TEXAS REGISTER

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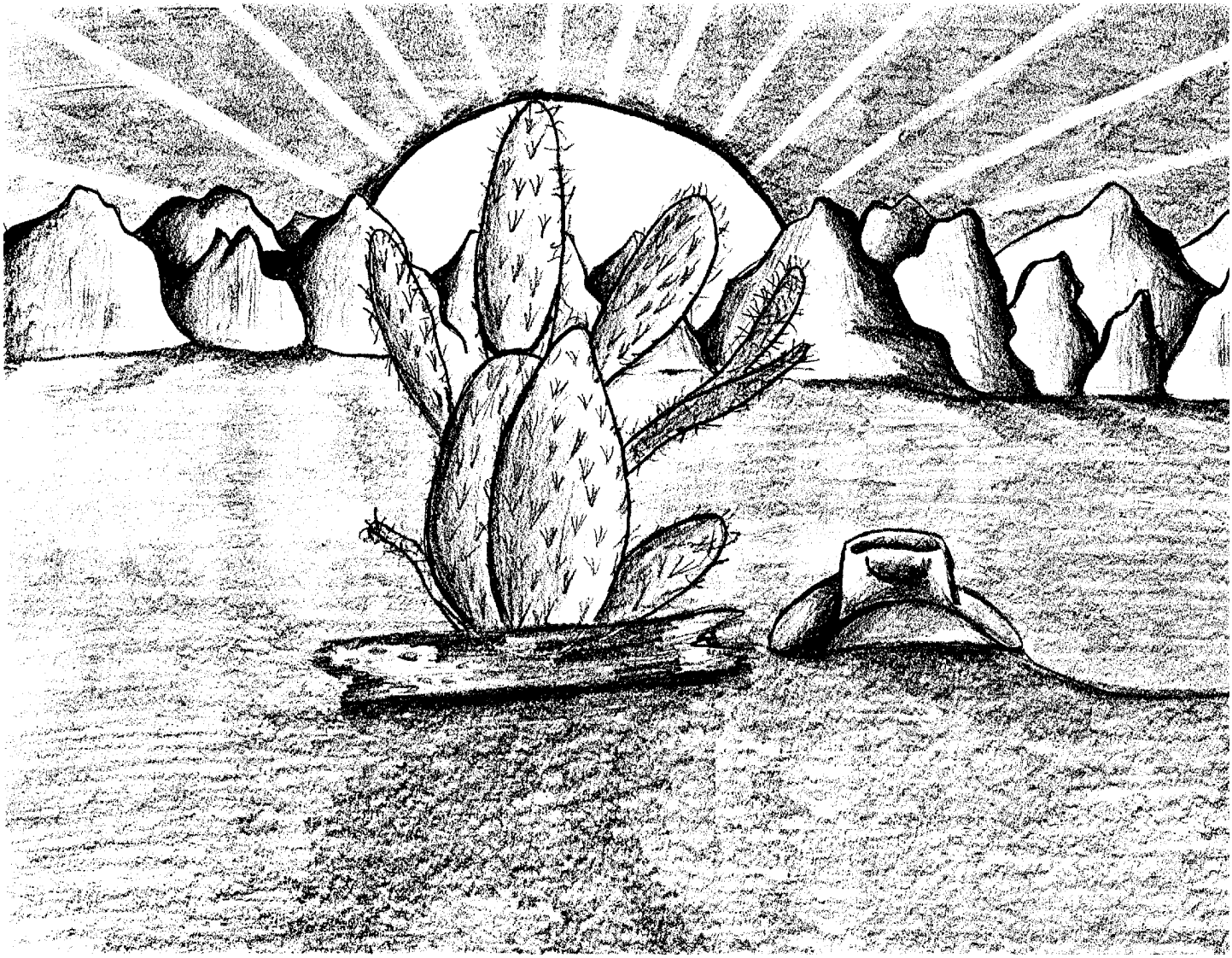

This month's front cover artwork:

Artist: *Louis Marquez*
7th Grade
Dr. Armando Cuellar M.S.

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

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

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

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ATTORNEY GENERAL

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OFFICE OF THE SECRETARY OF STATE

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TEXAS DEPARTMENT OF AGRICULTURE

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CONTESTED CASE HEARINGS

Open Meetings

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

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

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

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

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

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

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-0407.

The Honorable Tim Curry, Tarrant County Criminal District Attorney, 1025 South Jennings, Suite 300, Fort Worth, Texas 76104, regarding whether a hospital district board of managers may appoint its own members to the board of a health maintenance organization created by the district and whether the health maintenance organization's board of directors is subject to the Open Meetings Act (RQ-0362-JC).

S U M M A R Y.

The Tarrant County Hospital District board of managers may appoint its own members to the board of the health maintenance organization ("HMO") established by the Hospital District, but members of the board of managers who also serve on the HMO board must comply with chapter 171 of the Local Government Code whenever participating in a Hospital District vote or decision involving the HMO. Furthermore, in participating in HMO matters involving the interests of both entities, HMO board members who are also members of the board of managers must faithfully carry out their duty to the HMO, consulting and complying with the standards and requirements of the Texas Non-Profit Corporation Act.

Although the HMO board is not a governmental body subject to the Open Meetings Act, the group of Hospital District board of managers members who serve on the HMO board may constitute a governmental body in and of itself if the board of managers has delegated to the group any authority over Hospital District business or rubber-stamps the group's recommendations regarding Hospital District business. In that case, meetings of the HMO board at which the board of managers members consider Hospital District business within that group's control will be subject to the Open Meetings Act.

Opinion No. JC-0408.

The Honorable Michael L. Williams, Chair, Railroad Commission of Texas, P.O. Box 12967, Austin, Texas 78711-2967, regarding whether section 39.9048 of the Utilities Code requires the Railroad Commission to initiate "a program to keep the costs of fuel, such as natural gas, used for generating electricity low" Tex. Util. Code Ann. §39.9048(2) (Vernon Supp. 2001) (RQ-0372-JC).

S U M M A R Y.

Section 39.9048 of the Utilities Code does not require the Railroad Commission to initiate "a program to keep the costs of fuel, such as natural gas, used for generating electricity low." Tex. Util. Code Ann. §39.9048(2) (Vernon Supp. 2001).

Opinion No. JC-0409.

The Honorable Jim Solis, Chair, Economic Development Committee, Texas House of Representatives, P.O. Box 2910, Austin, Texas 78768-2910, regarding furnishing of a social security number as a requirement for a Texas driver's license (RQ-0343-JC).

S U M M A R Y.

Pursuant to 42 U.S.C. §666 (1994 & Supp. IV 1998) and Texas Family Code section 231.302, in order to aid in the collection of child support, the Texas Department of Public Safety must require any and all applicants for a Texas driver's license who possess a social security number to provide that number. Tex. Fam. Code Ann. §231.302 (Vernon Supp. 2001). An individual is not required to have a social security number as a condition of receiving a license.

Opinion No. JC-0410.

The Honorable Bill G. Carter, Chair, House Committee on Urban Affairs, Texas House of Representatives, P.O. Box 2910, Austin, Texas 78768-2910, regarding whether an emergency communication district may expend funds for an item that is not "attributable to designing a 9-1-1 system and to all equipment and personnel necessary to establish and operate a public safety answering point and other related answering points" (RQ- 0365-JC).

S U M M A R Y.

Under sections 772.117, 772.217, and 772.317 of the Health and Safety Code, an emergency communication district may expend funds for an item other than an item "attributable to designing a 9-1-1 system and to all equipment and personnel necessary to establish and operate a public safety answering point and other related answering points." See Tex. Health & Safety Code Ann. §§772.117, .217, .317 (Vernon 1992). To be an allowable operating expense, the expenditure must relate to a 9-1-1 system by which a person in need of emergency assistance may communicate that need to the district and by which the district may respond quickly.

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

TRD-200105614
Susan D. Gusky
Assistant Attorney General
Office of the Attorney General
Filed: September 19, 2001

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Request for Opinions

RQ-0424-JC.

The Honorable Tim Curry. Tarrant County Criminal District Attorney. 401 West Belknap Street. Fort Worth, Texas 76196-0201, regarding constitutionality of article 102.0173, Texas Code of Criminal Procedure, which requires a defendant convicted of a misdemeanor in justice court to pay a "technology fee" as a cost of court (Request No. 0424-JC).

Briefs requested by October 13, 2001.

RQ-0425-JC.

Mr. Jim Loyd, Executive Director, Texas Health Care Information Council, 206 East Ninth Street, Suite 19.140, Austin, Texas 78701, regarding amount of fees which the Texas Health Care Information Council may charge for making hospital inpatients discharge data available to the public (Request No. 0425-JC).

Briefs requested by October 14, 2001.

RQ-0426-JC.

The Honorable Tony Goolsby Chair, Higher Education Committee, Texas House of Representatives, P.O. Box 2910, Austin, Texas 78768-2910, regarding authority of a home-rule city to authorize the use of automated enforcement systems for traffic control enforcement (Request No. 0426-JC).

Briefs requested by October 11, 2001.

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

TRD-200105615
Susan D. Gusky
Assistant Attorney General
Office of the Attorney General
Filed: September 19, 2001

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PROPOSED RULES

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

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

TITLE 1. ADMINISTRATION

PART 4. OFFICE OF THE SECRETARY OF STATE

CHAPTER 81. ELECTIONS

SUBCHAPTER F. PRIMARY ELECTIONS

1 TAC §§81.101 - 81.135

(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the Office of the Secretary of State, Texas Register Division, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The Office of the Secretary of State proposes the repeal of §§81.101 - 81.135, concerning primary elections. The repeal allows for new funding rules to be proposed for the 2002 Primary Elections. These rules deal with expenses relating to the proper conduct of the primary elections by party officials and the procedure for requesting reimbursement by the parties for such expenses.

Geoffrey Connor, Assistant Secretary of State, has determined that for the first five-year period the repeals are in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering the repeals.

Mr. Connor has determined also that for each year of the first five years the repeals are in effect, the public benefit anticipated as a result of enforcing the repeals will be the proper conduct of the 2002 primary elections by party officials with the aid of state money appropriated for that purpose. There will be no effect on small businesses. There will be no anticipated economic cost to the state and the county chairs of the Democratic and Republican parties.

Comments on the proposal may be submitted to the Office of the Secretary of State, Cathie E. Simpkins, Program Administrator for Elections Funds Management, P.O. Box 12060, Austin, Texas 78711.

The repeals are proposed under the Texas Election Code, §31.003 and §173.006, which provides the Office of the Secretary of State with the authority to obtain and maintain uniformity in the application, interpretation, and operation of provisions under the Texas Election Code and other election laws, and, in performing such duties, to prepare detailed and comprehensive written directives and instructions based on such laws, and to adopt rules consistent with the Election Code that reduce the cost of the primary elections or facilitate the holding of the elections within the amount appropriated by the legislature for that purpose.

The Texas Election Code, Chapter 173, Subchapter A, §173.006 is affected by the proposed repeals.

§81.101. Application of Rules.
§81.102. Primary Funds Defined.
§81.103. Bank Account for Primary-Fund Deposits and Expenditures.
§81.104. Signature on Checks; Authorization of Primary-Fund Expenditures.
§81.105. Payee of Checks From Primary-Fund Account Restricted.
§81.106. Deposits.
§81.107. Primary-Fund Records.
§81.108. Transfer of Records to New County Chair.
§81.109. Political-Party Costs not Payable with Primary Funds.
§81.110. Fidelity Bond Purchase.
§81.111. Interest on Start Up Loan to Open Primary Fund Is Not Reimbursable.
§81.112. List of Candidates and Filing Fees.
§81.113. Misuse of State Funds.
§81.114. Conflicts of Interest.
§81.115. Requirement for Competitive Bids for Services or Products.
§81.116. Contracting for Services.
§81.117. Estimating Voter Turnout.
§81.118. Number of Election Workers per Polling Place.
§81.119. Flex Scheduling of Precinct Workers.
§81.120. County Chair's Compensation.
§81.121. Compensation for Election-Day Workers.
§81.122. Compensation for Delivering Election Records and Supplies and Attending Election Schools for Judges.
§81.123. Personnel Payroll Taxes and Benefits.

§81.124. Administrative Personnel Limited.
§81.125. Number of Paper or Electronic-Voting-System Ballots per Voting Precinct.
§81.126. Number of Voting Machines, Punch-Card Voting Devices, or Precinct Ballot Counters per Voting Precinct.
§81.127. Training Reimbursement to Attend County Chairs Election Law Seminar.
§81.128. Office Equipment and Supplies.
§81.129. Telephone and Postage Charges.
§81.130. Office Rental.
§81.131. Payment for Use of County-Owned Equipment.
§81.132. Contracting with the County-Elections Officer (County Clerk, County Elections Administrator, or County Tax Assessor-Collector).
§81.133. Cost of Early Voting To Be Paid by the County.
§81.134. No Charge for Use of a Public Building as Polling Place; Political Conventions.
§81.135. Legal Expenses.

This 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 September 13, 2001.

TRD-200105467
Geoffrey S. Connor
Assistant Secretary of State
Office of the Secretary of State
Earliest possible date of adoption: October 28, 2001
For further information, please call: (512) 463-5701

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1 TAC §§81.101 - 81.135

The Office of the Secretary of State proposes new §§81.101 - 81.135, concerning primary election funding. The new sections concern the financing of the 2002 primary elections with state funds, including the determination of necessary and proper expenses relating to the proper conduct of primary elections by party officials and the procedures for requesting reimbursement by the parties for such expenses.

The new sections are necessary for the proper and efficient conduct of the 2002 primary elections. It is in the public interest to establish adequate procedures to insure the best use of state funding.

Geoffrey Connor, Assistant Secretary of State, has determined that for the first five-year period the sections are in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering the sections.

Mr. Connor has determined also 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 proper conduct of the 2002 primary elections by party officials with the aid of state money appropriated for that purpose. There will be no effect on small business. There will be no anticipated economic cost to the state and county chairs of the Democratic and Republican parties.

Comments of the proposal may be submitted to the Office of the Secretary of State, Cathie Simpkins, Program Administrator for Elections Funds Management, P.O. Box 12060, Austin, Texas, 78711.

The new sections are proposed under §31.003 and §173.006 of the Code, which provide the Office of the Secretary of State with the authority to obtain and maintain uniformity in the application, interpretation, and operation of provisions under the Code and other election laws. It also allows the Secretary of State in performing such duties, to prepare detailed and comprehensive written directives and instructions based on such laws. These sections additionally authorize the Secretary of State to adopt rules consistent with the Code that reduce the cost of the primary elections or facilitate the holding of the elections within the amount appropriated by the legislature for that purpose.

The Texas Election Code, Chapter 173, Subchapter A, §173.006 is affected by these proposed rules.

§81.101. Application of Rules.

(a) This subchapter applies to the use and management of all primary funds.

(b) Approval by the Secretary of State of a Primary Finance Cost Estimate does not relieve the chair, or any employee of the primary fund, of their responsibility to comply with administrative rules issued by the Secretary of State, or with any statute governing the use of primary funds.

§81.102. Primary Funds Defined.

(a) Pursuant to §173.031 of the Texas Election Code, primary funds consist of:

(1) all filing fees;

(2) contributions to the fund;

(3) state appropriations; and

(4) the income earned by the fund.

(b) Any refund of money expended from a primary fund is considered part of the primary fund.

§81.103. Bank Account for Primary-Fund Deposits and Expenditures.

(a) The county chair shall establish and maintain a bank account for the sole purpose of depositing and expending primary funds; any interest earned in such an account becomes part of the primary fund.

(b) The county chair, or any employee of the primary fund, shall not commingle primary funds with any other fund or account.

(c) Each check issued from a primary-funds account must include the following statement on its face: "VOID AFTER 60 DAYS."

(d) The county chair shall complete bank reconciliations on a monthly basis. Bank reconciliations are considered part of the primary-fund records.

§81.104. Signature on Checks; Authorization of Primary-Fund Expenditures.

(a) Except as provided by this section, the county chair, or an authorized agent of the county chair, shall sign all checks drafted on the primary-fund account.

(b) The county chair must authorize all primary-fund expenditures.

(c) The county chair must sign all of the following drawn on a primary-fund account:

(1) checks issued for an amount of $1,000 or greater;

(2) payroll checks to administrative personnel; and

(3) checks to sole-source vendors.

(d) The county chair or an authorized agent shall not sign a check drawn on a primary-fund account with a rubber stamp or other facsimile of the signature.

§81.105. Payee of Checks from Primary-Fund Account Restricted.

(a) Except as provided by this section, an individual, who is authorized to draft primary-fund checks, shall make checks payable to an entity or a person. An individual, who is authorized to draft primary-fund checks, may draft a check payable to "cash" or "bearer" only to establish a petty-cash fund.

(b) An individual authorized to draft primary-fund checks shall not make checks payable to the county party as contributions or to election judges for reimbursement for payments to election clerks.

§81.106. Deposits.

The county chair, or an authorized agent of the county chair, shall:

(1) deposit all filing fees, contributions, and miscellaneous receipts into the primary fund; and

(2) maintain an itemized list detailing the source of all funds deposited into the primary fund including, but not limited to, all candidate filings.

§81.107. Primary-Fund Records.

(a) The county chair shall preserve all records relating to primary-election expenses until the later of:

(1) June 30th of the year following the primary elections; or

(2) the conclusion of any relevant litigation or official investigation.

(b) In order to receive approval of a final cost report, the county chair shall transmit copies of bills, invoices, contracts, petty-cash receipts for items and services over $2,000 and copies of all monthly bank statements, Quicken records, and any other related materials documenting primary-fund expenditures.

(c) Unless otherwise provided by the Secretary of State, not later than July 1 of the year in which the primary elections occur, the county chair shall:

(1) file a completed primary-fund-account reconciliation;

(2) return all unexpended and uncommitted primary funds.

§81.108. Transfer of Records to New County Chair.

(a) The county chair shall transfer in an orderly manner to his or her successor or the appropriate county committee all primary-election records required by law to be maintained.

(b) If a vacancy occurs in the office of county chair, the county executive committee shall appoint an individual to serve as the custodian of primary-election records until a new county chair is appointed or elected.

§81.109. Political-Party Costs not Payable with Primary Funds.

(a) Pursuant to §173.001 of the Texas Election Code, only expenses necessary for and directly related to the conduct of primary elections are payable from primary funds.

(b) Political expenses and expenses for any activity forbidden by statute or rule are not primary costs subject to primary fund reimbursement. Examples of non-payable expenses include, but are not limited to, the following:

(1) expenses incurred in connection with a convention of a political party;

(2) any food or drink items;

(3) stationery not related to the conduct of the primary election; or

(4) costs associated with voter-registration drives or get-out-the-vote campaigns.

§81.110. Fidelity Bond Purchase.

(a) An individual with responsibilities that include the receipt or expenditure of primary funds may purchase a fidelity bond with money from the primary fund.

(b) An individual purchasing a bond under this section shall base the amount of the bond on the anticipated total amount of primary funds that the individual will collect and disburse from December 1 before the primary elections to the last day of the month in which the final primary election occurs. The amount used for the purpose of determining the amount of the bond shall not exceed $50,000, unless a higher amount is approved by the Secretary of State.

§81.111. Interest on Start Up Loan to Open Primary Fund is not Reimbursable.

(a) A party chair may not use primary funds, which are subsequently approved by the Secretary of State, to pay interest on loans used to defray operating expenses incurred prior to the receipt of such funds.

(b) A party chair may receive an initial distribution of primary funds from the Secretary of State by filing a 2002 General Primary Cost Estimate on or before November 2, 2001.

§81.112. List of Candidates and Filing Fees.

Not later than January 14, 2002, the county chair shall file with the Secretary of State a complete list of candidates, including the name of the candidate, the office sought, and the amount of the filing fee paid (or a notation that the candidate filed a petition in lieu of a filing fee). (Note: The amount of filing fees paid must equal the amount reported on the Final Cost Report. If any additions or deletions are made to the list of candidates, after being filed with the Secretary of State, a supplemental list of candidates must be filed with the Secretary of State, the county clerk and the state chair.)

§81.113. Misuse of State Funds.

The Secretary of State shall refer any misuse or misappropriation of primary funds to the appropriate prosecuting authority for the enforcement of all civil and/or criminal penalties.

§81.114. Conflicts of Interest.

(a) No disbursements may be made from the primary fund to the county chair personally, or to an entity or business in which the party, the county chair, the county chair's spouse, or the county chair's family has a financial interest, except for payments for:

(1) election day workers;

(2) incidental administrative costs; or

(3) the county chair's compensation.

(b) For the purposes of this section, "family" is defined as individuals related within the third degree of consanguinity (blood) or the second degree of affinity (marriage). (See the figure in this subsection) Figure: 1 TAC §81.114(b)

§81.115. Requirement for Competitive Bids for Services or Products.

(a) This section does not apply to expenditures of $2,000 or less.

(b) Unless prior approval from the Secretary of State is obtained, the county chair must purchase all services and products, including election kits and assembly kits, using competitive bids from no less than three sources.

(c) The county chair must document or otherwise provide an explanation regarding the lack of available bids from vendors. This documentation or explanation must be submitted with the 2002 General Primary Election Cost Estimate.

(d) If the county chair contracts with the county election official who has a term contract for election supplies or services, then competitive bids are not required for term-contract supplies or services if the county entered the term contract pursuant to regular county purchasing rules.

§81.116. Contracting for Services.

(a) Contractors submitting bids pursuant to §81.115 of this title (relating to Requirement for Competitive Bids for Services or Products) must provide:

(1) no fewer than three references (including the references' names and telephone numbers); and

(2) verifiable proof of at least 18-months experience in providing the service, which is the subject of the bid, to other customers in the contractor's normal course of business.

(b) The county chair must submit all contracts for services for amounts of $2,000 or more to the Secretary of State for approval.

(c) The county chair shall not make payment on any contract subject to subsection (b) of this section prior to receiving written approval of the contract by the Secretary of State.

(d) The county chair shall contract for services at a rate or for a fee that is reasonable for the services rendered. The rate or fee shall be in accordance with the prevailing rate or fee structure used in the area for the same or similar services.

(e) The county chair and the contractor shall sign the contract.

(f) The county chair is responsible for obtaining the Employer Identification Number from each contracting entity and for issuing IRS Form 1099, if required.

§81.117. Estimating Voter Turnout.

