of an employee or retiree and unmarried children under 25 years of age, including:

(A) the natural child of an employee/retiree;

(B) a legally adopted child (including a child living with the adopting parents during the period of probation);

(C) a stepchild whose primary place of residence is the employee/retiree's household;

(D) a foster child whose primary place of residence is the employee/retiree's household and who is not covered by another governmental health program;

(E) a child whose primary place of residence is the household of which the employee/retiree is head and to whom the employee/retiree is legal guardian of the person;

(F) a child who is in a parent-child relationship to the employee/retiree, provided the child's primary place of residence is the household of the employee/retiree, the employee/retiree provides the necessary care and support for the child, and if the natural parent of the child is 21 years of age or older, the natural parent does not reside in the same household;

(G) a child who is considered a dependent of the employee/retiree for federal income tax purposes and who is a child of the employee/retiree's child;

(H) an eligible child, as defined in this subsection, for whom the employee/retiree must provide medical support pursuant to a valid order from a court of competent jurisdiction; or

(I) a child eligible under Section 3(a)(8)B of the Act, provided that the child's mental retardation or physical incapacity is a medically determinable condition which prevents the child from engaging in self-sustaining employment, that the condition commences before the date of the child's 25th birthday, and that satisfactory proof of such condition and dependency is submitted by the employee/retiree within 31 days following such child's attainment of age 25 and at such intervals thereafter as may be required by the system.

(13) Eligible to receive an annuity - Refers to a person who, in accordance with the Act, meets all requirements for retirement from a state retirement program or the Optional Retirement Program.

(14) Employee - A person authorized by the Act to participate in the program as an employee.

(15) Employing office - For a retiree covered by this program, the office of the Employees Retirement System of Texas in Austin, Texas or the retiree's last employing department; for an active employee, the employee's employing department.

(16) Evidence of insurability - Such evidence required by a qualified carrier for approval of coverage or changes in coverage pursuant to the rules of §81.7(h) of this title (relating to Enrollment and Participation).

(17) Former COBRA unmarried child - a child of an employee or retiree who is unmarried; whose UGIP coverage as a dependent has ceased; and who upon expiration of continuation coverage under the Consolidated Omnibus Budget Reconciliation Act, Public Law 99-272 (COBRA) reinstates UGIP coverage.

(18) HealthSelect of Texas - The statewide point-of-service plan of health coverage fully self-insured by the Employees Retirement System of Texas and administered by a qualified carrier or HMO.

(19) HealthSelect Plus - The optional managed care plan of health coverage fully self-insured by the Employees Retirement System of Texas and administered by a qualified carrier or HMO on a regular basis.

(20) HMO - A health maintenance organization approved by the board to provide health care benefits to eligible participants in the program in lieu of participation in the program's HealthSelect of Texas plan or HealthSelect Plus plan.

(21) Insurance premium expenses - Any out-of-pocket premium incurred by a participant, or by a spouse or dependent of such participant, as payment for coverage provided under the program that exceeds the state's or institution's contributions offered as an employee benefit by the employer. The types of premium expense covered by the premium conversion plan include out-of-pocket premium for group term life, health (including HMO premiums), AD&D, and dental, but do not include out-of-pocket premium for long or short term disability or dependent term life.

(22) Leave without pay - The status of an employee who is certified by a department administrator to be absent from duty for an entire calendar month, who does not receive any compensation for that month, and who has not received a refund of retirement contributions based upon the most recent term of employment.

(23) ORP - The Optional Retirement Program as provided in the Government Code, Chapter 830.

(24) Placement for adoption - A person's assumption and retention of a legal obligation for total or partial support of a child in anticipation of the person's adoption of such child.

(25) Preexisting condition - Any injury or sickness, for which the employee received medical treatment, or services, or took prescribed drugs or medicines during the three-month period immediately prior to the effective date of such coverage. However, if the evidence of insurability requirements set forth in §81.7(h) of this title must first be satisfied, the three-month period for purposes of determining the preexisting conditions exclusion will be the three-month period immediately preceding the date of the employee's completed application for coverage.

(26) Premium conversion plan - A separate plan, under the Internal Revenue Code, §79 and §106, adopted by the board of trustees and designed to provide premium conversion as described in §81.7(f) of this title.

(27) Program - The Texas Employees Uniform Group Insurance Program as established by the board.

(28) Retiree - An employee who retires or is retired and who:

(A) is authorized by the Act to participate in the program as a retiree;

(B) on August 31, 1992, was a participant in a group insurance program administered by an institution of higher education; or

(C) on the date of retirement, meets the service credit requirements of the Act for participation in the program as an annuitant; and

(i) on August 31, 2001, was an eligible employee with a department whose employees are authorized to participate in the program and, on the date of retirement has three years of service with such a department; or

(ii) on August 31, 2001, had three years of service as an eligible employee with a department whose employees are authorized to participate in the program.

(29) Salary - The salary to be used for determining optional term life and disability income limitations will be the employee's regular salary, including longevity, shift differential, hazardous duty pay, and benefit replacement pay, received by the employee as of the employee's first day of active duty within a contract year. No other component of compensation shall be included. Non-salaried elective and appointive officials and members of the legislature may use the salary of a state district judge or their actual salary as of September 1 of each year.

(30) System - The Employees Retirement System of Texas.

(31) TRS - The Teacher Retirement System of Texas.

§81.7. Enrollment and Participation.

(a) Full-time employees and their dependents.

(1) A new employee who is eligible under the Act for automatic insurance coverage shall be enrolled in the basic plan of health and life insurance unless, on or before the date on which the employee begins active duty, the employee completes an enrollment form to elect other coverages or to decline any and all coverages. Coverage of an employee under the basic plan, and other coverages selected as provided in this paragraph, become effective on the date on which the employee begins active duty.

(2) To enroll eligible dependents, to elect to enroll in an approved HMO or in HealthSelect Plus, and to elect optional coverages, the employee shall complete an enrollment form within 30 days after the date on which the employee begins active duty. Coverages selected on or before the date on which the employee begins active duty become effective on the date on which the employee begins active duty. Coverages selected within 30 days after the date on which the employee begins active duty become effective on the first day of the month following the date on which the enrollment form is completed. An enrollment form completed after the initial period for enrollment as provided in this paragraph is subject to the provisions of subsection (h) of this section.

(3) Except as otherwise provided in this section, an employee may not change coverage during a contract year.

(4) An eligible employee who enrolls in the program is eligible to participate in premium conversion and shall be automatically enrolled in the premium conversion plan. The employee shall be automatically enrolled in the plan for subsequent plan years as long as the employee remains on active duty.

(5) Coverage for a newly eligible dependent, other than a dependent referred to in paragraphs (6) or (8) of this subsection, will be effective on the first day of the month following the date the person becomes a dependent if an enrollment form is completed on or within 30 days after the date the person first becomes a dependent. If the enrollment form is completed and signed after the initial period for enrollment as provided in this paragraph, the enrollment form will be governed by the rules in subsection (h) of this section.

(6) A newborn natural child will be covered immediately and automatically from the date of birth in the health plan in effect for the employee or retiree. A newly adopted child will be covered immediately and automatically from the date of placement for adoption in the health plan in effect for the employee or retiree. To continue coverage for more than 30 days after the date of birth or placement for adoption, an enrollment form for health coverage must be submitted within 30 days after the date of birth or placement for adoption.

(7) The effective date of a newborn natural child's life and AD&D insurance will be the date of birth, if the child is born alive, as certified by an attending physician. The effective date of a newly adopted child's life and AD&D insurance will be the date of placement for adoption. The effective date of all other eligible dependents' life and AD&D insurance coverages will be as stated in paragraph (5) of this subsection.

(8) Health insurance coverage of an eligible child for whom a covered employee or retiree is court-ordered to provide medical support becomes effective on the date on which the department receives a valid copy of the court order.

(9) The effective date of HealthSelect of Texas coverage for an employee's or retiree's dependent, other than a newborn natural child or newly adopted child, will be as stated in paragraph (5) of this subsection.

(10) For purposes of this section, an enrollment form is completed when all information necessary to effect an enrollment has been transmitted to the system in the form and manner prescribed by the system.

(b) Part-time employees. A part-time employee or other employee who is not automatically covered must complete an application form provided by the Employees Retirement System of Texas, authorizing necessary deductions for premium payments for elected coverage. This form must be submitted to the Employees Retirement System of Texas through his or her employing department on, or within 30 days after, the date on which the employee begins active duty. All other rules for enrollment stated in subsection (a) of this section, other than the rule as to automatic coverage, apply to such employee.

(c) Retirees and their dependents.

(1) Provided the required premiums are paid or deducted, an employee's health, dental and term life insurance coverage (including eligible dependent coverages) may be continued upon retirement. The life insurance will be reduced to the maximum amount which the retiree is permitted to retain under the insurance contract as a retiree. All other coverages in force for the active employee, but not available to the retiree, will automatically be discontinued concurrently with the commencement of retirement status. If a retiree is not covered as an active employee on the day before becoming an annuitant, the retiree will be enrolled in the basic plan.

(2) A retiree may enroll in health, dental, and life insurance coverages for which the retiree is eligible, including dependent coverages, by completing an enrollment form before, on, or within 30 days after, the retiree's effective date of retirement. For the purposes of this paragraph, the effective date of retirement of a retiree who is eligible to receive, but who is not actually receiving, an annuity is the date on which the system receives written notice of the retirement. Except as otherwise provided in paragraph (4) of this subsection, coverage becomes effective on the first day of the month following the effective date of retirement. An application received after the initial period for enrollment as provided in this paragraph is subject to the provisions of subsection (h) of this section.

(3) A retiree who becomes eligible for minimum retiree optional life insurance coverage or dependent life insurance coverage as provided in §81.5(c)(3) of this title (relating to Eligibility), may apply for approval of such coverage by providing evidence of insurability acceptable to the system.

(4) Enrollments and applications to change coverage become effective as provided in paragraph (2) of this subsection unless other coverages are in effect at that time. If other coverages are in effect at that time, coverage becomes effective on the first day of the month following the date of approval of retirement by the Employees Retirement System of Texas; or, if cancellation of the other coverages

preceded the date of approval of retirement, the first day of the month following the date the other coverages were canceled.

(5) All other enrollment rules stated in subsections (a), (g), and (l) of this section apply to retirees.

(d) Surviving dependents

(1) Provided that the required premiums are paid or deducted, the health and dental insurance coverages of a surviving dependent may be continued on the death of the deceased employee or retiree if the dependent is eligible for such coverage as provided by §81.5(f) of this title (relating to Eligibility).

(2) A surviving spouse who is receiving an annuity shall make premium payments by deductions from the annuity as provided in §81.3(b)(2)(A) of this title (relating to Administration). A surviving spouse who is not receiving an annuity may make payments as provided in §81.3(b)(2)(B) of this title.

(e) Former COBRA unmarried children. A former COBRA unmarried child must provide an application to continue health and dental insurance coverage within 30 days after the date the notice of eligibility is mailed by the system. Coverage becomes effective on the first day of the month following the month in which continuation coverage ends. Premium payments may be made as provided in §81.3(b)(2)(B) (relating to Administration).

(f) Premium conversion plans.

(1) An eligible employee participating in the program is deemed to have elected to participate in the premium conversion plan and to pay insurance premium expenses with pre-tax dollars as long as the employee remains on active duty. The plan is intended to be qualified under the Internal Revenue Code, §79 and §106.

(2) Maximum benefit available. Subject to the limitations set forth in these rules and in the plan, to avoid discrimination, the maximum amount of flexible benefit dollars which a participant may receive in any plan year for insurance premium expenses under this section shall be the amount required to pay the participant's portion of the premiums for coverage under each type of insurance included in the plan.

(g) Special rules for additional or alternative coverages.

(1) An employee/retiree must be enrolled in health coverage provided by the program to apply for any optional coverages. Only an employee or retiree or a former officer or employee specifically authorized to join the program may apply for optional coverages.

(2) An eligible participant in the program and eligible dependents may participate in an approved HMO if they reside in the approved service area of the HMO and are otherwise eligible under the terms of the contract with the HMO.

(3) An eligible participant in the program and eligible dependents may participate in HealthSelect Plus if they reside in an approved service area of HealthSelect Plus.

(4) An eligible participant in the Program electing optional additional coverage and/or HMO or HealthSelect Plus coverage in lieu of the basic plan of insurance is obligated for the full payment of premiums. If the premiums are not paid, all coverages not fully funded by the state contribution will be canceled. A person entitled to the state contribution will retain member only health coverage provided the state contribution is sufficient to cover the premium for such coverage. If the state contribution is not sufficient for member only coverage in the health plan selected by the employee or retiree, the employee or retiree will be enrolled in the basic plan except as provided for in subsection (l)(2)(B) of this section.

(5) An eligible participant in the Program enrolled in an HMO whose contract is not renewed for the next fiscal year will be eligible to make one of the following elections:

(A) change to another approved HMO for which the participant is eligible or to HealthSelect Plus (if the participant is eligible) by completing an enrollment form during the annual enrollment period. The effective date of the change in coverage will be September 1;

(B) enroll in HealthSelect of Texas without evidence of insurability by completing an enrollment form during the annual enrollment period, if the participant is eligible to enroll in another approved HMO. The effective date of the change in coverage for the eligible participant shall be September 1. Eligible dependents shall be subject to evidence of insurability requirements. The effective date of coverage for dependents may be either September 1 or the first day of the month following the date approval is received by the department;

(C) enroll in HealthSelect of Texas without evidence of insurability by completing an enrollment form during the annual enrollment period, if the participant is not eligible to enroll in another approved HMO (an approved HMO is not available to the participant). Eligible dependents shall not be subject to evidence of insurability requirements. The effective date of the change in coverage will be September 1; or

(D) if the participant does not make one of the elections, as defined in subparagraphs (A)-(C) of this paragraph, the participant will automatically be enrolled in the basic plan. Evidence of insurability for the participant and the participant's dependents will apply as referenced in subparagraph (B) of this paragraph.

(6) An employee, retiree, or other eligible program participant enrolled in an HMO whose contract is terminated during the fiscal year or which fails to maintain compliance with the letter of agreement will be eligible to make one of the following elections:

(A) change to another approved HMO for which the participant is eligible. The effective date of the change in coverage will be determined by the board;

(B) enroll in HealthSelect of Texas without evidence of insurability or in HealthSelect Plus if the participant is eligible, provided the participant is not eligible to enroll in another approved HMO. The effective date of the change in coverage will be determined by the board; or

(C) if a participant is eligible to enroll in another HMO, the board may allow the participant to enroll in HealthSelect of Texas without evidence of insurability or in HealthSelect Plus, if the participant is eligible. The effective date of the change in coverage will be determined by the board.

(h) Changes in coverage after the initial period for enrollment.

(1) Changes for Qualifying Life Event.

(A) Subject to the provisions of paragraphs (3) and (4) of this subsection, a participant shall be allowed to change coverage during a plan year if a qualifying life event occurs as provided in this paragraph and the change in coverage is consistent with the qualifying life event.

(B) A qualifying life event occurs when a participant experiences one of the following changes:

(i) change in marital status;

(ii) change in dependent status;

(iii) change in employment status;

(iv) change of address that results in loss of benefits eligibility;

(v) change in Medicare or Medicaid status;

(vi) significant cost of benefit or coverage change imposed by a third party provider; or

(vii) change in coverage ordered by a court.

(C) A participant who loses benefits eligibility as a result of a change of address shall change coverage as provided in paragraphs (6) - (9) of this subsection.

(D) A participant may apply to change coverage on, or within 30 days after, the date of the qualifying life event.

(E) Except as otherwise provided in subsections (a)(6) and (a)(8) of this section, the change in coverage is effective on the first day of the month following the date on which the enrollment form is completed.

(F) The plan administrator may require documentation in support of the qualifying life event.

(2) Effects of change in cost of benefits to the premium conversion plan. There shall be an automatic adjustment in the amount of premium conversion plan dollars used to purchase optional benefits in the event of a change, for whatever reason, during an applicable period of coverage, of the cost of providing such optional benefit to the extent permitted by applicable law and regulation. The automatic adjustment shall be equal to the increase or decrease in such cost. A participant shall be deemed by virtue of participation in the plan to have consented to the automatic adjustment.

(3) An eligible participant who wishes to add or increase coverage, add eligible dependents to HealthSelect of Texas, or change coverage from an HMO to HealthSelect of Texas after the initial period for enrollment must make application for approval by providing evidence of insurability acceptable to the system. Unless not in compliance with paragraph (1) of this subsection, coverage will become effective on the first day of the month following the date approval is received by the employee's benefits coordinator or by the system, if the applicant is a retiree or an individual in a direct pay status. If the applicant is an employee whose coverage was canceled while the employee was in a leave without pay status, the approved change in coverage will become effective on the date the employee returns to active duty if the employee returns to active duty within 30 days of the approval letter. If the date the employee returns to active duty is more than 30 days after the date on the approval letter, the approval is null and void; and a new application shall be required. An employee or retiree may withdraw the application at any time prior to the effective date of coverage by submitting a written notice of withdrawal.

(4) The evidence of insurability provision applies only to:

(A) employees who wish to enroll in Elections III or IV optional term life insurance, except as otherwise provided in subsection (k) of this section;

(B) employees who wish to enroll in or increase optional term life insurance or disability income insurance after the initial period for enrollment;

(C) employees, retirees, or eligible dependents who wish to enroll in HealthSelect of Texas after the initial period for enrollment, except as provided in subsections (a), (g)(5)-(6), and (h)(6)-(10) of this section and §81.3(b)(3)(B) of this title (relating to Administration);

(D) employees enrolled in the program whose coverage was dropped or canceled, except as otherwise provided in subsection (k) of this section; and

(E) retirees who wish to enroll in minimum optional life insurance coverage or dependent life insurance coverage as provided in subsection (c)(3) of this section.

(5) An employee or retiree who wishes to add eligible dependents to the employee's or retiree's HMO or HealthSelect Plus coverage may do so:

(A) during the annual enrollment period (coverage will become effective on September 1); or

(B) upon the occurrence of a qualifying life event as provided in paragraph (1) of this subsection.

(6) A participant who is enrolled in a approved HMO and who permanently moves out of the HMO service area shall make one of the following elections, to become effective on the first day of the month following the date on which the participant moves out of the HMO service area:

(A) enroll in another approved HMO for which the participant and all covered dependents are eligible;

(B) enroll in HealthSelect Plus, if the participant and all covered dependents are eligible; or

(C) if the participant and all covered dependents are not eligible to enroll in either an approved HMO or HealthSelect Plus; either:

(i) enroll in HealthSelect of Texas without providing evidence of insurability; or

(ii) enroll in an approved HMO or in HealthSelect Plus, if the participant is eligible, and drop any ineligible covered dependent, unless not in compliance with §81.11(a)(2) of this title (relating to Termination of Coverage).

(7) A participant who is enrolled in HealthSelect Plus and who permanently moves out of the HealthSelect Plus service area, shall make one of the following elections, to become effective on the first day of the month following the date on which the participant moves out of the HealthSelect Plus service area:

(A) enroll in an approved HMO for which the participant and all covered dependents are eligible; or

(B) if the participant and all covered dependents are not eligible to enroll in an approved HMO, either;

(i) enroll in HealthSelect of Texas without providing evidence of insurability; or

(ii) enroll in an approved HMO for which the participant is eligible and drop any ineligible covered dependent, unless not in compliance with §81.11(a)(2) of this title (relating to Termination of Coverage).

(8) When a covered dependent of a participant permanently moves out of the participant's HMO service area, the participant shall make one of the following elections, to become effective on the first day of the month following the date on which the dependent moves out of the HMO service area:

(A) drop the ineligible dependent, unless not in compliance with §81.11(a)(2) (relating to Termination of Coverage);

(B) enroll in an approved HMO or HealthSelect Plus, if the participant and all covered dependents are eligible; or

(C) enroll in HealthSelect of Texas without providing evidence of insurability if the participant and all covered dependents are not eligible to enroll in an approved HMO or HealthSelect Plus.

(9) When a covered dependent of a participant permanently moves out of the HealthSelect Plus service area, the participant shall make one of the following elections, to become effective on the first day of the month following the date on which the dependent moves out of the HealthSelect Plus service area:

(A) drop the ineligible dependent, unless not in compliance with §81.11(a)(2) (relating to Termination of Coverage);

(B) enroll in an approved HMO if the participant and all covered dependents are eligible; or

(C) enroll in HealthSelect of Texas without providing evidence of insurability, if the participant and all covered dependents are not eligible to enroll in an approved HMO.

(10) An eligible participant will be allowed an annual opportunity to make changes in coverages.

(A) A participant will be allowed to:

(i) change from one HMO to another HMO;

(ii) change from an HMO to HealthSelect Plus;

(iii) change from HealthSelect Plus to an HMO;

(iv) change from HealthSelect of Texas to HealthSelect Plus;

(v) change from HealthSelect of Texas to an HMO;

(vi) change from HealthSelect Plus to HealthSelect of Texas;

(vii) select in-area or out-of-area coverage in HealthSelect of Texas based on an out-of-area residential zip code and an in-area work zip code;

(viii) enroll in a dental plan;

(ix) change dental plans;

(x) enroll eligible dependents in an HMO, HealthSelect Plus, or dental coverage;

(xi) enroll eligible dependents in HealthSelect of Texas, without evidence of insurability, if the participant is enrolled in HealthSelect of Texas and does not reside in any HMO service area;

(xii) enroll themselves and their eligible dependents in an eligible HMO, in HealthSelect Plus (if they are eligible), and in a dental plan from a declined or canceled status;

(xiii) decrease or cancel coverage, unless prohibited by §81.11(a)(2) (relating to Termination of Coverage); and

(xiv) apply for coverage for which evidence of insurability is required as provided in paragraph (3) of this subsection.

(B) Surviving dependents and former COBRA unmarried children are not eligible for the provisions in subparagraph (A)(vii), (x), or (xi) of this paragraph, except that a surviving dependent or former COBRA unmarried child may enroll an eligible dependent in dental insurance coverage if the dependent is enrolled in health insurance coverage.

(C) Such opportunity will be scheduled prior to September 1 of each year at times announced by the system. Coverage selected during the annual enrollment period will be effective September 1. An employee who re-enrolled after the close of the annual opportunity but prior to September 1 of the same calendar year shall have until August 31 of that calendar year to make changes as allowed above to be effective September 1.

(11) A participant who is a retiree or a surviving dependent, or who is in a direct pay status, may decrease or cancel any coverage at any time unless such coverage is health insurance coverage ordered by a court as provided in §81.5(d) (relating to Eligibility).

(i) Preexisting conditions exclusion. The preexisting conditions exclusion shall apply to employees who enroll in disability coverage. The exclusion for benefit payments shall not apply after the first six consecutive months that the employee has been actively at work or after the employee's disability coverage has been continuously in force for 12 months for a preexisting condition, as defined in §81.1 of this title (relating to Definitions). The preexisting conditions exclusion will not apply to a medical condition resulting from congenital or birth defects.

(j) Special provisions relating to term life benefits

(1) An employee or annuitant who is enrolled in the group term life insurance plan may file a claim for an accelerated life benefit for himself or his covered dependent in accordance with the terms of the plan in effect at that time. An accelerated life benefit paid will be deducted from the amount that would otherwise be payable under the plan.

(2) An employee or annuitant who is enrolled in the group term life insurance plan may make, in conjunction with receipt of a viatical settlement, an irrevocable beneficiary designation in accordance with the terms of the plan in effect at that time.

(k) Re-enrollment in the program.

(1) The provisions of subsection (a) of this section shall apply to the enrollment of an employee who terminates employment and returns to active duty within the same contract year, who transfers from one department to another, or who returns to active duty after a period of leave without pay during which coverage is canceled.

(2) An employee to whom paragraph (k)(1) applies shall not be required to submit evidence of insurability acceptable to the carrier to re-enroll in the coverages in which the employee was previously enrolled. Provided that all applicable preexisting conditions exclusions were satisfied on the date of termination, transfer, or cancellation, no new preexisting conditions exclusions will apply. If not, any remaining period of preexisting conditions exclusions must be satisfied upon re-enrollment.

(3) If an employee is a member of the Texas National Guard or any of the reserve components of the United States armed forces, and the employee's coverages are canceled during a period of leave without pay or upon termination of employment as the result of an assignment to active military duty, the period of active military duty shall be applied toward satisfaction of any period of preexisting conditions exclusions remaining upon the employee's return to active employment.

(l) Continuing coverage in special circumstances.

(1) Continuation of coverages for terminating employees. A terminating employee is eligible to continue all coverages through the last day of the month in which employment is terminated.

(2) Continuation of coverages for employees in a leave without pay status.

(A) An employee in a leave without pay status may continue the coverages in effect on the date the employee entered that status for the period of leave, but not more than 12 months. The employee

must pay premiums directly as provided in §81.3(b)(2)(B)(i) of this title (relating to Administration).

(B) An employee whose leave without pay is a result of the Family and Medical Leave Act of 1993 will continue to receive the state contribution during such period of leave without pay. The employee must pay premiums directly as defined in §81.3(b)(2)(B)(i) of this title. Failure to make the required payment of premiums by the due date will result in the cancellation of all coverages except for member only health and basic life coverage. The employee will continue in the health plan in which he or she was enrolled immediately prior to the cancellation of all other coverages. If a premium beyond the state contribution for member only health and basic life coverage is owed, the employee must make the required payment of premiums directly to the employing department upon return to active duty.

(3) Continuation of coverages for a former member or employee of the legislature. Provided that the required premiums are paid, the health, dental, and life insurance coverages of a former member or employee of the legislature may be continued on conclusion of the term of office or employment.

(4) Continuation of coverages for a former judge. A former State of Texas judge, who is eligible for judicial assignments and who does not serve on judicial assignments during a period of one calendar month or longer, may continue the coverages that were in effect during the calendar month immediately prior to the month in which the former judge did not serve on judicial assignments. These coverages may continue for no more than 12 continuous months during which the former judge does not serve on judicial assignments as long as, during the period, the former judge continues to be eligible for assignment.

(5) Continuation of health and dental coverage for a surviving spouse and/or dependent child/children of a deceased employee or retiree. The surviving spouse and/or dependent child/children of a deceased employee/retiree, who, in accordance with §81.5(k)(1) of this title, elects to continue coverage may do so by submitting the required election notification and enrollment forms to the system. The enrollment form, including all premiums due for the election/enrollment period, must be postmarked or received by the system on or before the date indicated on the continuation of coverage enrollment form. Continuing coverage will begin on the first day of the month following the month in which the employee/retiree dies, provided all group insurance premiums due for the month in which the employee/retiree died and for the election/enrollment period have been paid in full.