(a) The county chair shall use the formula set out in this subsection, with necessary modifications as determined by the chair, to determine the estimated voter turnout for the 2002 primary elections. This general formula must be adjusted if the local political situation indicates a higher voter turnout than that derived by the formula.
Figure: 1 TAC §81.117(a)

(b) After estimating the voter turnout for each precinct, the county chair shall use the guidelines set forth in §§81.118, 81.125, and 81.126 of this title (relating to the Number of Election Workers per Polling Place, Number of Paper or Electronic Voting System Ballots per Voting Precinct, and Number of Voting Machines, Punch-Card Voting Devices, or Precinct Ballot Counters per Voting Precinct) to determine the necessary personnel, supplies, and equipment for each precinct (i.e. ballots, election judges and clerks, voting devices, or machines).

(c) After estimating the need for personnel, supplies, and equipment for each precinct, the county chair shall combine all precinct data to determine the total countywide estimate.

(d) The county chair may use the estimate calculated under subsection (c) of this section to determine the cost of the election.

§81.118. Number of Election Workers per Polling Place.

(a) The county chair shall use the formula set out in this subsection to determine the number of election workers allowable for each polling place.
Figure: 1 TAC §81.118(a)

(b) Each polling place must have, at the minimum, a presiding judge, an alternate judge (clerk), and a clerk.

§81.119. Flex Scheduling of Precinct Workers.

(a) The county chair may hire more than two clerks if the formula provided under §81.118(a) of this title (relating to Number of Election Workers per Polling Place) indicates that more than two clerks are necessary.

(b) If the formula in §81.118(a) of this title indicates that additional election workers are necessary, the presiding judge may hire individuals to work in shifts. The county chair may assign clerks to work in shifts that end before the examination or counting of the ballots begins.

§81.120. County Chair's Compensation.

(a) Pursuant to §173.004 of the Texas Election Code, a county chair may receive compensation for administering primary elections.

(b) The Secretary of State shall not authorize payment under this section until the county party's 2002 Final Primary Election Cost report has been approved. The Secretary of State shall notify the county chair of this approval by letter.

(c) After all other expenses have been paid, the county chair shall be paid with a check drawn on the county's primary-fund account.

(d) The Secretary of State may deny compensation to county chairs who file delinquent final-cost reports.

§81.121. Compensation for Election-Day Workers.

(a) Except as provided by subsection (b) of this section, the compensation paid to polling-place judges, clerks, early-voting-ballot board members, or persons working at the central counting station for the 2002 general-primary and primary-runoff elections shall be $5.15 per hour.

(b) The county chair may pay technical support personnel at the central counting station (appointed under Texas Election Code §§127.002, 127.003, or 127.004) compensation which is more than $5.15 per hour.

(c) Except as provided by this section, a judge or clerk may be paid only for the actual time spent on election duties performed in the polling place or central counting station.

(d) The county chair may allow one election worker from each polling place up to one hour before election day to annotate the precinct list of registered voters.

(e) The county chair is authorized to pay members of the early-voting-ballot board in the following manner:

(1) Members working 10 hours or less may be paid an amount up to 10 full hours, regardless of the actual number of hours worked; or

(2) Members working more than 10 hours will be paid for the actual amount of time worked.

(f) Except as provided by §81.122 of this title (relating to Compensation for Delivering Election Records and Supplies and Attending Election Schools for Judges), the county chair may not pay an election-day worker for travel time, delivery of supplies, or attendance at the precinct convention.

§81.122. Compensation for Delivering Election Records and Supplies and Attending Election Schools for Judges.

(a) The county chair may not authorize hourly reimbursement to an election worker for attending election training.

(b) Training materials may be ordered free of charge from the Secretary of State.

(c) The county chair may not be reimbursed for materials published and provided by the Secretary of State.

(d) Compensation for the election judge or clerk who delivers and picks up the election records, equipment, and unused supplies may not exceed $15 per polling-place location.

(e) The election judge or the judge's designee may receive a delivery fee not to exceed $25, if, in addition to carrying out delivery duties, that person has attended a training program as provided by §32.113 of the Texas Election Code. (The election school referenced in this subsection must be more than one hour in length, and the county chair shall maintain a signed roster of all individuals who attended.)

§81.123. Personnel Payroll Taxes and Benefits.

(a) The county chair shall follow all applicable federal and state laws with respect to payroll taxes. (The County Chairs Bookkeeping Guide provides a table that sets out payroll taxes as they apply to election day workers.)

(b) The county chair may not use primary funds to pay penalties or interest resulting from a failure to file required tax returns or from failure to pay the employer's portion of employment taxes.

(c) The county chair shall maintain copies of all federal and state payroll tax returns and forms, and keep such copies with the county primary records. (The county chair shall also transmit copies of these records to the Secretary of State at the Secretary's request.)

(d) The county chair may not pay for group medical, dental, life insurance or retirement benefits with primary funds.

§81.124. Administrative Personnel Limited.

(a) "Administrative Personnel" means a non-election-day worker.

(b) The employment of administrative personnel is not required for the conduct of the primary elections. (Please note that for the 2000 Primary and Runoff Elections, 385 of the 508 county chairs reported $0 in administrative personnel costs.)

(c) Pursuant to §81.114 of this title (relating to Conflicts of Interest), no member of the county chair's family may be paid an administrative salary from primary funds.

(d) The county chair shall obtain prior written approval from the Secretary of State before administrative personnel are hired under this section. (The Secretary of State encourages the use of part-time administrative personnel.)

(e) If administrative personnel are required for the conduct of the primary election, salaries or wages for such personnel are payable from the primary fund for a period beginning no earlier than December 1, 2001, and ending no later than the last day of the month in which the last primary election is held.

(f) The county chair shall submit to the Secretary of State a list of all necessary personnel to be paid from the primary fund. This list must indicate the name and title of the employee, job duties, hours to be worked, period of employment, monthly or hourly rate of pay, and the estimated or actual gross pay for the period. (The county chair must also attach this information to each primary cost estimate and to the 2002 Final Primary Election Cost Report.)

(g) The county chair shall use the formula set out in this subsection to calculate the maximum total gross salaries that may be paid to administrative personnel. Salaries must be reasonable for the hours worked and services rendered and must reflect the salaries paid for similar work or services in the same area. In no circumstance may an employee who is paid from the primary fund be compensated more than $2,500 for any one-month's work. If an individual is paid from the primary fund and that individual is also leasing space, furniture, or equipment to the party for the primary-election, then the lease amounts must be added to that person's salary to determine whether the allowable administrative-salary limit has been reached.
Figure: 1 TAC §81.124(g)

(h) If the county chair contracts with third parties or the county-elections officer for election services, the overall administrative personnel costs must be reduced to reflect the actual amount of work performed by the primary fund staff. (Administrative personnel costs include, but are not limited to, polling location services, ballot ordering, and secretarial services.)

(i) The Secretary of State may disallow full payment for administrative personnel if it is determined that the contracting county-elections officer substantially performed the conduct of the election.

§81.125. Number of Paper or Electronic-Voting-System Ballots per Voting Precinct.

(a) The county chair shall determine the minimum number of ballots to be furnished to each polling place based on the estimated voter turnout formula established pursuant to §81.117 of this title (relating to Estimating Voter Turnout). The county chair shall not distribute to a polling place fewer ballots than the amount indicated by the formula provided by §81.117(a) of this title.

(b) If the chair determines that more ballots than the minimum are necessary, he or she may order a maximum number of ballots up to an amount that is equal to the number of registered voters in the precinct.

(c) In no event should a polling-place ballot supply be limited so as to impede the voting process or jeopardize voting rights.

§81.126. Number of Voting Machines, Punch-Card Voting Devices, or Precinct Ballot Counters per Voting Precinct.

(a) The county chair shall use the table set out in this subsection to determine the number of voting machines, precinct ballot counters, and punch-card voting devices allowable for each precinct.
Figure: 1 TAC §81.126(a)

(b) In counties where voting machines are used, the county chair should make a special assessment of whether the number of voting machines calculated according to the formula in subsection (a) of this section is adequate. Based on this determination, the chair should adjust the cost estimate and procurement of voting machines.

(c) If a county chair determines that the number of voting machines, precinct ballot counters or punch-card voting devices authorized under the formula is inadequate, he or she must obtain permission from the Secretary of State to obtain additional machines, counters, or devices.

§81.127. Training Reimbursement to Attend County Chairs Election Law Seminar.

(a) Except as provided by this section, the Secretary of State shall reimburse from the state primary fund, the actual travel expenses for the county chair or the county chair's designee to attend the Secretary of State's Election Law Seminar for County Chairs. (The Secretary of State shall provide travel reimbursement forms at the seminar.)

(b) The Secretary of State shall reimburse the county chair or the county chair's designee for:

(1) mileage (if driving personal vehicle);

(2) airfare (coach only);

(3) airport transfers;

(4) airport parking;

(5) lodging; and

(6) any other reasonable expenses related to an individual's attendance at the Election Law Seminar for County Chairs.

(c) The Secretary of State shall use the Official State Mileage Guide to determine distances traveled to attend the Election Law Seminar for County Chairs. The Secretary of State shall reimburse mileage claims based on $.345 per mile.

(d) The Secretary of State shall reimburse actual lodging expenses in an amount not to exceed $80 per day, plus applicable taxes.

(e) As provided by the Texas General Appropriations Act, the Secretary of State shall not make reimbursements for gratuities or tips.

(f) The county chair or the chair's designee must submit actual receipts to the Secretary of State in order to be reimbursed for airfare, lodging, parking, or airport transfers.

(g) The Secretary of State shall make all travel reimbursement warrants payable to the county chair.

§81.128. Office Equipment and Supplies.

(a) Rental of office equipment is not required in order to conduct primary elections.

(b) The county chair may lease office equipment necessary for the administration of the primary elections for a period beginning December 1, 2001, and ending not later than the last day of the month in which the last primary election is held.

(c) The county party may not rent or lease equipment in which the party, the county chair, or a member of the county chair's family has a financial interest. (See definition of "family" in §81.114(b) of this title (relating to Conflicts of Interest).)

(d) The county chair or party shall rent equipment from an entity that has been in business for at least 18 months and has at least three other bona fide clients.

(e) The purchase of office supplies necessary for the administration of the primary election is payable from the primary fund. (This includes the purchase of two paperback copies of the Texas Election Code.)

(f) The county chair or party may be reimbursed for the cost of incidental supplies used in connection with the primary election. (Examples of incidental supplies include paper, toner, and staples.)

(g) The county chair may not use primary funds to purchase any single office-supply item or equipment valued at over $500.

(h) The county chair may not pay notary public expenses from the primary fund.

§81.129. Telephone and Postage Charges.

(a) The Secretary of State shall reimburse necessary telephone and postage costs incurred with respect to the administration of the primary elections beginning no earlier than December 1, 2001 and ending no later than the last day of the month in which the last primary election is held.

(b) In counties with fewer than 150 primary election day polling places, the county party may be reimbursed for the lease of no more than two telephone lines.

(c) In counties with 150 or more primary election day polling places, the county party may be reimbursed for the lease of no more than four telephone lines.

§81.130. Office Rental.

(a) The rental of office space is not required for the conduct of the primary elections. (Please note that for the 2000 Primary and Runoff Elections, 397 of the 508 county chairs reported $0 in office rental costs.)

(b) The Secretary of State shall reimburse necessary office-space-rental expenses incurred with respect to the administration of the primary elections for a period beginning no earlier than December 1, 2001, and ending not later than the last day of the month in which the last primary election is held.

(c) If the rental of office space is necessary, the county party shall rent office space in a regularly rented commercial building.

(d) Office rent shall not exceed the fair market rate for office space currently-rented in the same area.

(e) Unless such services are required in accordance with the lease agreement, no payment may be made with primary funds for janitorial services, parking, or signage.

(f) The county party may not rent or lease office space in which the party, the county chair, the county chair's spouse, or the county chair's family has a financial interest. (See definition of "family" in §81.114(b) of this title (relating to Conflicts of Interest).)

(g) The county chair shall transmit a copy of the lease agreement to the Secretary of State, along with a copy of the 2002 Primary Election Cost Estimate.

(h) The county chair shall transmit to the Secretary of State, with the next primary election cost estimate or report, any change in a lease agreement. The county chair shall also provide an explanation regarding any change in the lease.

§81.131. Payment for Use of County-Owned Equipment.

(a) Section 123.033 of the Texas Election Code provides for the rental rate that a county may charge for the use of its equipment. (The rental rates are $16 per lever-voting machine, $5 per punch-card voting device, and $5 for each unit of tabulating equipment.)

(b) In addition to subsection (a) of this section, the county primary fund may be used to pay the actual expenses incurred by the county in transporting, preparing, programming, and testing the necessary equipment, as well as for staffing the central counting station.

(c) The county shall be reimbursed for actual expenses if the county's computer system is used as the central-counting-station ballot accumulator. (The county shall calculate the cost to be reimbursed by using the same cost-accounting techniques used by the county in charging county departments for use of its data-processing services. If the county does not have such a formula, then the reimbursement shall be calculated based on $1 per 100 ballots tabulated.)

(d) The county chair shall submit all calculations for amounts charged for the use of county-owned equipment to the Secretary of State for review with the 2002 Final Cost Report.

(e) The county chair shall not use primary funds to pay expenses related to the use of noncounty-owned equipment, including ballot boxes and voting booths, without written permission from the Secretary of State.

§81.132. Contracting with the County-Elections Officer (County Clerk, County Elections Administrator, or County Tax Assessor-Collector).

(a) The Model Election Services Contract (the "Model Contract") prescribed by the Secretary of State is adopted by reference. Copies of the Model Contract may be obtained from the Secretary of State.

(b) The county chair shall use the Model Contract when executing an agreement for election services between the county executive committee and the county elections officer. (Contractible election services are listed in Subchapter B of Chapter 31 of the Texas Election Code.)

(c) The county chair shall submit to the Secretary of State for approval any change to the Model Contract or any alternate contract that the chair desires to use. A contract submitted under this subsection may not be executed prior to the chair receiving written approval of the contract from the Secretary of State.

(d) Prior to the time that the chair submits final payment, the county elections officer must submit an accounting of the actual costs incurred in the performance of the election-services contract.

(e) Prior to the final payment of 25% of primary funds, the county chair shall provide to the Secretary of State, along with the Final Cost Report, a detailed billing of all actual costs incurred in the performance of the election-services contract.

(f) The Secretary of State may only pay actual costs incurred by the county and payable under provisions of the Texas Election Code, an election-services contract, or these administrative rules.

(g) A contract may not allow for reimbursement for training of election workers or providing materials published by the Secretary of State.

(h) Salaries of personnel regularly employed by the county may not be paid from or reimbursed to the county from the primary fund.

(i) A county-elections officer may not contract for the performance of any duty or service that he or she is statutorily obligated to perform.

(j) Costs associated with an election-services contract are not counted toward the administrative salary limits established under §81.124 of this title (Administrative Personnel Limited).

§81.133. Cost of Early Voting to Be Paid by the County.

(a) Pursuant to §173.003 of the Texas Election Code, the only expense to be paid from primary funds for early voting is ballot costs.

(b) The county shall pay for voting-by-mail kits and their postage, early-voting workers, and all other costs incurred that are related to early voting.

(c) The county chair shall not include expenses related to early voting in a primary-election-services joint resolution or a primary cost report. (Note: Expenses related to the early-voting-ballot board are payable from the primary fund.)

§81.134. No Charge for Use of a Public Building as Polling Place; Political Conventions.

(a) Pursuant to §43.033 of the Texas Election Code, no charge may be made for the use of a public building as a polling place if that building is normally open for business on election day.

(b) A central counting station is subject to subsection (a) of this section.

(c) Primary funds may not be used to pay any charge for the use of a building for a state or county political convention.

§81.135. Legal Expenses.

(a) The county chair shall contact the Secretary of State's Elections Division for legal advice concerning routine election law questions. (Attorneys with the Elections Division may be reached toll-free by calling 1-800-252-2216. There is no charge for this service.)

(b) The Secretary of State shall not provide primary-fund reimbursement for legal expenses resulting from the negligent or wrongful acts of the county chair, a member of the county executive committee, the county executive committee, or a staff member performing a statutory duty.

(c) The Secretary of State shall only pay legal expenses related to litigation concerning the conduct of the primary election.

(d) The county chair shall contact the Secretary of State before entering into a contract for legal services in order to obtain a determination from the Secretary as to whether the legal services are payable from the primary fund.

(e) The Secretary of State shall not reimburse legal expenses if the county chair fails to notify the Secretary of State of litigation within three business days following the receipt of service of process.

(f) Not later than 14 days after the county chair retains an attorney, the county chair shall provide to the Secretary of State written information concerning the background of the case and an estimate of the cost to defend the case.

(g) The county chair shall provide to the Secretary of State copies of all invoices related to legal expenses. The Secretary of State shall review all invoices for legal expenses and make a determination as to their reasonableness based on the novelty and complexity of the legal issues involved. The Secretary of State shall base payment of legal expenses upon the pay scale currently reflected in the State Bar of Texas Attorney Economic Survey - Hourly Rates in Texas Law Firms.

(h) The county chair shall file a final invoice for legal expenses no later than July 1, 2002, unless the chair has requested and received a written authorization from the Secretary of State to extend the deadline.

(i) All legal billings submitted to the Secretary of State for reimbursement are subject to the Public Information Act (Chapter 552, Texas Government Code).

This 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 September 13, 2001.

TRD-200105469
Geoffrey S. Connor
Assistant Secretary of State
Office of the Secretary of State
Earliest possible date of adoption: October 28, 2001
For further information, please call: (512) 463-5701

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SUBCHAPTER G. JOINT PRIMARY ELECTIONS

1 TAC §§81.145 - 81.157

(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the Office of the Secretary of State, Texas Register Division, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The Office of the Secretary of State proposes the repeal of §§81.145 - 81.157, concerning joint primary elections. The repeal allows for new funding rules to be proposed for the 2002 Joint Primary Elections. These rules deal with expenses relating to the proper conduct of the joint primary elections by party officials and the procedure for requesting reimbursement by the parties for such expenses.

Geoffrey Connor, Assistant Secretary of State, has determined that for the first five-year period the repeals are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the repeals.

Mr. Connor has determined also that for each year of the first five years the repeals are in effect the public benefit anticipated as a result of enforcing the repeals will be the proper conduct of the 2002 joint primary elections by party officials with the aid of state money appropriated for that purpose. There will be no effect on small businesses. There will be no anticipated economic cost to the state and the county chairs of the Democratic and Republican parties.

Comments on the proposal may be submitted to the Office of the Secretary of State, Cathie E. Simpkins, Program Administrator for Elections Funds Management, P.O. Box 12060, Austin, Texas, 78711.

The repeals are proposed under the Texas Election Code, §31.003 and §173.006, which provides the Office of the Secretary of State with the authority to obtain and maintain uniformity in the application, interpretation, and operation of provisions under the Texas Election Code and other election laws, and, in performing such duties, to prepare detailed and comprehensive written directives and instructions based on such laws, and to adopt rules consistent with the Election Code that reduce the cost of the primary elections or facilitate the holding of the elections within the amount appropriated by the legislature for that purpose.

The Texas Election Code, Chapter 172, Subchapter E, §172.026, and Chapter 173, Subchapter A, §173.011, are affected by the proposed repeals.

§81.145. Recommended Deadlines To Comply with Statutory Requirements for the Conduct of Joint Primaries.

§81.146. Applicability of Other Rules.

§81.147. County Clerk/Elections Administrator To Conduct Joint Primary.

§81.148. Appointment of Various Election Officials.

§81.149. Number of Election Workers per Joint Polling Place.

§81.150. Qualifications of Co-judges and Alternates Co-judges.

§81.151. Authority of Co-judge for Joint Primary-Polling Places, Joint-Primary Central Counting Station, and Joint-Primary-Early-Voting-Ballot Board.

§81.152. Estimating Voter Turnout for Joint Primaries.

§81.153. Delivery of Election Records and Supplies.

§81.154. Ballots for Joint Primary Elections.

§81.155. Returning Surplus Funds.

§81.156. Liability of County Clerk or Elections Administrator.

§81.157. Joint-Primary Contract with the County-Elections Officer (County Clerk, County Elections Administrator, or County Tax Assessor Collector).

This 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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Geoffrey S. Connor
Assistant Secretary of State
Office of the Secretary of State
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For further information, please call: (512) 463-5701

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1 TAC §§81.145 - 81.157

The Office of the Secretary of State proposes new §§81.145 - 81.157, concerning joint primary election funding. The new sections concern the financing of the 2002 joint primary elections with state funds, including the determination of necessary and proper expenses relating to the proper conduct of joint primary elections by party officials and the procedures for requesting reimbursement by the parties for such expenses.

The new sections are necessary for the proper and efficient conduct of the 2002 joint primary elections. It is in the public interest to establish adequate procedures to insure the best use of state funding.

Geoffrey Connor, Assistant Secretary of State, has determined that for the first five-year period the sections are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the sections.

Mr. Connor has determined also 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 proper conduct of the 2002 primary elections by party officials with the aid of state money appropriated for that purpose. There will be no effect on small business. There will be no anticipated economic cost to the state and county chairs of the Democratic and Republican parties.

Comments of the proposal may be submitted to the Office of the Secretary of State, Cathie Simpkins, Program Administrator for Elections Funds Management, P.O. Box 12060, Austin, Texas, 78711.

The new sections are proposed under the Texas Election Code, §31.003 and §173.006, which provides the Office of the Secretary of State with the authority to obtain and maintain uniformity in the application, interpretation, and operation of provisions under the Texas Election Code and other election laws. It also allows the Secretary of State in performing such duties, to prepare detailed and comprehensive written directives and instructions based on such laws. These sections additionally authorize the Secretary of State to adopt rules consistent with the Election Code that reduce the cost of the primary elections or facilitate the holding of the elections within the amount appropriated by the legislature for that purpose. The new sections are also adopted under the Texas Election Code, §172.126(c) and (i) and §173.011(c) which provide the Office of the Secretary of State with the authority to prescribe procedures for appointment of election day workers, to ensure orderly and proper administration of as well as fair and efficient financing of joint primary elections.

The Texas Election Code, Chapter 173, Subchapter A, §173.006 is affected by these proposed rules.

§81.145. Recommended Deadlines to Comply with Statutory Requirements for the Conduct of Joint Primaries.

(a) November 16, 2001: Recommended date by which county chairs who wish to conduct a joint primary should meet with the county clerk/elections administrator to determine whether to enter into a joint resolution to conduct the primary, and to determine the estimated number of election judges and clerks, members of the early-voting-ballot-board, and central counting station personnel to be appointed from the parties. Additionally, the parties and the county clerk/elections administrator should determine which voting system(s), ballot formats, and precinct consolidation or combination plans (if applicable) will be used. (It is permissible to create separate consolidation or combination plans for each party, provided that every consolidated or combined precinct has a co-judge representing each party.)

(b) December 1, 2001: Recommended date by which the commissioners court should vote on approval of joint resolution. The joint resolution must include the required number of joint-precinct-polling places and the number of co-judges and clerks for each joint-precinct location. The commissioners court resolution approving the joint primary must also be signed by the county clerk or elections administrator, and the county chair of both parties entering into the agreement.

(c) December 10, 2001 (2nd Monday in December): Statutory date for each party chair to deliver lists of names of election judges and clerks, early-voting-ballot-board members, and central counting station personnel (if applicable) to the county clerk/elections administrator.

(d) January 28, 2002: Deadline to file final cost estimate and joint resolution. Recommended date to make modifications to the joint resolution regarding the number of joint polling places and the number of polling-place personnel. Any modifications must be signed by the county clerk/elections administrator and both party chairs.

§81.146. Applicability of Other Rules.

Except for areas of conflict, the general-primary-finance rules of Subchapter F of this chapter (relating to Primary Elections) apply to the conduct of joint primaries.

§81.147. County Clerk/Elections Administrator to Conduct Joint Primary.

(a) Pursuant to §172.126(a) of the Texas Election Code, the county clerk/elections administrator shall supervise the overall conduct of joint primary elections.

(b) The county clerk/elections administrator is responsible for:

(1) appointing election judges and clerks;

(2) determining the ballot format and type of voting system for each precinct; and

(3) procuring election equipment and supplies.

§81.148. Appointment of Various Election Officials.

(a) Upon receipt of the lists of names of election judges and clerk from each county chair (list must be submitted by December 10, 2001), the county clerk/elections administrator shall select co-judges, co-alternate judges, and appoint clerks (if applicable) for each precinct. (These selections are made in accordance with §32.002(c) of the Texas Election Code and §81.152 of this title (relating to Estimating Voter Turnout for Joint Primary).)

(b) The county clerk/elections administrator shall determine the total number of election workers required and select from the party chairs' list the individuals to be appointed as co-judges, members of the early-voting-ballot board, and central counting station personnel. The county clerk/elections administrator shall ensure party balance in these selections.

(c) If the total number of individuals serving on the early-voting-ballot board or at the central counting station is an odd number, the county clerk/elections administrator shall appoint an additional member from the party whose candidate for governor received the highest number of votes in the county in the most recent gubernatorial general election.

§81.149. Number of Election Workers per Joint Polling Place.

(a) The county clerk/election administrator shall use the table set out in this subsection, to determine the number of election workers allowable for each joint polling place.
Figure: 1 TAC §81.149(a)

(b) Each polling place shall have no less than one co-judge from each party and one clerk from each party.

(c) If the total number of workers is an odd number, the county clerk/elections administrator shall appoint an additional worker from the list of the party whose candidate for governor received the highest number of votes in the precinct in the most recent gubernatorial general election. (If precincts have been consolidated or combined for the joint primary, then the highest number of votes is determined by adding together the votes from the consolidated or combined precincts.)

§81.150. Qualifications of Co-Judges and Alternates Co-Judges.

(a) The presiding co-judge and alternate co-judge must be a qualified voter of a precinct that is included in the consolidated or combined precincts in which they are serving.

(b) If a co-judge or alternate co-judge are not available to serve in an individual precinct, then the county clerk/elections administrator must consolidate or combine that precinct with a precinct that does have a qualified co-judge and alternate co-judge.

§81.151. Authority of Co-Judge for Joint-Primary-Polling Places, Joint-Primary Central Counting Station, and Joint-Primary-Early-Voting-Ballot Board.

(a) A co-judge may only challenge the eligibility of voters from the judge's own party. (This applies to challenges at the polling place or early-voting-ballot board.)

(b) A co-judge may only determine a voter's intent on an irregularly marked ballot cast by a voter from the co-judge's own party. (This limitation applies to individuals serving in a co-judge capacity at the polling place, early-voting-ballot board, or central counting station.)

§81.152. Estimating Voter Turnout for Joint Primaries.

(a) Each county chair shall estimate voter turnout for each precinct using the formula set out in this subsection.
Figure: 1 TAC §81.152(a)

(b) The county clerk/elections administrator shall combine the turnout estimates provided by each party chair for each joint-primary precinct.

(c) The county clerk/elections administrator shall enter this information in Section B of the Joint Primary Resolution.

§81.153. Delivery of Election Records and Supplies.

(a) In joint precincts using an electronic voting system in which only one ballot box is used, the co-judge from the party whose candidate for governor received the highest number of votes in the precinct or consolidated precinct in the most recent gubernatorial general election shall deliver the election supplies. (Note: A county clerk/elections administrator may use separate ballot boxes for each party when using electronic voting systems.)

(b) The co-judge of the party whose candidate for governor received the highest number of votes in the precinct or consolidated precinct in the most recent gubernatorial general election may designate the other co-judge or a clerk to deliver the ballot box.

(c) In a jurisdiction using paper ballots, each co-judge shall deliver their party's ballot box and election returns.

§81.154. Ballots for Joint Primary Elections.

The county clerk/elections administrator shall prepare ballots in a joint primary so that each party's ballots are easily distinguishable. The county clerk or elections administrator may use different colors of paper in order to achieve this distinction. (Note: Yellow paper may not be used. Only sample ballots may be printed on yellow paper.)

§81.155. Returning Surplus Funds.

(a) Immediately following final payment of necessary expenses for conducting the joint primary elections (but no later than July 1 of the last primary election), the county chair shall remit any surplus in the primary fund account to the county clerk/elections administrator. (The county chair shall remit the surplus regardless of whether state funds were requested by the chair.)

(b) The county clerk/elections administrator may use surplus funds received under this section to pay any remaining expenses related to the joint primary.

(c) After making final payment under subsection (b) of this section, the county clerk/elections administrator shall immediately remit any remaining funds to the Secretary of State. (In no event shall the county clerk/elections administrator remit these funds after August 1 following the final primary election for that county.)

§81.156. Liability of County Clerk or Elections Administrator.

The county clerk/elections administrator is not liable, in his or her official or individual capacity, for debts related to the conduct of a joint primary incurred by the county executive committee or county chairs resulting from an insufficient legislative appropriation.

§81.157. Joint-Primary Contract with the County-Elections Officer (County Clerk, County Elections Administrator, or County Tax Assessor Collector).

(a) Before the county chair may make final payment, the county-elections officer must submit to the Secretary of State an accounting of actual costs incurred in conducting the joint-primary election.

(b) Before the Secretary of State may reimburse the final 25% of primary funds requested, the county elections officer must submit to the Secretary of State a detailed billing of all actual costs with the Final Cost Report.

(c) The Secretary of State may only reimburse actual costs incurred by the county and payable pursuant to provisions of the Texas Election Code, a joint primary contract, or an administrative rule.

(d) If the joint elections agreement requires the county-elections officer to directly pay the costs associated with the joint election, then the county chair shall remit the total amount of state funds forwarded to the county chair pursuant to section B of the Final Cost Estimate to the county clerk no later than the fifth day after receipt of the funds.

(e) The cost estimate may not provide for reimbursement for training of election workers or for materials provided by the Secretary of State.

(f) The county may not reimburse from primary-election funds, regular pay for personnel normally employed by the county.

(g) The joint resolution for the 2002 primary elections may not provide for any salary or compensation for the county-elections officer for the performance of any statutory duty or service. (Note: Joint Primary Election Agreements do not count against the administrative salary limits set out under §81.124 of this title (relating to Administrative Personnel Limited).)

This 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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PART 15. TEXAS HEALTH AND HUMAN SERVICES COMMISSION

CHAPTER 355. MEDICAID REIMBURSEMENT RATES

The Texas Health and Human Services Commission (HHSC) proposes amendments to §355.101, concerning introduction, §355.105, concerning general reporting and documentation requirements, methods, and procedures, §355.308, concerning enhanced direct care staff rate, and new §355.312, concerning liability insurance lists, in its Medicaid Reimbursement Rates chapter.

House Bill 154 of the 77th Legislature directed HHSC to ensure that the "rates paid for nursing home services provide for the rate component derived from reported liability insurance costs to be paid only to those homes that purchase liability insurance acceptable to the commission." The purpose of the proposed amendments is to comply with House Bill 154 by creating separate payment rates for nursing facilities such that facilities with acceptable liability insurance will receive higher payment rates that include a separate payment rate component for professional liability insurance and a separate payment rate component for general liability insurance paid to the provider as appropriate.

The spending requirement effective September 1, 2002 will be increased from 85% to 90%. Facilities that fail to meet the spending requirement are subject to recoupment of unexpended funds below 90% of the direct care staff compensation rate component revenues. In recognition of nursing facilities that deliver good care, some of the spending recoupment of facilities that fail to meet their spending requirement will be mitigated for facilities that achieve a high quality index score. The higher the quality index score of the facility, the less recoupment the facility will be required to repay. The proposal will also mitigate staffing recoupments to the extent that enhancements are expended on direct care nursing staff compensation.

For facilities that staff above their required staffing levels, the proposal provides for the distribution of funds that were collected as

recoupments. The distribution would be made to nursing facilities that requested higher enhanced staffing levels than were granted, and achieved the higher levels of staffing.

The calculation of the staffing requirement for private pay residents is being modified to use the facility's average case mix or Texas Index for Level of Effort (TILE) level 207, whichever is lower. Currently the facility's average case mix for Medicaid recipients is used in the calculation of the staffing requirement for private pay residents, because TILE levels are not determined for private pay residents. The proposal will also allow respiratory therapists to be included as direct care staff for the determination of staffing requirements when the facility is receiving the supplemental payment for serving ventilator dependent recipients.

The proposal eliminates the Six-Month Staffing Report and allows contracted providers to elect to combine their Annual Staffing and Compensation Report and their cost report by using the rate year as the reporting period. In addition, beginning with the rate year September 1, 2001 to August 31, 2002, the annual staffing and compensation report must be completed by an individual that has attended the nursing facility cost report training. The proposal also clarifies that undocumented staff and contract labor time will be disallowed from the staffing and compensation reports. The proposal requires facilities that fail to submit an acceptable staffing and compensation report be made non- participants retroactive to the first day of the reporting period in question until an acceptable report is received and any funds owed are recouped.

The proposal clarifies how the days of service and revenue for Medicaid managed care recipients in nursing facilities are used in the calculation of required spending levels. In addition, it clarifies that swing beds in rural hospitals will be paid the minimum participant rate, but are not subject to staffing and spending requirements. The proposal also clarifies when compliance with spending requirements may be evaluated in the aggregate for all nursing facility contracts controlled by a single parent company, sole member or governmental entity.

In addition, the proposal allows HHSC to delay or cancel the annual enhancement enrollment in July if HHSC determines it to be warranted; eliminates references to the implementation period which ended on August 31, 2000; and changes the references from DHS to references for HHSC as the responsible entity for nursing facility payment rates.

Don Green, Chief Financial Officer, has determined that for the first five-year period the sections are in effect there will be no fiscal implications for state government or local governments as a result of enforcing or administering the sections.

Commissioner Don Gilbert has determined that for each year of the first five years the sections are in effect the public benefit anticipated as a result of enforcing the sections will be the creation of separate payment rates for nursing facilities such that facilities with acceptable liability insurance will receive higher payment rates. The option to mitigate staffing recoupments with spending will make the accountability standards more equitable in light of differentials in wages and staff availability across the state and make participation in the enhancement program viable for a greater number of facilities. Increasing the spending requirement to 90% will further expand the accountability of spending on direct care staff. Mitigation of spending recoupments for facilities with high quality index scores will recognize facilities that provide high quality of care at a lower cost than average. Redistributing recouped funds to facilities that staffed above their required staffing levels will reward facilities with high levels of direct care staff. The modification in the private pay staffing requirement recognizes that in some cases facilities may have a high average case mix for their Medicaid recipients and a lower average case mix for their private pay residents. The proposal allows respiratory therapists to be included as direct care staff for the determination of staffing requirements when the facility is receiving the supplemental payment for serving ventilator dependent recipients. The changes in the reporting requirements for the Staffing and Compensation Reports are intended to reduce paperwork, allow the full year for providers to meet their staffing requirement, and improve the quality of the staffing and compensation reports submitted by providers. The proposal clarifies how managed care days of service and revenue are handled in the calculation of required spending levels, how swing beds in rural hospitals will be paid, and that swing beds are not subject to the spending requirements. The proposal allows HHSC to delay or cancel the open enrollment if warranted which will give HHSC the flexibility necessary to successfully administer the enhancement program.

Contracted providers that did not spend 90% of the direct care staff revenues on direct care staff spending would have the unexpended funds below 90% subject to recoupment. The change in the spending requirement to 90% is effective September 1, 2002 to allow time for contracted providers to adjust their spending to comply with this new requirement. The spending requirement would have the same impact on all businesses, and there will be no adverse economic effect on large, small, or micro businesses, because the spending recoupment can be avoided through increased direct care spending by the individual contracted provider. The proposal allows for possible mitigation of some of the recouped funds for facilities that achieve a high quality index score. This would reward facilities with high quality by reducing the amount of recoupment.

The amendments provide for the redistribution of funds within the nursing facility program. For example, the funds that are recouped because of the proposed change in the spending requirement may be reinvested into additional levels of rate enhancements. In addition, the mitigation or reduction of recoupments for failure to meet staffing requirements if facilities spent the enhanced funds that they received and/or based on their quality index score, would reduce the funds that could be redistributed into increased levels of enhanced rates.

A public hearing on this proposal will be held on October 11, 2001, at 9 AM in the Texas Department of Human Services' public hearing room, room 125EE, at 701 West 51st Street, Austin, Texas.

Questions about the content of this proposal may be directed to Carolyn Pratt at (512) 438-4057 in HHSC's Rate Analysis Department. Written comments on the proposal may be submitted to Supervisor, Rules and Handbooks Unit-227, Texas Department of Human Services E-205, P.O. Box 149030, Austin, Texas 78714-9030, within 30 days of publication in the *Texas Register*. For further information regarding the proposal or to make the proposal available for public review, contact local offices of DHS or Carolyn Pratt at (512) 438-4057 in HHSC's Rate Analysis Department.

SUBCHAPTER A. COST DETERMINATION PROCESS

1 TAC §355.101, §355.105

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

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

§355.101. Introduction.

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

(c) The Texas Department of Human Services (DHS) reimburses providers for contracted client services through reimbursement amounts determined as described in this chapter and in reimbursement methodologies for each program. Non-Medicaid, statewide, uniform reimbursements and reimbursement ceilings are approved by the Texas Department of Human Services. Medicaid, statewide, uniform reimbursements, and reimbursement ceilings are approved by the Texas Health and Human Services Commission (HHSC). In Medicaid programs where reimbursements are contractor-specific, the HHSC approves the reimbursement parameter dollar amounts, e.g., ceilings, floors, or program reimbursement formula limits. In approving reimbursement amounts DHS or the HHSC takes into consideration staff recommendations based on the application of formulas and procedures described in this chapter and in reimbursement methodologies for each program. However, DHS or the HHSC may adjust staff recommendations when DHS or the HHSC deems such adjustments are warranted by particular circumstances likely to affect achievement of program objectives, including economic conditions and budgetary considerations. Medicaid reimbursement methodology rules are developed and recommended for approval to the HHSC. The HHSC has oversight authority with respect to the state's Medicaid rules.

(1) Reimbursement amounts will be determined coincident with the state's biennium based upon odd-year reports.

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

§355.105. General Reporting and Documentation Requirements, Methods, and Procedures.

(a) (No change.)

(b) Cost report requirements. Unless specifically stated in program rules, each provider must submit financial and statistical information on cost report forms provided by DHS, or on facsimiles which are formatted according to DHS specifications and are pre-approved by DHS staff, or electronically in DHS-prescribed format in programs where these systems are operational. The cost reports must be submitted to DHS in a manner prescribed by DHS. The cost reports must be prepared to reflect the activities of the provider while delivering contracted services during the fiscal year specified by the cost report. Cost reports or other special surveys or reports may be required for other periods at the discretion of DHS. Each provider is responsible for accurately completing any cost report or other special survey or report submitted to DHS.

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

(5) Cost report year. Effective for reporting periods beginning on September 1, 2002 and thereafter, a [~~A~~] provider's cost report year must coincide with the provider's fiscal year as used by the provider for reports to the Internal Revenue Service (IRS) or with the state of Texas' fiscal year, which begins September 1 and ends August 31.

(A) Providers whose cost report year coincides with their IRS fiscal year are responsible for reporting to HHSC [~~DHS~~] any change in their IRS fiscal year and subsequent cost report year by submitting written notification of the change to HHSC [~~DHS~~] along with supportive IRS documentation. HHSC [~~DHS~~] must be notified of the provider's change in IRS fiscal year no later than 30 days following the provider's receipt of approval of the change from the IRS.

(B) Providers who chose to change their cost report year from their IRS fiscal year to the state fiscal year or from the state fiscal year to their IRS fiscal year must submit a written request to HHSC by August 1 of state fiscal year in question.

(6) (No change.)

(c)-(h) (No change.)

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

Filed with the Office of the Secretary of State, on September 17, 2001.

TRD-200105542
Marina Henderson
Executive Deputy Commissioner
Texas Health and Human Services Commission
Earliest possible date of adoption: October 28, 2001
For further information, please call: (512) 438-3734

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SUBCHAPTER C. REIMBURSEMENT METHODOLOGY FOR NURSING FACILITIES

1 TAC §355.308, §355.312

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

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

§355.308. Enhanced Direct Care Staff Rate.

(a) Direct care staff cost center. This cost center will include compensation for employee and contract labor Registered Nurses (RNs) including Directors of Nursing (DONs) and Assistant Directors of Nursing (ADONs), Licensed Vocational Nurses (LVNs) including DONs and ADONs, medication aides, and nurse aides performing nursing-related duties for Medicaid contracted beds.

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

(5) For facilities receiving supplemental reimbursement for children with tracheostomies requiring daily care as described in §355.307(b)(3)(F)[~~(G)~~] of this title (relating to Reimbursement Setting Methodology), staff required by 40 TAC §19.901(14)(C)(iii) (relating to Quality of Care) performing nursing-related duties for Medicaid contracted beds are included in the direct care staff cost center.

(6) For facilities receiving supplemental reimbursement for qualifying ventilator- dependent residents as described in

§355.307(b)(3)(E) of this title (relating to Reimbursement Setting Methodology), Registered Respiratory Therapists and Certified Respiratory Therapy Technicians are included in the direct care staff cost center.

(7) [~~(6)~~] Nursing facility administrators are not included in the direct care staff cost center.

(8) [~~(7)~~] Staff members performing more than one function in a facility without a differential in pay between functions are categorized at the highest level of licensure or certification they possess. If this highest level of licensure or certification is not that of an RN, LVN, medication aide, or certified nurse aide, the staff member is not to be included in the direct care staff cost center but rather in the cost center where staff members with that licensure or certification status are typically reported.

(b) Rate year. The standard rate year begins on the first day of September and ends on the last day of August of the following year. [~~An implementation rate period will begin on May 1, 2000, and end on August 31, 2000. Except where otherwise noted, all the rules in this section apply to the implementation rate period as well as the standard rate year.~~]

(c) Open enrollment. Open enrollment will begin[~~begins~~] on the first day of July and end [~~ends~~] on the last day of that same July preceding the rate year for which payments are being determined unless the Texas Health and Human Services Commission (HHSC) notified providers prior to the first day of July that that open enrollment has been postponed or cancelled. Should conditions warrant, HHSC [~~the Texas Department of Human Services~~] may conduct additional enrollment periods during a rate year.

(d) Enrollment contract amendment. An initial enrollment contract amendment is required from each facility choosing to participate in the enhanced direct care staff rate. Participating and nonparticipating facilities may request to modify their enrollment status (i.e., a nonparticipant can request to become a participant, a participant can request to become a nonparticipant, a participant can request to change its enhancement level) during any open enrollment period. Requests to modify a facility's enrollment status during an open enrollment period must be received by HHSC [~~DHS's Rate Analysis Department~~] by the last day of the open enrollment period as per subsection (c) of this section. Facilities from which HHSC [~~DHS's Rate Analysis Department~~] has not received an acceptable request to modify their enrollment by the last day of the open enrollment period will continue at the level of participation in effect during the open enrollment period within available funds. To be acceptable, an enrollment contract amendment must be completed according to [~~DHS~~] instructions, signed by an authorized signator as per the Texas Department of Human Services (DHS) Form 2031 applicable to the provider's contract or ownership type and be legible.

(e) New facilities. For purposes of this section, for each rate year a new facility is defined as a facility delivering its first day of service to a DHS recipient after the first day of the open enrollment period, as defined in subsection (c) of this section, for that rate year. Facilities that underwent an ownership change are not considered new facilities. For purposes of this subsection, an acceptable enrollment contract amendment is defined as a legible enrollment contract amendment that has been completed according to [~~DHS~~] instructions, signed by an authorized signator as per the DHS Form 2031 applicable to the provider's contract or ownership type, and received by HHSC [~~DHS's Rate Analysis Department~~] within 30 days of the mailing of notification to the facility by HHSC [~~DHS~~] that such an enrollment contract amendment must be submitted. New facilities will receive the direct care staff rate associated with minimum staffing requirements as determined in subsection (j)(1) of this section until:

(1) for facilities specifying their desire to participate on an acceptable enrollment contract amendment, the direct care staff rate is adjusted as specified in subsection (l)(3) of this section, effective on the first day of the month following receipt by HHSC [~~the Rate Analysis Department~~] of the acceptable enrollment contract amendment.

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

(f) Staffing and Compensation Report submittal requirements. Staffing and Compensation Reports must be submitted as follows:

(1) Annual Staffing and Compensation Report [~~All contracted facilities~~]. All contracted facilities will provide HHSC [~~DHS~~], in a method specified by HHSC [~~DHS~~], an Annual Staffing and Compensation Report reflecting the activities of the facility while delivering contracted services from the first day of the rate year through the last day of the rate year. This report will be used as the basis for determining compliance with the staffing requirements and recoupment amounts as described in subsection (n) of this section [~~for the last six months of the rate year~~] for participants, and as the basis for determining the spending requirements and recoupment amounts as described in subsection (o) of this section for all facilities. Facilities failing to submit an acceptable Annual Staffing and Compensation Report within 60 days of the end of the rate year will be placed on vendor hold until such time as an acceptable report is received and processed by HHSC [~~DHS~~]. [~~For the implementation rate period, a Staffing and Compensation Report is required reflecting the activities of the facility while delivering contracted services from June 1, 2000, through August 31, 2000.~~]

(A) When a facility changes ownership, the prior owner must submit a Staffing and Compensation Report covering the period from the beginning of the rate year to the date recognized by DHS as the ownership-change effective date. This report will be used as the basis for determining any recoupment amounts as described in subsections (n) and (o) of this section. The new owner will be required to submit a Staffing and Compensation Report covering the period from the day after the date recognized by DHS as the ownership-change effective date to the end of the rate year.