(6) Continuation of health and dental coverage for a covered employee whose employment has been terminated, voluntarily or involuntarily (other than for gross misconduct), whose work hours have been reduced such that the employee is no longer eligible for the program as an employee, or whose coverage has ended following the maximum period of leave without pay as provided in paragraph (2)(A) of this section. An employee, his or her spouse and/or dependent child/children, who, in accordance with §81.5(k)(2) of this title, elects to continue health and dental coverages may do so by submitting the required election notification and enrollment forms to the system. The enrollment form, including all premiums due for the election/enrollment period, must be postmarked or received by the system on or before the date indicated on the continuation of coverage enrollment form. Continuing coverage will begin on the first day of the month following the month in which the employee's coverage ends, provided all group insurance premiums due for the month in which the coverage ends and for the election/enrollment period have been paid in full.

(7) Continuation of health and dental coverage for a spouse who is divorced from an employee/retiree and/or the spouse's dependent child/children. The divorced spouse and/or the spouse's dependent child/children (not provided for by §81.5(a) of this title) of an employee/retiree who, in accordance with §81.5(k)(4) of this title, elects to continue coverage may do so by submitting the required election notification and enrollment forms to the system. The enrollment form, including all premiums due for the election/enrollment period, must be postmarked or received by the system on or before the date indicated on the continuation of coverage enrollment form. Continuing coverage will begin on the first day of the month following the month in which the divorce decree is signed, provided all group insurance premiums due for the month in which the divorce decree is signed and for the election/enrollment period have been paid in full.

(8) Continuation of health and dental coverage for a dependent child under 25 years of age who marries. A dependent child under 25 years of age who marries and who, in accordance with §81.5(k)(5) of this title, elects to continue coverage may do so by submitting the required election notification and enrollment forms to the system. The enrollment form, including all premiums due for the election/enrollment period, must be postmarked or received by the system on or before the date indicated on the continuation of coverage enrollment form. Continuing coverage will begin on the first day of the month following the month in which the dependent child's marriage occurred, provided all group insurance premiums due for the month in which the dependent child's marriage occurred and for the election/enrollment period have been paid in full.

(9) Continuation of health and dental coverage for a dependent child who has attained 25 years of age. A 25-year-old dependent child (not provided for by §81.5(d) of this title of an employee/retiree who, in accordance with §81.5(k)(6) of this title, elects to continue coverage may do so by submitting the required election notification and enrollment forms to the system. The enrollment form, including all premiums due for the election/enrollment period, must be postmarked or received by the system on or before the date indicated on the continuation of coverage enrollment form. Continuing coverage will begin on the first day of the month following the month in which the dependent child of the employee/retiree attains 25 years of age, provided all group insurance premiums due for the month in which the dependent child attained age 25 and for the election/enrollment period have been paid in full.

(10) Extension of continuation of health and dental coverages for certain spouses and/or dependent child/children of former employees who are continuing coverage under the provisions of paragraph (6) of this subsection.

(A) The surviving spouse and/or dependent child/children of a deceased former employee, who, in accordance with §81.5(k)(7)(A) of this title (relating to Eligibility), elects to extend continuation coverage may do so by submitting the required election notification and enrollment forms to the Employees Retirement System of Texas. The enrollment form, including all premiums due for the election/enrollment period, must be postmarked or received by the Employees Retirement System of Texas on or before the date indicated on the continuation enrollment form. The election/enrollment period begins on the first day of the month following the month in which the former employee died.

(B) A spouse who is divorced from a former employee and/or the divorced spouse's dependent child/children, who, in accordance with §81.5(k)(7)(B) of this title (relating to Eligibility), elects to extend continuation coverage may do so by submitting the required election notification and enrollment forms to the Employees Retirement System of Texas. The enrollment form, including all premiums

due for the election/enrollment period, must be postmarked or received by the Employees Retirement System of Texas on or before the date indicated on the continuation enrollment form. The election/enrollment period begins on the first day of the month following the month in which the divorce decree was signed.

(C) A dependent child under 25 years of age who marries, who, in accordance with §81.5(k)(7)(C) of this title (relating to Eligibility), elects to extend continuation coverage may do so by submitting the required election notification and enrollment forms to the Employees Retirement System of Texas. The enrollment form, including all premiums due for the election/enrollment period, must be postmarked or received by the Employees Retirement System of Texas on or before the date indicated on the continuation enrollment form. The election/enrollment period begins on the first day of the month following the month in which the dependent child marries.

(D) A dependent child who has attained 25 years of age, who, in accordance with §81.5(k)(7)(D) of this title (relating to Eligibility), elects to extend continuation coverage may do so by submitting the required election notification and enrollment forms to the Employees Retirement System of Texas. The enrollment form, including all premiums due for the election/enrollment period, must be postmarked or received by the Employees Retirement System of Texas on or before the date indicated on the continuation enrollment form. The election/enrollment period begins on the first day of the month following the month in which the dependent child attained age 25.

(11) Continuation coverage defined. Continuation coverage as provided for in paragraphs (5)-(10) of this subsection means the continuation of only health and dental coverage benefits which meet the following requirements.

(A) Type of benefit coverage. The coverage shall consist of only the health and dental coverages, which, as of the time the coverage is being provided, are identical to the health and dental coverages provided for a similarly situated person for whom a cessation of coverage event has not occurred.

(B) Period of coverage. The coverage shall extend for at least the period beginning on the first day of the month following the date of the cessation of coverage event and ending not earlier than the earliest of the following:

(i) in the case of loss of coverage due to termination of an employee's employment, reduction in work hours, or end of maximum period of leave without pay, the last day of the 18th calendar month of the continuation period;

(ii) in the case of loss of coverage due to termination of an employee's employment, reduction in work hours, or end of maximum period of leave without pay, if the employee, spouse, or dependent child has been certified by the Social Security Administration as being disabled as provided in §81.5(k)(3) of this title, the last day of the 29th calendar month of the continuation period;

(iii) in any case other than loss of coverage due to termination of an employee's employment, reduction in work hours, or end of maximum period of leave without pay, the last day of the 36th calendar month of the continuation period;

(iv) the date on which the employer ceases to provide any group health plan to any employee/retiree;

(v) the date on which coverage ceases under the plan due to failure to make timely payment of any premium required as provided in §81.3(b)(2)(B)(ii) and (iii) of this title (relating to Administration);

(vi) the date on which the participant, after the date of election, becomes covered under any other group health plan under which the participant is not subject to a preexisting conditions limitation or exclusion;

(vii) the date on which the participant, covered under any other group health plan that subjects him or her to a preexisting conditions limitation or exclusion that was not satisfied by the service credit provisions of Public Law 104-91 (HIPAA), is no longer subject to the preexisting conditions limitation or exclusion in the other plan;

(viii) the date on which the participant, after the date of election, becomes entitled to benefits under the Social Security Act, Title XVIII.

(C) Premium requirements. The premium for a participant during the continuation coverage period will be 102% of the employee's/retiree's health and dental coverages only rate and is payable as provided in §81.3(b)(2)(B)(ii) of this title (relating to Administration).

(i) The premium for a participant eligible for 36 months of coverage will be 102% of the employee's/retiree's health and dental coverages only rate for the 19th through 36th months of coverage and is payable as provided in §81.3(b)(2)(B)(ii) of this title (relating to Administration).

(ii) The premium for a participant eligible for 29 months of coverage will be 150% of the employee's/retiree's health and dental coverages only rate for the 19th through 29th months of coverage and is payable as provided in §81.3(b)(2)(B)(iii) of this title (relating to Administration).

(D) No requirement of insurability. No evidence of insurability is required for a participant who elects to continue coverage under the provisions of §81.5(k)(1)-(6) of this title (relating to Eligibility).

(E) Conversion option. An option to enroll under the conversion plan available to employees/retirees is also available to a participant who continues health and dental coverages for the maximum period as provided in subparagraph (B)(i)-(iii) of this section. The conversion notice will be provided to a participant during the 180-day period immediately preceding the end of the continuation period.

(12) Continuation coverage for a former board member. Provided that the required premiums are paid, the health, dental, and life insurance coverages of a former member of a board or commission, or of the governing body of an institution of higher education, as both are described in Section 3(a)(5) of the Act, may be continued on conclusion of service if no lapse in coverage occurs after the term of office. Life insurance will be reduced to the maximum amount for which the former member is eligible.

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 August 24, 2001.

TRD-200105003
Sheila W. Beckett
Executive Director
Employees Retirement System of Texas
Effective date: September 13, 2001
Proposal publication date: July 20, 2001
For further information, please call: (512) 867-7125

34 TAC §81.3, §81.11

The Employees Retirement System of Texas (ERS) adopts §§81.3 and 81.11, concerning the Texas Employees Uniform Group Insurance Program, without changes to the proposed text as published in the July 20, 2001, issue of the *Texas Register* (26 TexReg 5370).

Section 81.3 is amended to delete all references to the Group Benefits Advisory Committee and to revise language pertaining to the payment of premiums. Section 81.11 is amended to update language pertaining to termination of coverage.

No comments were received concerning these amendments.

The amendments are adopted under Tex. Ins. Code, art. 3.50-2, §4A, which provides authorization for the board to adopt rules necessary to carry out its statutory duties and responsibilities.

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) 867-7125

CHAPTER 85. FLEXIBLE BENEFITS

34 TAC §85.9

The Employees Retirement System of Texas (ERS) adopts amendments to §85.9, concerning payment of claims from reimbursement accounts, without changes to the proposed text as published in the July 20, 2001, issue of the *Texas Register* (26 TexReg 5375).

This section is amended in order to clarify the rule regarding permissible methods of claims reimbursement.

No comments were received concerning these amendments.

The amendments are adopted under Tex. Ins. Code, art. 3.50-2, §4A, which provides authorization for the board to adopt rules necessary to carry out its statutory duties and responsibilities.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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TITLE 40. SOCIAL SERVICES AND ASSISTANCE

PART 19. TEXAS DEPARTMENT OF PROTECTIVE AND REGULATORY SERVICES

CHAPTER 700. CHILD PROTECTIVE SERVICES

SUBCHAPTER C. ELIGIBILITY FOR CHILD PROTECTIVE SERVICES

40 TAC §700.316

The Texas Department of Protective and Regulatory Services (TDPRS) adopts an amendment to §700.316, without changes to the proposed text published in the July 6, 2001, issue of the *Texas Register* (26 TexReg 4977).

The justification for the amendment is to remove the specific procedures that staff must follow when a lump-sum payment affects a child's foster care eligibility, and replace them with a reference to the statutes and regulations that control the management of the payments.

The amendment will function by enabling TDPRS to receive and manage lump-sum payments in an efficient and effective manner.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Human Resources Code (HRC), §40.029, which authorizes the Board to adopt rules to ensure the Department's compliance with state and federal law and to facilitate implementation of departmental programs; and the Texas Family Code §264.101, which authorizes the Department to accept and spend funds available from any source to pay for foster care, including medical care, for a child in the Department's care.

The amendment implements the Texas Family Code, §264.101.

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 August 24, 2001.

TRD-200105021
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Proposal publication date: July 6, 2001
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SUBCHAPTER R. COST-FINDING METHODOLOGY FOR 24-HOUR CHILD-CARE FACILITIES

The Texas Department of Protective and Regulatory Services (PRS) adopts the repeal of §700.1802 and §700.1807, and

adopts new §700.1802, in its Child Protective Services chapter. New §700.1802 is adopted with changes to the proposed text published in the July 6, 2001, issue of the *Texas Register* (26 TexReg 4977). The repeal of §700.1802 and §700.1807 are adopted without changes to the proposed text and will not be republished.

The justification for the repeals and new section is to revise the foster care rate-setting methodology to provide a more equitable distribution of funding for the level of services provided to PRS children in conservatorship. New §700.1802 also gives PRS the ability to provide the rate increase intended by the 77th legislature for the 2002-2003 biennium. Section 700.1807 is repealed because it relates to the rate increase for the 2000-2001 biennium.

The sections will function by providing 24-hour residential care providers an equitable rate for the level of services provided to PRS children in conservatorship. Proper compensation helps to ensure that children receive appropriate levels of service. The methodology seeks to reimburse all foster care providers for a proportionate share of the established cost basis for each rate based upon the available foster care appropriations. The methodology could result in future reductions in individual rates if the reported cost basis for those rates does not substantiate the rate being paid. To avoid any potential impact on service delivery during the fiscal year 2002-2003 biennium, no rate reductions will be implemented during this biennium.

It is important to note that the rate-setting methodology, as proposed in new §700.1802, authorizes the Board to set rates based not only on costs, as determined under the cost-finding analysis contained in this same rule, but also on other factors, including funding, staff recommendations, and agency service demands.

In considering the proposed rate-setting methodology at its June 21st worksession, the Board was presented with a set of proposed new rates that were based solely on the cost- finding analysis contained in new proposed §700.1802, adjusted on a pro-rata basis to match appropriations for foster care. The Board noted that if new rates are based solely on the data compiled through the new cost-finding analysis, the daily foster care rate for Levels of Care (LOC) 5 and 6 will not be raised enough to meet market demand for providers who serve this population of children. Second, the proposed rates were projected to result in a significant shortfall in funding for adoption assistance monthly payments due to the linkage between LOC 1 rates and the maximum monthly rate for adoption assistance.

To address these concerns, PRS staff developed four rate options, which were shared with foster care providers by memo distributed on July 20, 2001. Two additional options were prepared in response to comments received from the public. None of the six rate options require changes to §700.1802, as proposed for adoption, since these options all derive from the cost-finding analysis, adjusted for other factors, as provided in proposed §700.1802.

During the public comment period, PRS received comments from Coastal Bend Youth City, Texas Association of Leaders in Children and Family Services (TALCS), Texas State Foster Parents, Inc., and one individual. None of the commenters expressed any concerns regarding the substance of the proposed rule changes, and therefore no changes to the proposed rules were considered in response to these comments. All of the commenters expressed an opinion on the various rate options that might result from the new rule, and these comments will be considered by the Board when it adopts new rates for Fiscal Year 2002. TALCS also recommended continued joint study and reform to analyze cost data and time studies and to consider different financing options. PRS agrees with the recommendation to continue to study and refine the process in future years.

As a result of staff comments concerning §700.1802, PRS is changing the title of the section to "Rate-Setting Methodology for 24-Hour Residential Child-Care Reimbursements." This title better reflects the fact that the cost-finding analysis is only one component of the rate- setting methodology, which authorizes the Board to take into consideration other factors relevant to the rate structure, such as available funding and service demands. Also in §700.1802, PRS is moving the maternity home facility type from the child-placing agency category (subsection (c)(3)(f)) to the residential care facility category (subsection (d)(3)(f)). This change will not substantially affect the content of the rule and is appropriate as the operations of a maternity home are more similar to those of a residential care facility versus a child-placing agency.

40 TAC §700.1802, §700.1807

The repeals are adopted under Human Resources Code (HRC), Chapter 40, which describes the services authorized to be provided by the Texas Department of Protective and Regulatory Services (PRS), specifically §40.029 granting rulemaking authority to PRS, and §40.052 regarding delivery of services; and under Texas Family Code, §264.101, which authorizes the Board of PRS to adopt rules relating to the payment of foster care.

The repeals implement the HRC, Chapter 40, which authorizes the department to enter into agreements with federal, state, or other public or private agencies or individuals to accomplish the purposes of the programs authorized by the HRC and which authorizes the department to enter into contracts as necessary to perform any of its powers or duties.

The repeals also satisfy the requirement of the Department's Rider 21, Article II, of the General Appropriations Act for the 2000-2001 biennium; and the General Appropriations Act for the 2002-2003 biennium.

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 August 24, 2001.

TRD-200105028
C. Ed Davis
Deputy Director, Legal Services
Texas Department of Protective and Regulatory Services
Effective date: September 13, 2001
Proposal publication date: July 6, 2001
For further information, please call: (512) 438-3437

40 TAC §700.1802

The new section is adopted under Human Resources Code (HRC), Chapter 40, which describes the services authorized to be provided by the Texas Department of Protective and Regulatory Services (PRS), specifically §40.029 granting rulemaking authority to PRS, and §40.052 regarding delivery of services; and under Texas Family Code, §264.101, which authorizes the

Board of PRS to adopt rules relating to the payment of foster care.

The new section implements the HRC, Chapter 40, which authorizes the department to enter into agreements with federal, state, or other public or private agencies or individuals to accomplish the purposes of the programs authorized by the HRC and which authorizes the department to enter into contracts as necessary to perform any of its powers or duties.

The new section also satisfies the requirement of the Department's Rider 21, Article II, of the General Appropriations Act for the 2000-2001 biennium; and the General Appropriations Act for the 2002-2003 biennium.

§700.1802. Rate-Setting Methodology for 24-Hour Residential Child-Care Reimbursements.

(a) The Board of the Texas Department of Protective and Regulatory Services (PRS) reviews payment rates for providers of 24-hour residential child care services every other year in an open meeting, after considering financial and statistical information, PRS rate recommendations developed according to the provisions of this subchapter, legislative direction, staff recommendations, agency service demands, public testimony, and the availability of appropriated revenue. Before the open meeting in which rates are presented for adoption, PRS sends rate packets containing the proposed rates and average inflation factor amounts to provider association groups. PRS also sends rate packets to any other interested party, by written request. Providers who wish to comment on the proposed rates may attend the open meeting and give public testimony. Notice of the open meeting is published on the Secretary of State's web site at http://www.sos.state.tx.us/open. If the Board adopts the proposed rates, PRS notifies all foster care providers of the adopted rates by letter.

(b) PRS develops rate recommendations for Board consideration for foster homes serving Levels of Care 1 through 4 children as follows:

(1) For all Level of Care 1 rates, PRS analyzes the most recent statistical data available on expenditures for a child published by the United States Department of Agriculture (USDA) from middle income, dual parent households for the "Urban South." USDA data includes costs for age groupings from 0 to 17 years of age. An age differential is included with one rate for children ages 0-11 years, and another rate for children 12 years and older. Foster homes providing services to Level of Care 1 children receive the rate that corresponds to the age of the child in care.

(A) PRS excludes health care costs, as specified in the USDA data, from its calculations since Medicaid covers these costs. USDA specified child-care and education costs are also excluded since these services are available in other PRS day-care programs.

(B) PRS includes the following cost categories for both age groups as specified in the USDA data: housing, food, transportation, clothing, and miscellaneous.

(C) The total cost per day is projected using the Implicit Price Deflator-Personal Consumption Expenditures (IPD-PCE) Index from the period covered in the USDA statistics to September 1 of the second year of the biennium, which is the middle of the biennium that the rate period covers. Information on inflation factors is specified in subsection (h) of this section.

(2) For Levels of Care 2 through 4 rates, PRS analyzes the information submitted in audited foster home cost surveys and related documentation in the following ways:

(A) A statistically valid sample of specialized (therapeutic, habilitative, and primary medical) foster homes complete a cost survey covering one month of service if they meet the following criteria:

(i) the foster home currently has a PRS foster child(ren) residing in the home; and

(ii) the number of children in the home, including the children of the foster parents, is 12 or fewer.

(B) For rates covering the fiscal year 2002-2003 biennium, child-placing agency homes are the only foster homes that complete a cost survey because the children they serve are currently assigned levels of care verified by an independent contractor. By September 1, 2001, children served in PRS specialized foster homes will also be assigned levels of care verified by an independent contractor. All future sample populations completing a one-month foster home cost survey will include both child-placing agency and PRS specialized foster homes. As referenced in subsection (j) of this section, during the 2004-2005 biennium, when the rate methodology is fully implemented, PRS specialized foster homes and child-placing agency foster homes will be required to receive at a minimum the same foster home rate as derived by this subsection.

(C) Cost categories included in the one-month foster home cost survey include:

(i) shared costs, which are costs incurred by the entire family unit living in the home, such as mortgage or rent expense and utilities;

(ii) direct foster care costs, which are costs incurred for PRS foster children only, such as clothing and personal care items. These costs are tracked and reported for the month according to the level of care of the child; and

(iii) administrative costs that directly provide for PRS foster children, such as child-care books, and dues and fees for associations primarily devoted to child care.

(D) A cost per day is calculated for each cost category and these costs are combined for a total cost per day for each level of care served.

(E) A separate sample population is established for each type of specialized foster home (therapeutic, habilitative, and primary medical). Each level of care maintenance rate is established by the sample population's central tendency, which is defined as the mean, or average, of the population after applying two standard deviations above and below the mean of the total population.

(F) The rates calculated for each type of specialized foster home are averaged to derive one foster care maintenance rate for each of the Levels of Care 2 through 4.

(G) The total cost per day is projected using the IPD-PCE Index from the period covered in the cost report to September 1 of the second year of the biennium, which is the middle of the biennium that the rate period covers. Information on inflation factors is specified in subsection (h) of this section.

(c) PRS develops rate recommendations for Board consideration for child-placing agencies serving Levels of Care 1 through 4 children as follows:

(1) The rate-setting model defined in subsection (g) of this section is applied to child-placing agencies' cost reports to calculate a daily rate.

(2) At a minimum, child-placing agencies are required to pass through the applicable foster home rate derived from subsection (b) of this section to their foster homes. The remaining portion of the rate is provided for costs associated with case management, treatment coordination, administration, and overhead.

(3) For rate-setting purposes, the following facility types are included as child-placing agencies and will receive the child-placing agency rate:

(A) child-placing agency;

(B) independent foster family/group home;

(C) independent therapeutic foster family/group home;

(D) independent habilitative foster family/group home; and

(E) independent primary medical needs foster family/group home.

(d) PRS develops rate recommendations for Board consideration for residential care facilities serving Levels of Care 1 through 6 as follows:

(1) For Levels of Care 1 and 2, PRS applies the same rate paid to child-placing agencies as recommended in subsection (c) of this section.

(2) For Levels of Care 3 through 6, the rate-setting model defined in subsection (g) of this section is applied to residential care facilities' cost reports to calculate a daily rate.

(3) For rate-setting purposes, the following facility types are included as residential care facilities and will receive the residential care facility rate:

(A) residential treatment center;

(B) therapeutic camp;

(C) institution for mentally retarded;

(D) basic care facility;

(E) halfway house; and

(F) maternity home.

(e) PRS develops rate recommendations for Board consideration for emergency shelters as follows:

(1) PRS analyzes emergency shelter cost report information included within the rate-setting population defined in subsection (f) of this section. Emergency shelter costs are not allocated across levels of care since, for rate-setting purposes, all children in emergency shelters are considered to be at the same level of care.

(2) For each cost report in the rate-setting population, the total costs are divided by the total number of days of care to calculate a daily rate.

(3) The total cost per day is projected using the IPD-PCE Index from the period covered in the cost report to September 1 of the second year of the biennium, which is the middle of the biennium that the rate period covers. Information on inflation factors is specified in subsection (h) of this section.

(4) The emergency shelter rate is established by the population's central point or central tendency. The measure of central tendency is defined as the mean, or average, of the population after applying two standard deviations above and below the mean of the total population.

(f) Level of care rates for contracted providers including child-placing agencies, residential care facilities, and emergency shelters are dependent upon provider cost report information. The following criteria applies to this cost report information:

(1) PRS excludes the expenses specified in §700.1805 and §700.1806 of this title (relating to Unallowable Costs and Costs Not Included in Recommended Payment Rates). Exclusions and adjustments are made during audit desk reviews and on-site audits.

(2) PRS includes therapy costs in its recommended payment rates for emergency shelters and for Levels of Care 3 through 6, and these costs will be considered as allowable costs for inclusion on the provider's annual cost report, only if one of the following conditions applies. The provider must access Medicaid for therapy for children in their care unless:

(A) the child is not eligible for Medicaid or is transitioning from Medicaid Managed Care to fee- for-service Medicaid;

(B) the necessary therapy is not a service allowable under Medicaid;

(C) service limits have been exhausted and the provider has been denied an extension;

(D) there are no Medicaid providers available within 45 miles that meet the needs identified in the service plan to provide the therapy; or

(E) it is essential and in the child's best interest for a non-Medicaid provider to provide therapy to the child and arrange for a smooth coordination of services for a transition period not to exceed 90 days or 14 sessions, whichever is less. Any exception beyond the 90 days or 14 sessions must be approved by PRS before provision of services.

(3) PRS may exclude from the database any cost report that is not completed according to the published methodology and the specific instructions for completion of the cost report. Reasons for exclusion of a cost report from the database include, but are not limited to:

(A) receiving the cost report too late to be included in the database;

(B) low occupancy;

(C) auditor recommended exclusions;

(D) days of service errors;

(E) providers that do not participate in the level of care system;

(F) providers with no public placements;

(G) not reporting costs for a full year;

(H) using cost estimates instead of actual costs;

(I) not using the accrual method of accounting for reporting information on the cost report;

(J) not reconciling between the cost report and the provider's general ledger; and

(K) not maintaining records that support the data reported on the cost report.

(4) PRS requires all contracted providers to complete the first portion of the cost report including contracted provider identification; preparer/contact person; facility license type; reporting period; days of service by level of care provided during the reporting period;

facility capacity and occupancy status; and cost report exemption determination. Providers that meet any one of the following criteria are not required to complete the entire cost report:

(A) total number of days of service for state-placed children equal to or less than 10% of total days of service;

(B) total number of PRS days of service equal to or less than 10% of total days of service;

(C) no services provided to PRS children;

(D) services provided to only Level of Care 1 children;

(E) contract with PRS terminated or was not renewed;

(F) occupancy rate for emergency shelters is less than 30%; or

(G) occupancy rate for all other facility types, except for child-placing agencies, is less than 50%.

(5) The occupancy rate equals the total number of days of service provided during the reporting period divided by the maximum operating capacity. The maximum operating capacity is the number of residents the facility is equipped to serve multiplied by the number of days in the reporting period.

(6) All contracted providers not meeting the exemption criteria defined in paragraph (4) of this subsection are included in the rate-setting population and must complete the entire cost report for rate-setting purposes, including:

(A) all child-placing agencies because they do not report occupancy;

(B) emergency shelters with a 30% or more overall occupancy rate; and

(C) all other facilities with a 50% or more overall occupancy rate.

(g) A rate-setting model is applied to child-placing agencies' and residential care facilities' cost report information included within the rate-setting population defined in subsection (f) of this section. Three allocation methodologies are used in the rate-setting model to allocate allowable costs among the levels of care of children that are served. The methodologies are explained below and are applied as follows:

(1) The first methodology is a staffing model, validated by a statistically valid foster care time study, driven by the number of direct care and treatment coordination staff assigned to a child- placing agency or residential care facility to care for the children at different levels of care. The staffing model produces a staffing complement that is applied to direct care costs to allocate the costs among the levels of care.

(A) Staff positions reported on the direct care labor area of the cost report are grouped into the following categories to more clearly define the staffing complement required at each level of care:

(i) case management;

(ii) treatment coordination;

(iii) direct care;

(iv) direct care administration; and

(v) medical.

(B) A categorized staffing complement for each Level of Care 1 through 6 is derived as follows:

(i) A 14-day foster care time study is applied to a representative sample of residential care facilities and child-placing agencies that completed a cost report.

(ii) Contracted staff, or employees, within the sampled facilities complete a foster care time study daily activity log that assigns half-hour units of each employee's time to the individual child(ren) with whom the employee is engaged during the time period. By correlating the distribution of the employee's time with the level of care assigned to each child, the employee's time is distributed across the Levels of Care 1 through 6.