(B) Facilities whose contracts are terminated either voluntarily or involuntarily must submit a Staffing and Compensation Report covering the period from the beginning of the rate year to the date recognized by DHS as the contract termination date. This report will be used as the basis for determining any recoupment amounts as described in subsections (n) and (o) of this section.

(C) Participating facilities who voluntarily withdraw from participation as per subsection (r) of this section must submit a Staffing and Compensation Report within 60 days of the date of withdrawal as determined by HHSC [~~DHS~~], covering the period from the beginning of the rate year to the date of withdrawal as determined by HHSC [~~DHS~~]. This report will be used as the basis for determining any recoupment amounts as described in subsections (n) and (o) of this section.

(D) Facilities whose cost report year coincides with the state of Texas fiscal year as per §355.105(b)(5) (relating to General Reporting and Documentation Requirements, Methods and Procedures) are exempt from the requirement to submit a separate Annual Staffing and Compensation Report. For these facilities, their cost report will be considered their Annual Staffing and Compensation Report.

[~~(2) Participating facilities. Within 30 days of the end of the first six months of the rate year, all participating facilities will provide DHS, in a method specified by DHS, with a Six- Month Staffing Report reflecting the activities of the facility while delivering~~

~~contracted services from the first day of the rate year through the last day of the sixth month of the rate year. These reports will be used as the basis for determining compliance with the staffing requirements and recoupment amounts as described in subsection (n) of this section for the first six months of the rate year. Facilities failing to submit an acceptable Six-Month Staffing Report within 30 days of the end of the sixth month of the rate year will be placed on vendor hold until such time as an acceptable report is received and processed by DHS.]~~

(2) [~~(3)~~] Other reports. HHSC [~~DHS~~] may require other Staffing and Compensation Reports from all facilities as needed.

(3) [~~(4)~~] Vendor hold. HHSC or its designee [~~DHS~~] will place on hold the vendor payments for any facility which does not submit a Staffing and Compensation Report completed in accordance with all applicable rules and instructions by the due dates described in this subsection. This vendor hold will remain in effect until an acceptable Staffing and Compensation Report is received by HHSC [~~DHS~~]. Facilities that do not submit a Staffing and Compensation Report completed in accordance with all applicable rules and instructions within 60 days of the due dates described in this subsection will become nonparticipants retroactive to the first day of the reporting period in question until they submit an acceptable report and repay to HHSC or its designee [~~DHS~~] funds identified for recoupment from subsections (n) and/or (o) of this section.

(g) Report contents. Annual Staffing and Compensation Reports [~~and Six-Month Staffing Reports~~] will include any information required by HHSC [~~DHS~~] to implement this enhanced direct care staff rate.

(h) Completion of Reports. All Staffing and Compensation Reports [~~and Staffing Reports~~] must be completed in accordance with the provisions of §§355.102-355.105 of this title (relating to General Principles of Allowable and Unallowable Costs, Specifications for Allowable and Unallowable Costs, Revenues, and General Reporting and Documentation Requirements, Methods, and Procedures) and may be reviewed or audited in accordance with §355.106 of this title (relating to Basic Objectives and Criteria for Audit and Desk Review of Cost Reports). Beginning with the state fiscal year 2002 report, all Staffing and Compensation Reports must be completed by preparers who have attended the required nursing facility cost report training as per §355.102(d) (relating to General Principles of Allowable and Unallowable Costs).

(i) Enrollment. Facilities choosing to participate in the enhanced direct care staff rate must submit to HHSC [~~DHS~~] a signed contract amendment as described in subsection (d) of this section, before the end of the open enrollment period. Participation will remain in effect, subject to availability of funds, until the facility notifies HHSC [~~DHS~~] in accordance with subsection (r) of this section that it no longer wishes to participate or the facility is removed from participation as described in subsection (n)(3) of this section. Facilities voluntarily withdrawing from participation will have their participation end effective on the date of the withdrawal as determined by HHSC [~~DHS~~].

(j) Determination of staffing requirements for participants. Facilities choosing to participate in the enhanced direct care staff rate agree to maintain certain direct care staffing levels. In order to permit facilities the flexibility to substitute RN, LVN and aide (Medication Aide and nurse aide) staff resources and, at the same time, comply with an overall nursing staff requirement, total nursing staff requirements are expressed in terms of LVN equivalent minutes. Conversion factors to convert RN and aide minutes into LVN equivalent minutes are based upon most recently available, reliable relative compensation levels for the different staff types.

(1) Minimum staffing levels. HHSC [~~DHS~~] determines, for each participating facility, minimum LVN equivalent staffing levels as follows.

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

(E) Effective for reporting periods beginning on or after September 1, 2001, divide [~~Divide~~] the sum from subparagraph (C) of this paragraph by the facility's total Medicaid days of service, with a day of service for a Medicaid TILE recipient who also qualifies for a supplemental TILE reimbursement counted as one day of service, compare this result to the minimum required LVN-equivalent minutes for a TILE 207 and multiply the lower of the two figures [~~the result~~] by the facility's other resident days of service.

(F) (No change.)

(2) (No change.)

(3) Granting of staffing enhancements. HHSC [~~DHS~~] divides all requested enhancements into two groups: pre-existing enhancements that facilities request to carry over from the prior year and newly-requested enhancements. Newly-requested enhancements may be enhancements requested by facilities that were nonparticipants in the prior year or by facilities that were participants in the prior year desiring to be granted additional enhancements. For the granting of enhancements to be effective on or after September 1, 2001, [~~and thereafter~~] for an enhancement to qualify as a pre- existing enhancement a facility must have actually met the enhancement's staffing requirements during the most recent [~~six-month~~] reporting period from which reliable data is available at the time qualification is determined. Enhancements held by nursing facilities whose staffing requirements were not met during the most recent [~~six-month~~] reporting period from which reliable data is available will qualify as pre-existing if the facility submitted, with that staffing report, documentation that demonstrates to the satisfaction of HHSC [~~DHS~~] that the facility has been unable, despite diligent efforts (including offering wages at the community prevailing rate for nursing facilities), to recruit appropriate personnel. If the [~~initial six-month~~] report from the subsequent rate year indicates that the staffing requirement was again not met, the unmet staffing will no longer be considered pre-existing. Using the process described herein, HHSC [~~DHS~~] first determines the distribution of carry-over enhancements. If funds are available after the distribution of carry-over enhancements, HHSC [~~DHS~~] then determines the distribution of newly requested enhancements. HHSC [~~DHS~~] may not distribute newly requested enhancements to facilities owing funds identified for recoupment from subsections (n) and/or (o) of this section.

(A) HHSC [~~DHS~~] determines projected units of service for facilities requesting each enhancement option and multiplies this number by the rate add-on associated with that enhancement as determined in subsection (l) of this section.

(B) HHSC [~~DHS~~] compares the sum of the products from subparagraph (A) of this paragraph to available funds.

(i) (No change.)

(ii) If the product is greater than available funds, enhancements are granted beginning with the lowest level of enhancement and granting each successive level of enhancement until requested enhancements are granted within available funds. Based upon an examination of existing staffing levels and staffing needs, HHSC [~~DHS~~] may grant certain enhancement options priority for distribution.

(4) Notification of granting of enhancements. Participating facilities are notified, in a manner determined by HHSC [~~DHS~~], as to the disposition of their request for staffing enhancements.

(k) (No change.)

(l) Determination of direct care staff rates for participating facilities. Direct care staff rates for participating facilities as defined in subsection (i) will be determined as follows:

(1) Determine the direct care staff rate associated with maintaining LVN equivalent minutes at the minimum levels required for participation.

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

(E) The initial database from subsection (k)(1) of this section used in determining the direct care staff rates will not change, except for adjustments for inflation from subparagraph (B) of this paragraph. HHSC [~~DHS~~] may also recommend adjustments to the rates in accordance with §355.109 of this title (relating to Adjusting Reimbursement When New Legislation, Regulations, or Economic Factors Affect Costs).

(2) Determine the direct care staff rate add-on associated with each enhanced staffing level. Taking into consideration the most recently available, reliable data relating to LVN equivalent compensation levels, HHSC [~~DHS~~] will determine a per diem add- on payment for each enhanced staffing level.

(3) Determine each participating facility's total direct care staff rate. Each participating facility's direct care staff rate will be equal to the direct care staff rate associated with maintaining LVN equivalent minutes at the minimum levels required for participation from paragraph (1) of this subsection plus any add-on payments associated with enhanced staffing levels selected by and awarded to the facility during open enrollment.

(m) Staffing requirements for participating facilities. Each participating facility will be required to maintain [~~LVN equivalent minutes equal to those determined in subsection (j) of this section~~] adjusted LVN-equivalent minutes equal to those determined in subsection (j) of this section. Each participating facility's adjusted LVN-equivalent minutes maintained during the reporting period will be determined as follows.

(1) Determine unadjusted LVN-equivalent minutes maintained. Upon receipt of the staffing and spending information described in subsection (f) of this section, HHSC will determine the unadjusted LVN-equivalent minutes maintained by each facility during the reporting period.

(2) Determine adjusted LVN-equivalent minutes maintained. Compare the unadjusted LVN-equivalent minutes maintained by the facility during the reporting period from paragraph (1) of this subsection to the LVN-equivalent minutes required of the facility as determined in subsection (j) of this section. The adjusted LVN-equivalent minutes are determined as follows:

(A) If the number of unadjusted LVN-equivalent minutes maintained by the facility during the reporting period is greater than or equal to the number of LVN-equivalent minutes required for the facility or less than the minimum LVN-equivalent minutes required for participation as determined in subsection (j)(1) of this section; the facility's adjusted LVN-equivalent minutes maintained is equal to its unadjusted LVN-equivalent minutes; or

(B) If the number of unadjusted LVN-equivalent minutes maintained by the facility during the reporting period is less than the number of LVN-equivalent minutes required of the facility, the following steps are performed.

(i) Determine what the facility's accrued Medicaid fee-for-service and managed care revenue for the reporting period would have been if their staffing requirement had been set at a level consistent with the highest LVN-equivalent minutes that the facility actually maintained, as defined in subsection (j) of this section.

(ii) Determine the facility's adjusted accrued revenue by multiplying the accrued revenue from clause (i) of this subparagraph by 0.85. Effective for reporting periods beginning on or after September 1, 2002, determine the facility's adjusted accrued revenue by multiplying the accrued revenue from clause (i) of this subparagraph by 0.90.

(iii) Determine the facility's accrued allowable Medicaid fee-for-service and managed care direct care staff expenses for the rate year.

(iv) Determine the facility's direct care spending surplus for the reporting period by subtracting the facility's adjusted accrued revenue from clause (ii) of this subparagraph from the facility's accrued allowable expenses from clause (iii) of this subparagraph.

(v) If the facility's direct care spending surplus from clause (iv) of this subparagraph is less than or equal to zero, the facility's adjusted LVN-equivalent minutes maintained is equal to the unadjusted LVN-equivalent minutes maintained as calculated in paragraph (1) of this subsection.

(vi) If the facility's direct care spending surplus from clause (iv) of this subparagraph is greater than zero, the adjusted LVN-equivalent minutes maintained by the facility during the reporting period is set equal to the facility's direct care spending surplus from clause (iv) of this subparagraph divided by the per diem enhancement add-on as determined in subsection (l)(2) of this section plus the unadjusted LVN-equivalent minutes maintained by the facility during the reporting period from paragraph (1) of this subsection according to the following formula: (Direct Care Spending Surplus / Per Diem Enhancement Add-on for One LVN-equivalent Minute) + Unadjusted LVN-equivalent Minutes.

(n) Staffing accountability. Participating facilities will be responsible for maintaining the staffing levels determined in subsection (j) of this section. [~~Upon receipt of the staffing information described in subsections (f)(1) and (2) of this section~~], HHSC [~~DHS~~] will determine the adjusted LVN-equivalent minutes maintained by each facility during the reporting period by the method described in subsection (m) of this section. Adjustments to direct care staff rates and staffing requirements and collection of recoupment and interest amounts, if applicable, will be made upon determination by HHSC [~~DHS~~] that a facility is failing to meet its staffing requirement.

(1) HHSC or its designee [~~DHS~~] will recoup all direct care staff revenues associated with unmet staffing goals from participating facilities that fail to meet their staffing requirements during the reporting period.

(2) Participating facilities required to provide less than two LVN-equivalent minutes above their minimum required LVN-equivalent minutes per resident day, as determined in paragraph (j)(1) of this subsection, who fail to maintain staffing at their required LVN- equivalent minutes and any participating facilities that fail to maintain staffing at their required LVN-equivalent minutes by less than two LVN-equivalent minutes will have their direct care staff rates and staffing requirements adjusted to a level consistent with the highest LVN-equivalent minutes, as defined in subsection (j) of this section, that they actually attained. If the level attained is less than the minimum direct care staff requirement for participation, the facility will be removed from participation. [~~During the first six months of any rate year, staffing requirements as determined in subsection (j) of this section override any prospective adjustments made to staffing requirements under this paragraph.~~]

(3) Facilities that are required to provide two or more LVN-equivalent minutes above their minimum required LVN-equivalent minutes per resident day, as determined in paragraph (j) (1) of this section and that fail to maintain their required LVN-equivalent minutes by two or more LVN-equivalent minutes will have their direct care staff rates and staffing requirements adjusted to a level consistent with the highest LVN-equivalent minutes, as defined in subsection (j) of this section, that they actually attained. If the level attained is less than the minimum direct care staff requirement for participation, the facility will be removed from participation. These adjustments will remain in effect for the longer of either the remainder of the rate year in which the determination is made plus another full rate year or until the first day of the rate year after funds identified for recoupment from subsections (n) and/or (o) of this section are repaid to HHSC or its designee [~~DHS~~]. HHSC or its designee [~~DHS~~] will collect interest from participating facilities that fail to maintain their required LVN-equivalent minutes by two or more LVN- equivalent minutes as follows:

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

(o) Spending requirements for all facilities. All facilities, participants and non-participants alike, are subject to a direct care staff spending requirement with recoupment calculated as follows:

(1) At the end of the [~~facility's~~] rate year [~~(with the implementation rate period being treated as a rate year)~~], a spending floor will be calculated by multiplying accrued Medicaid fee-for-service and managed care direct care staff revenues (net of revenues recouped by HHSC or its designee [~~DHS~~] due to the failure of the facility to meet a staffing requirement as per subsection (n)(4) of this section) by 0.85. Effective for reporting periods beginning on or after September 1, 2002, the spending floor will be calculated by multiplying accrued Medicaid fee-for-service and managed care direct care staff revenues (net of revenues recouped by HHSC or its designee due to failure of the facility to meet a staffing requirement as per subsection (n) (4) of this section) by 0.90.

(2) Accrued allowable Medicaid direct care staff expenses for the rate year will be compared to the spending floor from paragraph (1) of this subsection. HHSC or its designee [~~DHS~~] will recoup the difference between the spending floor and accrued allowable Medicaid direct care staff expenses from facilities whose Medicaid direct care staff spending is less than their spending floor.

(p) Mitigation of recoupment. Recoupment of funds described in subsection (o) of this section may be mitigated as follows.

(1) Dietary and Fixed Capital Mitigation. Recoupment of funds described in subsection (o) of this section may be mitigated by high dietary and/or fixed capital expenses as follows.

(A) [~~(1)~~] Calculate dietary cost deficit. At the end of the facility's rate year [~~(with the implementation rate period being treated as a rate year)~~], accrued Medicaid dietary per diem revenues will be compared to accrued, allowable Medicaid dietary per diem costs. If costs are greater than revenues, the dietary per diem cost deficit will be equal to the difference between accrued, allowable Medicaid dietary per diem costs and accrued Medicaid dietary per diem revenues. If costs are less than revenues, the dietary cost deficit will be equal to zero.

(B) [~~(2)~~] Calculate dietary revenue surplus. At the end of the facility's rate year [~~(with the implementation rate period being treated as a rate year)~~], accrued Medicaid dietary per diem revenues will be compared to accrued, allowable Medicaid dietary per diem costs. If revenues are greater than costs, the dietary per diem revenue surplus will be equal to the difference between accrued Medicaid dietary per diem revenues and accrued, allowable Medicaid dietary per diem costs. If revenues are less than costs, the dietary revenue surplus will be equal to zero.

(C) [~~(3)~~] Calculate fixed capital cost deficit. At the end of the facility's rate year [~~(with the implementation rate period being treated as a separate rate year)~~], accrued Medicaid fixed capital per diem revenues will be compared to accrued, allowable Medicaid fixed capital per diem costs as defined in §355.306(a)(2)(B) of this title (relating to Cost Finding Methodology). If costs are greater than revenues, the fixed capital cost per diem deficit will be equal to the difference between accrued, allowable Medicaid fixed capital per diem costs and accrued Medicaid fixed capital per diem revenues. If costs are less than revenues, the fixed capital cost deficit will be equal to zero. For purposes of this paragraph, fixed capital per diem costs of facilities with occupancy rates below 85% are adjusted to the cost per diem the facility would have accrued had it maintained an 85% occupancy rate throughout the rate year.

(D) [~~(4)~~] Calculate fixed capital revenue surplus. At the end of the facility's rate year [~~(with the implementation rate period being treated as a separate rate year)~~], accrued Medicaid fixed capital per diem revenues will be compared to accrued, allowable Medicaid fixed capital per diem costs as defined in §355.306(a)(2)(B) of this title (relating to Cost Finding Methodology). If revenues are greater than costs, the fixed capital revenue per diem surplus will be equal to the difference between accrued Medicaid fixed capital per diem revenues and accrued, allowable Medicaid fixed capital per diem costs. If revenues are less than costs, the fixed capital revenue surplus will be equal to zero. For purposes of this paragraph, fixed capital per diem costs of facilities with occupancy rates below 85% are adjusted to the cost per diem the facility would have accrued had it maintained an 85% occupancy rate throughout the rate year.

(E) [~~(5)~~] Facilities with a dietary per diem cost deficit will have their dietary per diem cost deficit reduced by their fixed capital per diem revenue surplus, if any. Any remaining dietary per diem cost deficit will be capped at $2.00 per diem.

(F) [~~(6)~~] Facilities with a fixed capital cost per diem deficit will have their fixed capital cost per diem deficit reduced by their dietary revenue per diem surplus, if any. Any remaining fixed capital per diem cost deficit will be capped at $2.00 per diem.

(G) [~~(7)~~] Each facility's recoupment, as calculated in subsection (o) of this section, will be reduced by the sum of that facility's dietary per diem cost deficit as calculated in subparagraph (E) [~~paragraph (5)~~] of this paragraph [~~subsection~~] and its fixed capital per diem cost deficit as calculated in subparagraph (F) [~~paragraph (6)~~] of this paragraph [~~subsection~~].

(2) Performance-based Mitigation. Recoupment of funds described in paragraph (1) (G) of this subsection will be mitigated based upon each facility's compliance with state and federal regulations as well as on the basis of resident outcomes as follows.

(A) Calculation of Performance-based Mitigation Index. Calculate the performance- based mitigation index (PMI) using the formula: PMI = (A+B) x C Where "A", "B", and "C" are the performance weights as detailed in 1 TAC §§355.309(l), (m), and (i) (relating to Performance-based Add-on Payment Methodology) for potential advantages, potential disadvantages, and regulatory compliance, respectively. The performance weights used in the calculation of the PMI will be those calculated for the service period as defined in §355.309 (relating to Performance-based Add-on Payment Methodology) that coincides with the rate year to which the recoupment described in subsection (o) of this section applies.

(B) Recoupment eligible for Performance-based Mitigation. Recoupment eligible for Performance-based Mitigation is limited to the facility's recoupment as described in paragraph (1)(G) of this paragraph would have been if the facility had been a nonparticipant in the enhancement program during the reporting period.

(C) Calculation of Performance-based Mitigation. For each facility, multiply the PMI from subparagraph (A) of this paragraph by the recoupment eligible for Performance-based Mitigation from subparagraph (B) of this paragraph. The resulting product is the performance-based mitigation.

(D) Determination of recoupment after Performance-based Mitigation. Each facility's recoupment as calculated in paragraph (1)(G) of this subsection will be reduced by that facility's performance-based mitigation as described in subparagraph (C) of this paragraph.

(E) In cases where a responsible entity has requested to have its contracts' compliance with the spending requirements evaluated in the aggregate, performance- based mitigation will be based on the lowest PMI associated with any of its contracts.

(F) Facilities, for which a PMI cannot be calculated due to missing, invalid or unverifiable data are not eligible for performance-based mitigation.

(q) Adjusting staffing requirements. Facilities that determine that they will not be able to meet their staffing requirements from subsection (m) of this section may request a reduction in their staffing requirements and associated rate add-on. These requests will be effective on the first day of the month following approval of the request. [~~This option is not available during the implementation rate period.~~]

(r) Voluntary withdrawal. Facilities wishing to withdraw from participation must notify HHSC [~~DHS~~] in writing by certified mail. Facilities voluntarily withdrawing must remain nonparticipants for the remainder of the rate year.

(s) Notification of recoupment based on Annual Staffing and Compensation Report. Facilities will be notified, in a manner specified by HHSC [~~DHS~~], within 90 days of the due date of their Annual Staffing and Compensation Report or within 90 days of the date the report is submitted, whichever is later, of the amount to be repaid to HHSC or its designee [~~DHS~~]. If a subsequent review or audit results in adjustments to the Annual Staffing and Compensation Report as described in subsection (f) (1) of this section that changes the amount to be repaid to HHSC or its designee [~~DHS~~], the facility will be notified in writing of the adjustments and the adjusted amount to be repaid [~~to DHS~~]. HHSC or its designee [~~DHS~~] will recoup any amount owed from a facility's vendor payment(s) following the date of the notification letter.

[~~(t) Notification of recoupment from Quarterly Staffing and Compensation Report. Facilities will be notified in a manner specified by DHS within 60 days of the due date of their Quarterly Staffing and Compensation Report or within 60 days of the date the report is submitted, whichever is later, of the amount to be repaid to DHS. If a subsequent review or audit results in adjustments to the Quarterly Staffing and Compensation Report as described in subsection (f)(2) of this section that changes the amount to be repaid to DHS, the facility will be notified in writing of the adjustments and the adjusted amount to be repaid to DHS. DHS will recoup any amount owed from a facility's vendor payment(s) following the date of the notification letter.~~]

(t) [~~(u)~~] Vendor hold. Facilities required to submit a Staffing and Compensation Report due to a change of ownership or contract termination as described in subsection (f)(1)(A)-(B) of this section will have funds held as per 40 TAC §19.2308(2) (relating to Change of Ownership) until an acceptable Staffing and Compensation Report is received by HHSC [~~DHS~~] and funds identified for recoupment from subsections (n) and/or (o) of this section are repaid to HHSC or its designee [~~DHS~~]. HHSC or its designee [~~DHS~~] will recoup any amount owed from the facility's vendor payments that are being held. In cases where funds identified for recoupment cannot be repaid from the held vendor payments, the responsible entity from subsection (x) [~~(y)~~] of this section will be jointly and severally liable for any additional payment due to HHSC or its designee [~~DHS~~]. Failure to repay the amount due or submit an acceptable payment plan within 60 days of notification will result in placement of a vendor hold on all DHS contracts controlled by the responsible entity and will bar the responsible entity from enacting any new contracts with DHS until repayment is made in full.

(u) [~~(v)~~] Failure to document staff time and spending. Undocumented direct care staff and contract labor time and compensation costs will be disallowed and will not be used in the determination of direct care staff time and costs per unit of service.

(v) [~~(w)~~] All other rate components. All other rate components will be calculated as specified in §355.307 of this title (relating to Reimbursement Setting Methodology) and will be uniform for all providers.

(w) [~~(x)~~] Appeals. Subject matter of informal reviews and formal appeals is limited as per §355.110(a)(3)(B) of this title (relating to Informal Reviews and Formal Appeals).

(x) [~~(y)~~] Responsible entities. The contracted provider, owner, or legal entity that received the revenue to be recouped upon is responsible for the repayment of any recoupment amount.

(y) [~~(z)~~] Change of ownership. Participation in the enhanced direct care staff rate confers to the new owner as defined in 40 TAC §19.2308 (relating to Change of Ownership) when there is a change of ownership. The new owner is responsible for the reporting requirements in subsection (f) of this section for any reporting period days occurring after the change. If the change of ownership occurs prior to or during an open enrollment period as defined in subsection (c) of this section and the new owner has not met all contracting requirements delineated in §19.2301 of this title (relating to Requirements for Medicaid-Contracted Facilities) by the end of the open enrollment period, participation in the enhanced direct care staff rate as it existed prior to the ownership change will confer to the new owner.

(z) [~~(aa)~~] Contract cancellations. If a facility's Medicaid contract is cancelled before the first day of an open enrollment period as defined in subsection (c) of this section and the facility is not granted a new contract until after the last day of the open enrollment period, participation in the enhanced direct care staff rate as it existed prior to the date when the facility's contract was cancelled will be reinstated when the facility is granted a new contract, if it remains under the same ownership.

(aa) [~~(bb)~~] In cases where a parent company, sole member, or governmental body [~~responsible entity~~] controls more than one nursing facility (NF) contract, the parent company, sole member, or governmental body [~~responsible entity~~] may request, in a manner prescribed by HHSC [~~DHS~~], to have its contracts' compliance with the spending requirements detailed in subsection (o) of this section evaluated in the aggregate for all NF contracts it controlled at the end of the rate year or at the effective date of the change of ownership or termination of its last NF contract. In limited liability partnerships in which the same single general partner controls all the limited liability partnerships, that single general partner may make this request. Other such requests will be reviewed on a case-by-case basis.

(bb) Medicaid Swing Bed Program for Rural Hospitals. When a rural hospital participating in the Medicaid swing bed program furnishes NF nursing care to a Medicaid recipient under 40 TAC §19.2326 (relating to Medicaid Swing Bed Program for Rural Hospitals), DHS makes payment to the hospital using the same procedures, the same case-mix methodology and the same TILE rates that HHSC authorizes for reimbursing NFs participating in the enhanced direct care staff rate at the minimum level required for participation. These hospitals are not subject to the staffing and spending requirements detailed in this section.

(cc) Reinvestment. HHSC has the option to reinvest recouped funds in the enhanced direct care staff rate program.

(1) Identify qualifying facilities. Facilities meeting the following criteria during the most recent completed reporting period are qualifying facilities for reinvestment purposes.

(A) The facility was a participant in the enhanced direct care staff rate.

(B) The facility requested a higher level of enhancement than it was awarded.

(C) The facility's unadjusted LVN-equivalent minutes as determined in subsection (m) (1) of this section were greater than the number of LVN-minutes required of the facility as determined in subsection (j) of this section.

(D) The facility met its spending requirement as determined in subsection (o) of this section.

(2) Distribution of available reinvestment funds. Available funds are distributed as described below.

(A) HHSC determines units of service provided during the most recent completed reporting period by qualifying facilities requesting and achieving, with unadjusted LVN- equivalent minutes as determined in subsection (m)(1) of this section, each enhancement option above the maximum enhancement option awarded during the reporting period and multiplies this number by the rate add-on associated with that enhancement in effect during the reporting period.

(B) HHSC compares the sum of the products from subparagraph (A) of this paragraph to funds available for reinvestment.

(i) If the product is less than or equal to available funds, all requested enhancements for qualifying facilities are retroactively awarded for the reporting period.

(ii) If the product is greater than available funds, retroactive enhancements are granted beginning with the lowest level of enhancement and granting each successive level of enhancement until requested enhancements are granted within available funds.

(3) All retroactive enhancements are subject to spending requirements detailed in subsection (o) of this section.

(4) Retroactively awarded enhancements do not qualify as pre-existing enhancements for enrollment purposes.

(5) Notification of reinvested enhancements. Qualifying facilities are notified in a manner determined by HHSC, as to the award of reinvested enhancements.

(dd) [~~(cc)~~] Disclaimer. Nothing in these rules should be construed as preventing facilities from adding direct care staff in addition to those funded by the enhanced direct care staff rate.

§355.312. Reimbursement Setting Methodology--Liability Insurance Costs.

Effective September 1, 2001, the portion of the rate accruing from reported general liability insurance costs will only be disbursed to providers certifying that they have purchased general liability insurance acceptable to HHSC and the portion of the rate accruing from reported professional liability insurance costs will only be disbursed to providers certifying that they have purchased professional liability insurance acceptable to HHSC. Providers who cancel or fail to renew their liability coverage during a rate year must notify HHSC within two weeks of the effective date of their cancellation or failure to renew.

This 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 September 17, 2001.

TRD-200105543
Marina Henderson
Executive Deputy Commissioner
Texas Health and Human Services Commission
Earliest possible date of adoption: October 28, 2001
For further information, please call: (512) 438-3734

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TITLE 4. AGRICULTURE

PART 1. TEXAS DEPARTMENT OF AGRICULTURE

CHAPTER 1. GENERAL PROCEDURES

SUBCHAPTER M. SURPLUS AGRICULTURAL PRODUCTS GRANT PROGRAM

4 TAC §§1.900 - 1.905

The Texas Department of Agriculture (the department) proposes new Chapter 1, Subchapter M, §§1.900-1.905, concerning a grant program for distribution of surplus agricultural products. The new sections are proposed to implement House Bill (HB) 1086, enacted by the 77th Legislature, 2001. HB 1086 adds a new Chapter 20 to the Texas Agriculture Code, which provides that the department by rule shall develop a grant program for collecting and distributing surplus agricultural products to food banks and other charitable organizations that serve needy or low-income individuals. The new sections provide a statement of purpose for the new grant program, provide definitions to be used in Subchapter M, provide eligibility requirements, provide items that must be included in a proposal submitted under the program and provide for reporting requirements.

Carol Funderburgh, contracts and grants coordinator, has determined that for the first five-year period the amendment is in effect, there will be no fiscal implications for state government as a result of enforcing or administering the section. There will be no fiscal implication for local government as a result of enforcing or administering the section.

Ms. Funderburgh also has determined that for each of the first five years the section is in effect, the public benefit anticipated as a result of enforcing the section will be the opportunity for the department to fund, in a more efficient manner, the distribution of surplus agricultural products to food banks and other charitable

organizations. There will be no anticipated costs to microbusinesses, small or large businesses or to persons required to comply with the amendment.

Comments on the proposal may be submitted to Carol Funderburgh, contracts and grants coordinator, 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 new sections are proposed under the Texas Agriculture Code, Chapter 20, §20.001, which provides the department with the authority to adopt rules as necessary for the administration of the grant program for the distribution of surplus agricultural products.

The code affected by this proposal is the Texas Agriculture Code, Chapter 20.

§1.900. Statement of Purpose.
The Grant program for the distribution of surplus agricultural products is designed to provide funding to eligible nonprofit organizations for collecting and distributing surplus agricultural products to food banks and other charitable organizations that serve needy or low- income individuals.

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

(1) Nonprofit Organization. An organization with an IRS designation as a 501 (c) (3) organization which has been established and is operating for religious, charitable or educational purposes and does not distribute any of its income to its members, directors or officers.

(2) Charitable organization. An organization organized for purely benevolent, charitable, educational or religious purpose and not for financial gain.

(3) Department. The Texas Department of Agriculture

§1.903. Eligibility.
Subject to available funds, a nonprofit organization is eligible to receive a grant under this chapter if the organization:

(1) has at least five years of experience coordinating a statewide network of food banks and charitable organizations that serve each county of this state;

(2) operates a program that coordinates the collection and transportation of surplus agricultural products to a statewide network of food banks that provide food to needy or low-income individuals; and

(3) submits to the department in a manner and time prescribed by the Department, a proposal for the collection and distribution of surplus products to food banks or other charitable organizations for use in providing food to needy or low-income individuals.

§1.904. Contents of Proposal.
The proposal submitted to the department in accordance with §1.903 of this title (relating to Eligibility), shall include:

(1) a description of how the collection and distribution of surplus products will be accomplished;

(2) a schedule of projected costs for the proposal;

(3) measurable goals for the proposal;

(4) a plan for evaluating the success of the proposal; and

(5) any other information requested by the department.

§1.905. Reporting Requirements.

A nonprofit organization that receives a grant under this subchapter must report the results of the project to the Department in a manner prescribed by the Department.

This 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 September 14, 2001.

TRD-200105488
Dolores Alvarado Hibbs
Deputy General Counsel
Texas Department of Agriculture
Earliest possible date of adoption: October 28, 2001
For further information, please call: (512) 463-4075

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TITLE 19. EDUCATION

PART 2. TEXAS EDUCATION AGENCY

CHAPTER 100. CHARTERS

SUBCHAPTER A. OPEN-ENROLLMENT CHARTER SCHOOLS

19 TAC §100.101

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

The Texas Education Agency (TEA) proposes the repeal of §100.101, concerning adverse action on an open-enrollment charter. The section specifies procedures for modifying, placing on probation, revoking, or denying renewal of the charter of an open-enrollment charter school. This repeal is necessary since House Bill (HB) 6, 77th Texas Legislature, 2001, transferred authority for rules governing adverse action on open-enrollment charters from the State Board of Education (SBOE) to the commissioner of education.

Senate Bill (SB) 1, 74th Texas Legislature, 1995, granted the SBOE the authority to establish up to 20 open-enrollment charter schools to eligible entities. In 1997, the 75th Texas Legislature granted the SBOE the authority to approve 100 additional open-enrollment charters and an unlimited number of open- enrollment charters to serve students at risk of dropping out of school. HB 6, 77th Texas Legislature, 2001, called for the combination of these two types of charters into one open-enrollment category and limited the number of charters to 215. In addition, HB 6 granted the SBOE the authority to approve an unlimited number of charters to public senior colleges or universities. HB 6 also transferred authority for taking adverse action, including modification, placement on probation, revocation, or denial of renewal of a charter, from the SBOE to the commissioner of education.

Susan Barnes, assistant commissioner for charter schools, has determined that for 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. Barnes 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 implementation of the legislative mandate of HB 6 relating to adverse action taken against open-enrollment charter schools. Open-enrollment charter schools provide new avenues to improve student learning; increase the choice of learning opportunities within the public school system; create professional opportunities that will attract new teachers to the public school system; establish a new form of accountability for public schools; and encourage different and innovative learning methods. There will not be an 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 Criss Cloudt, Accountability Reporting and Research, 1701 North Congress Avenue, Austin, Texas 78701, (512) 463-9701. Comments may also be submitted electronically to *rules@tea.state.tx.us* or faxed to (512) 475-3499. All requests for a public hearing on the proposed section submitted under the Administrative Procedure Act must be received by the commissioner of education not more than 15 calendar days after notice of a proposed change in the section has been published in the *Texas Register*.

The repeal is proposed under the Texas Education Code, §§12.115, 12.116, 12.1161, and 12.1162, as amended and added by House Bill 6, 77th Texas Legislature, 2001, which authorizes the commissioner of education to modify, place on probation, revoke, or deny renewal of the charter of an open-enrollment charter school.

The amendment implements the Texas Education Code, §§12.115, 12.116, 12.1161, and 12.1162, as amended and added by House Bill 6, 77th Texas Legislature, 2001.

§100.101. Adverse Action on an Open-Enrollment Charter.

This 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 September 17, 2001.

TRD-200105546
Criss Cloudt
Associate Commissioner for Accountability Reporting and Research
Texas Education Agency
Earliest possible date of adoption: October 28, 2001
For further information, please call: (512) 463-9701

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TITLE 22. EXAMINING BOARDS

PART 10. TEXAS FUNERAL SERVICE COMMISSION

CHAPTER 201. LICENSING AND ENFORCEMENT-PRACTICE AND PROCEDURE

22 TAC §201.16

The Texas Funeral Service Commission proposes an amendment to §201.16, concerning the Memorandum of Understanding with the Texas Department of Health.

The Texas Funeral Service Commission proposes an amendment to change some of the language. Some wording is incorrect. The last sentence is deleted. Additional wording is added to correct the incorrect information.

O.C. Robbins, Executive Director, Texas Funeral Service Commission, has determined that for the first five-year period this section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the proposed section, beyond what is already required under the existing rule.

Mr. Robbins has also determined that for the first five-year period this section is in effect the public benefit will be that it corrects a mistake of the existing rule and directs the public to the correct location for information concerning this Joint Memorandum of Understanding.

Comments on the proposal may be submitted in writing for a 30 day period to O.C. Robbins, Executive Director, Texas Funeral Service Commission, 510 South Congress, Ste. 206, Austin, Texas 78704, or P.O. Box 12217, Capitol Station , Austin, Texas 78711-1440, or faxed to (512) 479-5064, or submitted electronically to chet.robbins@tfsc.state.tx.us.

The amendment is proposed under §651.152 of the Texas Occupations Code, as amended by Section 18 of House Bill 3516, 76th Legislature which authorizes the Commission to issue such rules and regulations as may be necessary to effect the provision of this Section.

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

§201.16. Memorandum of Understanding with the Texas Department of Health.

The Texas Funeral Service Commission adopts by reference the[~~a~~] joint memorandum of understanding with the Texas Department of Health published at 25 Texas Administrative Code §181.27. [~~(25 TAC §181.27) The document is published by and available at the Texas Funeral Service Commission, 8100 Cameron Road, Suite 550, Austin, Texas 78753.~~]

This 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 September 13, 2001.

TRD-200105473
O.C. "Chet" Robbins
Executive Director
Texas Funeral Service Commission
Earliest possible date of adoption: October 28, 2001
For further information, please call: (512) 936-2480

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CHAPTER 203. LICENSING AND ENFORCEMENT-SPECIFIC SUBSTANTIVE RULES

22 TAC §203.15

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

The Texas Funeral Service Commission proposes to repeal §203.15 concerning Requirements of Reciprocal Licenses.

O.C. Robbins, Executive Director, has determined that for the first five year period this section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

O.C. Robbins, Executive Director, has determined that the public benefit is that the repeal of this section will get rid of an obsolete rule. The subject matter is covered sufficiently in the Commission's enabling statute, Texas Occupations Code, Chapter 651.259 and 651.264. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the proposed section.

Comments on the proposal may be submitted to O.C. "Chet" Robbins, Executive Director, Texas Funeral Service Commission, 510 South Congress Avenue, Suite 206, Austin, Texas 78704 (512) 936-2474 or 1-888-667-4881. Comments may also be submitted electronically to crob@tfsc.state.tx.us or faxed to (512) 479-5064.

The repeal is proposed under §651.152 of the Texas Occupations Code, as amended by Section 18 of House Bill 3516, 76th Legislature which authorizes the Commission to issue such rules and regulations as may be necessary to effect the provisions of this section.

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

§203.15. Requirements of Reciprocal Licenses.

This 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 September 13, 2001.

TRD-200105458
O.C. "Chet" Robbins
Executive Director
Texas Funeral Service Commission
Earliest possible date of adoption: October 28, 2001
For further information, please call: (512) 936-2480

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22 TAC §203.18

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

The Texas Funeral Service Commission proposes to repeal §203.18 concerning Clarification of Definition of Directing a Funeral.

O.C. Robbins, Executive Director, has determined that for the first five year period this section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

O.C. Robbins, Executive Director, has determined that the public benefit is that the repeal of this section will get rid of a rule that lacks statutory authority. The subject matter has contradictions to the Texas Occupations Code Chapter 651. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the proposed section.

Comments on the proposal may be submitted to O.C. "Chet" Robbins, Executive Director, Texas Funeral Service Commission, 510 South Congress Avenue, Suite 206, Austin, Texas 78704, (512) 936-2474 or 1-888-667-4881. Comments may also be submitted electronically to crob@tfsc.state.tx.us or faxed to (512) 479-5064.

The repeal is proposed under §651.152 of the Texas Occupations Code, as amended by Section 18 of House Bill 3516, 76th Legislature which authorizes the Commission to issue such rules and regulations as may be necessary to effect the provisions of this section.

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

§203.18. Clarification of Definition of Directing a Funeral.

This 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 September 13, 2001.

TRD-200105463
O.C. "Chet" Robbins
Executive Director
Texas Funeral Service Commission
Earliest possible date of adoption: October 28, 2001
For further information, please call: (512) 936-2480

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22 TAC §203.19

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

The Texas Funeral Service Commission proposes to repeal §203.19 concerning Clarification of Facilities in Which Funeral Services May Be Conducted.

O.C. Robbins, Executive Director, has determined that for the first five year period this section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

O.C. Robbins, Executive Director, has determined that the public benefit is that the repeal of this section will get rid of an obsolete rule. There will be no effect on small businesses. There is no

anticipated economic cost to persons who are required to comply with the proposed section.

Comments on the proposal may be submitted to O.C. "Chet" Robbins, Executive Director, Texas Funeral Service Commission, 510 South Congress Avenue, Suite 206, Austin, Texas 78704, (512) 936-2474 or 1-888-667-4881. Comments may also be submitted electronically to crob@tfsc.state.tx.us or faxed to (512) 479-5064.

The repeal is proposed under §651.152 of the Texas Occupations Code, as amended by Section 18 of House Bill 3516, 76th Legislature which authorizes the Commission to issue such rules and regulations as may be necessary to effect the provisions of this section.

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

§203.19. Clarification of Facilities in Which Funeral Services May Be Conducted.

This 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 September 13, 2001.

TRD-200105462
O.C. "Chet" Robbins
Executive Director
Texas Funeral Service Commission
Earliest possible date of adoption: October 28, 2001
For further information, please call: (512) 936-2480

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22 TAC §203.22

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

The Texas Funeral Service Commission proposes to repeal §203.22 concerning Required documentation for embalming.

O.C. Robbins, Executive Director, has determined that for the first five year period this section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

O.C. Robbins, Executive Director, has determined that the public benefit is that the repeal of this section will be that new language under the same title and number will be submitted that increases licensee accountability. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the proposed section.

Comments on the proposal may be submitted to O.C. "Chet" Robbins, Executive Director, Texas Funeral Service Commission, 510 South Congress Avenue, Suite 206, Austin, Texas 78704, (512) 936-2474 or 1-888-667-4881. Comments may also be submitted electronically to crob@tfsc.state.tx.us or faxed to (512)479-5064.

The repeal is proposed under §651.152 of the Texas Occupations Code, as amended by Section 18 of House Bill 3516, 76th Legislature which authorizes the Commission to issue such rules and regulations as may be necessary to effect the provisions of this Section.

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

§203.22. Required Documentation for Embalming.

This 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 September 13, 2001.

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O.C. "Chet" Robbins
Executive Director
Texas Funeral Service Commission
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For further information, please call: (512) 936-2480

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22 TAC §203.26

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

The Texas Funeral Service Commission proposes to repeal §203.26 concerning Clarification of Definition of Unreasonable Time.

O.C. Robbins, Executive Director, has determined that for the first five year period this section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

O.C. Robbins, Executive Director, has determined that the public benefit is that the repeal of this section will consolidate this rule into the definitions found in §203.1 concerning Definitions . There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the proposed section.

Comments on the proposal may be submitted to O.C. "Chet" Robbins, Executive Director, Texas Funeral Service Commission, 510 South Congress Avenue, Suite 206, Austin, Texas 78704, (512) 936-2474 or 1-888-667-4881. Comments may also be submitted electronically to crob@tfsc.state.tx.us or faxed to (512) 479-5064.

The repeal is proposed under §651.152 of the Texas Occupations Code, as amended by Section 18 of House Bill 3516, 76th Legislature which authorizes the Commission to issue such rules and regulations as may be necessary to effect the provisions of this section.

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

§203.26. Clarification of Definition of Unreasonable Time.

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

Filed with the Office of the Secretary of State, on September 13, 2001.

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O.C. "Chet" Robbins
Executive Director
Texas Funeral Service Commission
Earliest possible date of adoption: October 28, 2001
For further information, please call: (512) 936-2480

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22 TAC §203.30

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

The Texas Funeral Service Commission proposes to repeal §203.30 concerning Continuing Education as a condition of license renewal.

O.C. Robbins, Executive Director, has determined that for the first five year period this section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

O.C. Robbins, Executive Director, has determined that the public benefit is that the repeal of this section will improve and enhance the continuing education requirements that are a condition for license renewal. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the proposed section.

Comments on the amendment may be submitted to O.C. "Chet" Robbins, Executive Director, Texas Funeral Service Commission, 510 South Congress Avenue, Suite 206, Austin, Texas 78704, (512) 936-2474 or 1-888-667-4881. Comments may also be submitted electronically to crob@tfsc.state.tx.us or faxed to (512) 479-5064.

The repeal is proposed under §651.152 of the Texas Occupations Code, as amended by Section 18 of House Bill 3516, 76th Legislature which authorizes the Commission to issue such rules and regulations as may be necessary to effect the provisions of this section.

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

§203.30. Continuing Education as a Condition for License Renewal.

This 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 September 13, 2001.

TRD-200105466
O.C. "Chet" Robbins
Executive Director
Texas Funeral Service Commission
Earliest possible date of adoption: October 28, 2001
For further information, please call: (512) 936-2480

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22 TAC §203.30

The Texas Funeral Service Commission proposes new language to §203.30, concerning the Continuing Education as a Condition for License Renewal.

The Texas Funeral Service Commission proposes the new language in order to add sections to the repealed version of the rule and change some of the requirements of continuing education for both providers of continuing education and licensee recipients of continuing education.