(iii) The foster care time study daily activity log also captures the type of activity performed. The total amount of time spent in each of these activities is a component in determining the number of staff needed in each of the categories included in the staffing complement. The activities performed include:

(I) care and supervision;

(II) treatment planning and coordination;

(III) medical treatment and dental care; and

(IV) other (administrative, managerial, training functions, or personal time).

(iv) An analysis of the cumulative frequency distribution of these time units by level of care of all children served in the sample population, by category of staff performing the activity, and by type of activity, establishes appropriate staffing complements for each level of care in child- placing agencies and in residential care facilities. These time units by level of care are reported as values that represent the equivalent of a full-time employee. The results are reported in the following chart for incorporation into the rate-setting model:
Figure: 40 TAC §700.1802

(v) The foster care time study should be conducted every other biennium, or as needed, if service levels substantially change.

(C) Staff position salaries and contracted fees are reported as direct care labor costs on the cost reports. Each staff position is categorized according to the staffing complement outlined for the time study. The salaries and contracted fees for these positions are grouped into the staffing complement categories and are averaged for child-placing agencies and residential care facilities included in the rate-setting population. This results in an average salary for each staffing complement category (case management, treatment coordination, direct care, direct care administration, and medical).

(D) The staffing complement values, as outlined in the chart at paragraph (1)(B)(iv) of this subsection, are multiplied by the appropriate average salary for each staffing complement category. The products for all of the staffing complement categories are summed for a total for each level of care for both child-placing agencies and residential care facilities. The total by level of care is multiplied by the number of days of service in each level of care, and this product is used as the primary allocation statistic for assigning each provider's direct care costs to the various levels of care.

(E) Direct care costs include the following areas from the cost reports:

(i) direct care labor;

(ii) total payroll taxes/workers compensation; and

(iii) direct care non-labor for supervision/recreation, direct services, and other direct care (not CPAs).

(2) The second methodology allocates the following costs by dividing the total costs by the total number of days of care for an even distribution by day regardless of level of care. This amount is multiplied by the number of days served in each level:

(A) direct care non-labor for dietary/kitchen;

(B) building and equipment;

(C) transportation;

(D) tax expense; and

(E) net educational and vocational service costs.

(3) The third methodology allocates the following administrative costs among the levels of care by totaling the results of the previous two allocation methods, determining a percent of total among the levels of care, and applying those percentages:

(A) administrative wages/benefits;

(B) administration (non-salary);

(C) central office overhead; and

(D) foster family development.

(4) The allocation methods described in paragraphs (1)-(3) of this subsection are applied to each child-placing agency and residential care facility in the rate-setting population, and separate rates are calculated for each level of care served. Rate information is included in the population to set the level of care rate if the following criteria are met:

(A) Providers must have at least 30% of their service days within Levels of Care 3 through 6 for residential settings. For example, for the provider's cost report data to be included for calculating the Level of Care 3 rate, a provider must provide Level of Care 3 services for at least 30% of their service days.

(B) For Levels of Care 5 and 6, a contracted provider could provide up to 60% of "private days" services to be included in the rate-setting population. They must provide at least 40% state- placed services.

(5) Considering the criteria in paragraph (4) of this subsection, the rate-setting population is fully defined for each level of care. Based on this universe, each level of care rate will be established by the group's central point or central tendency. The measure of central tendency is defined as the mean, or average, of the population after applying two standard deviations above and below the mean of the total population.

(6) The total cost per day for each child-placing agency and residential care facility is projected using the IPD-PCE Index from the period covered in the cost report to September 1 of the second year of the biennium, which is the middle of the biennium that the rate period covers. Information on inflation factors is specified in subsection (h) of this section.

(h) PRS uses the Implicit Price Deflator - Personal Consumption Expenditures (IPD-PCE) Index, which is a general cost inflation index, to calculate projected allowable expenses. The IPD-PCE Index is a nationally recognized measure of inflation published by the Bureau of Economic Analysis of the United States Department of Commerce. PRS uses the lowest feasible IPD-PCE Index forecast consistent with the forecasts of nationally recognized sources available to PRS when the rates are prepared. Upon written request, PRS will provide inflation factor amounts used to determine rates.

(i) All reimbursement rates will be equitably adjusted to the level of appropriations authorized by the Legislature.

(j) There will be a transition period for the fiscal year 2002-2003 biennium. During this period current rates will not be reduced, and any increased funding will be applied to those levels of care that are less adequately reimbursed according to the methodology. Since increased funding was appropriated at a different percentage for each year of the 2002-2003 biennium, the rates will be set separately for each year instead of setting a biennial rate, and inflation factors will be applied to the middle of each year of the biennium. Full implementation of the methodology will occur during the fiscal year 2004-2005 biennium.

(k) The Board may adjust payment rates, if determined appropriate, when federal or state laws, rules, standards, regulations, policies, or guidelines are changed or adopted. These adjustments may result in increases or decreases in payment rates. Providers must be informed of the specific law, rule, standard, regulation, policy or guideline change and be given the opportunity to comment on any rate adjustment resulting from the change prior to the actual payment rate adjustment.

(l) To implement Chapter 1022 of the Acts of the 75th Texas Legislature, §103, the executive director may develop and implement one or more pilot competitive procurement processes to purchase substitute care services, including foster family care services and specialized substitute care services. The pilot programs must be designed to produce a substitute care system that is outcome-based and that uses PRS's outcome measures. Rates for the pilot(s) will be the result of the competitive procurement process, but must be found to be reasonable by the executive director. Rates are subject to adjustment as allowed in subsections (a) and (k) of this section.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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C. Ed Davis
Deputy Director, Legal Services
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For further information, please call: (512) 438-3437

CHAPTER 732. CONTRACTED SERVICES
SUBCHAPTER L. CONTRACT ADMINISTRATION

The Texas Department of Protective and Regulatory Services (PRS) adopts the repeal of §§732.201-732.207, 732.209-732.236, and 732.262, and adopts new §§732.201-732.228 and 732.262, concerning contract administration, in its Contracted Services chapter. New §732.203 is adopted with a change to the proposed text published in the July 6, 2001, issue of the *Texas Register* (26 TexReg 4983). The repeal of §§732.201-732.207, 732.209-732.236, and 732.262, and new §§732.201, 732.202, 732.204-732.228, and 732.262 are adopted without changes to the proposed text and will not be republished.

The justification for the repeals and new sections is to delete unnecessary PRS rules and replace them with rules that are consistent with the contracting rules adopted by the Health and Human Services Commission.

The sections will function by being consistent with the rules of other Health and Human Services Commission agencies and will match revised state and federal requirements.

No comments were received regarding adoption of the sections. PRS, however, is adopting §732.203(a) with a non-substantive change to clarify the total period between procurements. The phrase "for a period not to exceed four years without being subject to further competition" now states "as along as the total period of the contract does not exceed 54 months without being subject to a new procurement."

40 TAC §§732.201 - 732.207, 732.209 - 732.236, 732.262

The repeals are adopted under the Human Resources Code (HRC) §40.029, which authorizes the department to adopt rules to facilitate implementation of departmental programs.

The repeals implement the Human Resources Code, §40.029.

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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C. Ed Davis
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40 TAC §§732.201 - 732.228, 732.262

The new sections are adopted under the Human Resources Code (HRC) §40.029, which authorizes the department to adopt rules to facilitate implementation of departmental programs.

The new sections implement the Human Resources Code, §40.029.

§732.203. How long may a contract period last and when may the contract be renewed?

(a) At the Department's option, a contract procured through competitive methods may be renewed annually as along as the total period of the contract does not exceed 54 months without being subject to a new procurement.

(b) The Department may renew annually for an indefinite number of years a contract procured by noncompetitive methods; however, a periodic review, not less often than every four years or the time specified in the waiver authorizing noncompetitive procurement, whichever is less, must be made and documented to determine if competition is necessary or possible.

(c) Renewal of a contract is not automatic; the contract may be renewed at the Department's option, when authorized, and when it is in the Department's best interests.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Texas Department of Protective and Regulatory Services
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TEXAS DEPARTMENT OF INSURANCE

Notification Pursuant to the Insurance Code, Chapter 5, Subchapter L

As required by the Insurance Code, Article 5.96 and 5.97, the ***Texas Register*** publishes notice of proposed actions by the Texas Board of Insurance. Notice of action proposed under Article 5.96 must be published in the ***Texas Register*** not later than the 30th day before the board adopts the proposal. Notice of action proposed under Article 5.97 must be published in the ***Texas Register*** not later than the 10th day before the Board of Insurance adopts the proposal. The Administrative Procedure Act, the Government Code, Chapters 2001 and 2002, does not apply to board action under Articles 5.96 and 5.97.

The complete text of the proposal summarized here may be examined in the offices of the Texas Department of Insurance, 333 Guadalupe Street, Austin, Texas 78714-9104.)

This notification is made pursuant to the Insurance Code, Article 5.96, which exempts it from the requirements of the Administrative Procedure Act.

Texas Department of Insurance

Final Action

ADOPTION OF AMENDMENTS TO THE FIRE SUPPRESSION RATING SCHEDULE TO ESTABLISH A NEW PUBLIC PROTECTION CLASSIFICATION AND ADOPTION OF CONFORMING AMENDMENTS TO THE TEXAS PERSONAL LINES MANUAL AND THE TEXAS STATISTICAL PLAN FOR RESIDENTIAL RISKS AND DELETION OF OUTDATED RATE CAPPING AND PREVIOUS KEY RATE REFERENCES IN THE TEXAS PERSONAL LINES MANUAL AND A TYPOGRAPHICAL CORRECTION TO THE TEXAS ADDENDUM TO THE FIRE SUPPRESSION RATING SCHEDULE

The Commissioner of Insurance at a public hearing held August 22, 2001, at 9:30 a.m. under Docket No. 2489 in Room 100 of the William P. Hobby Jr. State Office Building, 333 Guadalupe Street, Austin, Texas adopted amendments proposed by Staff to the Fire Suppression Rating Schedule (FSRS) which would establish a new public protection classification, Class 8B, and further adopted conforming amendments to the Texas Personal Lines Manual and the Texas Statistical Plan for Residential Risks, and also deleted outdated rate capping and previous key rate references in the Texas Personal Lines Manual, and made a typographical correction to the Texas Addendum to the Fire Suppression Rating Schedule (Texas Addendum). Staff's petition was filed on July 9, 2001; notice of this petition (Reference No. P-0701-07-I) was published in the July 20, 2001, issue of the *Texas Register* (26 TexReg 5447).

The Commissioner adopted the proposal as noticed in the July 20, 2001, issue of the *Texas Register*, with clarification changes to the FSRS as follows: Subpart D was added to Item 201 in the FSRS to note that if the city has a combination of A, B, or C, which subparts set forth the facilities available in determining the method of applying the public fire suppression section, then multiple Public Protection Classifications may apply. This conforms to current practice of assigning multiple public protection classifications when warranted. Item 800 regarding the general application of the Class 8B Protection has been clarified to note that the city, "or part of the city," must not have a water system capable of delivering the fire flow as specified therein. Additional conforming changes were made to make the numerical calculations correspond with the deletion of the outdated references to rate capping factors in the example sections of the Homeowners Section VI. Rating Rules, B.2. and the Dwelling Section VI. Rating Rules, B.1. of the Texas Personal Lines Manual. The adopted rules: (1) revise the FSRS to establish the Class 8B Protection and set forth the criteria for eligibility for the new classification; (2) update the FSRS in its references to the new classification and re-number the items referencing the Class 9 Protection; (3) conform various sections of the Texas Personal Lines Manual and the Texas Statistical Plan for Residential Risks (Residential Statistical Plan) consistent with the establishment of the new Class 8B classification; (4) delete outdated rate capping and previous key rate references in the Texas Personal Lines Manual since the public protection classification system has been in effect long enough that the use of rate capping factors are no longer needed in property rating for insurance; and (5) make a typographical correction to the Texas Addendum.

A. The adoption amends the FSRS as follows:

(1) Add the requirements of eligibility for the new Class 8B Protection in re-numbered Items 800, 801, and 802 of the FSRS;

(2) Re-number the Class 9 Protection requirements as new Items 810, 811, and 812 of the FSRS;

(3) Amend Item 201 of the FSRS to reflect the references to the new and renumbered Items concerning Class 8B Protection and Class 9 Protection and to note that multiple public protection classifications may apply if a city has a combination of facilities.

B. Conforming amendments are adopted to the Texas Personal Lines Manual as follows:

(1) Homeowners Section VI. Rating Rules, A.2. Public Protection Classification Codes - add Class 8B and new code;

(2) Homeowners Section X. Rate Tables and Premium Charts. Homeowners -- Table B and Tenant Homeowners -- Table B -- add Class 8B and new factors;

(3) Dwelling Section VI. Rating Rules, A.2. Public Protection Classification

Codes and C.1. Public Housing Modifications - add Class 8B and new code;

(4) Dwelling Section IX. Rate Tables and Premium Charts. Dwelling -- Table A -- add Class 8B and new factors.

C. Conforming amendments are adopted to the Residential Statistical Plan as follows:

(1) Coding Section (page 16) - add option "B" and note for PPC Code 8B.

(2) Premiums Section (page 6) - add option "B" and note for PPC Code 8B.

(3) Losses Section (page 3) - add option "B" and note for PPC Code 8B.

D. The adoption deletes the outdated references to rate capping factors and the previous key rate in the Texas Personal Lines Manual as follows:

(1) Homeowners Section VI. Rating Rules, B.1. - delete subsection d. and re-letter and conform subsection e;

(2) Homeowners Section VI. Rating Rules, B.2. - delete subsection d. and re-letter and conform subsection e and subsection f;

(3) Delete Homeowners Tables D-1 and D-2 and delete Tenant Homeowners Tables D-1 and D-2;

(4) Dwelling Section VI. Rating Rules, B.1. - delete Step 3 and re-number and conform Step 4 and Step 5.

(5) Delete Dwelling Tables C-1 and C-2;

(6) Delete incidental references to capping factors and the previous key rate in other rules and rating examples of the Texas Personal Lines Manual as more specifically set forth in Exhibit D referred to herein below;

E. The adoption makes a typographical correction to the Texas Addendum by adding a percentage symbol (%) to the denominator in the formula for the calculation of the Texas Addendum Credit.

A city's eligibility requirements for a Class 8B Protection classification consist of the following criteria:

Meet the minimum FSRS criteria defined in Item 106, "Minimum Facilities for Applying This Schedule."

Is eligible for a minimum credit of 5 points in the FSRS Item 400, "Receiving and Handling Fire Alarms."

Is eligible for a minimum credit of 20 points in the FSRS Item 500, "Fire Department" and:

(1) responds with an average of 6 firefighters on first alarm responses to structure fires; and

(2) conducts a minimum of 24 hours of structural fire fighting training per year for each active firefighter.

Is capable of delivering an uninterrupted minimum fire flow of 200 gpm for 20 minutes within 5 minutes of the first arriving engine company, and:

(1) the primary responding fire department and automatic aid fire department(s) must be able to deliver the minimum fire flow; and

(2) the minimum fire flow must be able to be delivered to at least 85% of the built-upon areas of the city.

The adopted amendments are more particularly set forth in the applicable portions of the FSRS that are attached hereto as Exhibit A and made a part hereof for all purposes; in the conforming amendments to the Texas Personal Lines Manual that are attached hereto as Exhibit B and made a part hereof for all purposes; in the conforming amendments to the Residential Statistical Plan that are attached hereto as Exhibit C and made a part hereof for all purposes; in the revised portions of the Texas Personal Lines Manual that have deleted the outdated capping factors and previous key rate references and that are attached hereto as Exhibit D and made a part hereof for all purposes; and in the typographical correction to the Texas Addendum that is attached hereto as Exhibit E and made a part hereof for all purposes.

The Commissioner of Insurance has jurisdiction over this matter pursuant to the Insurance Code, Articles 5.33, 5.96, 5.98, and 5.101.

The amendments as revised and adopted by the Commissioner of Insurance are on file in the Chief Clerk's Office of the Texas Department of Insurance under Reference No. P-0701-07-I and are incorporated by reference into Commissioner's Order No. 01-0815.

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).

Consistent with the Insurance Code, Article 5.96(h), the Department will notify the applicable entities of this adoption by letter summarizing the Commissioner's action.

IT IS THEREFORE THE ORDER of the Commissioner of Insurance that amendments to the Fire Suppression Rating Schedule, the Texas Personal Lines Manual and the Texas Statistical Plan for Residential Risks, and the Texas Addendum to the Fire Suppression Rating Schedule, as described herein and set forth in the exhibits attached to this Order and incorporated into this Order by reference, be adopted and applicable to be effective on and after December 31, 2001.

TRD-200105070
Lynda Nesenholtz
General Counsel and Chief Clerk
Texas Department of Insurance
Filed: August 27, 2001

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.

Agency Rule Review Plan

Texas Board of Pardons and Paroles

Title 37, Part 5

Filed: August 24, 2001

Proposed Rule Reviews

Texas Workforce Commission

Title 40, Part 20

The Texas Workforce Commission (Commission) files this notice of its intent to review Chapter 807. Proprietary Schools in accordance with Texas Government Code §2001.039.

An assessment will be made by the Commission as to whether the reasons for adopting or readopting the rules continue to exist. This assessment will be continued during the rule review process. Each rule will be reviewed to determine whether it is obsolete, whether the rule reflects current legal and policy considerations, and whether the rule reflects current procedures of the Commission.

Comments on the review may be submitted in writing within 30 days following the publication of this notice in the *Texas Register* to John Moore, Assistant General Counsel, Texas Workforce Commission, 101 East 15th Street, Room 608, Austin, Texas, 78778-0001; via facsimile at (512) 463-2220; or via e-mail at john.moore@twc.state.tx.us.

For information about the Commission, please visit our web page at www.texasworkforce.org.

TRD-200105091
John Moore
Assistant General Counsel
Texas Workforce Commission
Filed: August 28, 2001

The Texas Workforce Commission (Commission) files this notice of its intent to review Chapter 837. Apprenticeship Training Program in accordance with Texas Government Code §2001.039.

An assessment will be made by the Commission as to whether the reasons for adopting or readopting the rules continue to exist. This assessment will be continued during the rule review process. Each rule will be reviewed to determine whether it is obsolete, whether the rule reflects current legal and policy considerations, and whether the rule reflects current procedures of the Commission.

Comments on the review may be submitted in writing within 30 days following the publication of this notice in the *Texas Register* to John Moore, Assistant General Counsel, Texas Workforce Commission, 101 East 15th Street, Room 608, Austin, Texas, 78778-0001; via facsimile at (512) 463-2220; or via e-mail at john.moore@twc.state.tx.us.

For information about the Commission, please visit our web page at www.texasworkforce.org.

TRD-200105090
John Moore
Assistant General Counsel
Texas Workforce Commission
Filed: August 28, 2001

Adopted Rule Reviews

Texas State Board of Examiners of Dietitians

Title 22, Part 31

The Texas State Board of Examiners of Dietitians (board) has completed and adopts the rules review of Title 22, Examining Boards, Part 31, Texas State Board of Examiners of Dietitians, Chapter 711. Dietitians.

The notice of intent to review was published in the February 12, 1999, issue of the *Texas Register* (24 TexReg 999), and no comments were received regarding the publication of the notice.

This review is in accordance with the requirements of the Texas Government Code, §2001.039, the General Appropriations Act, Article IX, §9-10.13, 76th Legislature, 1999. The board has determined that reasons for adopting or readopting the sections continue to exist. The rules reviewed were determined by the board to continue to be needed, reflective of current legal and policy considerations, and reflective of current procedures of the board.

As a result of the rules review, the board has adopted amendments to §§711.11 - 711.14, 711.16 - 711.17, 711.19, the repeal of §711.15, and new §711.15. The board also adopts §§711.18, 711.20, and 711.21 that were proposed for readoption without changes because no needed revisions were identified during the review and no comments were received and was published in the proposed preamble in the May 26, 2000, issue of the *Texas Register* (26 TexReg 4694). The adopted rules were published in the December 1, 2000, issue of the *Texas Register* (26 TexReg 11939), and became effective December 7, 2000.

TRD-200105051
Patricia Mayers Krug
Chair
Texas State Board of Examiners of Dietitians
Filed: August 24, 2001

Texas State Board of Examiners of Perfusionists

Title 22, Part 33

The Texas State Board of Examiners of Perfusionists (board) has completed and adopts the rules review of Title 22, Examining Boards, Part 33, Texas State Board of Examiners of Perfusionists, Chapter 761. Perfusionists.

The notice of intent to review was published in the September 17, 1999, issue of the *Texas Register* (24 TexReg 7775), and no comments were received regarding the publication of the notice.

This review is in accordance with the requirements of the Texas Government Code, §2001.039, the General Appropriations Act, Article IX, §9-10.13, 76th Legislature, 1999. The board has determined that reasons for adopting or readopting the sections continue to exist. The rules reviewed were determined by the board to continue to be needed, reflective of current legal and policy considerations, and reflective of current procedures of the board.

As a result of the rules review, the board has adopted amendments to §§761.1 - 761.9, the repeal of §§761.10 - 761.20, and new §§761.10 - 761.19. The proposed rules were published in the January 26, 2001, issue of the *Texas Register* (26 TexReg 876). The adopted rules were published in the June 1, 2001 issue of the *Texas Register* (26 TexReg 3932), and became effective June 10, 2001.

TRD-200105050
Debra Sue Douglas
Chairman
Texas State Board of Examiners of Perfusionists
Filed: August 24, 2001

Texas State Board of Examiners of Professional Counselors

Title 22, Part 30

The Texas State Board of Examiners Professional Counselors (board) has completed and adopts the rules review of Title 22, Examining Boards, Part 30, Texas State Board of Examiners of Professional Counselors, Chapter 681, Professional Counselors.

The notice of intent to review was published in the July 17, 1998, issue of the *Texas Register* (23 TexReg 7396). No comments were received in regards to the publication of the notice.

This review is in accordance with the requirements of the Texas Government Code, §2001.039, the General Appropriations Act, Article IX, §9-10.13, 76th Legislature, 1999, and the General Appropriations Act of 1997, Article IX, §167. The department has determined that reasons for readopting the sections continue to exist. The rules reviewed were determined by the board to continue to be needed, reflective of current legal and policy considerations, and reflective of current procedures of the board.

As a result of the rules review, the board adopted the repeal of §681.84, amendments to §§681.2-681.3, 681.16- 681.18, 681.32-681.33, 681.40, 681.43, 681.52, 681.63, 681.81-681.83, 681.92, 681.94, 681.96, 681.111-681.112, 681.121-681.124, 681.126, 681.128, 681.172-681.178, 681.192 and 681.196; and new §§681.251-681.256. The board also adopts §§681.1, 681.4-681.15, 681.19, 681.26, 681.34 - 681.39, 681.41 - 681.42, 681.51, 681.61 - 681.62, 681.64, 681.91, 681.93, 681.95, 681.113 -681.114, 681.125, 681.127, 681.161 - 681.163, 681.171, 681.179, 681.191, 681.193 - 681.195, 681.197 - 681.200, and 681.211 - 681.220 that were proposed for readoption without changes because no needed revisions were identified during the review and was published in the proposed preamble in the April 9, 1999, issue of the *Texas Register* (24 TexReg 2829). The adopted rules were published in the July 23, 1999, issue of the *Texas Register* (24 TexReg 5701) and the rules became effective August 1, 1999. The rule review completion date is August 1, 1999.

TRD-200105071
Judy Powell
Chair
Texas State Board of Examiners of Professional Counselors
Filed: August 27, 2001

Texas Board of Licensure for Professional Medical Physicists

Title 22, Part 26

The Texas Board of Licensure for Professional Medical Physicists (board) has completed and adopts the rules review of Title 22, Examining Boards, Part 26, Texas Board of Licensure for Professional Medical Physicists, Chapter 601. Medical Physicists.

The notice of intent to review was published in the September 17, 1999, issue of the *Texas Register* (24 TexReg 7774). No comments were received in regards to the publication of the notice.

This review is in accordance with the requirements of the Texas Government Code, §2001.039, the General Appropriations Act, Article IX, §9-10.13, 76th Legislature, 1999, and the General Appropriations Act of 1997, Article IX, §167. The department has determined that reasons for readopting the sections continue to exist. The rules reviewed were determined by the board to continue to be needed, reflective of current legal and policy considerations, and reflective of current procedures of the board.

As a result of the rules review, the board adopts amendments to §§601.1 - 601.17 and 601.19 - 601.21, the repeal of §601.18, new §601.18 and §601.22, and was published in the proposed preamble in the February 2, 2001, issue of the *Texas Register* (26 TexReg 1055). The adopted rules were published in the August 3, 2001, issue of the *Texas Register* (26 TexReg 5808) and the rules became effective August 5, 2001. The rules review completion date is August 5, 2001.

TRD-200105072
Louis B. Levy
Presiding Officer
Texas Board of Licensure for Professional Medical Physicists.
Filed: August 27, 2001

Railroad Commission of Texas

Title 16, Part 1

The Railroad Commission of Texas ("Commission") readopts§3.83, regarding Tax Exemption for Two-Year Inactive Wells and Three-Year Inactive Wells. The notice of review was published in the July 6, 2001, issue of the *Texas Register* (26 TexReg 5076). The Commission received no comments regarding the proposed rule review or the proposed amendments to §3.83 which were also published in that issue. After review, the Commission readopts this section, as amended.

The Commission has determined that the reasons for adopting this rule, with the adopted amendments, continue to exist.

Issued in Austin, Texas on August 21, 2001.

TRD-200104975
Mary Ross McDonald
Deputy General Counsel, Office of General Counsel
Railroad Commission of Texas
Filed: August 23, 2001

The Railroad Commission of Texas (Commission), readopts §3.98, relating to Standards for Management of Hazardous Oil and Gas Waste. The notice of review was published in the May 11, 2001, issue of *Texas Register* (26 TexReg 3500). The Commission received no comments regarding the proposed rule review or the amendments to §3.98 which were also published in that issue. After review, the Commission readopts this section, as amended.

The Commission has determined that the reason for adopting this rule, with the adopted amendments, continues to exist.

Issued in Austin, Texas on August 21, 2001.

TRD-200104976
Mary Ross McDonald
Deputy General Counsel, Office of General Counsel
Railroad Commission of Texas
Filed: August 23, 2001

State Board of Examiners for Speech-Language Pathology and Audiology

Title 22, Part 32

The State Board of Examiners for Speech-Language Pathology and Audiology (board) has completed and adopts the rules review of Title 22, Examining Boards, Part 32, State Board of Examiners for Speech-Language Pathology and Audiology, Chapter 741. Speech-Language Pathologists and Audiologists.

The notice of intent to review was published in the May 28, 1999, issue of the *Texas Register* (24 TexReg 4033). No comments were received in regards to the publication of the notice.

This review is in accordance with the requirements of the Texas Government Code, §2001.039, the General Appropriations Act, Article IX, §9-10.13, 76th Legislature, 1999, and the General Appropriations Act of 1997, Article IX, §167. The department has determined that reasons for readopting the sections continue to exist. The rules reviewed were determined by the board to continue to be needed, reflective of current legal and policy considerations, and reflective of current procedures of the board.

As a result of the rules review, the board adopted repeal of §§741.1, 741.2, 741.13-741.26, 741.33, 741.41, 741.61, 741.62, 741.64, 741.65, 741.67, 741.81, 741.82, 741.84, 741.85, 741.87, 741.91, 741.101-741.103, 741.121-741.123, 741.141-741.143, 741.161-741.166, 741.181, 741.182, 741.191-741.201, and 741.301-741.303; new §§741.1, 741.13, 741.14, 741.33, 741.41, 741.61, 741.62, 741.64, 741.65, 741.67, 741.81, 741.82, 741.84, 741.85, 741.91, 741.101-741.103, 741.111, 741.112, 741.121, 741.141, 741.142, 741.161-741.165, 741.181, 741.182, and 741.191-741.195; and amendments to §§741.11, 741.12, 741.31, 741.32, 741.63, 741.66, 741.83, and 741.86, and was published in the proposed preamble in the July 21, 2000, issue of the *Texas Register* (25 TexReg 6895). The adopted rules were published in the December 15, 2000, issue of the *Texas Register* (25 TexReg 12394) and the rules became effective December 24, 2000. The rules review completion date is December 24, 2000.

TRD-200105073
Elsa Cardenas-Hagan
Presiding Officer
State Board of Examiners for Speech-Language Pathology and Audiology
Filed: August 27, 2001

TABLES & GRAPHICS

Graphic material from the emergency, proposed, and adopted sections is published separately in this tables and graphics section. Graphic material is arranged in this section in the following order: Title Number, Part Number, Chapter Number and Section Number.

Graphic material is indicated in the text of the emergency, proposed, and adopted rules by the following tag: the word "Figure" followed by the TAC citation, rule number, and the appropriate subsection, paragraph, subparagraph, and so on.

Figure: 30 TAC §101.27(c)(1)

Fiscal Year	Rate Per Ton	Minimum Fee
1992	$3	
1993	$5	$25
1994	$25	$25
1995 - 2002	$26	$26

The rate of $26 per ton will remain effective for future fiscal years until amended. If the fee is applicable, the company responsible for the account shall pay the calculated emissions fee or the minimum fee, whichever is greater.

Figure: 40 TAC §700.1802(g)(1)(B)(iv)

	Case Management	Treatment Coordination	Direct Care	Direct Care Administration	Medical	Total
LOC I (CPA)						
LOC II (CPA)						
LOC II (Res.)						
LOC III (CPA)						
LOC III (Res.)						
LOC IV (CPA)						
LOC IV (Res.)						
LOC V (Res.)						
LOC VI (Res.)						

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.

Texas State Affordable Housing Corporation

Notice of Public Hearing

Notice is hereby given of a public hearing to be held by the Texas State Affordable Housing Corporation (the "Issuer") on September 17, 2001 at 5:30 p.m., at the Thousand Oaks-El Sendero Library, 4618 Thousand Oaks, San Antonio, Texas 78233, with respect to an issue of multifamily housing revenue bonds (the "Bonds") to be issued by the Issuer in one or more series in an aggregate principal amount not to exceed $23,000,000, the proceeds of which will be loaned to Commonwealth Multifamily Housing Corporation, an Internal Revenue Code Section 501(c)(3) corporation, to finance the acquisition, construction and equipment of a multifamily housing property (the "Property") to be located in the city of San Antonio, Texas. The public hearing, which is the subject of this notice, will concern the White Rock Apartments, a proposed 336-unit apartment community to be located in the 3100 block of Thousand Oaks Drive near its southeast intersection with Jones Maltsberger Drive, San Antonio, Texas. The Property will be owned by Commonwealth Multifamily Housing Corporation.

All interested parties are invited to attend such public hearing to express their views with respect to the Property and the issuance of the Bonds. Questions or requests for additional information may be directed to Daniel C. Owen at the Texas State Affordable Housing Corporation, 1715 West 35th Street, Austin, Texas 78703; 1-888-638-3555 ext. 404.

Persons who intend to appear at the hearing and express their views are invited to contact Daniel C. Owen in writing in advance of the hearing. Any interested persons unable to attend the hearing may submit their views in writing to Daniel C. Owen prior to the date scheduled for the hearing.

Individuals who require auxiliary aids in order to attend this meeting should contact Glenda David, ADA Responsible Employee, at 1-888-638-3555, ext.417 through Relay Texas at 1-800-735-2989 at least two days before the meeting so that appropriate arrangements can be made.

Individuals who require child care to be provided at this meeting should contact Glenda David at 1-888-638-3555, ext. 417, at least five days before the meeting so that appropriate arrangements can be made.

Individuals may transmit written testimony or comments regarding the subject matter of this public hearing to Daniel Owen at dowen@tsahc.org.

TRD-200105122
Barbara Jantz
Vice President
Texas Affordable Housing Corporation
Filed: August 29, 2001

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Coastal Coordination Council

Notice and Opportunity to Comment on Requests for Consistency Agreement/Concurrence Under the Texas Coastal Management Program

On January 10, 1997, the State of Texas received federal approval of the Coastal Management Program (CMP) (62 Federal Register pp. 1439-1440). Under federal law, federal agency activities and actions affecting the Texas coastal zone must be consistent with the CMP goals and policies identified in 31 TAC Chapter 501. As required by federal law, the public is given an opportunity to comment on the consistency of proposed activities in the coastal zone undertaken or authorized by federal agencies. Pursuant to 31 TAC §§506.25, 506.32, and 506.41, the public comment period for these activities extends 30 days from the date published on the Coastal Coordination Council web site. Requests for federal consistency review were received for the following projects(s) during the period of August 17, 2001, through August 23, 2001. The public comment period for these projects will close at 5:00 p.m. on September 28, 2001.

FEDERAL AGENCY ACTIONS:

Applicant: Port of Houston Authority; Location: The project is located in the Houston Ship Channel (HSC) at the confluence of Greens Bayou and the HSC, at the Port of Houston Authority's Bulk Materials Handling Point (BMHP) dock facility, in Houston, Harris County, Texas. The project can be located on the U.S.G.S. quadrangle map entitled: Pasadena, Texas. Approximate UTM Coordinates: Zone 15; Easting: 290500; Northing 3292700. CCC Project No.: 01-0197-F1; Description of Proposed Action: On 29 May 2001, Emergency Permit No. 22394 was issued to the Port of Houston Authority (PHA) authorizing dredging at the BMHP dock using the SILT Wing dredging method. This dredging method involves the redistribution of accumulated sediment to achieve desired depths and bottom contours. Approximately 10,000 cubic yards of material was removed from the dock area and

placed in the HSC. The dredged area measures 1,350 feet long by 100 feet wide and was dredged to a depth of - 42 feet mean low tide. On 24 May, 2001, the PHA requested authorization to perform SILT Wing activities at the subject dock under permit procedures for emergency activities (33 CFR 325.2 (e)(4)). Due to recent storm events in the Houston area, unanticipated shoaling in the project area had occurred. This shoaling resulted in safety concerns with regard to vessels calling at the BMHP dock. The emergency activity was coordinated via Interagency Coordination Notice dated 24 May, 2001. Based on imminent financial hardship on behalf of the PHA, the Corps of Engineers, Galveston District authorized the emergency dredging. It was determined that SILT Wing dredging was the least damaging, practicable alternative for the PHA to achieve their stated purpose in a timely manner. This project was directly associated with a concurrent Federal emergency SILT Wing dredging operation in the Federal Channel in Greens Bayou. Type of Application: U.S.A.C.E. permit application #22394 is being evaluated under §10 of the Rivers and Harbors Act of 1899 (33 U.S.C.A. §403) and §404 of the Clean Water Act (33 U.S.C.A. §§125-1387).

Applicant: David and Sandy Elkins; Location: The project is located at Dalehite (Delehide) Cove of West Bay, at Section 3 of Pirates Cove, Galveston County, Texas. The project can be located on the U.S.G.S. quadrangle map entitled Lake Como, Texas. Approximate UTM Coordinates: Zone 15; Easting: 310200; Northing: 3233500. CCC Project No.: 01-0310-F1; Description of Proposed Action: The applicant proposes to construct a bulkhead, boardwalk, screened porch, kayak pier, look-out structure, birding structure, and two double-slip boathouses with piers, to mechanically dredge new-work and maintenance material from the proposed boathouse and channel access areas, and to place the dredged material in two proposed dredged material placement areas (PA). The proposed 355-foot-long bulkhead would be constructed above mean high tide (MHT) in an area where wetlands do not occur. There would be minimal backfill behind the concrete bulkhead at the approximate rate of 1 cubic yard per linear foot. The proposed boardwalk would extend over 1,260 square feet of wetlands. The proposed screened porch would extend over 360 square feet of wetlands. The proposed un-roofed kayak pier T-head and walkway would extend over 1,275 square feet of wetlands and aquatic habitat. The proposed roofed look-out structure at the southwest end of the proposed boardwalk would be constructed over 148 square feet of wetlands and 230 square feet of aquatic habitat. The proposed west boathouse and piers would extend over 3,180 square feet of aquatic habitat and would provide space for two boats, two kayaks, and large storage areas. The proposed east boathouse and piers would extend over 2,790 square feet of aquatic habitat and would serve two lots that the applicants expect to sell at a later date. Approximately 175 cubic yards of new-work sand would be mechanically dredged from the proposed 40-foot-square boatslip and channel access area of each boathouse. The new-work dredged material would be placed in a proposed unconfined 0.26-acre Placement Area along the shoreline for beneficial use. Spartina alterniflora would be transplanted from nearby areas in the proposed Placement Areas on 3-foot centers to create marsh along the shoreline.

Type of Application: U.S.A.C.E. permit application #22390 is being evaluated under §10 of the Rivers and Harbors Act of 1899 (33 U.S.C.A. §403) and §404 of the Clean Water Act (33 U.S.C.A. §§125-1387).

Applicant: Houston Fuel Oil Terminal; Location: The project is located east of Beltway 8, south of Interstate Highway (IH) 10, northeast of the intersection of Jacintoport Boulevard and Sheldon Road in Houston, Harris County, Texas. The project can be located on the U.S.G.S. quadrangle map entitled Highlands, Texas. Approximate UTM Coordinates: Zone 15; Easting: 295402; Northing: 3293618. CCC Project No.: 01-0311-F1; Description of Proposed Action: The applicant proposes to expand the terminal operations located at their Jacintoport facility. This expansion will involve the multi-phase development of an approximately 115-acre tract of land located adjacent to the existing terminal. The applicant proposes to build an above ground storage tank (AST) facility with supporting administrative and maintenance facilities to meet current and anticipated future demand for tank storage. The conceptual site plan for the facility includes the eventual utilization of the entire 115-acre site and fill of approximately 13.8 acres of wetlands. The applicant proposes, during the first phase of expansion, to construct a dredged material disposal cell to raise and level an approximately 11-acre site. This 11-acre area will allow for the construction of storage tanks in future development phases of the project. The proposed Phase 1 will fill 2.765 acres of emergent herbaceous wetlands dominated by cattail. The applicant proposes to use dredged material from maintenance dredging, permitted under existing Permit 12339, as fill material for the 11-acre site. Future phases of development, not under this permit application, may include construction of a barge mooring facility and dredging of Carpenter's Bayou. The applicant proposes to purchase credits from the Greens Bayou Mitigation Bank as compensatory mitigation to offset the loss of 2.765 acres of jurisdictional wetlands. Type of Application: U.S.A.C.E. permit application #22404 is being evaluated under §10 of the Rivers and Harbors Act of 1899 (33 U.S.C.A. §403) and §404 of the Clean Water Act (33 U.S.C.A. §§125-1387). NOTE: The CMP consistency review of this project may be conducted by the Texas Natural Resource Conservation Commission, as part of its certification under Section 401 of the Clean Water Act.

Applicant: Davis Petroleum Corporation; Location: The project site is located in State Tract 283 in Galveston Bay, Galveston County, Texas. The site can be located on the U.S.G.S. quadrangle ma entitled: Port Boliver, Texas. Approximate UTM Coordinates: Zone 15: 321574; Northing: 3262100. CCC Project No.: 01-0312-F1; Description of Proposed Action: The applicant requests authorization to drill Well Number 2 in State Tract 283 of Galveston Bay, Galveston County, Texas. Type of Application: U.S.A.C.E. permit application #21021(01)/013 is being evaluated under 10 of the Rivers and Harbors Act of 1899 (33 U.S.C.A. §403) and §404 of the Clean Water Act (33 U.S.C.A. §§125-1387). NOTE: The CMP consistency review of this project may be conducted by the Railroad Commission, as part of its certification under Section 401 of the Clean Water Act.

Applicant: Davis Petroleum Corporation; Location: The project is located in State Tract 283 in Galveston Bay, Galveston County, Texas. The project can be located on the U.S.G.S. quadrangle map entitled: Port Boliver, Texas. Approximate UTM Coordinates: Zone 15; Easting: 321322; Northing: 3263534. CCC Project No.: 01-0313-F1; Project Description: The applicant proposes to drill Well Number 4 in State Tract 283 in Galveston Bay, Galveston County, Texas.

Type of Application: U.S.A.C.E. permit application #21021(02)/014 is being evaluated under §10 of the Rivers and Harbors Act of 1899 (33 U.S.C.A. §403) and §404 of the Clean Water Act (33 U.S.C.A. §§125-1387). NOTE: The CMP consistency review of this project may be conducted by the Railroad Commission, as part of its certification under Section 401 of the Clean Water Act.

Pursuant to §306(d)(14) of the Coastal Zone Management Act of 1972 (16 U.S.C.A. §§1451-1464), as amended, interested parties are invited to submit comments on whether a proposed action is or is not consistent with the Texas Coastal Management Program goals and policies and whether the action should be referred to the Coastal Coordination Council for review.

Further information for the applications listed above may be obtained from Ms. Diane P. Garcia, Council Secretary, Coastal Coordination

Council, 1700 North Congress Avenue, Room 617, Austin, Texas 78701-1495, or diane.garcia@glo.state.tx.us. Comments should be sent to Ms. Garcia at the above address or by fax at 512/475-0680.

TRD-200105123
Larry R. Soward
Chief Clerk, General Land Office
Coastal Coordination Council
Filed: August 29, 2001

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Comptroller of Public Accounts

Notice of Request for Proposals

Pursuant to Chapter 2254, Subchapter B, and §403.011 and §403.020, Texas Government Code, the Comptroller of Public Accounts (Comptroller) announces the issuance of a Request for Proposals (RFP #125a) from qualified, independent firms to provide consulting services to Comptroller. The successful respondent will assist Comptroller in conducting a management and performance review of the Laredo Independent School District (Laredo ISD). Comptroller reserves the right, in its sole discretion, to award one or more contracts for a review of the Laredo ISD under this RFP. The successful respondent(s) will be expected to begin performance of the contract or contracts, if any, on or about October 21, 2001.

Contact: Parties interested in submitting a proposal should contact Clay Harris, Assistant General Counsel, Contracts, Comptroller of Public Accounts, 111 E. 17th St., ROOM G-24, Austin, Texas, 78774, telephone number: (512) 305-8673, to obtain a copy of the RFP. Comptroller will mail copies of the RFP only to those specifically requesting a copy. The RFP was made available for pick-up at the above-referenced address on Friday, September 7, 2001, between 2 p.m. and 5 p.m., Central Zone Time (CZT), and during normal business hours thereafter. Comptroller also made the complete RFP available electronically on the Texas Marketplace at: http://www.marketplace.state.tx.us after 2 p.m. (CZT) on Friday, September 7, 2001.

Mandatory Letters of Intent and Questions: All Mandatory Letters of Intent and questions regarding the RFP must be sent via facsimile to Mr. Harris at: (512) 475-0973, not later than 2:00 p.m. (CZT), on Monday, September 24, 2001. Official responses to questions received by the foregoing deadline will be posted electronically on the Texas Marketplace no later than September 26, 2001, or as soon thereafter as practical. Mandatory Letters of Intent received after the 2:00 p.m., September 24th deadline will not be considered.

Closing Date: Proposals must be received in Assistant General Counsel's Office at the address specified above (ROOM G-24) no later than 2 p.m. (CZT), on Wednesday, October 3, 2001. Proposals received after this time and date will not be considered. Proposals will not be accepted from respondents that do not submit mandatory letters of intent by the September 24th deadline.

Evaluation and Award Procedure: All proposals will be subject to evaluation by a committee based on the evaluation criteria and procedures set forth in the RFP. Comptroller will make the final decision regarding the award of a contract or contracts. Comptroller reserves the right to award one or more contracts under this RFP.

Comptroller reserves the right to accept or reject any or all proposals submitted. Comptroller is under no legal or other obligation to execute any contracts on the basis of this notice or the distribution of any RFP. Comptroller shall not pay for any costs incurred by any entity in responding to this Notice or the RFP.

The anticipated schedule of events is as follows: Issuance of RFP - September 7, 2001, 2 p.m. CZT; All Mandatory Letters of Intent and Questions Due - September 24, 2001, 2 p.m. CZT; Official Responses to Questions Posted - September 26, 2001, or as soon thereafter as practical; Proposals Due - October 3, 2001, 2 p.m. CZT; Contract Execution - October 15, 2001, or as soon thereafter as practical; Commencement of Project Activities - October 21, 2001.

TRD-200105117
Pamela Ponder
Deputy General Counsel for Contracts
Comptroller of Public Accounts
Filed: August 29, 2001

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Notice of Request for Proposals

Pursuant to Chapter 2254, Subchapter B, and §403.011 and §403.020, Texas Government Code, the Comptroller of Public Accounts (Comptroller) announces the issuance of a Request for Proposals (RFP #126a) from qualified, independent firms to provide consulting services to Comptroller. The successful respondent will assist Comptroller in conducting management and performance reviews of the following six Independent School Districts within Webb and Willacy Counties: Webb Consolidated, Mirando City, Raymondville, Lasara, Lyford, and San Perlita. Comptroller reserves the right, in its sole discretion, to award one or more contracts for a review of one or more of the preceding districts under this RFP. The successful respondent(s) will be expected to begin performance of the contract or contracts, if any, on or about October 21, 2001.

Contact: Parties interested in submitting a proposal should contact Clay Harris, Assistant General Counsel, Contracts, Comptroller of Public Accounts, 111 E. 17th St., ROOM G-24, Austin, Texas, 78774, telephone number: (512) 305-8673, to obtain a copy of the RFP. Comptroller will mail copies of the RFP only to those specifically requesting a copy. The RFP was made available for pick-up at the above-referenced address on Friday, September 7, 2001, between 2 p.m. and 5 p.m., Central Zone Time (CZT), and during normal business hours thereafter. Comptroller also made the complete RFP available electronically on the Texas Marketplace at: http://www.marketplace.state.tx.us after 2 p.m. (CZT) on Friday, September 7, 2001.

Mandatory Letters of Intent and Questions: All Mandatory Letters of Intent and questions regarding the RFP must be sent via facsimile to Mr. Harris at: (512) 475-0973, not later than 2:00 p.m. (CZT), on Wednesday, September 26, 2001. Official responses to questions received by the foregoing deadline will be posted electronically on the Texas Marketplace no later than September 28, 2001, or as soon thereafter as practical.

Closing Date: Proposals must be received in Assistant General Counsel's Office at the address specified above (ROOM G-24) no later than 2 p.m. (CZT), on Friday, October 5, 2001. Proposals received after this time and date will not be considered. Proposals will not be accepted from respondents that do not submit mandatory letters of intent by the September 26th deadline.

Evaluation and Award Procedure: All proposals will be subject to evaluation by a committee based on the evaluation criteria and procedures set forth in the RFP. Comptroller will make the final decision regarding the award of a contract or contracts. Comptroller reserves the right to award one or more contracts under this RFP.

Comptroller reserves the right to accept or reject any or all proposals submitted. Comptroller is under no legal or other obligation to execute any contracts on the basis of this notice or the distribution of any RFP.

Comptroller shall not pay for any costs incurred by any entity in responding to this Notice or the RFP.

The anticipated schedule of events is as follows: Issuance of RFP - September 7, 2001, 2 p.m. CZT; All Mandatory Letters of Intent and Questions Due - September 26, 2001, 2 p.m. CZT; Official Responses to Questions Posted - September 28, 2001, or as soon thereafter as practical; Proposals Due - October 5, 2001, 2 p.m. CZT; Contract Execution - October 15, 2001, or as soon thereafter as practical; Commencement of Project Activities - October 21, 2001.

TRD-200105118
Pamela Ponder
Deputy General Counsel for Contracts
Comptroller of Public Accounts
Filed: August 29, 2001

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Office of Consumer Credit Commissioner

Notice of Rate Ceilings

The Consumer Credit Commissioner of Texas has ascertained the following rate ceilings by use of the formulas and methods described in Sections 303.003, 303.005, 303.008, 303.009, 304.003, and 346.101. Tex. Fin. Code.

The weekly ceiling as prescribed by Sec. 303.003 and 303.009 for the period of 09/03/01 - 09/09/01 is 18% for Consumer [1]/Agricultural/Commercial[2]/credit thru $250,000.

The weekly ceiling as prescribed by Sec. 303.003 and 303.009 for the period of 09/03/01 - 09/09/01 is 18% for Commercial over $250,000.

The monthly ceiling as prescribed by Sec. 303.005 and 303.009[3]for the period of 09/01/01 - 09/30/01 is 18% for Consumer/Agricultural/Commercial/credit thru $250,000.

The monthly ceiling as prescribed by Sec. 303.005 and 303.009 for the period of 09/01/01 - 09/30/01 is 18% for Commercial over $250,000.

The standard quarterly rate as prescribed by Sec. 303.008 and 303.009 for the period of 10/01/01 - 12/31/01 is 18% for Consumer/Agricultural/Commercial/credit thru $250,000.

The standard quarterly rate as prescribed by Sec. 303.008 and 303.009 for the period of 10/01/01 - 12/31/01 is 18% for Commercial over $250,000.

The retail credit card quarterly rate as prescribed by Sec. 303.009 [1] for the period of 10/01/01 - 12/31/01 is 18% for Consumer/Agricultural/Commercial/credit thru $250,000.

The lender credit card quarterly rate as prescribed by Sec. 346.101 Tex. Fin. Code[1]for the period of 10/01/01 - 12/31/01 is 18% for Consumer/Agricultural/Commercial/credit thru $250,000.

The standard annual rate as prescribed by Sec. 303.008 and 303.009 [4]

The Consumer Credit Commissioner of Texas has ascertained the following rate ceilings by use of the formulas and methods described in Sections 303.003, 303.005, 303.008, 303.009, 304.003, and 346.101. Tex. Fin. Code.

The weekly ceiling as prescribed by Sec. 303.003 and 303.009 for the period of 09/03/01 - 09/09/01 is 18% for Consumer [1]/Agricultural/Commercial[2]/credit thru $250,000.

The weekly ceiling as prescribed by Sec. 303.003 and 303.009 for the period of 09/03/01 - 09/09/01 is 18% for Commercial over $250,000.

The monthly ceiling as prescribed by Sec. 303.005 and 303.009[3]for the period of 09/01/01 - 09/30/01 is 18% for Consumer/Agricultural/Commercial/credit thru $250,000.

The monthly ceiling as prescribed by Sec. 303.005 and 303.009 for the period of 09/01/01 - 09/30/01 is 18% for Commercial over $250,000.

The standard quarterly rate as prescribed by Sec. 303.008 and 303.009 for the period of 10/01/01 - 12/31/01 is 18% for Consumer/Agricultural/Commercial/credit thru $250,000.

The standard quarterly rate as prescribed by Sec. 303.008 and 303.009 for the period of 10/01/01 - 12/31/01 is 18% for Commercial over $250,000.

The retail credit card quarterly rate as prescribed by Sec. 303.009 [1] for the period of 10/01/01 - 12/31/01 is 18% for Consumer/Agricultural/Commercial/credit thru $250,000.

The lender credit card quarterly rate as prescribed by Sec. 346.101 Tex. Fin. Code[1]for the period of 10/01/01 - 12/31/01 is 18% for Consumer/Agricultural/Commercial/credit thru $250,000.

The standard annual rate as prescribed by Sec. 303.008 and 303.009 [4]for the period of 10/01/01 - 12/31/01 is 18% for Consumer/Agricultural/Commercial/credit thru $250,000.

The standard annual rate as prescribed by Sec. 303.008 and 303.009 for the period of 10/01/01 - 12/31/01 is 18% for Commercial over $250,000.

The retail credit card annual rate as prescribed by Sec. 303.009[1]for the period of 10/01/01 - 12/31/01 is 18% for Consumer/Agricultural/Commercial/credit thru $250,000.

The judgment ceiling as prescribed by Sec. 304.003 for the period of 09/01/01 - 09/30/01 is 10% for Consumer/Agricultural/Commercial/credit thru $250,000.

The judgment ceiling as prescribed Sec. 304.003 for the period of 09/01/01 - 09/30/01 is 10% for Commercial over $250,000.

[1]Credit for personal, family or household use.

[2]Credit for business, commercial, investment or other similar purpose.

[3]For variable rate commercial transactions only.

[4]Only for open-end credit as defined in Sec. 301.002(14), Tex. Fin. Code.for the period of 10/01/01 - 12/31/01 is 18% for Consumer/Agricultural/Commercial/credit thru $250,000.

The standard annual rate as prescribed by Sec. 303.008 and 303.009 for the period of 10/01/01 - 12/31/01 is 18% for Commercial over $250,000.

The retail credit card annual rate as prescribed by Sec. 303.009[1]for the period of 10/01/01 - 12/31/01 is 18% for Consumer/Agricultural/Commercial/credit thru $250,000.

The judgment ceiling as prescribed by Sec. 304.003 for the period of 09/01/01 - 09/30/01 is 10% for Consumer/Agricultural/Commercial/credit thru $250,000.

The judgment ceiling as prescribed Sec. 304.003 for the period of 09/01/01 - 09/30/01 is 10% for Commercial over $250,000.

[1]Credit for personal, family or household use.

[2]Credit for business, commercial, investment or other similar purpose.

[3]For variable rate commercial transactions only.

[4]Only for open-end credit as defined in Sec. 301.002(14), Tex. Fin. Code.

TRD-200105121
Leslie L. Pettijohn
Commissioner
Office of Consumer Credit Commissioner
Filed: August 29, 2001

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Texas Department of Criminal Justice

Notice of Award

The Texas Department of Criminal Justice hereby gives notice of a Contract Award for the TYC Administrative Segregation/Infirmary Building, Gainsville, Texas, Solicitation Number: 696-TY-1-B042.

The Contract was awarded to A & S Contractors, Inc., as a full award for a dollar amount of $2,614,000, Contract Number: 696-TY-1-3-Co175.