O.C. Robbins, Executive Director, Texas Funeral Service Commission, has determined that for the first five-year period this section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section. There will be no effect on small businesses. There is an increase in the anticipated economic cost to persons who are required to comply with the proposed section, beyond what is already required under the existing rule. The Commission has voted to raise the provider fee costs to include an increase in provider fee and add an additional course fee charge.

Mr. Robbins has also determined that for the first five-year period this section is in effect the public benefit will be that the continuing education requirements will conform to statutory requirements and better enhance and increase licensee knowledge and professionalism.

Comments on the proposal may be submitted in writing for a 30 day period to O.C. Robbins, Executive Director, Texas Funeral Service Commission, 510 South Congress, Ste. 206, Austin, Texas 78704, or P.O. Box 12217, Capitol Station , Austin, Texas 78711-1440, or faxed to (512) 479-5064, or submitted electronically to chet.robbins@tfsc.state.tx.us.

The amendment is proposed under §651.152 of the Texas Occupations Code, as amended by Section 18 of House Bill 3516, 76th Legislature which authorizes the Commission to issue such rules and regulations as may be necessary to effect the provision of this Section.

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

§203.30. Continuing Education as a Condition for License Renewal.

(a) Purpose To ensure that all licensees maintain and improve their professional skills, each person holding a license issued by the Commission is required to participate in continuing education as a condition for renewal of any licenses.

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

(1) Approved provider - Any person or organization conducting or sponsoring a specific program of instruction that has been approved the Commission.

(2) Approved program - A continuing education program activity that has receive prior approval by the Commission.

(3) Hour of continuing education - A 50 minute clock hour completed by a licensee in attendance at an approved continuing education program.

(c) Types of Acceptable Continuing Education Acceptable sources of continuing education are institutes, seminars, workshops, conferences, independent study programs, college academic or continuing education courses which are related to or enhance the practice of funeral service and are offered or sponsored by an approved provider.

(d) Approved Continuing Education Provider

(1) Continuing Education may be provided by a variety of sources. The Commission will examine each provider and course for suitability, practicality, and applicability.

(2) Types of sources that may be approved to provider continuing education are private businesses that prepare and offer courses related to the funeral industry, accredited colleges and universities, national or state funeral industry associations, other state agencies, an American Board of Funeral Service Education accredited mortuary college, home study courses and courses taken over the Internet or through film rental.

(e) Approval of continuing education

(1) A person or entity seeking approval as a continuing education provider shall file a completed application on a form provided by the Commission and include the continuing education provider fee and the fee for each course submitted. Governmental agencies are exempt from paying this fee.

(2) National or state funeral industry professional organizations may apply for approval of seminars or other courses of study given during a convention.

(3) An application for approval must be accompanied by a syllabus for each course submitted which specifies the course objectives, course content and teaching methods to be used, and the number of credit hours each course is requesting to be granted, and a brief resume or description of the instructor and the instructor's qualifications.

(4) A program offered by a provider for continuing education credit hours from the Commission shall contribute to the advancement, extension and enhancement of the professional skills and knowledge of the licensee in the practice of funeral service by providing information relative to the funeral service industry.

(5) A provider is not approved until the executive director of the commission communicates in writing that the application has been accepted and issued a Provider Number for the provider and a course number for each course offered under that Provider number.

(6) A Provider Number and Course number are valid for one year, expiring on August 30th of each year, regardless of when the number was granted.

(f) Responsibilities of Approved Providers of Continuing Education

(1) The provider shall verify attendance at each program and provide a certificate of attendance to each attendee. The certificate of attendance shall contain:

(A) the name of the provider and approval number;

(B) the name of the participant;

(C) the title of the course or program;

(D) the number of credit hours given;

(E) the date and place the course was held;

(F) the signature of the provider or provider's representative.

(G) the signature of each attendee.

(2) The provider shall maintain the attendance records for a minimum of two years on each course provided.

(3) The provider shall provide a mechanism for evaluation of the program by the participants, to be completed on-site or at the time the program concludes. A copy of the evaluation will be provided to the Commission following the presentation of each course.

(4) The provider shall provide a syllabus of each course offered, which may include a copy of any video offered for home study.

(5) The provider shall be responsible for ensuring that no licensee receives continuing education credit for time not actually spent attending the program.

(g) Credit Hours Required

(1) Individual licensees are required to obtain 20 hours of continuing education every two year renewal period.

(2) The following are mandatory continuing education subjects:

(A) Ethics - 2 credit hours - this course must at least cover principals of right and wrong, the philosophy of morals, and standards of professional behavior.

(B) Law Updates - 2 credit hours - this course must at least cover the most current versions of Texas Occupations Code Chapter 651, and Texas Administrative Code Chapters 201 and 203.

(C) Vital Statistics Requirements and Regulations - 2 credit hours - this course must at least cover Health and Safety Code Chapters 193, 711-715 and Texas Administrative Code Chapter 181.

(3) This requirement will commence with the May, 2002 renewal for individual licenses.

(4) The three topics must be included in the satisfaction of every renewal period continuing education requirement.

(h) Credit Hours Granted. The commission will grant the following credit hours toward the continuing education requirements for license renewal.

(1) One credit hour is given for each hour of participation, except in accredited college courses taken for school credit.

(2) A supervisor of a provisional licensee will be granted a maximum 5 credit hours per renewal period, regardless of the number of provisional licensees supervised.

(3) A presenter or instructor of a continuing education program may be granted (five) 5 credit hours per renewal period, regardless of the number of times the course is presented.

(4) All required hours may be obtained through independent study, including home study or Internet presentation.

(5) A total of (four) 4 credit hours per renewal period will be granted for attendance to a regularly scheduled Commission meeting, provided the licensee signs in and out and is present during this period of time.

(6) A licensee may carry over to the next renewal period up to (ten) 10 credit hours earned in excess of the continuing education renewal requirements, except for those courses listed in subsection (g) of this section.

(7) It is the responsibility of the licensee to track the number of hours accumulated during a licensing period.

(8) When excessive hours are to be carried over to the next licensing period, the licensee must request and obtain permission in writing to carry over continuing education hours. This request will be kept in the permanent licensing file of the individual.

(i) Exemptions/waivers

(1) Continuing education requirements for individuals newly licensed by examination shall be waived for the first-time renewal of license (does not apply to reciprocal licensees).

(2) Individuals licensed in Texas, but not practicing in the state, are exempt from the continuing education requirements set forth in this section. Any individual who returns to practice in this state shall, before the next license renewal period, meet the continuing education requirements.

(3) Persons in a "Retired, Inactive" status will be exempted from the continuing education requirements. Any person changing from the "Retired, Inactive" status to a "Retired, Active" status shall, before the next license renewal period, meet the continuing education requirements.

(4) Persons in an active military status will be exempted, upon request, from the continuing education requirements. A copy of the active duty orders must be included in the request. Upon release from active duty and return to residency in the state, the individual shall, before the next renewal period after his or her release and return, meet the continuing education requirements.

(5) Upon request, the executive director may authorize partial or full exemption from the continuing education requirements based on person or family hardship. This request must be made at least 30 days prior to expiration of the license(s) and the executive director may require documentation of hardship. Hardship exemption may only be used for every other two-year licensing period and the request for exemption must be made in writing each time.

(j) Failure to comply.

(1) Failure by any licensee to comply fully with the continuing education requirements will result in rejection of the application for renewal of the individual's license.

(2) A $300 noncompliance fee must be paid before a license is subject to renewal if the individual has not obtained the required continuing education.

(A) The $300 noncompliance fee may only be used in lieu of obtaining the required continuing education for every other two-year renewal period.

(B) The noncompliance penalty fee and allowance for every other renewal period does not waive the necessity of obtaining continuing education hours in the mandatory courses listed in subsection (g) of this section.

(C) The mandatory courses must be taken before the license expiration. If the mandatory courses do not total 20 hours, the noncompliance fee of $300 is due upon application for renewal.

This 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 September 13, 2001.

TRD-200105468
O.C. "Chet" Robbins
Executive Director
Texas Funeral Service Commission
Earliest possible date of adoption: October 28, 2001
For further information, please call: (512) 936-2480

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PART 17. TEXAS STATE BOARD OF PLUMBING EXAMINERS

CHAPTER 361. ADMINISTRATION

The Texas State Board of Plumbing Examiners proposes amendments to §§361.1, 361.6, 361.8, 361.22, 361.26-361.28, and new §361.12, concerning administration. During the 77th Legislature House Bills 217 and 1505 were signed into law. As a result of these two House Bills, the Plumbing License Law is amended. The major amendments are explained as follows:

House Bill (HB) 217 amends the Plumbing License Law to modify the plumbing codes that the Texas State Board of Plumbing Examiners is required to adopt and authorizes the board by rule to adopt later editions of the adopted plumbing codes. The Southern Standard Plumbing Code and the National Standard Plumbing Code were eliminated from the codes adopted by the Board. The Uniform Plumbing Code was maintained and the International Plumbing Code was added, resulting in two Plumbing Codes to be adopted by the board. All plumbing installed in a political subdivision, in compliance with an adopted state approved code, must be inspected by a licensed Plumbing Inspector. The bill provides that plumbing installed in an area not otherwise subject to regulation under the Plumbing License Law must be installed in accordance with a board adopted plumbing code. The bill authorizes municipalities or owners of a public water system to amend any provisions of the codes and standards to conform to local concerns that do not substantially vary with rules or laws of this state. The bill provides that plumbing installed in compliance with an adopted plumbing code must be inspected by a licensed plumbing inspector. (Section 3)

Under HB 217, the board's jurisdiction was greatly expanded by requiring that all plumbing work connected to a public water system, or performed in any city in the state be performed by a licensed plumber. This eliminated the exemption, which had been in place since 1947, requiring a plumbing license in only cities with populations of 5,000 or more inhabitants (Section 2).

Under HB 217, Licensed Plumbing Inspectors are no longer restricted to being bona fide employees of a political subdivision, but were allowed to contract with a political subdivision as long as they are paid directly by the political subdivision (Section 1 and 3).

House Bill (HB) 1505 amends the Plumbing License Law by clarifying some existing language and effectively regulating all facets of plumbing work and individuals engaged in plumbing work.

HB 1505 clarifies that medical gasses and vacuum are included in the definition of "plumbing" (Section 1).

HB 1505 establishes a new Tradesman Plumber-Limited license and four new registrations. HB 1505 mandates, by law, experience and qualification requirements for all licenses and registrations issued by the Board. The new Tradesman Plumber-Limited license authorizes individuals to engage in the construction and installation of plumbing only in one and two-family dwellings, after passing an examination administered by the Board. HB 1505 provides for registrations authorizing individuals to install residential yard water and sewer lines (Residential Utilities Installer); remove p-traps and install clean-outs to clear obstructions in sewer lines (Drain Cleaner); clear obstructions in sewer lines through existing openings only (Drain Cleaner-Restricted Registrant); and assist in the installation of plumbing work (Plumber's Apprentice). HB 1505 requires all registrants and licensees to work under the general supervision of a Master Plumber and Residential Utilities Installers, Drain Cleaners and Drain Cleaner-Restricted Registrants to maintain registrations as a Plumber's Apprentice. (Sections 1 and 5).

HB 1505 provides the board with express authority to adopt rules and take other actions as the board deems necessary to administer this law including provisions relating to the new classes of registrants and licensees (Sections 5, 9, 11, and 14).

HB 1505 authorizes the board to appoint advisory committees as it considers necessary(Section 5).

HB 1505 requires, rather than authorizes, the board to recognize, approve, and administer continuing education programs for licensees and endorsees (Section 5).

Under HB 1505, the Licensed Sanitary Engineer position on the Board was changed to a Licensed Professional Engineer. Clarification that the Master Plumber Position, Journeyman Plumber Position, and Plumbing Inspector position on the Board, must be licensees of the Board was also included (Section 5).

HB 1505 requires a person who desires to learn the trade of plumbing to register as a Plumber's Apprentice before beginning to assist a licensee at the trade of plumbing (Section 13).

HB 1505 requires that no person, whether as a tradesman plumber-limited licensee, plumber's apprentice, registrant or otherwise to engage in, work at, or conduct the business of plumbing in this state or serve as a plumbing inspector unless such a person is the holder of a valid license, endorsement, or registration (Section 16).

HB 1505 authorizes the board to monitor insurance requirements for Master Plumbers responsible for the operation of a plumbing business by requiring them to submit a certificate of insurance to the Board (Section 17).

HB 1505 requires that the installation and replacement of water heaters be inspected by a Licensed Plumbing Inspector (Section 17).

HB 1505 also requires municipal plumbing inspections to be performed by licensed plumbing inspectors and provides that if the boundaries of a municipality and a municipal utility district overlap, only the affected municipality may perform a plumbing inspection and collect a permit fee (Section 17).

HB 1505 requires the board to adopt the required rules necessary to implement this law no later than January 1, 2002 (Section 24).

The following is an outline of the sections being added and amended in Chapter 361:

Section 361.1, regarding definitions, (3)-(6), (10)-(12), (14)-(18), (20)-(22), (24)(B)(i), (25)-(27), (29), (31), (33), (36)-(57).

The Board is amending and adding several new definitions to this section. Due to several definitions being added to this section, the existing paragraphs will be re-numbered to make room for these terms.

Section 361.6, regarding fees, (a)(1)-(4), (b)(1)-(4).

This section will add new license and registration/application fees for Tradesman Plumber-Limited License; Plumber's Apprentice Registration/Application; Residential Utilities Installer Registration/Application; Drain Cleaner Registration/Application; and Drain Cleaner-Restricted Registration/Application to subsection (a) (1)-(4). Subsection (b) is being amended to add Registration to License, replace testing with examination and add the term political subdivision.

Section 361.8, regarding forms and materials, (1)-(7).

The section is amending existing paragraphs in order to delete the Application for Registration as an Apprentice Plumber and to add Certificate of Insurance.

Section 361.12, regarding Advisory Committees.

This section is being proposed as new to give the board authority to appoint Advisory Committees.

Section 361.22, regarding contested cases; hearings.

"Registration" is being added and "for examination" is being deleted for this section.

Section 361.26, regarding contested cases: Investigations.

Subsection (a) is being amended to add registered or unregistered when referring to a person being investigated regarding a complaint.

Section 361.27, regarding rules of practice and procedure.

Subsection (a) (6) is being amended to replace licensee with respondent.

Section 361.28, regarding preliminary criminal reviews.

Registration and registered is being added to subsections (a) and (b).

Also, as a result of HB 217 and HB 1505, the Texas State Board of Plumbing Examiners proposes amendments to Chapters 363, 365, and 367 elsewhere in this issue of the *Texas Register*.

Robert L. Maxwell, Administrator of the Texas State Board of Plumbing Examiners, has determined that for the first five-year period the rules are in effect the fiscal impact on state and local government as well as small businesses and persons required to comply with these rules as a result of HB 1505 and HB 217is as follows:

The Board is required to adopt rules necessary for the implementation of HB 1505, no later than January 1, 2002;

The Board is required to develop and administer the one new examination required for the new license category and implement a registration process for the Plumber's Apprentice and the other three new mandatory registrations;

The Board is required to modify its computer programs to automate the examination and renewal process for the new categories, and make necessary changes to other administrative functions;

The addition of the International Plumbing Code, as a code to be adopted by the Board, will require the Board to review and make changes, as necessary, to its examinations to ensure that the answers to examination questions may be found in both the Uniform Plumbing Code and the International Plumbing Code;

Currently the Board is not required to register apprentices. They are issued a one-time apprentice card, but are not required to renew or update information. Therefore, the Board is not able to determine exactly how many apprentices are currently working in the plumbing industry. However, the Board estimates that there are at least two apprentices working with each journeyman. As of February 20, 2001, there were 12,070 licensed journeymen, or an estimated 24,140 apprentices. Therefore, it is estimated that the implementation of HB 1505 will double the size of the Board's current license database. One additional Administrative Technician III will be requested to support the increase in activity in the licensing department at a cost of $29,232 per year. Additionally, license cards at an approximate cost of $0.30 each

for 24,000 additional licensees and registrants will cost approximately $7,200. One additional Administrative Technician III will be requested to support the processing of new applications for examination and registration at a cost of $29,232 per year. Material cost for the examination center would increase by approximately $ 10,000 per year.

One-time costs will be the changes to the Board's licensing system by outside programmers for an estimated approximate cost of $21,650. Updates will be required to the Board's web site at an approximate cost of $1,000. Other one-time costs will be for computers, desks, and telephones for these 2 additional employees, at a cost of $ 7,500.

The Board will have an ongoing cost for Northrop Grumman, who supports the Board's regulatory computer, based on the number of licensees in the system. The cost is currently $0.0764 per month per licensee. Because of the additional estimated number of licensees and registrants that would be added to our system, the additional amount to be charged by Northrop Grumman would be $1,834 per month, or $22,008 per fiscal year.

The Board anticipates there will also be an increase in the number of hearings due to denials (usually due to criminal history issues) of unqualified applicants for registration as Plumber's Apprentice. Since, under current law, there is no requirement for Plumber's Apprentices to register with the Board, denied applicants for registration as a Plumber's Apprentice are not entitled to a hearing. However, under the new legislation, denied applicants will have a right to a hearing on any denial. This would increase the estimated number of cases to be heard by the State Office of Administrative Hearings (SOAH). SOAH costs for an estimated five additional hearings per year for applicants who are denied would cost approximately $6,250 to the State.

The Board's jurisdiction regarding job site monitoring will be increased by the elimination of the current exemption that allows unlicensed plumbers to perform plumbing work in areas outside of cities of 5,000 or more. The Board will perform job site monitoring in those areas previously exempted, to ensure that plumbing work is performed by licensed plumbers. Additionally, there will be an increase in the number of plumbers examined and licensed by the Board. However, since these unlicensed plumbers are not currently regulated or registered by the Board, the Board has no accurate method for determining how many unlicensed individuals are performing plumbing work in these areas. However, the Board estimates that the increase in the number of unlicensed plumbers that decide to become licensed will average two (2) new licensees per county over the 2002-2003 biennium, the estimated increase would total 508 newly licensed individuals over the biennium. Assuming that one-half of these individuals would sit for the journeyman plumber examination during the first year, and the other half over the second year, the increase in fees to the Board would be $12,700 in the first year and $19,050 in the second year, which is a total increase in fees of $ 31,750 for the biennium. Annual renewal fees for the additional licensees in fiscal years 2004-2006, would be $12,700 each year.

The Board was authorized to raise fees to ensure that it will cover the cost of implementation of HB 1505 and HB 217. The proposed reasonable license, examination and registration fees that will be paid by the licensees and registrants are expected to cover the costs of implementation of the new legislation. The Board will monitor the number of new licensees and registrants and the amount of fees collected to ensure that its costs are covered. The Board, at a later date, could deem it necessary to raise or lower the current proposed fees.

Mr. Maxwell also has determined that each year of the first five years the rules are effect the public benefit anticipated as a result of enforcing these rules will be increased public health, safety and welfare. This is expected to be accomplished by ensuring that the proper installation, service, maintenance and repair of plumbing systems is being performed by qualified individuals.

Comments on the proposed rule changes may be submitted within 30 days of publication of these proposed rule amendments in the *Texas Register*, to Robert L. Maxwell, Administrator, Texas State Board of Plumbing Examiners, 929 East 41st Street, P.O. Box 4200, Austin, Texas 78765-4200.

SUBCHAPTER A. GENERAL PROVISIONS

22 TAC §§361.1, 361.6, 361.8, 361.12

The amendments and new section in accordance with HB 217 are proposed under Section 3 (Section 5B, Article 6243-101, V.T.C.S; and in accordance with HB 1505 are proposed under Section 5 (Section 5, Article 6243-101, V.T.C.S.), Section 11 (Section 8C, Article 6243-101, V.T.C.S), Section 14 (Section 12, Article 6243-101, V.T.C.S), and Section 24 which authorizes, empowers and directs the Board to prescribe, amend and enforce all rules and regulations necessary to carry out the Act.

No other statute, article, or code is affected by these proposed rule changes.

§361.1. Definitions.

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

(1) Act -- The Plumbing License Law, Texas Civil Statutes, Article 6243-101, as amended.

(2) Administrative Act -- The Administrative Procedure Act, the Texas Government Code, Section 2001.001, et seq, as amended.

(3) Administrator -- The Board-appointed executive director [~~head~~] of all Board [~~the administrative~~] staff.

(4) Adopted Plumbing Code -- A plumbing code, including a fuel gas code adopted by the Board or a political subdivision, including any city, town, village, municipality, public water system, municipal utility district, in compliance with Section 5B of the Act.

(5) Advisory Committee -- A Board appointed committee subject to Section 5(f) of the Act and Chapter 2110 of the Government Code, of which the primary function is to advise the Board.

(6) [~~(4)~~] Appliance Connection -- An[~~A minor~~] appliance connection procedure using only a code approved appliance connector that does not require cutting into or altering the existing plumbing system [~~piping~~].

(7) [~~(5)~~] Applicant -- An individual seeking to obtain a License, Registration or Endorsement.

(8) [~~(6)~~] Board -- The Texas State Board of Plumbing Examiners.

(9) [~~(7)~~] Board Member -- An individual appointed by the governor and confirmed by the senate to serve on the Board.

(10) Building Sewer -- The part of the sanitary drainage system outside of the building, which extends from the end of the building drain to a public sewer, private sewer, private sewage disposal system, or other point of sewage disposal.

(11) Certificate of Insurance -- A form submitted to the Board certifying that the Responsible Master Plumber carries insurance coverage as specified in Section 15 of the Act and §367.3 of this title (relating to Requirements for Plumbing Companies, Responsible Master Plumbers; Certificate of Insurance).

(12) [~~(8)~~] Chief Examiner -- An employee of the Board who, under the direction of the Administrator, coordinates and supervises the activities of the Board examinations and registrations.

(13) [~~(9)~~] Chief Field Representative -- An employee of the Board who meets the definition of "Field Representative" and, under the direction of the Administrator, coordinates and supervises the activities of the Field Representatives.

(14) Cleanout -- A fitting, other than a p-trap, approved by the adopted plumbing code and designed to be installed in a sanitary drainage system to allow easy access for cleaning the sanitary drainage system.

(15) Code-Approved Appliance Connector -- A semi-rigid or flexible assembly of tube and fittings approved by the adopted plumbing code and designed for connecting an appliance to the existing plumbing system without cutting into or altering the existing plumbing system.

(16) Code Approved Existing Opening -- For the purposes of drain cleaning activities described in Section 2(13) of the Act, a code approved existing opening is any existing cleanout fitting, inlet of any p-trap or fixture, or vent terminating into the atmosphere that has been approved and installed in accordance with the adopted plumbing code.