TRD-200105074
Carl Reynolds
General Counsel
Texas Department of Criminal Justice
Filed: August 28, 2001

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Notice of Award

The Texas Department of Criminal Justice hereby gives notice of a Contract Award for the Corsicana Residential Treatment Center - New Education Building and Renovation of Two Existing Buildings into Student Dorms, Solicitation Number: 696-TY-1-B032.

The Contract was awarded to RLM Enterprises, Inc., P.O. Box 6345, Longview, Texas 75608, as a full award for a dollar amount of $2,908,000, Contract Number: 696-TY-1-2-C0177.

TRD-200105075
Carl Reynolds
General Counsel
Texas Department of Criminal Justice
Filed: August 28, 2001

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Texas Education Agency

Public Notice Announcing the Availability of the Elementary and Secondary Education Act (ESEA) Title VI, Innovative Education Program Strategies, 1998-1999 and 1999-2000 Annual Summary Reports of Texas

Title VI, Innovative Education Program Strategies of the Elementary and Secondary Education Act (ESEA) provided federal financial assistance to state and local educational agencies to improve elementary and secondary education through a variety of innovative assistance programs and services for children attending both public and private nonprofit schools.

The ESEA Title VI, Innovative Education Program Strategies, 1998-1999 and 1999-2000 Annual Summary Reports for Texas are both now available to the public through each regional education service center (ESC). In addition, senior colleges and universities in Texas were requested to place a copy of each report in their campus libraries. Parents, teachers, school administrators, private nonprofit school personnel, local community organizations, businesses, and other interested persons or agencies may review the documents or copy them at personal expense at any ESC or Texas senior college or university library where the documents are on file.

An interested person or agency may also request a copy at no charge via mail, telephone, fax, or e-mail from the Texas Education Agency, Document Control Center, Room 6-108, 1701 North Congress Avenue, Austin, Texas 78701; telephone (512) 463-9304; fax (512) 463-9811; e-mail at dcc@tea.state.tx.us.

TRD-200105116
Criss Cloudt
Associate Commissioner, Accountability Reporting and Research
Texas Education Agency
Filed: August 29, 2001

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Request for Proposal Concerning Outside Counsel for Intellectual Property Matters

Eligible Proposers. The Texas Education Agency (TEA) is requesting proposals under Request for Proposal (RFP) #701-01-037 from private companies and individuals. Historically underutilized businesses (HUBs) are encouraged to submit a proposal.

Description. The TEA contracts with entities to create various products that improve public education, assess the educational progress of students, or assist educators in assessing student progress. By contract or grant through a work-for-hire clause, the TEA is granted full copyright ownership of the products produced by the contractors, grantees, subcontractors and/or subgrantees. With the increased national attention on Texas' integrated curriculum and assessment program and statewide reading and mathematics initiatives, many entities are interested in using TEA products in commercial and non-commercial settings. Other entities have reportedly begun using TEA-copyrighted products without obtaining the permission of the agency. The TEA has been authorized by the Attorney General to issue this RFP to seek legal representation in the area of intellectual property law. The Attorney General must approve the TEA's selection.

Dates of Project. All services and activities related to this proposal will be conducted within specified dates. Proposers should plan for a starting date of no earlier than November 1, 2001, and an ending date of no later than August 31, 2003.

Project Amount. One contractor will be selected to receive a maximum of $250,000 during the contract.

Selection Criteria. Proposals will be selected based on the ability of each proposer to carry out all requirements contained in the RFP. The TEA will base its selection on, among other things, the demonstrated competence, experience, and qualifications of the proposer. The TEA reserves the right to select from the highest-ranking proposals that address all requirements in the RFP.

The TEA is not obligated to execute a resulting contract, provide funds, or endorse any proposal submitted in response to this RFP. This RFP does not commit the TEA to pay any costs incurred before a contract is executed. The issuance of this RFP does not obligate the TEA to award a contract or pay any costs in preparing a response.

Requesting the Proposal. A complete copy of RFP #701-01-037 may be obtained by writing the: Document Control Center, Room 6-108, Texas Education Agency, William B. Travis Building, 1701 N. Congress Avenue, Austin, Texas 78701, or by calling (512) 463-9304. Please refer to the RFP number in your request.

Further Information. For clarifying information about the RFP, contact Joan Howard Allen, Office of Legal Services, Texas Education Agency, (512) 463-9720.

Deadline for Receipt of Proposals. Proposals must be received in the Document Control Center of the Texas Education Agency by 5:00 p.m. (Central Time), Tuesday, October 16, 2001, to be considered.

TRD-200105115
Criss Cloudt
Associate Commissioner, Accountability Reporting and Research
Texas Education Agency
Filed: August 29, 2001

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Office of the Governor

Request for Grant Applications for Juvenile Justice and Delinquency Prevention (JJDP) Act Fund Programs

The Criminal Justice Division (CJD) of the Governor's Office is soliciting applications for statewide projects that provide prevention, diversion, intervention and training to prevent juvenile delinquency under the fiscal year 2003 grant cycle.

Purpose: The purpose of the projects is to provide a variety of prevention, diversion, intervention, and training projects that prevent juvenile delinquency and teach young offenders how to change their lives and be accountable for their actions.

Available Funding: Federal funding is authorized under the Juvenile Justice and Delinquency Act of 1974, Section 221-223, Public Law 93-415, as amended, Public Laws 95-115, 96-509, 98-473, 100-690, and 102-586, codified as amended at 42 U.S.C. 5631-5633. In addition to the rules related to this funding source, applicants and grantees must comply with the federal regulations at 28 C.F.R. Section 31.

Standards: Grantees must comply with the applicable grant management standards adopted under Texas Administrative Code §3.19 and §3.53, which are hereby adopted by reference.

Prohibitions: Grantees may not use grant funds or program income for proselytizing or sectarian worship.

Eligible Applicants: (1) state agencies; (2) units of local government; (3) nonprofit corporations; (4) Indian tribes performing law enforcement functions; (5) crime control and prevention districts; and (6) faith-based organizations. Faith-based organizations must be tax-exempt nonprofit entities as certified by the Internal Revenue Service.

Project Period: Grant-funded projects must begin on or after September 1, 2002, unless exempted by the Executive Director of CJD.

Application Process: Interested parties should request an application kit for Juvenile Justice and Delinquency Prevention Programs from the Office of the Governor, Criminal Justice Division, P.O. Box 12428, Austin, Texas 78711, telephone (512) 463-1919. Application kits may also be obtained through the Office of the Governor's web site address located at http://www.governor.state.tx.us/cjd/cjdmain.htm.

Preferences: Preference will be given to applicants who provide statewide programs that focus on juvenile delinquency prevention and intervention. Preference may also be given to continuation projects.

Closing Date for Receipt of Applications: All original applications plus an additional copy must be submitted directly to the Criminal Justice Division and must be received or postmarked by February 26, 2002.

Selection Process: Completed applications will be reviewed for eligibility and cost effectiveness by CJD and rated competitively by a committee selected by the director of CJD. CJD reserves the right to renew grants for up to two additional years without the selected applications entering a competitive selection process. The Executive Director of CJD will make all final funding decisions.

Contact Person: If additional information is needed contact CJD at (512) 463-1919.

TRD-200105107
David Zimmerman
Assistant General Counsel
Office of the Governor
Filed: August 29, 2001

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Request for Grant Applications for Juvenile Justice and Delinquency Prevention (JJDP) Act Fund - Title V Programs

The Criminal Justice Division (CJD) of the Governor's Office is soliciting applications for local projects to implement comprehensive plans developed by communities under the fiscal year 2003 grant cycle.

Purpose: The purpose of the projects is to reduce risk factors that contribute to delinquent behavior and to strengthen protective factors that make children more resistant to such behavior.

Available Funding: Federal funding is authorized under the Juvenile Justice and Delinquency Act of 1974, §221-223, Public Law 93-415, as amended, Public Laws 95-115, 96-509, 98-473, 100-690, and 102-586, codified as amended at 42 U.S.C. 5631-5633. In addition to the rules related to this funding source, applicants and grantees must comply with the federal regulations at 28 C.F.R. §31.

Standards: Grantees must comply with the applicable grant management standards adopted under Texas Administrative Code §3.19 and §3.53, which are hereby adopted by reference.

Prohibitions:

(1) grantees are allowed a maximum of three years of funding (this includes any years previously funded);

(2) the minimum award amount is $25,000;

(3) the maximum award amount is $250,000;

(4) grantees must provide matching funds of at least 34 percent of the project's total expenditures; and

(5) grantees may not use grant funds or program income for proselytizing or sectarian worship.

Eligible Applicants:

(1) units of local government;

(2) Indian tribes performing law enforcement functions.

Project Period: Grant-funded projects must begin on or after April 1, 2002, unless exempted by the Executive Director of CJD.

Application Process: Interested applicants should call or write to regional council of governments for their county for information on application deadlines and submission requirements. Applicants may be required by a regional council to attend an application workshop prior to submitting their applications for funding. The applicant must contact the criminal justice planner at the regional council of governments for funding and workshop information. Detailed specifications are in the application kits, which is available from the regional councils of governments or on the Office of the Governor's web site address located at http://www.governor.state.tx.us/cjd/cjdmain.htm.

Preferences: Preference will be given to applicants who conduct comprehensive community planning and propose implementation of local programs that focus on delinquency prevention.

Closing Date for Receipt of Applications: All application deadlines are set by the regional councils of governments. Prospective applicants must contact the criminal justice planner at their regional council of governments for relevant deadlines.

Selection Process: Applications are prioritized by the Criminal Justice Advisory Committees of the regional councils of governments based on the need for the program. Priority listings will be approved by the executive committees of the regional councils. Completed applications will be reviewed for eligibility and cost effectiveness by CJD. CJD reserves the right to renew grants for up to two additional years without the selected applications entering into a competitive selection process. The Executive Director of CJD will make all final funding decisions.

Contact Person: If additional information is needed contact CJD at (512) 463-1919 or the criminal justice planner at the appropriate regional council of governments.

TRD-200105114
David Zimmerman
Assistant General Counsel
Office of the Governor
Filed: August 29, 2001

Request for Grant Applications for Local and Regional Juvenile Justice and Delinquency Prevention (JJDP) Act Fund Programs

The Criminal Justice Division (CJD) of the Governor's Office is soliciting applications for local and regional projects that provide prevention, diversion, intervention and training to prevent juvenile delinquency under the fiscal year 2003 grant cycle.

Purpose: The purpose of the projects is to provide a variety of prevention, diversion, intervention, and training projects that prevent juvenile delinquency and teach young offenders how to change their lives and be accountable for their actions.

Available Funding: Federal funding is authorized under the Juvenile Justice and Delinquency Act of 1974, Section 221-223, Public Law 93-415, as amended, Public Laws 95-115, 96-509, 98-473, 100-690, and 102-586, codified as amended at 42 U.S.C. 5631-5633. In addition to the rules related to this funding source, applicants and grantees must comply with the federal regulations at 28 C.F.R. Section 31.

Standards: Grantees must comply with the applicable grant management standards adopted under Texas Administrative Code §3.19 and §3.53, which are hereby adopted by reference.

Prohibitions: (1) Grantees may not use grant funds or program income for proselytizing or sectarian worship. (2) Applicants in the Houston-Galveston Area Council and the Concho Valley Coucil of Governments areas are not eligible under this RFA. These applicants may apply under the block grant program administered directly by these two councils of governments.

Eligible Applicants: (1) state agencies; (2) units of local government; (3) nonprofit corporations; (4) Indian tribes performing law enforcement functions; (5) crime control and prevention districts; and (6) faith-based organizations. Faith-based organizations must be tax-exempt nonprofit entities as certified by the Internal Revenue Service.

Project Period: Grant-funded projects must begin on or after September 1, 2002, unless exempted by the Executive Director of CJD.

Application Process: Interested applicants should call or write the regional council of governments for their county for information on application deadlines and submission requirements. Applicants may be required by a regional council to attend an application workshop prior to submitting their applications for funding. The applicant must contact the criminal justice planner at the regional council of governments for workshop information. Detailed specifications are in the application kits, which is available from the regional council of governments or on the Office of the Governor's web site address located at http://www.governor.state.tx.us/cjd/cjdmain.htm.

Preferences: Preference will be given to applicants who provide local and regional programs that focus on juvenile delinquency prevention and intervention.

Closing Date for Receipt of Applications: All application deadlines are set by the regional councils of governments. Prospective applicants must contact the criminal justice planner at their regional council of governments for relevant deadlines.

Selection Process: Applications are prioritized by the Criminal Justice Advisory Committees of the regional councils of governments based on the need for the program. Priority listings will be approved by the executive committees of the regional councils. Completed applications will be reviewed for eligibility and cost effectiveness by CJD. CJD reserves the right to renew grants for up to two additional years without the selected applications entering into a competitive selection process. The Executive Director of CJD will make all final funding decisions.

Contact Person: If additional information is needed contact CJD at (512) 463-1919 or the criminal justice planner at the appropriate regional council of governments.

TRD-200105106
David Zimmerman
Assistant General Counsel
Office of the Governor
Filed: August 29, 2001

Request for Grant Applications for Local and Regional Safe and Drug-Free Schools and Communities (SDFSC) Act Fund Programs

The Criminal Justice Division (CJD) of the Governor's Office is soliciting applications for local and regional projects that provide services to children, youths, and families that help prevent drug use and promote safety in schools and communities under the fiscal year 2003 grant cycle.

Purpose: The purpose of the projects is to promote safe and drug-free neighborhoods, fostering individual responsibility, promote respect for the rights of others, and improve school attendance, discipline, and learning.

Available Funding: Federal funding is authorized under the Elementary and Secondary Education Act, Title IV, Part A, Subpart 1, Sections 4011-4118, as amended, Public Law 103-382, 20 U.S.C. 7111-7118. All grants awarded from this fund must comply with the requirements contained therein. In addition to the rules related to this funding source, applicants and grantees must comply with the federal regulations at 348 C.F.R. Section 76, which are hereby adopted by reference.

Standards: Grantees must comply with the applicable grant management standards adopted under Texas Administrative Code §3.19 and §3.53, which are hereby adopted by reference.

Prohibitions: (1) Grantees may not use grant funds or program income for proselytizing or sectarian worship. (2) Applicants in the Houston-Galveston Area Council and the Concho Valley Coucil of Governments areas are not eligible under this RFA. These applicants may apply under the block grant program administered directly by these two councils of governments.

Eligible Applicants: (1) Councils of Governments (COGs); (2) cities; (3) counties; (4) universities; (5) colleges; (6) independent school districts; (7) nonprofit corporations; (8) crime control and prevention districts; (9) state agencies; (10) native American tribes; (11) faith-based organizations. Faith-based organizations must be tax exempt nonprofit entities as certified by the Internal Revenue Service; (12) regional education service centers; (13) community supervision and corrections departments; and (14) juvenile boards.

Project Period: Grant-funded projects must begin on or after September 1, 2002, unless exempted by the Executive Director of CJD.

Application Process: Interested applicants should call or write the regional council of governments for their county for information on application deadlines and submission requirements. Applicants may be required by a regional council to attend an application workshop prior to submitting their applications for funding. The applicant must contact the criminal justice planner at the regional council of governments for workshop information. Detailed specifications are in the application kits, which is available from the regional council of governments or on the Office of the Governor's web site address located at http://www.governor.state.tx.us/cjd/cjdmain.htm.

Preferences: Preference will be given to applicants who provide local and regional programs that target neighborhoods with high rates of violence, drug abuse, gang-related activities, weapons violations, truancy, and school dropouts.

Closing Date for Receipt of Applications: All application deadlines are set by the regional councils of governments. Prospective applicants must contact the criminal justice planner at their regional council of governments for relevant deadlines.

Selection Process: Applications are prioritized by the Criminal Justice Advisory Committees of the regional councils of governments based on the need for the program. Priority listings will be approved by the executive committees of the regional councils. Completed applications will be reviewed for eligibility and cost effectiveness. CJD reserves the right to renew grants for up to two additional years without the selected applications entering a competitive selection process. The Executive Director of CJD will make all final funding decisions.

Contact Person: If additional information is needed contact CJD at (512) 463-1919 or the criminal justice planner at the appropriate regional council of governments.

TRD-200105108
David Zimmerman
Assistant General Counsel
Office of the Governor
Filed: August 29, 2001

Request for Grant Applications for Local and Regional State Criminal Justice Planning (421) Fund Programs

The Criminal Justice Division (CJD) of the Governor's Office is soliciting applications for local and regional projects to provide support of programs that are designed to reduce crime and improve the criminal and juvenile justice systems under the fiscal year 2003 grant cycle.

Purpose: The purpose of the projects is to support a wide range of programs designed to reduce crime and improve the criminal and juvenile justice systems locally.

Available Funding: State funding is authorized for these projects under §772.006 of the Texas Government Code designating CJD as the Fund's administering agency. The Criminal Justice Planning Fund is established by §102.056 and §102.075, Texas Code of Criminal Procedure. The source of funding is a biennial appropriation by the Texas Legislature from funds collected through court costs and fees.

Standards: Grantees must comply with the applicable grant management standards adopted under Texas Administrative Code §3.19 as well as meet the rules set forth in Texas Administrative Code §3.53 and §3.55, which are hereby adopted by reference.

Prohibitions: (1) Grantees may not use grant funds or program income for proselytizing or sectarian worship. (2) Applicants in the Houston-Galveston Area Council and the Concho Valley Council of Governments areas are not eligible under this RFA. These applicants may apply under the block grant program administered directly by these two councils of governments.

Eligible Applicants: (1) state agencies; (2) units of local government; (3) school districts; (4) nonprofit corporations; (5) crime control and prevention districts; and (6) faith-based organizations. Faith-based organizations must be tax-exempt nonprofit entities as certified by the Internal Revenue Service.

CJD may approve grants for the renovation or retrofitting of existing facilities that provide additional beds for juvenile detention in compliance with the Texas Family Code.

Project Period: Grant-funded projects must begin on or after September 1, 2002, unless exempted by the Executive Director of CJD.

Application Process: Interested applicants should call or write the regional council of governments for their county for information on application deadlines and submission requirements. Applicants may be required by a regional council to attend an application workshop prior to submitting their applications for funding. The applicant must contact the criminal justice planner at the regional council of governments for funding and workshop information. Detailed specifications are in the application kits, which is available from the regional council of governments or on the Office of the Governor's web site address located at http://www.governor.state.tx.us/cjd/cjdmain.htm.

Preferences: Preference will be given to applicants who provide local and regional programs that focus on reducing crime and improving the criminal and juvenile justice systems.

Closing Date for Receipt of Applications: All application deadlines are set by the regional councils of governments. Prospective applicants must contact the criminal justice planner at their regional council of governments for relevant deadlines.

Selection Process: Applications are prioritized by the Criminal Justice Advisory Committees of the regional councils of governments based on the need for the program. Priority listings will be approved by the executive committees of the regional councils. Completed applications will be reviewed for eligibility and cost effectiveness by CJD. CJD reserves the right to renew grants for up to two additional years without the selected applications entering a competitive selection process. The Executive Director of CJD will make all final funding decisions.

Contact Person: If additional information is needed contact CJD at (512) 463-1919 or the criminal justice planner at the appropriate regional council of governments.

TRD-200105104

David Zimmerman
Assistant General Counsel
Office of the Governor
Filed: August 29, 2001

Request for Grant Applications for Local and Regional Victims of Crime Act (VOCA) Fund Programs

The Criminal Justice Division (CJD) of the Governor's Office is soliciting applications for local and regional projects that provide services to victims of crime under the fiscal year 2003 grant cycle.

Purpose: The purpose of the projects is to provide services and assistance directly to victims of crime to speed their recovery and aid them through the criminal justice process. Services may include the following:

(1) responding to the emotional and physical needs of crime victims;

(2) assisting victims in stabilizing their lives after a victimization;

(3) assisting victims to understand and participate in the criminal justice system; and

(4) providing victims with safety and security.

Available Funding: Federal funding is authorized under the Victims of Crime of 1984 (VOCA), as amended, Public Law 98-473, Chapter XIV, 42 U.S.C. 10601, et seq., §1402, §1404; Children's Justice and Assistance Act of 1986, as amended, Public Law 99-401, §102 (5)(b)(a)(ii); Anti-Drug Abuse Act of 1988, Title VII, Subtitle D, Public Law 100-690; Crime Control Act of 1990, Public Law 101-647; Federal Courts Administration Act of 1992, Public Law 102-572; Departments of Commerce, Justice, State, the Judiciary, and Related Agencies Appropriations Act of 1994; Violent Crime Control and Law Enforcement Act of 1994, Subtitle C, Public Law 104-132; Anti-Terrorism and Effective Death Penalty Act of 1996. All grants awarded from this fund must comply with the requirements contained therein.

Standards: Grantees must comply with the applicable grant management standards adopted under Texas Administrative Code §3.19 and §3.503. All grantees, other than Native American Tribes, must provide matching funds equal to at least 20 percent of total project expenditures. Native American Tribes must provide a five percent match. Grantees must satisfy this requirement through direct funding contributions, in-kind contributions, or a combination of the two.

Prohibitions:

(1) Grantees may not use grant funds or program income for proselytizing or sectarian worship.

(2) Grant funds may not be used to pay for indirect costs.

(3) Grantees may not use grant funds for nursing-home care (except for short-term emergencies), home health-care costs, in-patient treatment costs, hospital care, and other types of emergency and non-emergency medical or dental treatment.

(4) Grant funds cannot support medical costs resulting from a crime, except for forensic medical examinations for sexual assault victims.

(5) Grant funds cannot support relocation expenses for crime victims such as moving expenses, security deposits on housing, rent, and mortgage payments.

(6) Grantees may not use grant funds to pay salaries, fees, and reimbursable expenses associated with administrators, board members, executive directors, consultants, coordinators, and other individuals unless the grantees incur the expenses while providing direct services to crime victims.

(7) Grant funds may support administrative time to complete VOCA-required time and attendance sheets and programmatic documentation, reports, and statistics, administrative time to maintain crime victims' records, and the prorated share of audit costs.

(8) Applicants in the Houston-Galveston Area Council and the Concho Valley Council of Governments areas are not eligible under this RFA. These applicants may apply under the block grant program administered directly by these two councils of governments.

Grantees may not use grant funds to pay for the following services, activities, and costs:

(1) lobbying and administrative advocacy;

(2) perpetrator rehabilitation and counseling;

(3) needs assessments, surveys, evaluations, and studies;

(4) prosecution activities;

(5) fundraising activities;

(6) property loss;

(7) most medical costs;

(8) relocation expenses;

(9) administrative staff expenses;

(10) development of protocols, interagency agreements, and other working agreements;

(11) costs of sending individual crime victims to conferences;

(12) activities exclusively related to crime prevention;

(13) non-emergency legal representation such as for divorces or civil restitution recovery efforts;

(14) victim-offender meetings that serve to replace criminal justice proceedings; and

(15) management and administrative training for executive directors, board members, and other individuals that do not provide direct services.

Eligible Applicants:

(a) State agencies, units of local government, nonprofit corporations, Native American tribes, crime control and prevention districts, community supervision and corrections departments, and faith-based organizations who provide direct services to victims of crime are eligible to apply for grants under this fund. Faith-based organizations must be tax-exempt nonprofit entities certified by the Internal Revenue Service.

(b) All applicants must meet one of the following criteria:

(1) the applicant has a record of providing effective services to crime victims; or

(2) if an applicant does not have a demonstrated record of providing such services, it must show that at least 25 percent of its financial support comes from non-federal sources.

(c) All applicants must meet each of the following criteria:

(1) applicants must use volunteers, unless CJD determines that a compelling reason exists to grant an exception;

(2) applicants must promote community efforts to aid crime victims;

(3) applicants must help victims apply for compensation benefits;

(4) applicants must maintain and display civil rights information;

(5) applicants must provide services to victims of federal crimes on the same basis as victims of state and local crimes;

(6) applicants must provide grant-funded services at no charge to victims, and any deviation requires prior written approval by CJD; and

(7) applicants must maintain the confidentiality of all client-counselor information and research data, as required by state and federal law.

Project Period: Grant-funded projects must begin on July 1, 2002 and end on June 30, 2003.

Application Process: Interested applicants should call or write the regional council of governments for their county for information on application deadlines and submission requirements. Applicants may be required by a regional council to attend an application workshop prior to submitting their applications for funding. The applicant must contact the criminal justice planner at the regional council of governments for funding and workshop information. Detailed specifications are in the application kits, which is available from the regional council of governments or on the Office of the Governor's web site address located at http://www.governor.state.tx.us/cjd/cjdmain.htm.

Preferences: Preference will be given to applicants who provide local and regional programs that focus on providing services and assistance to victims of crime and aiding them through the criminal justice process.

Closing Date for Receipt of Applications: All application deadlines are set by the regional councils of governments. Prospective applicants must contact the criminal justice planner at their regional council of governments for relevant deadlines.

Selection Process: Applications are prioritized by the Criminal Justice Advisory Committees of the regional councils of governments based on the need for the program. Priority listings will be approved by the executive committees of the regional councils. Completed applications will be reviewed for eligibility and cost effectiveness by CJD. CJD reserves the right to renew grants for up to two additional years without the selected applications entering a competetive selection process. The Executive Director of CJD will make all final funding decisions.

Contact Person: If additional information is needed contact Aimee Snoddy CJD at (512) 463-1924 or the criminal justice planner at the appropriate regional council of governments.

TRD-200105112
David Zimmerman
Assistant General Counsel
Office of the Governor
Filed: August 29, 2001

Request for Grant Applications for Local and Regional Violence Against Women Act (VAWA) Fund Programs

The Criminal Justice Division (CJD) of the Governor's Office is soliciting applications for local and regional projects that reduce and prevent violence against women under the fiscal year 2003 grant cycle.

Purpose: The purpose of the projects is to assist in developing and strengthening effective law enforcement and prosecution strategies to combat violent crimes against women and to develop and strengthen victim services in such cases.

Available Funding: Federal funding is authorized under the Victims of Trafficking and Violence Prevention Act of 2000; Omnibus Crime Control and Safe Streets Act of 1968, as amended, §1001, 42 U.S.C. 3793(a), and §2001-2006, 42 U.S.C. 3796gg et. seq.

Standards:

Grantees must comply with the applicable grant management standards adopted under Texas Administrative Code §3.19. In addition to the rules related to the funding source, applicants and grantees must comply with the federal regulations in 28 C.F.R. §90, which are hereby adopted by reference.

Prohibitions:

(1) Grantees may not use grant funds or program income for proselytizing or sectarian worship.

(2) Applicants in the Houston-Galveston Area Council and the Concho Valley Coucil of Governments areas are not eligible under this RFA. These applicants may apply under the block grant program administered directly by these two councils of governments.

Eligible Applicants:

(1) state agencies;

(2) units of local government;

(3) nonprofit corporations;

(4) faith-based organizations. Faith-based organizations must be tax-exempt nonprofit entities as certified by the Internal Revenue Service;

(5) community supervision and corrections departments;

(6) Indian tribal governments; and

(7) crime control and prevention districts.

Grantees must provide matching funds of at least 25 percent of total project expenditures. This requirement may be satisfied through direct funding contributions, in-kind contributions, or a combination of the two. Nonprofit corporations are exempt from this matching requirement.

Project Period: Grant-funded projects must begin on June 1, 2002 and end on August 31, 2003.

Application Process: Interested applicants should call or write the regional council of governments for their county for information on application deadlines and submission requirements. Applicants may be required by a regional council to attend an application workshop prior to submitting their applications for funding. The applicant must contact the criminal justice planner at the regional council of governments for funding and workshop information. Detailed specifications are in the application kits, which is available from the regional council of governments or on the Office of the Governor's web site address located at http://www.governor.state.tx.us/cjd/cjdmain.htm.

Preferences: Preference will be given to applicants who provide local and regional programs that focus on assisting in developing and strengthening effective law enforcement and prosecution strategies to combat violent crimes against women and to develop and strengthen victim services in such cases.

Closing Date for Receipt of Applications: All application deadlines are set by the regional councils of governments. Prospective applicants must contact the criminal justice planner at their regional council of governments for relevant deadlines.

Selection Process: Applications are prioritized by the Criminal Justice Advisory Committees of the regional councils of governments based on the need for the program. Priority listings will be approved by the

executive committees of the regional councils. Completed applications will be reviewed for eligibility and cost effectiveness by CJD. CJD reserves the right to renew grants for up to two additional years without the selected applications entering a competitive selection process. The Executive Director of CJD will make all final funding decisions.

Contact Person: If additional information is needed contact Angie Martin at CJD at (512) 463-1884 or the criminal justice planner at the appropriate regional council of governments.

TRD-200105110
David Zimmerman
Assistant General Counsel
Office of the Governor
Filed: August 29, 2001

Request for Grant Applications for Safe and Drug-Free Schools and Communities (SDFSC) Act Fund Programs

The Criminal Justice Division (CJD) of the Governor's Office is soliciting applications for statewide projects that provide services to children, youths, and families that help prevent drug use and promote safety in schools and communities under the fiscal year 2003 grant cycle.

Purpose: The purpose of the projects is to promote safe and drug-free neighborhoods, fostering individual responsibility, promote respect for the rights of others, and improve school attendance, discipline, and learning.

Available Funding: Federal funding is authorized under the Elementary and Secondary Education Act, Title IV, Part A, Subpart 1, Sections 4011-4118, as amended, Public Law 103-382, 20 U.S.C. 7111-7118. All grants awarded from this fund must comply with the requirements contained therein. In addition to the rules related to this funding source, applicants and grantees must comply with the federal regulations at 348 C.F.R. Section 76.

Standards: Grantees must comply with the applicable grant management standards adopted under Texas Administrative Code §3.19 and §3.53, which are here adopted by reference.

Prohibitions: Grantees may not use grant funds or program income for proselytizing or sectarian worship.

Eligible Applicants: (1) Councils of Governments (COGs); (2) cities; (3) counties; (4) universities; (5) colleges; (6) independent school districts; (7) nonprofit corporations; (8) crime control and prevention districts; (9) state agencies; (10) native American tribes; (11) faith-based organizations. Faith-based organizations must be tax exempt nonprofit entities as certified by the Internal Revenue Service; (12) regional education service centers; (13) community supervision and corrections departments; and (14) juvenile boards.

Project Period: Grant-funded projects must begin on or after September 1, 2002, unless exempted by the Executive Director of CJD.

Application Process: Interested parties should request an application kit for Safe and Drug-Free Schools and Communities Act Programs from the Office of the Governor, Criminal Justice Division, P.O. Box 12428, Austin, Texas 78711, telephone (512) 463-1919. Application kits may also be obtained through the Office of the Governor's web site address located at http://www.governor.state.tx.us/cjd/cjdmain.htm.

Preferences: Preference will be given to applicants who provide statewide programs that target neighborhoods with high rates of violence, drug abuse, gang-related activities, weapons violations, truancy, and school dropouts. Preference may also be given to continuation projects.

Closing Date for Receipt of Applications: All original applications plus an additional copy must be submitted directly to the Criminal Justice Division and must be received or postmarked by February 26, 2002.

Selection Process: Completed applications will be reviewed for eligibility and cost effectiveness by CJD and rated competitively by a committee selected by the director of CJD. CJD reserves the right to renew grants for up to two additional years without the selected applications entering a competitive selection process. The Executive Director of CJD will make all final funding decisions.

Contact Person: If additional information is needed contact CJD at (512) 463-1919.

TRD-200105109
David Zimmerman
Assistant General Counsel
Office of the Governor
Filed: August 29, 2001

Request for Grant Applications for State Criminal Justice Planning (421) Fund Programs

The Criminal Justice Division (CJD) of the Governor's Office is soliciting applications for statewide projects to provide support of programs that are designed to reduce crime and improve the criminal and juvenile justice systems under the fiscal year 2003 grant cycle.

Purpose: The purpose of the projects is to support a wide range of programs designed to reduce crime and improve the criminal and juvenile justice systems throughout the state.

Available Funding: State funding is authorized for these projects under §772.006 of the Texas Government Code designating CJD as the Fund's administering agency. The Criminal Justice Planning Fund is established by §102.056 and §102.075, Texas Code of Criminal Procedure. The source of funding is a biennial appropriation by the Texas Legislature from funds collected through court costs and fees.

Standards: Grantees must comply with the applicable grant management standards adopted under Texas Administrative Code §3.19 as well as meet the rules set forth in Texas Administrative Code §3.53 and §3.55, which are hereby adopted by reference.

Prohibitions: Grantees may not use grant funds or program income for proselytizing or sectarian worship.

Eligible Applicants are those continuation grantees that meet the following criteria: (1) state agencies; (2) units of local government; (3) school districts; (4) nonprofit corporations; (5) crime control and prevention districts; and (6) faith-based organizations. Faith-based organizations must be tax-exempt nonprofit entities as certified by the Internal Revenue Service.

CJD may approve grants for the renovation or retrofitting of existing facilities that provide additional beds for juvenile detention in compliance with the Texas Family Code.

Project Period: Grant-funded projects must begin on or after September 1, 2002, unless exempted by the Executive Director of CJD.

Application Process: Interested parties should request an application kit for State Criminal Justice Planning Programs from the Office of the Governor, Criminal Justice Division, P.O. Box 12428, Austin, Texas 78711, telephone (512) 463-1919. Application kits may also be obtained through the Office of the Governor's web site address located at http://www.governor.state.tx.us/cjd/cjdmain.htm.

Preferences: Preference will be given to continuation grantees who are in good standing both programmatically and financially.

Closing Date for Receipt of Applications: All original applications plus an additional copy must be submitted directly to the Criminal Justice Division and must be received or postmarked by February 26, 2002.

Selection Process: Completed applications will be reviewed for eligibility by CJD. CJD reserves the right to renew grants for up to two additional years without the selected applications entering a competitive selection process. The Executive Director of CJD will make all final funding decisions.

Contact Person: If additional information is needed contact CJD at (512) 463-1919.

TRD-200105105
David Zimmerman
Assistant General Counsel
Office of the Governor
Filed: August 29, 2001

Request for Grant Applications for Victims of Crime Act (VOCA) Fund Programs

The Criminal Justice Division (CJD) of the Governor's Office is soliciting applications for statewide projects that provide services to victims of crime under the fiscal year 2003 grant cycle.

Purpose: The purpose of the projects is to provide services and assistance directly to victims of crime to speed their recovery and aid them through the criminal justice process. Services may include the following:

(1) responding to the emotional and physical needs of crime victims;

(2) assisting victims in stabilizing their lives after a victimization;

(3) assisting victims to understand and participate in the criminal justice system; and

(4) providing victims with safety and security.

Available Funding: Federal funding is authorized under the Victims of Crime of 1984 (VOCA), as amended, Public Law 98-473, Chapter XIV, 42 U.S.C. 10601, et seq., §1402, §1404; Children's Justice and Assistance Act of 1986, as amended, Public Law 99-401, §102 (5)(b)(a)(ii); Anti-Drug Abuse Act of 1988, Title VII, Subtitle D, Public Law 100-690; Crime Control Act of 1990, Public Law 101-647; Federal Courts Administration Act of 1992, Public Law 102-572; Departments of Commerce, Justice, State, the Judiciary, and Related Agencies Appropriations Act of 1994; Violent Crime Control and Law Enforcement Act of 1994, Subtitle C, Public Law 104-132; Anti-Terrorism and Effective Death Penalty Act of 1996. All grants awarded from this fund must comply with the requirements contained therein.

Standards: Grantees must comply with the applicable grant management standards adopted under Texas Administrative Code §3.19 and §3.503. All grantees, other than Native American Tribes, must provide matching funds equal to at least 20 percent of total project expenditures. Native American Tribes must provide a five percent match. Grantees must satisfy this requirement through direct funding contributions, in-kind contributions, or a combination of the two.

Prohibitions: Grantees may not use grant funds or program income for proselytizing or sectarian worship. Grant funds may also not be used to pay for indirect costs.

Grantees may not use grant funds to pay for the following services, activities, and costs:

(1) lobbying and administrative advocacy;

(2) perpetrator rehabilitation and counseling;

(3) needs assessments, surveys, evaluations, and studies;

(4) prosecution activities;

(5) fundraising activities;

(6) property loss;

(7) most medical costs. Grantees may not use grant funds for nursing-home care (except for short-term emergencies), home health-care costs, in-patient treatment costs, hospital care, and other types of emergency and non-emergency medical or dental treatment. Grant funds cannot support medical costs resulting from a crime, except for forensic medical examinations for sexual assault victims;

(8) relocation expenses. Grant funds cannot support relocation expenses for crime victims such as moving expenses, security deposits on housing, rent, and mortgage payments;

(9) administrative staff expenses. Grantees may not use grant funds to pay salaries, fees, and reimbursable expenses associated with administrators, board members, executive directors, consultants, coordinators, and other individuals unless the grantees incur the expenses while providing direct services to crime victims. Grant funds may support administrative time to complete VOCA-required time and attendance sheets and programmatic documentation, reports, and statistics, administrative time to maintain crime victims' records, and the prorated share of audit costs;

(10) development of protocols, interagency agreements, and other working agreements;

(11) costs of sending individual crime victims to conferences;

(12) activities exclusively related to crime prevention;

(13) non-emergency legal representation such as for divorces or civil restitution recovery efforts;

(14) victim-offender meetings that serve to replace criminal justice proceedings; and

(15) management and administrative training for executive directors, board members, and other individuals that do not provide direct services.

Eligible Applicants:

(a) State agencies, units of local government, nonprofit corporations, Native American tribes, crime control and prevention districts, community supervision and corrections departments, and faith-based organizations who provide direct services to victims of crime are eligible to apply for grants under this fund. Faith-based organizations must be tax-exempt nonprofit entities certified by the Internal Revenue Service.

(b) All applicants must meet one of the following criteria:

(1) the applicant has a record of providing effective services to crime victims; or

(2) if an applicant does not have a demonstrated record of providing such services, it must show that at least 25 percent of its financial support comes from non-federal sources.

(c) All applicants must meet each of the following criteria:

(1) applicants must use volunteers, unless CJD determines that a compelling reason exists to grant an exception;

(2) applicants must promote community efforts to aid crime victims;

(3) applicants must help victims apply for compensation benefits;

(4) applicants must maintain and display civil rights information;

(5) applicants must provide services to victims of federal crimes on the same basis as victims of state and local crimes;

(6) applicants must provide grant-funded services at no charge to victims, and any deviation requires prior written approval by CJD; and

(7) applicants must maintain the confidentiality of all client-counselor information and research data, as required by state and federal law.

Project Period: Grant-funded projects must begin on July 1, 2002 and end on June 30, 2003.

Application Process: Interested parties should request an application kit for Victims of Crime Act Programs from the Office of the Governor, Criminal Justice Division, P.O. Box 12428, Austin, TX 78711, telephone (512) 463-1919. Application kits may also be obtained through the Office of the Governor's web site address located at http://www.governor.state.tx.us/cjd/cjdmain.htm.

Preferences: Preference will be given to applicants who provide statewide programs that focus on providing services and assistance to victims of crime and aiding them through the criminal justice process. Preference may also be given to continuation projects.

Closing Date for Receipt of Applications: All original applications plus an additional copy must be submitted directly to the Criminal Justice Division and must be received or postmarked by February 25, 2002.

Selection Process: Completed applications will be reviewed for eligibility and cost effectiveness by CJD and rated competitively by a committee selected by the director of CJD. CJD reserves the right to renew grants for up to two additional years without the selected applications entering a competitive selection process. The Executive Director of CJD will make all final funding decisions.

Contact Person: If additional information is needed contact Aimee Snoddy at CJD at (512) 463-1924.

TRD-200105113
David Zimmerman
Assistant General Counsel
Office of the Governor
Filed: August 29, 2001

Request for Grant Applications for Violence Against Women Act (VAWA) Fund Programs

The Criminal Justice Division (CJD) of the Governor's Office is soliciting applications for statewide projects that reduce and prevent violence against women under the fiscal year 2003 grant cycle.

Purpose: The purpose of the projects is to assist in developing and strengthening effective law enforcement and prosecution strategies to combat violent crimes against women and to develop and strengthen victim services in such cases.

Available Funding: Federal funding is authorized under the Victims of Trafficking and Violent Prevention Act of 2000; Omnibus Crime Control and Safe Streets Act of 1968, as amended, §1001, 42 U.S.C. 3793(a), and §2001-2006, 42 U.S.C. 3796gg et. seq.

Standards: Grantees must comply with the applicable grant management standards adopted under Texas Administrative Code §3.19. In addition to the rules related to the funding source, applicants and grantees must comply with the federal regulations in 28 C.F.R. §90, which are hereby adopted by reference.

Prohibitions: Grantees may not use grant funds or program income for proselytizing or sectarian worship.

Eligible Applicants:

(1) state agencies;

(2) units of local government;

(3) nonprofit corporations;

(4) faith-based organizations. Faith-based organizations must be tax-exempt nonprofit entities as certified by the Internal Revenue Service;

(5) community supervision and corrections departments;

(6) Indian tribal governments; and

(7) crime control and prevention districts.

Grantees must provide matching funds of at least 25 percent of total project expenditures. This requirement may be satisfied through direct funding contributions, in-kind contributions, or a combination of the two. Nonprofit corporations are exempt from this matching requirement.

Project Period: Grant-funded projects must begin on June 1, 2002 and end on August 31, 2003.

Application Process: Interested parties should request an application kit for Violence Against Women Act Fund Programs from the Office of the Governor, Criminal Justice Division, P.O. Box 12428, Austin, TX 78711, telephone (512) 463-1919. Application kits may also be obtained through the Office of the Governor's web site address located at http://www.governor.state.tx.us/cjd/cjdmain.htm.

Preferences: Preference will be given to applicants who provide statewide programs that focus on assisting in developing and strengthening effective law enforcement and prosecution strategies to combat violent crimes against women and to develop and strengthen victim services in such cases. Preference may also be given to continuation projects.

Closing Date for Receipt of Applications: All original applications plus an additional copy must be submitted directly to the Criminal Justice Division and must be received or postmarked by February 26, 2002.

Selection Process: Completed applications will be reviewed for eligibility and cost effectiveness by CJD and rated competitively by a committee selected by the director of CJD. CJD reserves the right to renew grants for up to two additional years without the selected applications entering a competitive selection process. The Executive Director of CJD will make all final funding decisions.

Contact Person: If additional information is needed contact Angie Martin at CJD at (512) 463-1884.

TRD-200105111
David Zimmerman
Assistant General Counsel
Office of the Governor
Filed: August 29, 2001

Texas Department of Health

Notice of Emergency Order on Gulf Nuclear of Louisiana, Inc. and The GNI Group, Inc.

Notice is hereby given that the Bureau of Radiation Control (bureau) ordered Gulf Nuclear of Louisiana, Inc. and The GNI Group, Inc. (licensee-L03378) of Deer Park to immediately secure its Houston and

Webster facilities from unauthorized access to the public, and to maintain its facilities in a manner that prevents the release of radioactive material into the environment.

A copy of all relevant material is available for public inspection at the Bureau of Radiation Control, Texas Department of Health, Exchange Building, 8407 Wall Street, Austin, Texas, telephone (512) 834-6688, Monday-Friday, 8:00 a.m. to 5:00 p.m. (except holidays).

TRD-200105097
Susan Steeg
General Counsel
Texas Department of Health
Filed: August 29, 2001

Notice of Fees for Providing a Patient's Health Care Information

The Texas Department of Health licenses general and special hospitals in accordance with the Health and Safety Code, Chapter 241. In 1995, the Texas Legislature amended the law to address the release and confidentiality of health care information. In accordance with Health and Safety Code, §241.154(e), the fee for providing a patient's health care information has been adjusted 2.6% to reflect the most recent changes to the consumer price index as published by the Bureau of Labor Statistics (BLS) of the United States Department of Labor. The BLS measures the average changes in prices of goods and services purchased by urban wage earners and clerical workers.

With the adjustment, the fee may not exceed the sum of:

(1) a basic retrieval or processing fee, which must include the fee for providing the first 10 pages of copies and which may not exceed $34.85; and

(A) a charge for each page of:

(i) $1.16 for the 11th through the 60th page of the provided copies;

(ii) $.58 for the 61st through the 400th page of the provided copies;

(iii) $.30 for any remaining pages of the provided copies; and

(B) the actual cost of mailing, shipping, or otherwise delivering the provided copies; or

(2) if the requested records are stored on any microform or other electronic medium, a retrieval or processing fee, which must include the fee for providing the first 10 pages of the copies and which may not exceed $52.28; and

(A) $1.16 per page thereafter; and

(B) the actual cost of mailing, shipping, or otherwise delivering the provided copies.

This is published only as a courtesy to licensed hospitals. Hospitals are responsible for verifying that any fees charged for health care information are in accordance with the Health and Safety Code, Chapter 241.

If you have any questions, please call John M. Evans, Jr., Hospital Licensing Director, Health Facility Licensing and Compliance Division, Texas Department of Health, 1100 West 49th Street, Austin, Texas, 78756-3199, telephone (512) 834-6648.

TRD-200105020
Susan Steeg
General Counsel
Texas Department of Health
Filed: August 24, 2001

Notice of Preliminary Report for Assessment of Administrative Penalties and Notice of Violation on Castle Dental Centers, Inc.

Notice is hereby given that the Bureau of Radiation Control (bureau), Texas Department of Health (department), issued a notice of violation and proposal to assess an administrative penalty to Castle Dental Centers, Inc. (registrant-R09023) of Houston. A total penalty of $10,000 is proposed to be assessed to the registrant for alleged violations of 25 Texas Administrative Code, §289.232.

A copy of all relevant material is available for public inspection at the Bureau of Radiation Control, Texas Department of Health, Exchange Building, 8407 Wall Street, Austin, Texas, telephone (512) 834-6688, Monday-Friday, 8:00 a.m. to 5:00 p.m. (except holidays).

TRD-200105098
Susan Steeg
General Counsel
Texas Department of Health
Filed: August 29, 2001

Texas Health and Human Services Commission

Notice of Proposed Medicaid Payment Rate Ceiling for Home-Delivered Meals in the Community Based Alternatives Program

The Texas Health and Human Services Commission (HHSC) will conduct a public hearing to receive public comment on the proposed payment rate ceiling for Medicaid Home-Delivered Meals services in the Community Based Alternatives program. The hearing will be held in compliance with Title 1 of the Texas Administrative Code §355.105(g), which requires public hearings on proposed payment rates for medical assistance programs. The public hearing will be held on September 14, 2001, at 9:00 a.m. in Room 450C, of the John H. Winters Human Services Building at 701 West 51st Street, Austin, Texas (fourth floor, West Tower). Written comments regarding payment rates set by HHSC may be submitted in lieu of testimony until 5:00 p.m. the day of the hearing. Written comments may be sent by U.S. mail to the attention of Carolyn Pratt, HHSC, MC W-425, P.O. Box 149030, Austin, Texas 78714-9030. Express mail can be sent to Ms. Pratt at HHSC, MC W-425, 701 West 51st Street, Austin, Texas 78751-2312. Hand-delivered written comments addressed to Ms. Pratt will be accepted by the receptionist in the lobby of the John H. Winters Human Services Building at 701 West 51st Street, Austin, Texas. Alternatively, written comments may be sent via facsimile to Ms. Pratt at (512) 438-2165. Interested parties may request to have mailed to them or may pick up a briefing package concerning the proposed payment rate by contacting Carolyn Pratt, HHSC, MC W-425, P.O. Box 149030, Austin, Texas 78714-9030, telephone number (512) 438-4057.

Persons with disabilities who wish to attend the hearing and require auxiliary aids or services should contact Carolyn Pratt, HHSC, MC W-425, P.O. Box 149030, Austin, Texas 78714-9030, telephone number (512) 438-4057, by 4:00 p.m., September 11, 2001, so that appropriate arrangements can be made.

TRD-200105100
Marina Henderson
Executive Deputy Commissioner
Texas Health and Human Services Commission
Filed: August 29, 2001

Texas Department of Housing and Community Affairs

Texas Statewide Homebuyers Education Program (TSHEP) "Train the Trainer" request for proposals from training providers

The Texas Department of Housing and Community Affairs announces a Request for Proposals for organizations to provide training to nonprofit organizations in the principles and applications of homebuyer education, and to certify participants as homebuyer education providers.

I. Introduction

Section 2306.253, Government Code, charges the Texas Department of Housing and Community Affairs ("TDHCA" or "the Department") with the development and implementation of a statewide homebuyer education program, designed to provide information and counseling to prospective homebuyers about the home buying process. The Texas Statewide Homebuyer Education Program ("TSHEP") was created to fulfill this mandate.

TSHEP aims to bring comprehensive homebuyer education to all 254 Texas counties without duplicating the efforts of existing successful homebuyer education programs. TDHCA is committed to increasing homeownership across the State of Texas through homebuyer education. Expanding the availability of homebuyer education and providing access to counseling to all Texans not only benefits the new homeowner, but also greatly improves the sustainability of communities.

TSHEP proposes training local nonprofit organizations to initiate coverage in underserved areas of the state. To ensure uniform quality of homebuyer education is provided throughout the state, TSHEP will sponsor three "Train the Trainer" workshops. The purpose of the training will be to teach local organizations the principles and applications of comprehensive pre- and post purchase homebuyer education, and to certify participants as TSHEP providers.

II. Request for Proposals

The Texas Department of Housing and Community Affairs is seeking proposals to provide training to nonprofit organizations throughout the State of Texas. Such nonprofit organizations may include Texas Agricultural Extension Agents, units of local governments, faith-based organizations, Community Housing Development Organizations (CHDOs), Community Development Corporations (CDCs), Community Based Organizations (CBOs), and other organizations with a proven interest in community building. The purpose of the training will be to teach local organizations the principles and applications of comprehensive pre- and post purchase homebuyer education, and to certify participants as providers. TDHCA will contract for, three 4-day training classes with a minimum of 25 participants per class. TDHCA will review and select the participants. The three training locations will be determined by TDHCA and will be held in geographically diverse areas of the state. Training topics should include, but are not limited to the following:

pre- and post-purchase counseling (including information related to home equity loans and reverse mortgages)

delinquency and default counseling

delinquency intervention

how to access affordable housing single family mortgage products

how to reach traditionally underserved populations (including lower income persons/households, persons with disabilities, and persons living in colonias)

ethics issues for counselors

track development (e.g. fast, regular)

predatory and subprime lending

fair housing/ lending laws

effective training methods

As there will be a wide range of experience among the participants, the successful applicant will need to demonstrate the ability to tailor each class to their individual needs.

Specifically the applicant should show that they have the capacity to provide basic, intermediate, and advanced courses on homebuyer education training. In addition, proposals should itemize the cost of the individual training class.

The successful applicant will be responsible for coordinating the logistics of the training with respect to their training personnel (hotel and travel arrangements), providing course materials, and providing for any audio/visual needs. These items should be taken into account when preparing a budget. The successful applicant will also be responsible for administering a "Homebuyer Education Staff Training Certification" exam at the end of each training session. A report of the participants' results must be submitted to TDHCA within 30 days of the completion of each training session.

The payment for the successful applicant will be on a reimbursement basis and payment will be made within 60 days of the completion of each training session performed in accordance with the contract.

III. Response Time Frame and Other Information

Reponses should be delivered in the following manner:

Original and (2) two copies to:

Texas Department of Housing and Community Affairs

Attention: Jo Ann DePenning, Manager, Texas Statewide Homebuyer Education Programs.

P.O. Box 13941

Austin, TX 78701

Physical Address

507 Sabine, Suite 800

Austin, TX 78711-3941

Proposals must be received by TDHCA no later than 5:00 p.m. on Monday October 22, 2001.

Faxed or emailed applications will not be accepted.

Questions concerning this Request for Proposal may be directed in writing to TDHCA, Attention: Jo Ann DePenning, Manager, Texas Statewide Homebuyer Education Programs or by electronic mail to jdepenni@tdhca.state.tx.us

IV. Proposal Content

A maximum of 100 points can be awarded to proposals submitted to TDHCA within the parameters of this Request for Proposals. Points will be awarded according to the content of each proposal as itemized below:

Item A: Experience, 50 points

Experience will be evaluated in two categories as follows:

Category 1) Past Experience of your organization (25 points)

Provide reference of past training services provided by your organization (please provide a list)

Submit a narrative or resume style description of the training services your organization has provided on training homebuyer education providers in the past three years. **This description should not exceed two typewritten pages in length.**

Category 2) Personnel Information Requirement (25 points)

Provide the names, titles, brief resumes or statements of experience, and office location of the persons to be assigned any of the responsibility concerning this Proposal. Also indicate the duties assigned to each individual in previous homebuyer counseling endeavors as listed under Category 1.

It is the policy of TDHCA to encourage the participation of minorities and women in all facets of the Department's activities. The extent to which minorities and women participate in the ownership, management and professional work force of a firm will be considered by TDHCA Management in the selection of a training organization. Applicants are therefore requested to submit a current minority profile of their organization in terms of ownership and management, as well as by professional, administrative, and clerical and support personnel.

Item B: Description of Services to be Rendered to TDHCA, 50 points

Please summarize the services your organization will provide to participants of your training seminars. You should address the content, delivery, and format of the homebuyer education training you intend to provide. **This description should not exceed three typewritten pages in length.** Please include any pamphlets and training materials as an attachment.

Item C: Budget

Please provide an itemized budget outlining all costs to be covered by TDHCA funds requested in this proposal (e.g. travel, materials, salaries, and A/V equipment). Itemize the cost of the individual training classes.

Item D: Financial Condition

Please provide a copy of your organization's most recent annual audited financial statement (this should be included as an attachment).