(17) [~~(10)~~] Complaint -- A written charge alleging

[~~(A)~~] a violation of state law, Board rules or orders, local codes or ordinances, or standards of competency; or

[~~(B)~~] the presence of fraud, false information, or error in the attempt to obtain a License, Registration or Endorsement.

(18) [~~(11)~~] Contested Case -- A proceeding, including but not limited to rule making, [~~and~~] licensing and registering, in which the agency determines the legal right, duties, and privileges of a party after allowing an opportunity for adjudicative hearing of the case.

(19) [~~(12)~~] Continuing Professional Education -- Board-approved courses/programs required for a licensee [~~plumber~~] to renew his or her License and/or Endorsement.

(20) Direct Supervision --

(A) The on-the-job oversight and direction of an individual performing plumbing work by a licensed plumber who is fulfilling his or her responsibility to the client and employer by ensuring the following:

(i) that the plumbing materials for the job are properly prepared prior to assembly according to the material manufacturers recommendations and the requirements of the adopted plumbing code; and

(ii) that the plumbing work for the job is properly installed to protect health and safety by meeting the requirements of the adopted plumbing code and all requirements of local and state ordinances, regulations and laws.

(B) The on-the-job oversight and direction by a licensed Plumbing Inspector of an individual training to qualify for the Plumbing Inspector Examination.

(21) Drain Cleaner -- An individual who has completed at least 4,000 hours working under the supervision of a Master Plumber as a registered Drain Cleaner-Restricted Registrant, who has fulfilled the requirements of and is registered with the Board, and who installs cleanouts and removes and resets p-traps to eliminate obstructions in building drains and sewers.

(22) Drain Cleaner-Restricted Registrant -- An individual who has worked as a registered Plumber's Apprentice under the supervision of a Master Plumber, who has fulfilled the requirements of and is registered with the Board, and who clears obstructions in sewer and drain lines through any code-approved existing opening.

(23) [~~(13)~~] Endorsement -- A certification issued by the Board in addition to the Master or Journeyman Plumber License.

(24) [~~(14)~~] Field Representative --

[~~(A)~~] For the purposes of these Rules,

(A) "Field Representative" means an employee of the Board who is:

(i) knowledgeable of this Act and of municipal ordinances relating to plumbing;

(ii) qualified by experience and training in good plumbing practice[~~;~~] and compliance with this Act;

(iii) designated by the Board to assist in the enforcement of this Act and rules adopted under this Act.

(B) A field representative may:

(i) make on-site license and registration checks to determine compliance with this Act;

(ii) investigate consumer complaints filed under Section 8A of this Act;

(iii) assist municipal plumbing inspectors in cooperative enforcement of this Act; and

(iv) issue citations as provided by Section 14 of this Act.

(25) [~~(15)~~] Journeyman Plumber -- An [~~any~~] individual licensed under this Act who has met the qualifications for registration as a Plumber's Apprentice or for licensure as a Tradesman Plumber-Limited Licensee, who has completed at least 8,000 hours working under the supervision of [~~person other than~~] a master plumber, who supervises, engages in, or works at the actual installation, alteration, repair, service and renovating of plumbing, and who has successfully fulfilled the examinations and requirements of the Board.

(26) [~~(16)~~] License -- A document issued by the Board to certify that the named [~~cited~~] individual [~~person~~] fulfilled the requirements of the Act and of these rules to hold a license issued by the Board.

(27) [~~(17)~~] Licensing and Registering -- The process of granting, denying, renewing, revoking, or suspending a License, Registration or Endorsement.

(28) [~~(18)~~] Maintenance Man or Maintenance Engineer -- An employee, as opposed to an independent contractor, who performs plumbing maintenance work incidental to and in connection with other duties. "Incidental to and in connection with" includes the repair, maintenance and replacement of existing potable water piping, existing sanitary waste and vent piping, existing plumbing fixtures and existing water heaters. "Incidental to and in connection with" does not include cutting into fuel gas plumbing systems and the installation of gas fueled water heaters. An [~~a~~] individual [~~person~~] who erects, builds, or installs plumbing not already in existence may not be classified as a maintenance man or maintenance engineer. Plumbing work performed by a maintenance man or maintenance engineer is not exempt from state law

and municipal rules and ordinances regarding plumbing codes, plumbing permits and plumbing inspections. Such maintenance individuals [~~persons~~] shall not engage in plumbing work for the general public.

(29) [~~(19)~~] Master Plumber -- An individual [~~a person~~] licensed under this Act who is skilled in the planning, superintending, and the practical installation, repair, and service of plumbing, who secures permits for plumbing work, [~~and~~] who is knowledgeable about [~~familiar with~~] the codes, ordinances, or rules and regulations governing those matters, who alone, or through an[~~a~~] individual or individuals [~~person or persons~~] under his supervision, performs plumbing work, and who has successfully fulfilled the examinations and requirements of the Board.

(30) [~~(20)~~] Medical Gas Piping Installation Endorsement -- A document entitling the holder of a Master or Journeyman Plumber License to install piping that is used solely to transport gases used for medical purposes including, but not limited to oxygen, nitrous oxide, medical air, nitrogen, medical vacuum and medical air.

(31) One Family Dwelling -- A detached structure designed for the residence of a single family that does not have the characteristics of a multiple family dwelling, and is not primarily designed for transient guests or for providing services for rehabilitative, medical, or assisted living in connection with the occupancy of the structure.

(32) [~~(21)~~] Party -- Each person named or admitted in association with an action as a party.

(33) Paid Directly -- As related to Section 5B(e) of the Act and § 365.1(4)(b) of this title (relating to License and Registration Categories; Description; Scope of Work Permitted), "paid" and "directly" have the common meanings and "paid directly" means that compensation for plumbing inspections must be paid by the political subdivision to the individual Licensed Plumbing Inspector who performed the plumbing inspections.

(34) [~~(22)~~] Person -- For the purposes of these Rules only, a person means an [~~An~~] individual, partnership, corporation, limited liability company, association, governmental subdivision, or public or private organization of any character other than an agency.

(35) [~~(23)~~] Petitioner -- A person asking the Board to adopt a rule.

(36) Plumber's Apprentice -- Any individual other than a Master Plumber, Journeyman Plumber, or Tradesman Plumber-Limited Licensee who, as his or her principal occupation, is engaged in learning and assisting in the installation of plumbing, is registered by the Board, and works under the supervision of a licensed Master Plumber and the direct supervision of a licensed plumber.

(37) [~~(24)~~] Plumbing -- All piping, fixtures, appurtenances, and appliances, including disposal systems, drain or waste pipes, or any combination of these that:

[~~(A)~~] supply, recirculate, drain, or eliminate water, gas, medical gasses and vacuum, liquids, and sewage for all personal or domestic purposes in and about buildings where persons live, work, or assemble;

[~~(B)~~] connect the building on its outside with the source of water, gas, or other liquid supply, or combinations of these, on the premises, or the water main on public property; and

[~~(C)~~] carry waste water or sewage from or within a building to the sewer service lateral on public property or the disposal or septic terminal that holds private or domestic sewage. The installation, repair, service, maintenance, alteration, or renovation of all piping, fixtures, appurtenances, and appliances on premises where persons live, work, or assemble that supply gas, water, liquids, or any combination of these, or dispose of waste water or sewage.

(38) [~~(25)~~] Plumbing Company -- A person, as defined in these Rules, who engages in the plumbing business [~~which engages in plumbing work. There is no criteria other than the performance of plumbing work that will designate a business a plumbing company~~].

(39) [~~(26)~~] Plumbing Inspection -- Any of the inspections required in Section 5B and Section [~~Sec.~~] 15(a) of the Act, including any check of pipes, faucets, tanks, valves, water heaters, plumbing fixtures and appliances by and through which a supply of water, gas, medical gasses or vacuum, or sewage is used or carried that is performed on behalf of any political subdivision, public water supply, municipal utility district, town, city or municipality [~~of more than five thousand (5,000) inhabitants~~] to ensure compliance with the [~~municipality's~~] adopted plumbing and gas codes and ordinances regulating plumbing.

(40) [~~(27)~~] Plumbing Inspector -- Any individual who is employed by a political subdivision, or who contracts as an independent contractor with a political subdivision, for the purpose of inspecting plumbing work and installations in connection with health and safety laws, ordinances, and plumbing and gas codes, who has no financial or advisory interests in any plumbing company, and who has successfully fulfilled the examinations and requirements of the Board [~~An individual with no financial or advisory interests in any plumbing company who: is authorized by the Act and Board Rules to conduct plumbing inspections and is employed by or is an agent of a political subdivision to check plumbing work for compliance with health and safety laws and ordinances; and has successfully completed the examinations and met the Board's requirements for Plumbing Inspector status~~].

(41) [~~(28)~~] Pocket Card -- A card issued by the Board which certifies that the holder has a Master Plumber License, Journeyman Plumber License, Tradesman Plumber-Limited License, [~~or~~] Plumbing Inspector License, Residential Utilities Installer Registration, Drain Cleaner Registration, Drain Cleaner-Restricted Registration or a Plumber's Apprentice Registration.

(42) Political Subdivision -- A political subdivision of the State of Texas that includes a:

(A) city;

(B) county;

(C) school district;

(D) junior college district;

(E) municipal utility district;

(F) levee improvement district;

(G) drainage district;

(H) irrigation district;

(I) water improvement district;

(J) water control improvement district;

(K) water control preservation district;

(L) freshwater supply district;

(M) navigation district;

(O) conservation and reclamation district;

(P) soil conservation district;

(Q) communication district;

(R) public health district;

(S) river authority; and

(T) any other governmental entity that:

(i) embraces a geographical area with a defined boundary;

(ii) exists for the purpose of discharging functions of government and;

(iii) possesses authority for subordinate self government through officers selected by it.

(43) P-Trap -- A fitting connected to the sanitary drainage system for the purpose of preventing the escape of sewer gasses from the sanitary drainage system and designed to be removed to allow for cleaning of the sanitary drainage system. For the purposes of drain cleaning activities described in Section 2(12) of the Act, a p-trap includes any integral trap of a water closet, bidet, or urinal.

(44) Public Water System -- A system for the provision to the public of water for human consumption through pipes or other constructed conveyances. Such a system must have at least 15 service connections or serve at least 25 individuals at least 60 days out of the year. Two or more systems with each having a potential to serve less than 15 connections or less than 25 individuals, but owned by the same person, firm, or corporation and located on adjacent land will be considered a public water system when the total potential service connections in the combined systems are 15 or greater or if the total number of individuals served by the combined systems total 25 or greater, at least 60 days out of the year. Without excluding other meanings of the terms "individual" or "served", an individual shall be deemed to be served by a water system if the individual lives in, uses as the individual's place of employment, or works in a place to which drinking water is supplied from the water system.

[(29) Registered Plumbing Apprentice -- An individual other than a master plumber or journeyman plumber whose principal occupation is learning about and assisting in the installation of plumbing. The work that may be performed by a Registered Plumbing Apprentice is limited by the Act and these rules (See Sec.365.2 and Sec 367.3 of these Rules)]

(45) [(30)] Regularly Employed -- Steadily, uniformly, or habitually working in an employer-employee relationship with a view of earning a livelihood, as opposed to working casually or occasionally.

(46) Residential Utilities Installer -- An individual who has completed at least 2,000 hours working under the supervision of a Master Plumber as a registered Plumber's Apprentice, who has fulfilled the requirements of and is registered with the Board, and who constructs and installs yard water service piping for one-family or two-family dwellings and building sewers.

(47) [(31)] Respondent -- A person charged in a complaint filed with the Board.

(48) [(32)] Responsible Master Plumber -- A Responsible Master Plumber is the Master Plumber who [that] allows his Master Plumber License to be used by a company for the purpose of performing plumbing work and obtaining the required plumbing permits. The Master Plumber by allowing his license to be used in this manner, assumes responsibility for all plumbing work performed. A Responsible Master Plumber may allow his Master Plumber License to be used by only one plumbing company.

(49) [(33)] Rule -- An agency statement of general applicability that implements, interprets, or prescribes law or policy, or describes the procedure or practice requirements of the agency. The term includes the amendment or repeal of a prior rule but does not include statements concerning only the internal management or organization of the agency and not affecting private rights or procedures.

(50) Supervision -- The general on-the-job or off-the-job oversight, direction and management of plumbing work and individuals performing plumbing work by a Responsible Master Plumber who is fulfilling his or her responsibility to the client and employer by ensuring the following:

(A) that the operations of the plumbing company that has secured his or her services meets the requirements of all applicable local and state ordinances, regulations and laws; and

(B) that the plumbing work performed under his or her License will protect health and safety by meeting the requirements of the adopted plumbing code and all requirements of local and state ordinances, regulations and laws.

(51) [(34)] System -- An interconnection between one or more public or private end users of water, gas, sewer, or disposal systems that could endanger public health if improperly installed.

(52) Tradesman Plumber-Limited Licensee -- An individual who has completed at least 4,000 hours working under the direct supervision of a Journeyman or Master Plumber as a registered Plumber's Apprentice, who has passed the required examination and fulfilled the other requirements of the Board, who constructs and installs plumbing for one-family or two-family dwellings, and who has not met or attempted to meet the qualifications for a Journeyman Plumber License.

(53) Two Family Dwelling -- A detached structure with separate means of egress designed for the residence of two families ("duplex") that does not have the characteristics of a multiple family dwelling and is not primarily designed for transient guests or for providing services for rehabilitative, medical, or assisted living in connection with the occupancy of the structure.

(54) [(35)] Water Supply Protection Specialist -- A Master or Journeyman Plumber who holds the Water Supply Protection Specialist Endorsement issued by the Board.

(55) [(36)] Water Treatment -- A business conducted under contract to analyze, then alter or purify influent or effluent water by adding or removing a mineral, chemical, or bacterial content or substance. The term includes the installation, exchange, servicing, or repair of fixed or portable water treatment equipment or connections necessary to the installation of such equipment in public or private water treatment systems.

[(37) Water Treatment Certificate -- A document issued by the Texas Natural Resource Conservation Commission certifying that the named person complies with department rules for engaging in water treatment.]

(56) Work as a Master Plumber --To act as and assume the responsibilities of a Responsible Master Plumber, as defined in these Rules.

(57) Yard Water Service Piping -- The building supply piping carrying potable water from the water meter or other source of water supply to the point of connection to the water distribution system at the building.

§361.6. Fees.

(a) The Board has established the following fees:

(1) Licenses, Endorsements and Registrations :

(A) Master license -- $175;

(B) Journeyman license -- $25;

(C) Medical gas installation endorsement (Master) -- $50;

(D) Medical gas installation endorsement (Journeyman) -- $12;

(E) Plumbing inspector license -- $50;

(F) Water supply protection specialist endorsement (Journeyman) -- $12;

(G) Water supply protection specialist endorsement (Master) -- $50;

(H) Tradesman Plumber-Limited License -- $25;

[~~(H) Water supply protection specialist endorsement (Inspector) -- $25;~~]

(I) Plumber's Apprentice Registration/Application -- $10;

[~~(I) Medical gas installation endorsement (Inspector) -- $25.~~]

(J) Residential Utilities Installer Registration/Application -- $10;

(K) Drain Cleaner Registration/Application -- $10;

(L) Drain Cleaner-Restricted Registration/Application -- $10.

(2) Examinations:

(A) Master examination -- $150;

(B) Journeyman examination -- $25;

(C) Medical gas installation endorsement (Master) -- $75;

(D) Medical gas installation endorsement (Journeyman) -- $25;

(E) Plumbing inspector examination -- $50;

(F) Water supply protection specialist endorsement (Journeyman) -- $25;

(G) Water supply protection specialist endorsement (Master) -- $75;

(H) Tradesman Plumber-Limited Licensee -- $25.

[~~(H) Water supply protection specialist endorsement (Inspector) -- $50;~~]

[~~(I) Medical gas installation endorsement (Inspector) -- $50.~~]

(3) Renewals:

(A) Master license -- $175[~~$150~~];

(B) Journeyman license -- $25[~~$12~~];

(C) Medical gas installation endorsement (Master) -- $50;

(D) Medical gas installation endorsement (Journeyman) -- $12;

(E) Plumbing inspector license -- $50;

(F) Water supply protection specialist endorsement (Journeyman) $12;

(G) Water supply protection specialist endorsement (Master) -- $50;

(H) Inspector with a Master and/or Journeyman License -- $50;

(I) Master with Journeyman License $175 [~~$150~~];

(J) Tradesman Plumber-Limited License -- $25;

[~~(J) Water supply protection specialist endorsement (Inspector) -- $25;~~]

(K) Plumber's Apprentice Registration -- $10;

[~~(K) Medical gas installation endorsement (Inspector) -- $25.~~]

(L) Residential Utilities Installer Registration -- $10;

(M) Drain Cleaner Registration -- $10;

(N) Drain Cleaner-Restricted Registration -- $10.

(4) Other fees:

(A) Late renewal:

(i) Master:

(I) less than 90 days -- one-half examination fee -- $75;

(II) more than 90 days -- examination fee -- $150;

(ii) Medical gas installation endorsement (Master):

(I) less than 90 days -- one half examination fee $37.50;

(II) more than 90 days -- examination fee -- $75;

(iii) Medical gas installation endorsement (Journeyman):

(I) less than 90 days -- one half examination fee -- $12.50

(II) more than 90 days -- examination fee -- $25;

(iv) Journeyman:

(I) less than 90 days -- one-half examination fee -- $12.50

(II) more than 90 days -- examination fee -- $25;

(v) Water supply protection specialist (Journeyman):

(I) less than 90 days -- one half examination fee -- $12.50

(II) more than 90 days -- examination fee -- $25;

(vi) Water supply protection specialist (Master):

(I) less than 90 days -- one half examination fee -- $37.50

(II) more than 90 days -- examination fee -- $75;

(vii) Plumbing Inspector:

(I) less than 90 days -- one half examination fee -- $25;

(II) more than 90 days -- examination fee -- $50;

(viii) Master with Journeyman:

(I) less than 90 days -- one half examination fee -- $75;

(II) more than 90 days -- examination fee -- $150;

(ix) Plumbing Inspector with Master and/or Journeyman:

(I) less than 90 days -- one half examination fee -- $25;

(II) more than 90 days -- examination fee -- $50;

(x) Tradesman Plumber -- Limited License:

(I) less than 90 days -- one half examination fee -- $12.50;

(II) more than 90 days -- examination fee -- $25;

(xi) Plumber's Apprentice Registration:

(I) less than 90 days -- one half registration fee -- $5.00;

(II) more than 90 days -- registration fee -- $10;

(xii) Residential Utilities Installer Registration:

(I) less than 90 days -- one half registration fee -- $5.00;

(II) more than 90 days -- registration fee -- $10;

(xiii) Drain Cleaner Registration:

(I) less than 90 days -- one half registration fee -- $5.00;

(II) more than 90 days -- registration fee -- $10;

(xiv) Drain Cleaner-Restricted Registration:

(I) less than 90 days -- one half registration fee -- $5.00;

(II) more than 90 days -- registration fee -- $10;

(B) Instructor Certification Training (Per Day) -- $100.

(C) Duplicate license or registration [~~new license with change of name~~] -- $10.

(D) Returned check -- $25 [~~$10~~].

(b) Methods of payment

(1) Examination fees shall be paid in the form of cash, cashiers check, or money order, or, only in the case of the Plumbing Inspector's examination, including, but not limited to a check from a political subdivision [~~in the form of a city check~~].

(2) License, Registration [~~Licensing~~] and Endorsement fees shall be paid in the form of cash, cashiers check, personal check (including company check), or money order, or, only in the case of the Plumbing Inspector's License, including, but not limited to a check from a political subdivision [~~in the form of a city check~~].

(3) License, Registration and Endorsement renewal fees shall be paid in the form of cash, cashiers check, personal check (including company check), or money order, or, only in the case of the Plumbing Inspector's license, including, but not limited to a check from a political subdivision [~~in the form of a city check~~].

(4) An [~~A~~] individual [~~person~~] shall pay the appropriate fee prior to the time of examination [~~testing~~] or at the time of examination [~~testing~~]. For License, Registration [~~licensing~~], Endorsement, and renewal, the appropriate fee shall be paid prior to issuance of the License, Registration, Endorsement, or renewal.

(5) The board, under any special circumstances it finds appropriate, may:

(A) waive any requirements concerning the method or timing of payment of any fee;

(B) refund any fee; or

(C) waive payment of any fee not required by statute.

§361.8. Forms and Materials.

The Board incorporates by reference any rules that may be contained in the following forms and requires the use of these forms in doing business with the agency:

(1) Applications for Examination, Registration and Endorsements;

(2) Employer's Certification;

[~~(3) Application for Registration as an Apprentice Plumber;~~]

(3) [~~(4)~~] General Complaint;

(4) [~~(5)~~] Applications for renewals of Licenses, Registrations and[~~/or~~] Endorsements;

(5) [~~(6)~~] Supplemental Criminal History Information;

(6) [~~(7)~~] Application for Nonstandard Testing Accommodations including the Physician or Licensed Health Care Provider;[~~.~~]

(7) Certificate of Insurance.

§361.12. Advisory Committees.

(a) The Board may appoint Advisory Committees as it considers necessary for the primary function of advising the Board.

(b) Advisory Committees are subject to §5(f) of the Act and Chapter 2110.008 of the Government Code and shall:

(1) be composed of a reasonable number of members not to exceed 24 members who provide a balanced representation between:

(A) individuals regulated or directly affected by the Board; and

(B) consumers of services provided by the Board or the plumbing industry; and

(2) select from among its members a presiding officer who shall preside over the advisory committee and report to the Board; and

(3) serve without compensation or reimbursement.

(c) If the Board appoints an advisory committee, it shall adopt rules that:

(1) state the purpose of the committee;

(2) describe the task of the committee and the manner in which the committee will report to the Board; and

(3) the date on which the committee will automatically be abolished (not to exceed four years from its creation) unless the Board votes to continue the committee in existence.

(d) If the Board appoints an advisory committee it shall evaluate annually:

(1) the committee's work;

(2) the committee's usefulness; and

(3) the costs related to the committee's existence, including the cost of Board staff time spent in support of the committee's activities.

(e) The Board shall report to the Legislative Budget Board the information developed in the evaluation required in subsection (d) of this section. The Board shall file the report biennially in connection with the agency's request for appropriations.

This 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 September 17, 2001.