V. Texas Open Records Act

To the extent allowed by law, information submitted relative to this Request for Proposal shall not be released by TDHCA during the evaluation process or prior to contract award. All information submitted to, and retained by TDHCA, becomes a public record and is subject to disclosure under the Texas Open Record Act, unless an exception under such Act is applicable.

If an organization does not desire proprietary information in the proposal to be disclosed under the Texas Open Records Act or otherwise, it is required to identify (and segregate, if possible) all proprietary information in the proposal, which identification shall be submitted concurrently with the proposal. If such information is requested under the Texas Open Records Act, your organization will be notified and given an opportunity to present its position to the Texas Attorney General, who shall make the final determination. If your organization fails to clearly identify proprietary information, it agrees, by submission of the proposal, that those sections shall be deemed non-proprietary and made available upon public request after the contract is awarded.

VI. Costs Incurred in Responding

All costs directly or indirectly related to the preparation of a response to this Request for Proposal or any oral presentation required to supplement and/or clarify the proposal which may be required by TDHCA shall be the sole responsibility of, and shall be borne by, your organization.

VII. General Information

TDHCA reserves the right to accept or reject any (or all) proposals submitted. The information contained in this Request for Proposal is intended to serve only as a general description of the services sought by TDHCA.

In releasing this Request for Proposal, TDHCA is not obligated to proceed with any action, and may decide it is in the agency's best interest to discontinue consideration of services.

TDHCA reserves the right, with thirty days written notice, to cancel any contract awarded under the terms of this Request for Proposal.

Individuals who require auxiliary aids or services should contact Gina Esteves, ADA Responsible Employee, at (512) 475-3943, or Relay Texas at 1-800-735-2989, so that appropriate arrangements can be made.

TRD-200105124
Daisy A. Stiner
Executive Director
Texas Department of Housing and Community Affairs
Filed: August 29, 2001

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Texas Department of Insurance

Insurer Services

Application for admission to the State of Texas by HEALTHCARE DYNAMICS INSURANCE COMPANY, INC., a foreign fire and casualty company. The home office is in Oklahoma City, Oklahoma.

Application to change the name of GENAM BENEFITS INSURANCE COMPANY to HCSC INSURANCE SERVICES COMPANY, a foreign life, accident and health company. The home office is in Chicago, Illinois.

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-200105120
Lynda H. Nesenholtz
General Counsel and Chief Clerk
Texas Department of Insurance
Filed: August 29, 2001

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Notice of Public Hearing

The Commissioner of Insurance will hold a public hearing under Docket No. 2496 on September 18, 2001 at 9:30 a.m., in Room 100 of the William B. Hobby Jr. State Office Building, 333 Guadalupe Street in Austin, Texas, to consider a proposed amendment to the Plan of Operation of the Texas Health Reinsurance System. The proposed amendment provides guidance to the administrator of the System in auditing reinsured carriers for the calculation of reinsurance premiums and reinsured claims. The proposed amendment was published in the June 29, 2001 issue of the *Texas Register* (26 TexReg 4906) as required by 28 Texas Administrative Code §26.201(d). The Commissioner of Insurance has jurisdiction of the proposed amendment under Insurance Code Article 26.55(a).

TRD-200105015

Lynda H. Nesenholtz
General Counsel and Chief Clerk
Texas Department of Insurance
Filed: August 24, 2001

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Lower Rio Grande Valley Workforce Development Board

Public Notice

Request for Proposals

Management and Operation of Workforce Development Programs

The Lower Rio Grande Valley Workforce Development Board dba "WorkFORCE Solutions" is requesting proposals for the management and operation of its Workforce Centers and for the administration of the following programs: WIA Title I, TANF/Choices, Food Stamp E&T, and Welfare to Work, and other special programs. The successful entity will be responsible for providing integrated workforce development services in coordination with workforce network partners. WorkFORCE Solutions serves Hidalgo and Willacy Counties. The contract will include the operation of 10 Workforce Centers throughout the region. The period of performance for these services will be from January 1, 2002 to August 31, 2002.

ISSUE DATE: September 4, 2001 10:00 a.m.

Interested Parties May Request a RFP from:

Michael H. Weaver, Director of Procurement/One-Stops

WorkFORCE Solutions

3406 W. Alberta Rd, Edinburg, Texas 78539

Phone: (956) 928-5000

A MANDATORY BIDDERS' CONFERENCE will be held on September 19, 2001 at 9:00 a.m. at WorkFORCE Solutions Administrative Office, 3406 W. Alberta Rd, Edinburg, Texas. All interested parties MUST attend this conference to be considered. One copy of the Board's Integrated Plan and Adopted Workforce Center Guidelines will be made available to each organization at the Bidders' Conference.

RESPONSE DEADLINE: November 9, 2001 by 5:00 p.m.

WORKFORCE SOLUTIONS DOES NOT DISCRIMINATE ON THE BASIS OF RACE, RELIGION, NATIONAL ORIGIN, AND POLITICAL AFFILIATION OR BELIEF.

WORKFORCE SOLUTIONS IS AN EQUAL OPPORTUNITY EMPLOYER.

TRD-200105079
Carlos A. Herrera
President/CEO
Lower Rio Grande Valley Workforce Development Board
Filed: August 28, 2001

♦ ♦ ♦

Texas Lottery Commission

Instant Game Number 207 "Texas Glory"

1.0. Name and Style of Game.

A. The name of Instant Game Number 207 is "TEXAS GLORY". The play style is a "key number match".

1.1. Price of Instant Ticket.

A. Tickets for Instant Game Number 207 shall be $2.00 per ticket.

1.2. Definitions in Instant Game Number 207.

A. Display Printing--That area of the instant game ticket outside of the area where the Overprint and Play Symbols appear.

B. Latex Overprint--The removable scratch-off covering over the Play Symbols on the front of the ticket.

C. Play Symbol--One of the symbols which appears under the Latex Overprint on the front of the ticket. Each Play Symbol is printed in Symbol font in black ink in positive. The possible play symbols are: 01, 02, 03, 04, 05, 06, 07, 08, 09, 10, 11, 12, 13, 14, 15, $2.00, $4.00, $5.00, $10.00, $20.00, $50.00, $100, $2,000, $20,000, BRAND SYMBOL, STAR SYMBOL, HORSESHOE SYMBOL, SADDLE SYMBOL, LASSO SYMBOL, CAMP FIRE SYMBOL, CACTUS SYMBOL, BOOT SYMBOL, HORSE SYMBOL, WAGON SYMBOL, and HAT SYMBOL.

D. Play Symbol Caption--the small printed material appearing below each Play Symbol which explains the Play Symbol. One and only one of these Play Symbol Captions appears under each Play Symbol and each is printed in caption font in black ink in positive. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:

Table 1

Figure 1: GAME NO. 207 - 1.2D

PLAY SYMBOL	CAPTION
$2.00	TWO$
$4.00	FOUR$
$5.00	FIVE$
$10.00	TEN$
$20.00	TWENTY
$50.00	FIFTY
$100	ONE HUND
$2,000	TWO THOU
$20,000	20 THOU
01	ONE
02	TWO
03	THR
04	FOR
05	FIV
06	SIX
07	SEV
08	EGT
09	NIN
10	TEN
11	ELVN
12	TWLV
13	THRTN
14	FRTN
15	FIFTN
BRAND SYMBOL	BRAND
STAR SYMBOL	STAR
HORSESHOE SYMBOL	HRSHOE
SADDLE SYMBOL	SADDLE
LASSO SYMBOL	LASSO
CAMP FIRE SYMBOL	FIRE
CACTUS SYMBOL	CACTUS
BOOT SYMBOL	BOOT
HORSE SYMBOL	HORSE
WAGON SYMBOL	WAGON
HAT SYMBOL	HAT

Table 2

E. Retailer Validation Code--Three small letters found under the removable scratch-off covering in the play area, which retailers use to verify and validate instant winners. The possible validation codes are:

Figure 2: GAME NO. 207 - 1.2E

CODE	PRIZE
TWO	$2.00
FOR	$4.00
FIV	$5.00
TEN	$10.00
TWN	$20.00

Low-tier winning tickets use the required codes listed in Table 2. Non-winning tickets and high-tier tickets use a non-required combination of the required codes listed in Table 2 with the exception of ∅, which will only appear on low-tier winners and will always have a slash through it.

F. Serial Number--A unique 13 digit number appearing under the latex scratch-off covering on the front of the ticket. There is a four digit security number which will be boxed and placed randomly within the Serial Number. The remaining nine digits of the Serial Number are the Validation Number. The Serial Number is positioned beneath the bottom row of play data in the scratched-off play area. The format will be: 0000000000000.

G. Low-Tier Prize--A prize of $2.00, $4.00, $5.00, $10.00, and $20.00.

H. Mid-Tier Prize--A prize of $50.00, $70.00, and $100.

I. High-Tier Prize--Prizes of $2,000 and $20,000.

J. Bar Code--A 22 character interleaved two of five bar code which will include a three digit game ID, the seven digit pack number, the three digit ticket number and the nine digit Validation Number. The bar code appears on the back of the ticket.

K. Pack-Ticket Number--A 22 digit number consisting of the three digit game number (207), a seven digit pack number, and a three digit ticket number. Ticket numbers start with 000 and end with 249 within each pack. The format will be: 207-0000001-000.

L. Pack--A pack of "TEXAS GLORY" Instant Game tickets contain 250 tickets, which are packed in plastic shrink-wrapping and fanfolded in pages of two. Tickets 000-001 will be on the top page. The backs of tickets 248 and 249 will expose the pack-ticket number through the shrink-wrap.

M. Non-Winning Ticket--A ticket which is not programmed to be a winning ticket or a ticket that does not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government Code, Chapter 466), and applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401.

N. Ticket or Instant Game Ticket, or Instant Ticket--A Texas Lottery "TEXAS GLORY" Instant Game Number 207 ticket.

2.0. Determination of Prize Winners. The determination of prize winners is subject to the general ticket validation requirements set forth in Texas Lottery Rule §401.302, Instant Game Rules, these Game Procedures, and the requirements set out on the back of each instant ticket. A prize winner in the "TEXAS GLORY" Instant Game is determined once the latex on the ticket is scratched off to expose 16 play symbols. In play area 1, if the player matches any of YOUR NUMBERS to the WINNING NUMBER, the player will win the prize. In play area 2, if the player finds 3 like symbols the player will win the prize in the PRIZE BOX. In play area 3, if the player finds a HAT SYMBOL, the player will win $20.00. No portion of the display printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Instant Game.

2.1. Instant Ticket Validation Requirements.

A. To be a valid Instant Game ticket, all of the following requirements must be met:

1. Exactly 16 Play Symbols must appear under the latex overprint on the front portion of the ticket;

2. Each of the Play Symbols must have a Play Symbol Caption underneath, and each Play Symbol must agree with its Play Symbol Caption;

3. Each of the Play Symbols must be present in its entirety and be fully legible;

4. Each of the Play Symbols must be printed in black ink;

5. The ticket shall be intact;

6. The Serial Number, Retailer Validation Code and Pack-Ticket Number must be present in their entirety and be fully legible;

7. The Serial Number must correspond, using the Texas Lottery's codes, to the Play Symbols on the ticket;

8. The ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted or tampered with in any manner;

9. The ticket must not be counterfeit in whole or in part;

10. The ticket must have been issued by the Texas Lottery in an authorized manner;

11. The ticket must not have been stolen, nor appear on any list of omitted tickets or non-activated tickets on file at the Texas Lottery;

12. The Play Symbols, Serial Number, Retailer Validation Code and Pack-Ticket Number must be right side up and not reversed in any manner;

13. The ticket must be complete and not miscut, and have exactly 16 Play Symbols under the latex overprint on the front portion of the ticket, exactly one Serial Number, exactly one Retailer Validation Code, and exactly one Pack-Ticket Number on the ticket;

14. The Serial Number of an apparent winning ticket shall correspond with the Texas Lottery's Serial Numbers for winning tickets, and a ticket with that Serial Number shall not have been paid previously;

15. The ticket must not be blank or partially blank, misregistered, defective or printed or produced in error;

16. Each of the 16 Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures.

17. Each of the 16 Play Symbols on the ticket must be printed in the Symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the ticket Serial Numbers must be printed in the Serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Pack-Ticket Number must be printed in the Pack-Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;

18. The display printing on the ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and

19. The ticket must have been received by the Texas Lottery by applicable deadlines.

B. The ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Instant Game ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the ticket. In the event a defective ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective ticket with another unplayed ticket in that Instant Game (or a ticket of equivalent sales price from any other current Instant Lottery game) or refund the retail sales price of the ticket, solely at the Executive Director's discretion.

2.2. Programmed Game Parameters.

A. Consecutive non-winning tickets within a book will not have identical patterns.

B. The player can win once in play area 1.

C. The WINNING NUMBER and YOUR NUMBERS will range from 01 through 15 in play area 1.

D. On winning tickets all four non-winning YOUR NUMBERS will be different in play area 1.

E. On non-winning tickets all five YOUR NUMBERS will be different in play area 1.

F. No ticket will have four or more like Play symbols on a ticket in play area 2

G. No ticket will contain two sets of three like Play symbols in play area 2.

H. Players can win once in play area 2.

I. Winning tickets in play area 3 will reveal a "HAT" play symbol.

J. Winning tickets in play area 3 will win only $20.00.

K. Non-winning tickets will display one of the non-winning play symbols.

2.3. Procedure for Claiming Prizes.

A. To claim a "TEXAS GLORY" Instant Game prize of $2.00, $4.00, $5.00, $10.00, $20.00, $50.00, $70.00, or $100, a claimant shall sign the back of the ticket in the space designated on the ticket and present the winning ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, make payment of the amount due the claimant and physically void the ticket; provided that the Texas Lottery Retailer may, but is not, in some cases, required to pay a $70.00 or $100 ticket. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and 2.3.C of these Game Procedures.

B. To claim a "TEXAS GLORY" Instant Game prize of $2,000 or $20,000, the claimant must sign the winning ticket and present it at one of the Texas Lottery's Claim Centers. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning ticket for that prize upon presentation of proper identification. When paying a prize of $600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. As an alternative method of claiming a "TEXAS GLORY" Instant Game prize, the claimant must sign the winning ticket, thoroughly complete a claim form, and mail both to: Texas Lottery Commission, Post Office Box 16600, Austin, Texas 78761-6600. The risk of sending a ticket remains with the claimant. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

D. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct a sufficient amount from the winnings of a person who has been finally determined to be:

1. delinquent in the payment of a tax or other money collected by the Comptroller, the Texas Workforce Commission, or Texas Alcoholic Beverage Commission;

2. delinquent in making child support payments administered or collected by the Attorney General; or

3. delinquent in reimbursing the Texas Department of Human Services for a benefit granted in error under the food stamp program or the program of financial assistance under Chapter 31, Human Resource Code;

4. in default on a loan made under Chapter 52, Education Code; or

5. in default on a loan guaranteed under Chapter 57, Education Code

F. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

2.4. Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;

B. if there is any question regarding the identity of the claimant;

C. if there is any question regarding the validity of the ticket presented for payment; or

D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.D of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5. Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize of less than $600 from the "TEXAS GLORY" Instant Game, the Texas Lottery shall deliver to an adult member of the minor's family or the minor's guardian a check or warrant in the amount of the prize payable to the order of the minor.

2.6. If a person under the age of 18 years is entitled to a cash prize of more than $600 from the "TEXAS GLORY" Instant Game, the Texas Lottery shall deposit the amount of the prize in a custodial bank account, with an adult member of the minor's family or the minor's guardian serving as custodian for the minor.

2.7. Instant Ticket Claim Period. All Instant Game prizes must be claimed within 180 days following the end of the Instant Game. Any prize not claimed within that period, and in the manner specified in these Game Procedures and on the back of each ticket, shall be forfeited.

3.0. Instant Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of an Instant Game ticket in the space designated therefor, a ticket shall be owned by the physical possessor of said ticket. When a signature is placed on the back of the ticket in the space designated therefor, the player whose signature appears in that area shall be the owner of the ticket and shall be entitled to any prize attributable thereto. Notwithstanding any name or names submitted on a claim form, the Executive Director shall make payment to the player whose signature appears on the back of the ticket in the space designated therefor. If more than one name appears on the back of the ticket, the Executive Director will require that one of those players whose name appears thereon be designated by such players to receive payment.

B. The Texas Lottery shall not be responsible for lost or stolen Instant Game tickets and shall not be required to pay on a lost or stolen Instant Game ticket.

4.0. Number and Value of Instant Prizes. There will be approximately 20,295,250 tickets in the Instant Game Number 207. The approximate number and value of prizes in the game are as follows:

Table 3

Figure 3: GAME NO. 207 - 4.0

Prize Amount	Approximate Number of Prizes *	Approximate Odds are 1 in **
$2.00	1,785,961	11.36
$4.00	1,623,578	12.50
$5.00	324,745	62.50
$10.00	202,896	100.03
$20.00	202,986	99.98
$50.00	82,880	244.88
$70.00	37,965	534.58
$100	7,653	2,651.93
$2,000	203	99,976.60
$20,000	28	724,830.36

*The number of actual winners may vary based on sales, distribution, and number of prizes claimed.

**The overall odds of winning a prize are 1 in 4.75. The individual odds of winning for a particular prize level may vary based on sales, distribution, and number of prized claimed.

A. The actual number of tickets in the game may be increased or decreased at the sole discretion of the Texas Lottery.

5.0. End of the Instant Game. The Executive Director may, at any time, announce a closing date (end date) for the Instant Game Number 207 without advance notice, at which point no further tickets in that game may be sold.

6.0. Governing Law. In purchasing an Instant Game ticket, the player agrees to comply with, and abide by, these Game Procedures for Instant Game Number 207, the State Lottery Act (Texas Government Code, Chapter 466), applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401, and all final decisions of the Executive Director.

TRD-200105094

Kimberly L. Kiplin
General Counsel
Texas Lottery Commission
Filed: August 28, 2001

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Texas Natural Resource Conservation Commission

Notice of Availability

Notice is hereby given that the Texas Natural Resource Conservation Commission (TNRCC) has available revised draft versions of the following sections of the *Procedures to Implement the Texas Surface Water Quality Standards* (IP): "Modeling Dissolved Oxygen," "Collecting Site-Specific Data," "Calculating Permit Limits for Silver," "Whole Effluent Toxicity Testing (Biomonitoring)," "TPDES Storm Water Permits," and the part of "Site-Specific Numerical Standards for Aquatic Life" that discusses water-effect ratios.

The commission approved the IP in November 2000 and sent it to the United States Environmental Protection Agency (EPA) for approval. The EPA instead made substantial comments on three chapters of the IP ("Modeling Dissolved Oxygen," "Whole Effluent Toxicity Testing (Biomonitoring)," and "TPDES Storm Water Permits"). In accordance with Series 23 of the TNRCC's Continuing Planning Process (CPP), the commission will take written comments on the proposed changes that were made in response to the EPA's comments and on the three additional sections that have been revised for clarity. The public comment period begins September 7, 2001 and ends October 8, 2001.

Written comments on the proposed changes should refer to the title of the document and may be submitted to Ms. Faith Hambleton, Texas Natural Resource Conservation Commission, Water Quality Assessment Section, MC 150, P.O. Box 13087, Austin, Texas 78711-3087, or at (512) 239-4600. Comments may be faxed to (512) 239-4420, but written comments must follow. Written comments must be received by **5:00 p.m. on October 8, 2001**. For further information concerning this proposal, please contact Faith Hambleton.

Copies of these sections of the IP will be available for viewing in the TNRCC Regional offices, the TNRCC library in Austin, Texas, and on the TNRCC website: *http://www.tnrcc.state.tx.us/permitting/waterperm/wqstand/revisions.html.* Copies will be available for mailing by **August 31, 2001**. Requests for copies should be sent to Bettye Young, Texas Natural Resource Conservation Commission, Water Quality Assessment Section, MC 150, P.O. Box 13087, Austin, Texas 78711-3087, or at (512) 239-4424.

TRD-200105096
Ramon Dasch
Acting Division Director, Environmental Law Division
Texas Natural Resource Conservation Commission
Filed: August 29, 2001

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Notice of District Petition

TNRCC Internal Control Number 11022000-D03; Teal Creek West, Inc., a Texas corporation, filed a petition for creation of Fort Bend-Waller Counties Municipal Utility District Number 1 with the Texas Natural Resource Conservation Commission (TNRCC). The petition was filed pursuant to Article XVI, Section 59 of the Constitution of the State of Texas; Chapters 49 and 54 of the Texas Water Code; 30 Texas Administrative Code Chapter 293; and the procedural rules of the TNRCC. The petition states that: (1) the petitioner is the owner of a majority in value of the land to be included in the proposed District; (2) that petitioner represents that Brookshire Lending Group and R. Judd Cribbs, Trustee are the only lien holders of the property to be included in the proposed district ; (3) the proposed District will contain approximately 597.302 acres located within Fort Bend and Waller County, Texas; and (4) the proposed District is not within the extraterritorial jurisdiction of any city. According to the petition, a preliminary investigation has been made to determine the cost of the project, and it is estimated by the petitioners, from the information available at this time, that the cost of said project will be approximately $23,300,000.

The TNRCC may grant a contested case hearing on this petition if a written hearing request is filed within 30 days after the 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) the name of the petitioner and the TNRCC Internal Control Number; (3) the statement "I/we request a contested case hearing"; (4) a brief description of how you would be affected by the petition in a way not common to the general public; and (5) the location of your property relative to the proposed district's boundaries. You may also submit your proposed adjustments to the petition which would satisfy your concerns. Requests for a contested case hearing must be submitted in writing to the Office of the Chief Clerk at the address provided in the information section below.

The Executive Director may approve the petition unless a written request for a contested case hearing is filed within 30 days after the newspaper publication of this notice. If a hearing request is filed, the Executive Director will not approve the petition and will forward the petition and hearing request to the TNRCC Commissioners for their consideration at a scheduled Commission meeting. If a contested case hearing is held, it will be a legal proceeding similar to a civil trial in state district court.

Written hearing requests should be submitted to the Office of the Chief Clerk, MC 105, TNRCC, P.O. Box 13087, Austin, 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-200105101
LaDonna Castañuela
Chief Clerk
Texas Natural Resource Conservation Commission
Filed: August 29, 2001

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Notice of Public Hearing

In accordance with the requirements of Texas Government Code, Chapter 2001, Subchapter B, the Texas Natural Resource Conservation Commission (TNRCC or commission) will conduct a public hearing to receive testimony concerning the proposed amendments to 30 TAC Chapter 90, Regulatory Flexibility.

These rules are needed to implement House Bill (HB) 2997 to be read in conjunction with HB 2912, §1.12 which amended the Texas Water Code by adding new §5.127 and §5.131 to require the commission to encourage the use of environmental management systems (EMS) through regulatory incentives. Additionally, HB 2997 lists examples of what types of incentives the commission may offer; lists the minimum requirements of what must be contained in an EMS; and mandates the commission incorporate the use of EMSs into its permitting,

enforcement, and assistance processes; develop model EMSs for small businesses and local governments and establish performance indicators to measure how the program performs. HB 2997 requires the commission to adopt these rules by December 1, 2001.

A public hearing on this proposal will be held in Austin on September 27, 2001 at 10:00 a.m., in Building C, Room 131E at the commission's central office located at 12100 Park 35 Circle. The hearing will be structured for the receipt of oral or written comments by interested persons. Individuals may present oral statements when called upon in order of registration. There will be no open discussion during the hearing; however, an agency staff member will be available to discuss the proposal 30 minutes prior to the hearing and will answer questions before and after the hearing.

Comments may be submitted to Angela Slupe, Office of Environmental Policy, Analysis, and Assessment, MC 205, P.O. Box 13087, Austin, Texas 78711-3087 or faxed to (512) 239-4808. Comments must be received by 5:00 p.m., October 8, 2001 and should reference Rule Log Number 2001-040-090-AD. This proposal is available on the commission's web site at *http://www.tnrcc.state.tx.us/oprd/rules/propadopt.html*. For further information, please contact Kathy Ramirez, Policy and Regulations Division at (512) 239-6757.

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.

TRD-200105010
Ramon Dasch
Acting Director, Environmental Law Division
Texas Natural Resource Conservation Commission
Filed: August 24, 2001

Notice of Public Hearing

In accordance with the requirements of Texas Government Code, Chapter 2001, Subchapter B, the Texas Natural Resource Conservation Commission (TNRCC or commission) will conduct a public hearing to receive testimony concerning the proposed amendments to 30 TAC Chapter 220, Regional Assessments of Water Quality; Chapter 303, Operation of the Rio Grande; and Chapter 304, Watermaster Operations.

The proposed amendments to three chapters would change the assessment of watermaster fees and water quality management fees against a holder of a non-priority hydroelectric right that owns or operates privately-owned facilities that collectively have a capacity of less than two megawatts. The proposed rules would exempt these privately-owned hydroelectric facilities from payment of watermaster fees and water quality management fees. These rules are needed to implement Senate Bill 289, 77th Legislature, 2001, which amended Texas Water Code (TWC), §11.329 and §11.404 and TWC, §26.0135.

A hearing will be held on this proposed rulemaking on October 4, 2001 at 10:00 a.m. at the Texas Natural Resource Conservation Commission Region 13 Office, 14250 Judson Road, San Antonio, Texas. The hearing is structured for the receipt of oral or written comments by interested persons. Individuals may present oral statements when called upon in order of registration. Open discussions will not occur during the hearing; however, an agency staff member will be available to discuss the proposal 30 minutes prior to the hearing and will answer questions before and after the hearing.

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 2001-048-304-WT. Comments must be received by 5:00 p.m., October 8, 2001. This proposal is available on the commission's web site at *http://www.tnrcc.state.tx.us/oprd/rules/propadopt.html*. For further information contact Melissa Estes, Policy and Regulations Division, at (512) 239-3937.

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.

TRD-200105014
Ramon Dasch
Acting Director, Environmental Law Division
Texas Natural Resource Conservation Commission
Filed: August 24, 2001

Notice of Water Rights Application

Notices mailed during the period August 8, 2001 through August 28, 2001.

APPLICATION NUMBER 5731; The Lower Colorado River Authority, applicant, P.O. Box 220, Austin, Texas 78767, seeks a Water Use Permit pursuant to 11.121 of the Texas Water Code, and Texas Natural Resource Conservation Commission Rules 30 TAC 295.1 et seq. The applicant is seeking authorization to divert, store and use those excess flood waters and those unappropriated flows of the Colorado River Basin downstream of O.H. Ivie Reservoir and downstream of Lake Brownwood, in an amount not to exceed 853,514 acre-feet of water annually. O.H. Ivie Reservoir is located on the Colorado River in Coleman, Concho, and Runnels Counties. Lake Brownwood is located on Pecan Bayou, tributary of the Colorado River, in Brown County. The applicant seeks authorization to divert and use the requested appropriation of water at nine of the applicant's authorized existing diversion points downstream of the U.S.G.S. streamflow gage at Columbus in Colorado County. The maximum combined diversion rate from all diversion points will be 40,000 cubic feet per second (cfs). The applicant is also seeking authorization to construct an unspecified number of off-channel reservoirs within Colorado, Wharton and Matagorda Counties with a maximum combined storage capacity of 500,000 acre-feet and a maximum combined surface area of 25,408 acres. In order to estimate the maximum total surface area of the reservoirs, the maximum evaporative losses from the reservoirs, and the maximum total yield from the reservoirs, the applicant indicates that, for those purposes, assumptions were made that at the maximum normal operating level of the reservoirs, the approximate depth of the reservoirs would be no more than 45 feet and no less than 20 feet. The applicant indicates that the estimated combined maximum annual evaporation from the off-channel reservoirs would be 82,264 acre-feet, based on a maximum surface area estimate of the reservoirs, assuming an approximate water depth of 20 feet in the reservoirs. The maximum combined annual diversion of water from the off-channel reservoirs would be not exceed 327,591 acre-feet, based on an assumed maximum approximate water depth of 45 feet within the reservoirs, at the maximum normal operating level, with a maximum combined diversion rate from the off-channel reservoirs of 4000 cubic feet per second (or 1,785,200 gallons per minute). Applicant estimates that the maximum monthly demand from the off-channel reservoirs would be 110,000 acre-feet based on an assumed capability of diverting one third of the annual total of

327,591 acre-feet in a single month. The reservoirs would be off-channel, in that no natural inflows from watercourses in the Colorado River Basin watershed would be captured and impounded by the reservoirs. Watercourses which are tributaries of the Colorado River Basin watershed and which may be currently located within the boundaries of the reservoir sites, would be redirected to flow around the perimeter of the reservoir sites, in order to maintain local drainage, runoff, and natural streamflow in the immediate area of the selected reservoir sites. The specific location of the off-channel reservoirs has not been determined by the applicant with the exception that the three counties--Colorado, Wharton, and Matagorda Counties have been identified as the general location of the reservoirs. Approval by the Commission of an amendment or amendments to the applicant's permit for this appropriation of state water would be required prior to the construction of the off-channel reservoirs. The applicant is seeking authorization to use the water requested in this application anywhere within the applicant' authorized water service area and/or such other areas that hereinafter may be authorized by law. The purposes of use will be municipal, industrial, irrigation, and/or agricultural. Appropriate instream flows and bay and estuary inflow requirements will be determined by the Commission in consultation with the Texas Parks and Wildlife Department. The application is subject to the Texas Coastal Management Program (CMP) and must be consistent with the CMP goals and policies. The application was received on March 31, 1999 and declared to be administratively complete on February 28, 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. The TNRCC may grant a contested case hearing on this application if a written hearing request is filed within 30 days from the date of newspaper publication of this notice. The Executive Director may approve the application unless a written request for a contested case hearing is filed within 30 days after newspaper publication of this notice.

APPLICATION NUMBER 19-1155B; Canyon Regional Water Authority, 850 Lakeside Pass, New Braunfels, Texas 78130, applicant seeks to amend Certificate of Adjudication No. 19-1155, as amended, pursuant to Texas Water Code 11.122 and Texas Natural Resource Conservation Commission Rules 30 TAC §§295.1, et seq. Certificate of Adjudication No. 19-1155, as amended, authorizes the owner to divert and use not to exceed 42 acre-feet of water per annum from a point on Cibolo Creek, tributary of the San Antonio River, in the San Antonio River Basin for municipal and irrigation use. The diversion point is on the northwest bank of the Cibolo Creek which is N 68 degrees 10' E, 12,000 feet from the southwest corner of the Eusebio Almaquez Survey No. 236, Abstract No. 37, Wilson County, Texas. The maximum diversion rate is 2.0 cfs (900 gpm). The time priority is January 10, 1950. Applicant seeks to amend Certificate of Adjudication No. 19-1155, as amended, by increasing the amount authorized for diversion from 42 acre-feet of water per annum to 5,042 acre-feet of water per annum for irrigation and municipal purposes. Applicant also seeks to increase the maximum diversion rate to 42 cfs (18,849.6 gpm). Applicant has indicated that the additional 5,000 acre-feet of water will only be diverted when the stream flow, as measured at the US Hwy. 123 gauging station, on Cibolo Creek exceeds 9.6 cfs. Applicant has also indicated that for stream flows between 9.6 to 27 cfs the maximum instantaneous diversion will be 7 cfs (3,141.6 gpm), for stream flows between 27 to 125 cfs the maximum instantaneous diversion will be 21 cfs (9,424.8 gpm), and for stream flows in excess of 125 cfs, the maximum instantaneous diversion will be 42 cfs (18,849.6 gpm). The application was received on August 21, 2000. Additional information was received on December 1, 2000, February 27, 2001, and June 27, 2001. The application was determined to be administratively complete on July 5, 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. The TNRCC may grant a contested case hearing on this application if a written hearing request is filed within 30 days from the date of newspaper publication of this notice. The Executive Director may approve the application unless a written request for a contested case hearing is filed within 30 days after newspaper publication of this notice.

APPLICATION NUMBER 5742; City of Bellaire, 7008 South Rice, Bellaire, Texas 77401, applicant seeks a Water Use Permit pursuant to Texas Water Code 11.121 and Texas Natural Resource Conservation Commission Rules 30 TAC 295.1, et seq. Applicant seeks authorization to divert and use not to exceed 3,254 acre-feet of water per annum from Brays Bayou at Cypress Ditch, tributary of Buffalo Bayou, tributary of San Jacinto River in the San Jacinto River Basin, Harris County, Texas for municipal use. The water will be diverted from three pumps at the same location. The combined maximum diversion rate will be 13.37 cfs (6,000 gpm). The diversion point is located 7.6 miles in a southwest direction from Houston, Texas, also being at 29.688 degrees N Latitude and 95.447 degrees W Longitude. Bearing, N 48 degrees E, 750 feet from the southeast corner of the P. W. Rose Survey Original Survey, Abstract 645, Harris County, Texas. The applicant will be returning approximately 2,190 acre-feet of water per annum to the Cypress Ditch a tributary of Brays Bayou, tributary of Buffalo Bayou, a tributary of the San Jacinto River. The return point is located at 29.690 degrees N Latitude and 96.449 degrees W Longitude, also bearing N 22 degrees W, 1,400 feet from the southwest corner of the P.W. Rose Survey Original Survey, Abstract 645, Harris County, Texas. The application was received on August 14, 2000. Additional information was received on October 3, 2000, December 18, 2000 and June 22, 2001. The application was determined to be administratively complete on July 6, 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. 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.

Information Section

A public meeting is intended for the taking of public comment, and is not a contested case hearing. A public meeting will be held if the Executive Director determines that there is a significant degree of public interest in an application.

The Executive Director can consider approval of an application unless a written request for a contested case hearing is filed. To request a contested case hearing, you must submit the following: (1) your name (or for a group or association, an official representative), mailing address, daytime phone number, and fax number, if any: (2) applicant's name and permit number; (3) the statement "[I/we] request a contested case hearing;" and (4) a brief and specific description of how you would be affected by the application in a way not common to the general public. You may also submit any proposed conditions to the requested application which would satisfy your concerns. Requests for a contested case hearing must be submitted in writing to the TNRCC Office of the Chief Clerk at the address provided in the information section below.

If a hearing request is filed, the Executive Director will not issue the requested permit and may forward the application and hearing request to the TNRCC Commissioners for their consideration at a scheduled Commission meeting.

Written hearing requests, public comments or requests for a public meeting should be submitted to the Office of the Chief Clerk, MC 105, TNRCC, P.O. Box 13087, Austin, Texas 78711-3087. For information concerning the hearing process, please contact the Public Interest Counsel, MC 103, at the same address. For additional information, individual members of the general public may contact the Office of Public Assistance at 1-800-687-4040. General information regarding the TNRCC can be found at our web site at www.tnrcc.state.tx.us.

TRD-200105103
LaDonna Castañuela
Chief Clerk
Texas Natural Resource Conservation Commission
Filed: August 29, 2001

Proposal for Decision

The State Office of Administrative Hearing (SOAH) issued a Proposal for Decision and Order to the Texas Natural Resource Conservation Commission (TNRCC) on August 16, 2001, Executive Director of the Texas Natural Resource Conservation Commission, Petitioner v. (Entity); Respondent; SOAH Docket Number 582-01-2749; TNRCC Docket Number 2000-0532-WTR-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 North 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 P.O. 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-200105102
Douglas A. Kitts
Agenda Coordinator
Texas Natural Resource Conservation Commission
Filed: August 29, 2001

Notice of Public Hearing by the Texas Natural Resource Conservation Commission on Proposed Revisions to 30 TAC Chapter 70

In accordance with the requirements of Texas Government Code, Chapter 2001, Subchapter B, the Texas Natural Resource Conservation Commission (TNRCC or commission) will conduct public hearings to receive testimony concerning the proposed new section of 30 TAC §70.4, Enforcement Action Using Information Provided by Private Individual.

The proposed new section would implement provisions of House Bill 2912, 77th Texas Legislature, 2001, §1.24 and §18.10, concerning the initiation of enforcement using information provided by a private individual.

Six public hearings on the proposal will be held at the following locations and times: 1.) El Paso City Council Chambers, 2nd Floor, 2 Civic Center Plaza, **El Paso on September 24, 2001, 7:00 p.m.**; 2.) University of Texas at San Antonio (Downtown Campus), Frio Street Building, Room 1.406, 501 Durango, **San Antonio on September 25, 2001, 7:00 p.m.**; 3.) TNRCC Waco Regional Office, 6801 Sanger Ave., Suite 2500, **Waco on September 27, 2001, 7:00 p.m.**; 4.) Arlington City Council Chambers, 1st Floor, 101 W. Abram St., **Arlington on October 1, 2001, 7:00 p.m.**; 5.) Texas A&M University - Corpus Christi, Natural Resources Center, Room 1003, 6300 Ocean Dr., **Corpus Christi on October 2, 2001, 7:00 p.m.**; and 6.) Houston City Hall, 2nd Floor, 901 Bagby, **Houston on October 4, 2001, 7:00 p.m.** 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.

Comments may be submitted to Patricia Durón, MC 205, Texas Natural Resource Conservation Commission, Office of Environmental Policy, Analysis, and Assessment, P.O. Box 13087, Austin, Texas 78711-3087, or by fax to (512) 239-4808. All comments should reference Rule Log Number 2001-029-070-AD. Comments must be received by **5:00 p.m., October 8, 2001**. For further information contact Richard O'Connell at (512) 239-5528.

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.

TRD-200104988
Ramon Dasch
Acting Director, Environmental Law Division
Texas Natural Resource Conservation Commission
Filed: August 23, 2001

Public Utility Commission of Texas

Notice of Application for a Certificate to Provide Retail Electric Service

Notice is given to the public of the filing with the Public Utility Commission of Texas (commission) of an application on August 23, 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 Entergy Solutions Essentials Ltd. for Retail Electric Provider (REP) certification, Docket Number 24549 before the Public Utility Commission of Texas.

Applicant's requested service area is the area of specific transmission and distribution utilities and/or municipal utilities or electric cooperatives in which competition is offered, as follows: SWEPCO and EGSI-Texas.

Persons who wish to comment upon the action sought should contact the Public Utility Commission of Texas, P.O. Box 13326, Austin, Texas 78711-3326, or call the commission's Customer Protection Division at (512) 936-7120 no later than September 14, 2001. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136.

TRD-200105078
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: August 28, 2001

Notice Of Application For Amendment To Service Provider Certificate Of Operating Authority

On August 21, 2001, Rosebud Telephone filed an application with the Public Utility Commission of Texas (PUC or commission) to amend its service provider certificate of operating authority (SPCOA) granted in SPCOA Certificate Number 60236. Applicant intends to (1) reflect assignment of the SPCOA to a newly formed limited liability company, Rosebud Telephone, LLC; (2) expand its geographic scope; and (3) remove the resale-only restriction.

The Application: Application of Rosebud Telephone for an Amendment to its Service Provider Certificate of Operating Authority, Docket Number 24533.

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 September 12, 2001. You may contact the PUC Customer Protection Division at (512) 936-7120. Hearing and speech- impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136. All correspondence should refer to Docket Number 24533.

TRD-200104973
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: August 23, 2001

Notice of Application for Amendment to Service Provider Certificate of Operating Authority

On August 22, 2001, 877-Ring Again filed an application with the Public Utility Commission of Texas (PUC) to amend its service provider certificate of operating authority (SPCOA) granted in SPCOA Certificate Number 60145. Applicant intends to remove the resale- only restriction.

The Application: Application of 877-Ring Again for an Amendment to its Service Provider Certificate of Operating Authority, Docket Number 24546.

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 September 12, 2001. You may contact the PUC Customer Protection Division at (512) 936-7120. Hearing and speech- impaired individuals with text telephone (TTY) may contact the PUC at (512) 936-7136. All correspondence should refer to Docket Number 24546.

TRD-200105006
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: August 24, 2001

Notice of Application for Certificate of Operating Authority

Notice is given to the public of the filing with the Public Utility Commission of Texas (commission) of an application on August 22, 2001, for a certificate of operating authority (COA), pursuant to §§54.101 - 54.105 of the Public Utility Regulatory Act (PURA). A summary of the application follows.

Docket Title and Number: Application of Verizon Avenue Corporation for a Certificate of Operating Authority, Docket Number 24548 before the Public Utility Commission of Texas.

Applicant intends to provide plain old telephone service and high speed bundled Internet services.

Applicant's requested COA geographic area includes the entire state of Texas.

Persons who wish to comment upon the action sought should contact the Public Utility Commission of Texas, P.O. Box 13326, Austin, Texas 78711-3326, or call the commission's Customer Protection Division at (512) 936-7120 no later than September 12, 2001. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136.

TRD-200105007
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: August 24, 2001

Notice of Application for Waiver of Denial by NANPA of Request for a Second NXX Code

Notice is given to the public of the filing with the Public Utility Commission of Texas (commission) of an application on August 20, 2001, for waiver of denial by the North American Numbering Plan Administrator (NANPA) of applicant's request for NXX codes.

Docket Title and Number: Application of AT&T Communications of Texas, L.P. and Teleport Communications Group-Dallas for Waiver of Denial by NANPA of NXX Code Request. Docket Number 24528.

The Application: On August 20, 2001, AT&T Communications of Texas, L.P. and Teleport Communications Group-Dallas (collectively AT&T or the Applicant), filed with the commission a request that the commission find good cause to waive the NANPA's denial of AT&T's request for NXX codes. Applicant stated that NANPA denied AT&T's request for initial NXX codes to be used to accommodate the expanded calling scopes co-existing in the Roanoke, Arlington, Cedar Hill, McKinney, and Lewisville Rate Centers. The Federal Communications Commission's (FCC) Numbering Resource Optimization Order (NRO Order) amended the FCC's rules to provide that a carrier may challenge the NANPA's decision to withhold numbering resources to the appropriate state regulatory commission.

Persons who wish to comment upon the action sought should contact the Public Utility Commission of Texas, by mail at P.O. Box 13326, Austin, Texas, 78711-3326, or call the commission's Customer Protection Division at (512) 936-7120 or toll free at 1-888-782-8477. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136. The deadline for comment is September 21, 2001. All comments should reference Docket Number 24528.

TRD-200105047
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: August 24, 2001

Notice of Application to Amend Certificate of Convenience and Necessity for a Proposed Transmission Line

Notice is given to the public of the filing with the Public Utility Commission of Texas (commission) of an application filed on July 3, 2001,

to amend a certificate of convenience for a proposed 138 kV transmission line in Callahan County pursuant to P.U.C. Substantive Rule §25.101(c)(1)(C) and §§14.001, 37.051, 37.054, 37.056 and 37.057 of the Public Utility Regulatory Act, Texas Utilities Code Annotated (Vernon 1998 & Supplement 2001) (PURA). A summary of the application follows:

Docket Style and Number: Application of the West Texas Utilities Company for a Certificate of Convenience and Necessity for a Proposed 138 kV Transmission Line in Callahan County, Texas, Docket Number 24345.

The Application: On July 3, 2001, West Texas Utilities Company (WTU) filed an application to amend its certificate of convenience and necessity (CCN) for proposed 138 kV transmission line in Callahan County. WTU stated that the proposed 3.12 mile 138 kV line tap from Putnam Substation to the existing South Abilene to Leon Line is necessary to relieve contingency overloads of the Abilene Plant Substation to Putnam 69 kV line and provide reliable service to the new Pecan Bayou 138 kV substation. Pursuant to P.U.C. Substantive Rule §25.101(c)(4), the commission must render a decision approving or denying an application for a certificate within one year of the date of filing of a complete application for such certificate. However, if the application is uncontested, pursuant to P.U.C. Substantive Rule §25.101(c)(5)(C), the application shall be approved administratively within 80 days from the date of filing a complete application.

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. The deadline for intervention in the proceeding will be established. The commission should receive a letter requesting intervention on or before the intervention deadline.

TRD-200104969
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: August 22, 2001

Notice of Application to Amend Certificated Service Area Boundaries

Notice is given to the public of the filing with the Public Utility Commission of Texas (commission) of an Application of Garland Power & Light (GPL) to Amend Certificated Service Area boundaries within Dallas County, Texas filed on August 21, 2001. The commission has jurisdiction over this matter pursuant to §§14.001, 37.051, 37.053, 37.054 and 37.056 of the Public Utility Regulatory Act (PURA) and P.U.C. Substantive Rule §25.101. Pursuant to P.U.C. Substantive Rule §25.101(c)(5)(B), the presiding officer must enter a final order in this docket within 45 days of the filing of the application, if the Applicant's request is deemed a minor boundary change. A summary of the application follows:

Docket Style and Number: Application of Garland Power & Light to Amend Certificated Service Area Boundaries within Dallas County, Texas - Docket Number 24532.

The Application: GPL stated that Williams Funeral Home is constructing a new facility, which would require a three-phase 120/208 for service to the new facility. GPL stated TXU Electric Company (TXU) has a two-phase line in front of the new facility but it would have to be upgraded to a three-phase and the cost to the customer would be extensive. GPL is seeking approval to install a one bore under Garland Road to serve Williams Funeral Home, at a considerably lower cost. GPL attached a letter from TXU supporting this service area exception.

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-200105076
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: August 28, 2001

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. Southwestern Bell Telephone Company's Application for Approval of LRIC Study for Multi-Service Optical Networks-New Private Line Service Offering Pursuant to P.U.C. Substantive Rule §26.215 on or about August 31, 2001, Docket Number 24536.

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 24536. 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-200105077
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: August 28, 2001

Public Notice of Interconnection Agreement

On August 31, 2001, Southwestern Bell Telephone Company, AT&T Communications of Texas, L.L.P., WorldCom, Inc., Sprint Communications Company, L.P. doing business as Sprint, and Sage Telecom, Inc., collectively referred to as applicants, filed interconnection agreements pursuant to §252 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 applications were filed pursuant to the arbitration award issued in *Petition of IP Communications Corporation to Establish Expedited Public Utility Commission of Texas Oversight Concerning Line Sharing Issues* and *Complaint of Covad Communications Company and Rhythms Links, Inc. Against Southwestern Bell Telephone Company for Post-Interconnection Agreement Dispute Resolution and Arbitration under the Telecommunications Act of 1996 Regarding Rates, Terms, Conditions,*

and Related Arrangements for Line Sharing. The consolidated applications have been designated Docket Numbers 22168 and 22469. The petition for arbitration, arbitration award, and the underlying interconnection agreements are available for public inspection at the commission's offices in Austin, Texas.

The FTA authorizes the commission to review and approve an interconnection agreement that is a result of arbitration. Pursuant to FTA §252(e)(2) the commission may reject any agreement resulting from an arbitration award if it finds that the agreement does not meet the requirements of §251, including the regulations prescribed by the commission pursuant to FTA §251, or the standards set forth in FTA §252(d). Additionally, under FTA §252(e)(3), the commission may establish or enforce other requirements of state law in its review of the agreement, including requiring compliance with intrastate telecommunications service quality standards or requirements.

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 13 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 Numbers 22168 and 22469. The comments shall be filed by September 21, 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) does not meet the requirements of FTA §251, including any Federal Communications' regulation implementing FTA §251; or

b) is not consistent with the standards established in FTA §252(d); or

c) is not consistent with other requirements of state law.

After reviewing any comments, the commission will issue a notice of approval, denial, or determine whether to conduct further proceedings concerning the application. The commission shall have the authority given to a presiding officer pursuant to P.U.C. Procedural Rule §22.202.

Persons with questions about this project or who wish to comment on the applications 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 (888) 782-8477. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136 or use Relay Texas (toll-free) 1 (800) 735-2989. All correspondence should refer to Docket Numbers 22168 and 22469.

TRD-200105093
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: August 28, 2001

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Center for Rural Health Initiatives

MSA Hospital Addendum to the Critical Access Hospital Application

For hospitals that are located in an MSA county, this page must also be completed and included with the application. The criteria listed below will replace the criteria in section III of the Critical Access Hospital Application, titled Eligibility Criteria.

1. A hospital that is located in an MSA or urban county, may be eligible for the Critical Access Hospital Program in the State of Texas if it meets all of the following State requirements under HB 2423 for certification as a "rural" hospital.

The hospital must be located in:

A county with a population of 75,000 persons or less; AND

A county with a population density of less than 100 persons per square mile of land area; AND

A city, municipality or township of 10,000 persons or less; AND

A non-urban or rural Census Tract.

2. A facility must also either meet the Federal requirement OR it must meet at least one of four criteria in order to be designated a "necessary provider". Please check all criteria that apply.

Federal Requirement

The hospital is at least 35 miles* from the nearest hospital.

Necessary Provider

The hospital is the only acute care hospital in the county; OR

The hospital is located in a Federally designated frontier area (designated by the Federal Census); OR

The hospital is located in an area that meets the criteria for designation as a Health Professional Shortage Area (HPSA); OR

The hospital is located in an area that meets the criteria for designation as a Medically Underserved Area (MUA).

Note: Applications will not be accepted, nor Critical Access Hospital status granted to either of the following:

1. Any hospital constructed after May 1, 2001.

2. Any hospital in a city, municipality or township where two or more currently licensed and operating acute care hospital facilities exist.

*To determine distance, use "improved road" miles. An improved road is defined as a road that a government entity maintains for regular use by the public.

TRD-200105016
Mike Easley
Executive Director
Center for Rural Health Initiatives
Filed: August 24, 2001

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Stephen F. Austin State University

Notice of Consultant Contract Award

In compliance with the provisions of Chapter 2254, Subchapter B, Texas Government Code, Stephen F. Austin State University furnishes this notice of consultant contract award. The consultant will identify sources of extramural funding in Washington, DC, to support specific areas of research and development for the University and cooperators; represent the University in meetings with governmental agencies, conservation organizations, industry associations, and private research firms, arrangement briefings for University faculty and staff; and schedule and/or host meetings in Washington, DC. The Request for Proposals was filed in the May 25, 2001 issue of the *Texas Register* (26 TexReg 3669).

The contract was awarded to National Environmental Strategies, Inc., 2600 Virginia Avenue, NW, Suite 550, Washington, DC 20037, for an

estimated value of $90,000.00 plus expenses for the duration of the contract.

The beginning date of the contract is August 1, 2001 and the contract will end on July 31, 2002.

For further information, please call (936)468-4305.

TRD-200105018
R. Yvette Clark
General Counsel
Stephen F. Austin State University
Filed: August 24, 2001

Teacher Retirement System of Texas

Notice of Contract Award

This information is filed in compliance with the notice requirement under the Government Code, §2254.030.

The Teacher Retirement System of Texas (TRS) has contracted with a private consultant to provide consultation services and an evaluation of customer satisfaction (using Mystery Shopping) regarding the current level of customer service provided by TRS.

TRS has executed a contract with Business Resources whose address is 2222 Western Trails, Suite 107, Austin, Texas 78745.

The agreed compensation set forth in the contract is $15,000. The contract is effective beginning August 16, 2001 through October 19, 2001.

Project deliverables are due as follows: development of criteria and instruments due three weeks from the beginning date of the contract; mystery shopping survey data collection due seven weeks from the beginning date of the contract; and database development and the final report are due by the end of the contract period.

TRD-200105052
Charles Dunlap
Executive Director
Teacher Retirement System of Texas
Filed: August 24, 2001

Texas Department of Transportation

Public Notice - Aviation

Public Notice - Aviation: Pursuant to Transportation Code, §21.111, and Title 43, Texas Administrative Code, §30.209, the Texas Department of Transportation conducts public hearings to receive comments from interested parties concerning proposed approval of various aviation projects.

For information regarding actions and times for aviation public hearings, please go to the following web site: **http://www.dot.state.tx.us**

Click on Aviation, click on Aviation Public Hearing. Or, contact Karon Wiedemann, Aviation Division, 150 East Riverside, Austin, Texas 78704, (512) 416-4520 or 800 68 PILOT.

TRD-200104971
Bob Jackson
Deputy General Counsel
Texas Department of Transportation
Filed: August 23, 2001

Texas Water Development Board

Eligible County List

Pursuant to 31 TAC §355.72(a), the Texas Water Development Board (the board), through its executive administrator, publishes the following list of Texas counties which are eligible to apply for financial assistance from the Economically Distressed Areas Program. These counties will continue to be eligible for such assistance until the next list is published which will be 60 days after the executive administrator of the board receives sufficiently reliable statistics to establish the statewide per capita income and unemployment rates for the previous three years, which is anticipated to be in November of 2002. Andrews County, Bee County, Brewster County, Brooks County, Cameron County, Coleman County, Crane County, Crosby County, Culberson County, Dimmit County, Duval County, El Paso County, Frio County, Grimes County, Hall County, Hidalgo County, Hudspeth County, Jeff Davis County, Jim Hogg County, Jim Wells County, Kinney County, Kleberg County, La Salle County, Leon County, Liberty County, Marion County, Maverick County, Mitchell County, Newton County, Nolan County, Panola County, Pecos County, Presidio County, Reagan County, Reeves County, San Augustine County, San Patricio County, Scurry County, Starr County, Terrell County, Tyler County, Upshur County, Upton County, Uvalde County, Val Verde County, Ward County, Webb County, Willacy County, Winkler County, Zapata County, and Zavala County.

TRD-200105095
Suzanne Schwartz
General Counsel
Texas Water Development Board
Filed: August 29, 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
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The *Texas Register* offers the following services. Please check the appropriate box (or boxes).

Texas Natural Resource Conservation Commission, Title 30

❑ **Chapter 285** $25 ❑ update service $25/year *(On-Site Wastewater Treatment)*
❑ **Chapter 290** $25 ❑ update service $25/year *(Water Hygiene)*
❑ **Chapter 330** $50 ❑ update service $25/year *(Municipal Solid Waste)*
❑ **Chapter 334** $40 ❑ update service $25/year *(Underground/Aboveground Storage Tanks)*
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