TRD-200105551
Robert Maxwell
Administrator
Texas State Board of Plumbing Examiners
Earliest possible date of adoption: October 28, 2001
For further information, please call: (512) 458-2145

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SUBCHAPTER B. PETITION FOR ADOPTION OF RULES

22 TAC §§361.22, 361.26 - 361.28

The amendments in accordance with HB 217 are proposed under Section 3 (Section 5B, Article 6243-101, V.T.C.S; and in accordance with HB 1505 are proposed under Section 5 (Section 5, Article 6243-101, V.T.C.S.), Section 11 (Section 8C, Article 6243-101, V.T.C.S), Section 14 (Section 12, Article 6243-101, V.T.C.S), and Section 24 which authorizes, empowers and directs the Board to prescribe, amend and enforce all rules and regulations necessary to carry out the Act.

No other statute, article, or code is affected by these proposed rule changes.

§361.22. Contested Cases: Hearings.

(a) If the Board denies an examination, a license, registration, or endorsement to an applicant under the Act, the Board shall give timely written notice of the denial to the applicant. Notice and hearings relating to the denial shall be governed by the Act and the Administrative Procedure Act. Failure by the denied applicant to request a hearing within 20 days of the mailing of the notice of the denial waives judicial appeal, and the Board determination becomes final and unappealable.

(b) The Board shall provide for a hearing when requested after issuing a formal complaint that:

(1) charges an individual with any of the actions specified as grounds for disciplinary action; or

(2) would prevent an otherwise qualified individual from obtaining a license, registration, or endorsement, a license, registration, or endorsement renewal, or permission to take an examination.

(c) The Board shall afford an opportunity for a hearing to all parties, giving them reasonable notice of not less than 10 days before the hearing.

(d) The Board shall conduct the hearing in accordance with all applicable provisions of the Administrative Procedure Act.

(e) Any individual whose application for examination, a license, registration or endorsement has been denied under §365.12 of this title may re-apply to the Board [~~for examination~~] after a waiting period of at least one year from the date that the denial became final. The Enforcement Committee shall be delegated the authority of making the initial review of the re-application. If the Committee decides to deny the re-application [~~for examination~~] it shall proceed as defined in subsections [~~subsection~~] (a) - (d) of this section.

§361.26. Contested Cases: Investigations.

(a) The Board may investigate complaints regarding any licensed, [~~or~~] unlicensed, registered or unregistered individual [~~person~~] who engages in plumbing as defined in Texas Civil Statutes, Article 6243-101, §2 [~~§3~~].

(b) Each written contract for services by the licensed Responsible Master Plumber and any other person shall contain the Responsible Master Plumber's License number, the Board's name, mailing address and telephone number. The term "written contract" includes documents used by a plumber or plumbing company to define the scope and cost of the work to be provided to the public. This would include items such as service invoices, billing invoices or any document which defines the services and cost of the services provided to the consumer. For the purposes of this section, the public need not sign the document for it to be considered a contract.

§361.27. Rules of Practice and Procedure.

(a) Entry of Appearance; Continuance

(1) When a contested case has been instituted, the respondent or the representative of the respondent shall enter an appearance within 20 days of the date on which the notice of hearing is provided to the respondent.

(2) For the purposes of this section, a contested case shall mean any action that is referred by the Texas State Board of Plumbing Examiners to the State Office of Administrative Hearings.

(3) For purposes of this section, an entry of appearance shall mean the filing of a written answer or other responsive pleading with the State Office of Administrative Hearings.

(4) For purposes of this section, notice of hearing is provided to a respondent on the date of mailing the notice via certified mail and via regular mail containing a notice of hearing in accordance with provisions of the Administrative Procedure Act.

(5) The filing of an untimely appearance by a party, or entering an appearance at the contested case hearing, entitles the Texas State Board of Plumbing Examiners to a continuance of the hearing in the contested case at the Board's discretion for such a reasonable period of time as determined by the Administrative Law Judge, but not for a period of less than 20 days. For purposes of this section, an untimely appearance is an appearance not entered within 20 days of the date of the mailing of the notice.

(6) The notice of hearing provided to a respondent [~~licensee~~] for a contested case as defined in this section shall include the following language in capital letters in bold face type: THE FAILURE TO FILE A TIMELY APPEARANCE IN PERSON OR THROUGH AN ANSWER OR OTHER RESPONSIVE PLEADING TO THE ALLEGATIONS CONTAINED IN THE COMPLAINT WITHIN 20 DAYS OF THE DATE THIS NOTICE WAS MAILED SHALL ENTITLE THE STATE BOARD OF PLUMBING EXAMINERS TO A CONTINUANCE OF THE HEARING FOR A TIME PERIOD SET BY THE ADMINISTRATIVE LAW JUDGE, BUT NOT FOR LESS THAN 20 DAYS.

(b) Failure to Attend Hearing: Default Judgment

(1) If a respondent fails to appear in person or through their legal representative on the day and at the time set for hearing in a contested case regardless of whether an appearance has been entered, the Administrative Law Judge, upon motion by the Board, shall enter a default judgment in the matter adverse to the respondent who has failed to attend the hearing.

(2) For purposes of this section, default judgment shall mean the issuance of a proposal for decision against the respondent in which the factual allegations against the respondent contained in the Complaint shall be admitted as prima facie evidence, and deemed admitted as true, without any requirement for additional proof to be submitted by the Board.

(3) Any default judgment granted under this section will be entered on the basis of the factual allegations contained in the Complaint, and upon the proof of proper notice to the defaulting party opponent. Such notice also shall include the following language in capital letters in bold face type: FAILURE TO APPEAR AT THE HEARING WILL RESULT IN THE ALLEGATIONS AGAINST YOU SET OUT IN THE COMPLAINT BEING ADMITTED AS TRUE.

§361.28. Preliminary Criminal Reviews.

(a) The Chief Examiner will review applications for examination or registration which contain a response of yes in the felony and misdemeanor box of the form to determine if the individual should be allowed to take the examination or be registered. The Chief Examiner, based upon his review, may allow individuals convicted of misdemeanor driving while intoxicated five times or less, or first time misdemeanor possession of controlled substance to take the examination or be registered. Any individual not approved by or outside of the authority of the Chief Examiner will be reviewed by the Texas State Board of Plumbing Examiner's Enforcement Committee.

(b) The Chief Field Representative will review all license and registration renewal forms which contain a response of yes in the felony and misdemeanor box of the form to determine if the individual should be allowed to renew their license or registration. The Chief Field Representative, based upon his review, may allow individuals convicted of misdemeanor driving while intoxicated five times or less, or first time misdemeanor possession of controlled substance to renew their license or registration. Any individual not approved by or outside the authority of the Chief Field Representative will be reviewed by the Texas State Board of Plumbing Examiner's Enforcement Committee.

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

Filed with the Office of the Secretary of State, on September 17, 2001.

TRD-200105552
Robert Maxwell
Administrator
Texas State Board of Plumbing Examiners
Earliest possible date of adoption: October 28, 2001
For further information, please call: (512) 458-2145

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CHAPTER 363. EXAMINATIONS

22 TAC §§363.1, 363.6, 363.10

The Texas State Board of Plumbing Examiners proposes amendments to §§363.1, 363.6, and 363.10, concerning examinations . During the 77th Legislature House Bills 217 and 1505 were signed into law. As a result of these two House Bills, the Plumbing License Law is amended as follows.

House Bill (HB) 217 amends the Plumbing License Law to modify the plumbing codes that the Texas State Board of Plumbing Examiners is required to adopt and authorizes the board by rule to adopt later editions of the adopted plumbing codes. The Southern Standard Plumbing Code and the National Standard Plumbing Code were eliminated from the codes adopted by the Board. The Uniform Plumbing Code was maintained and the International Plumbing Code was added, resulting in two Plumbing Codes to be adopted by the board. All plumbing installed in a political subdivision, in compliance with an adopted state approved code, must be inspected by a licensed Plumbing Inspector. The bill provides that plumbing installed in an area not otherwise subject to regulation under the Plumbing License Law must be installed in accordance with a board adopted plumbing code. The bill authorizes municipalities or owners of a public water system to amend any provisions of the codes and standards to conform to local concerns that do not substantially vary with rules or laws of this state. The bill provides that plumbing installed in compliance with an adopted plumbing code must be inspected by a licensed plumbing inspector. (Section 3)

Under HB 217, the board's jurisdiction was greatly expanded by requiring that all plumbing work connected to a public water system, or performed in any city in the state be performed by a licensed plumber. This eliminated the exemption, which had been in place since 1947, requiring a plumbing license in only cities with populations of 5,000 or more inhabitants (Section 2).

Under HB 217, Licensed Plumbing Inspectors are no longer restricted to being bona fide employees of a political subdivision, but were allowed to contract with a political subdivision as long as they are paid directly by the political subdivision (Section 1 and 3).

House Bill (HB) 1505 amends the Plumbing License Law by clarifying some existing language and effectively regulating all facets of plumbing work and individuals engaged in plumbing work.

HB 1505 clarifies that medical gasses and vacuum are included in the definition of "plumbing" (Section 1).

HB 1505 establishes a new Tradesman Plumber-Limited license and four new registrations. HB 1505 mandates, by law, experience and qualification requirements for all licenses and registrations issued by the Board. The new Tradesman Plumber-Limited license authorizes individuals to engage in the construction and installation of plumbing only in one and two-family dwellings, after passing an examination administered by the Board. HB 1505 provides for registrations authorizing individuals to install residential yard water and sewer lines (Residential Utilities Installer); remove p-traps and install clean-outs to clear obstructions in sewer lines (Drain Cleaner); clear obstructions in sewer lines through existing openings only (Drain Cleaner-Restricted Registrant); and assist in the installation of plumbing work (Plumber's Apprentice). HB 1505 requires all registrants and licensees to work under the general supervision of a Master Plumber and Residential Utilities Installers, Drain Cleaners and Drain Cleaner-Restricted Registrants to maintain registrations as a Plumber's Apprentice. (Sections 1 and 5).

HB 1505 provides the board with express authority to adopt rules and take other actions as the board deems necessary to administer this law including provisions relating to the new classes of registrants and licensees (Sections 5, 9, 11, and 14).

HB 1505 authorizes the board to appoint advisory committees as it considers necessary(Section 5).

HB 1505 requires, rather than authorizes, the board to recognize, approve, and administer continuing education programs for licensees and endorsees (Section 5).

Under HB 1505, the Licensed Sanitary Engineer position on the Board was changed to a Licensed Professional Engineer. Clarification that the Master Plumber Position, Journeyman Plumber Position, and Plumbing Inspector position on the Board, must be licensees of the Board was also included (Section 5).

HB 1505 requires a person who desires to learn the trade of plumbing to register as a Plumber's Apprentice before beginning to assist a licensee at the trade of plumbing (Section 13).

HB 1505 requires that no person, whether as a tradesman plumber-limited licensee, plumber's apprentice, registrant or otherwise to engage in, work at, or conduct the business of plumbing in this state or serve as a plumbing inspector unless such a person is the holder of a valid license, endorsement, or registration (Section 16).

HB 1505 authorizes the board to monitor insurance requirements for Master Plumbers responsible for the operation of a plumbing business by requiring them to submit a certificate of insurance to the Board (Section 17).

HB 1505 requires that the installation and replacement of water heaters be inspected by a Licensed Plumbing Inspector (Section 17).

HB 1505 also requires municipal plumbing inspections to be performed by licensed plumbing inspectors and provides that if the boundaries of a municipality and a municipal utility district overlap, only the affected municipality may perform a plumbing inspection and collect a permit fee (Section 17).

HB 1505 requires the board to adopt the required rules necessary to implement this law no later than January 1, 2002 (Section 24).

The following is an outline of the sections being added and amended in Chapter 363:

Section 363.1, regarding qualifications, (a)-(l)

Several new subsections are being added to this section which will re-lettered the existing levels.

Subsections are being amended and added to include Tradesman Plumber-Limited License; Plumber's Apprentice Registration, Residential Utilities Installer Registration, Drain Cleaner Registration or Drain Cleaner-Restricted Registration to its qualifications.

Also, the number of hours required on installation or repair are being amended throughout the section.

Section 363.6, regarding special examination conditions, (a)-(c).

This section is being amended to add subsections (a)-(c) which will allow the board to waive certain requirements regarding examinations in some instances.

Section 363.10, regarding disqualification.

This section is being amended to add "be registered or to" and "Registrant" in regards to disqualification of an individual.

Also, as a result of HB 217 and HB 1505, the Texas State Board of Plumbing Examiners proposes amendments to Chapters 361, 365, and 367 elsewhere in this issue of the *Texas Register*.

Robert L. Maxwell, Administrator of the Texas State Board of Plumbing Examiners, has determined that for the first five-year period the rules are in effect the fiscal impact on state and local government as well as small businesses and persons required to comply with these rules as a result of HB 1505 and HB 217is as follows:

The Board is required to adopt rules necessary for the implementation of HB 1505, no later than January 1, 2002;

The Board is required to develop and administer the one new examination required for the new license category and implement a registration process for the Plumber's Apprentice and the other three new mandatory registrations;

The Board is required to modify its computer programs to automate the examination and renewal process for the new categories, and make necessary changes to other administrative functions;

The addition of the International Plumbing Code, as a code to be adopted by the Board, will require the Board to review and make changes, as necessary, to its examinations to ensure that the answers to examination questions may be found in both the Uniform Plumbing Code and the International Plumbing Code;

Currently the Board is not required to register apprentices. They are issued a one-time apprentice card, but are not required to renew or update information. Therefore, the Board is not able to determine exactly how many apprentices are currently working in the plumbing industry. However, the Board estimates that there are at least two apprentices working with each journeyman. As of February 20, 2001, there were 12,070 licensed journeymen, or an estimated 24,140 apprentices. Therefore, it is estimated that the implementation of HB 1505 will double the size of the Board's current license database. One additional Administrative Technician III will be requested to support the increase in activity in the licensing department at a cost of $29,232 per year. Additionally, license cards at an approximate cost of $0.30 each for 24,000 additional licensees and registrants will cost approximately $7,200. One additional Administrative Technician III will be requested to support the processing of new applications for examination and registration at a cost of $29,232 per year. Material cost for the examination center would increase by approximately $ 10,000 per year.

One-time costs will be the changes to the Board's licensing system by outside programmers for an estimated approximate cost of $21,650. Updates will be required to the Board's web site at an approximate cost of $1,000. Other one-time costs will be for computers, desks, and telephones for these 2 additional employees, at a cost of $ 7,500.

The Board will have an ongoing cost for Northrop Grumman, who supports the Board's regulatory computer, based on the number of licensees in the system. The cost is currently $0.0764 per month per licensee. Because of the additional estimated number of licensees and registrants that would be added to our system, the additional amount to be charged by Northrop Grumman would be $1,834 per month, or $22,008 per fiscal year.

The Board anticipates there will also be an increase in the number of hearings due to denials (usually due to criminal history issues) of unqualified applicants for registration as Plumber's Apprentice. Since, under current law, there is no requirement for

Plumber's Apprentices to register with the Board, denied applicants for registration as a Plumber's Apprentice are not entitled to a hearing. However, under the new legislation, denied applicants will have a right to a hearing on any denial. This would increase the estimated number of cases to be heard by the State Office of Administrative Hearings (SOAH). SOAH costs for an estimated five additional hearings per year for applicants who are denied would cost approximately $6,250 to the State.

The Board's jurisdiction regarding job site monitoring will be increased by the elimination of the current exemption that allows unlicensed plumbers to perform plumbing work in areas outside of cities of 5,000 or more. The Board will perform job site monitoring in those areas previously exempted, to ensure that plumbing work is performed by licensed plumbers. Additionally, there will be an increase in the number of plumbers examined and licensed by the Board. However, since these unlicensed plumbers are not currently regulated or registered by the Board, the Board has no accurate method for determining how many unlicensed individuals are performing plumbing work in these areas. However, the Board estimates that the increase in the number of unlicensed plumbers that decide to become licensed will average two (2) new licensees per county over the 2002-2003 biennium, the estimated increase would total 508 newly licensed individuals over the biennium. Assuming that one-half of these individuals would sit for the journeyman plumber examination during the first year, and the other half over the second year, the increase in fees to the Board would be $12,700 in the first year and $19,050 in the second year, which is a total increase in fees of $ 31,750 for the biennium. Annual renewal fees for the additional licensees in fiscal years 2004-2006, would be $12,700 each year.

The Board was authorized to raise fees to ensure that it will cover the cost of implementation of HB 1505 and HB 217. The proposed reasonable license, examination and registration fees that will be paid by the licensees and registrants are expected to cover the costs of implementation of the new legislation. The Board will monitor the number of new licensees and registrants and the amount of fees collected to ensure that its costs are covered. The Board, at a later date, could deem it necessary to raise or lower the current proposed fees.

Mr. Maxwell also has determined that each year of the first five years the rules are effect the public benefit anticipated as a result of enforcing these rules will be increased public health, safety and welfare. This is expected to be accomplished by ensuring that the proper installation, service, maintenance and repair of plumbing systems is being performed by qualified individuals.

Comments on the proposed rule changes may be submitted within 30 days of publication of these proposed rule amendments in the *Texas Register*, to Robert L. Maxwell, Administrator, Texas State Board of Plumbing Examiners, 929 East 41st Street, P.O. Box 4200, Austin, Texas 78765-4200.

The amendments in accordance with HB 217 are proposed under Section 3 (Section 5B, Article 6243-101, V.T.C.S; and in accordance with HB 1505 are proposed under Section 5 (Section 5, Article 6243-101, V.T.C.S.), Section 11 (Section 8C, Article 6243-101, V.T.C.S), Section 14 (Section 12, Article 6243-101, V.T.C.S), and Section 24 which authorizes, empowers and directs the Board to prescribe, amend and enforce all rules and regulations necessary to carry out the Act.

No other statute, article, or code is affected by these proposed rule changes.

§363.1. Qualifications.

(a) An applicant may qualify for a Master Plumber License, Journeyman Plumber License, Tradesman Plumber-Limited License, [~~or~~] Plumbing Inspector License, Plumber's Apprentice Registration, Residential Utilities Installer Registration, Drain Cleaner Registration or Drain Cleaner-Restricted Registration. A Master or Journeyman Plumber License may contain a Medical Gas Piping Installation Endorsement or Water Supply Protection Specialist Endorsement. In order to qualify for any of the [~~these~~] licenses or endorsements an applicant must meet all the requirements of the Board, successfully complete the required examination and remit the appropriate fee. In order to qualify for any of the registrations an applicant must meet all the requirements of the Board and remit the appropriate fee.

(b) When a Plumber's Apprentice or Tradesman Plumber-Limited Licensee applies to take an examination, he/she must submit the Employer's Certification. This form certifies the Applicant's work experience complies with the eligibility criteria for the examination. If the applicant has met the criteria through employment with one employer, the Employer's Certification must be completed by that employer. However, if the applicant has met the criteria through employment with various employers, then the Employer's Certification must be submitted from each of those employers. Therefore, the Board recommends that the applicant request an employer complete the Employer's Certification each time the Applicant discontinues employment with a particular employer. A Licensee is required to complete the Employer's Certification form within 30 days of a request by any individual who has worked as a Plumber's Apprentice or Tradesman Plumber-Limited Licensee under the Licensee's supervision. It is the responsibility of the Applicant to supply the Licensee with the Employer's Certification form.

(c) [~~(b)~~] Master Plumber. Each applicant must:

(1) be licensed either as:

(A) a Journeyman Plumber in Texas or another state with at least 8,000 hours working at the trade under a Master Plumber and must have held the Journeyman License for at least one [~~two~~] year [~~years~~] before filing the Master Plumber application; or

(B) a Master Plumber in another state who has met the requirements in subparagraph (A) of this paragraph [~~in which case the applicant need not be currently licensed at the time of application if the expired license is renewable in the state that issued it~~];

(2) be a high school graduate or hold a General Equivalency Diploma (GED); and

(3) maintain a single registered mailing address that the Board shall regard as the applicant's principal business address for communication and record keeping purposes.

(4) be a citizen or national of the United States or an alien or non-immigrant eligible for licensure by the State of Texas.

(d) [~~(c)~~] Journeyman Plumber. Each applicant must:

(1) be a high school graduate or hold a General Equivalency Diploma (GED); and

(2) be a citizen or national of the United States or an alien or non-immigrant eligible for licensure by the State of Texas.

(3) [~~(2)~~] have either of the following:

(A) Plumber's Apprentice Registration or Tradesman Plumber-Limited Licensee [~~registration as a registered plumbing apprentice~~] and at least 8,000 [~~6,000~~] hours of experience working at the trade under the supervision of a Master Plumber, [~~or such work experience and technical training combined to equal 6,000 hours,~~] as verified by employers; or

(B) a valid Journeyman License from another state and at least 8,000 hours of experience working at the trade under the supervision of a Master Plumber [~~that need not be current at the time of application if the expired license is renewable in the state that issued it~~] .

(4) [~~(3)~~] meet the minimum trade experience requirements set forth in subparagraphs (A)-(F)[~~(G)~~] of this paragraph.

(A) 2,000 [~~1500~~] hours in the installation or repair of piping for waste and vent drainage systems. During this period an [~~a~~] individual [~~person~~] should obtain the proper knowledge and skill to install or repair different types of materials used in residential or commercial plumbing [~~these~~] systems, e.g., cast iron, plastics, copper.

(B) 2,000 [~~1500~~] hours in the installation or repair of piping for domestic hot and cold water systems. During this period an [~~a~~] individual [~~person~~] should obtain the proper knowledge and skill to install or repair different types of materials used in residential or commercial plumbing [~~these~~] systems, e.g., cast iron, plastics, copper, steel and understand the function, difference, and proper installation of various valves, e.g., gate, globe, mixing, etc.

(C) 2,000 [~~1500~~] hours in the installation or repair of fixtures and equipment common to residential or commercial plumbing systems. During this period an [~~a~~] individual [~~person~~] should obtain the proper knowledge and skill to install or repair different types of products used, e.g., water heaters, natural and L.P. gas fired equipment, plumbing fixtures, faucets, water softeners and similar equipment and understand the proper method for sizing and installation of gas appliance vents.

(D) 500 [~~375~~] hours in the installation or repair of Piping Hangers and Pipe Support systems. During this period an [~~a~~] individual [~~person~~] should obtain the proper knowledge and skill to install different types of hangers for piping support.

(E) 1,000 [~~750~~] hours in the installation or repair of Special Plumbing systems. During this period an [~~a~~] individual [~~person~~] should obtain the proper knowledge and skill regarding medical gas systems, decorative fountains, lawn irrigation systems and solar panels.

(F) 500 [~~375~~] hours of understanding and implementing the Americans with Disabilities Act. During this period an [~~a~~] individual [~~person~~] should become knowledgeable in model plumbing codes and job safety and OSHA requirements as they apply to the plumbing profession.

[~~(G) When the registered apprentice applies to take the Journeyman examination, he/she must submit the Employer's Certification. This form certifies the applicant's work experience complies with the eligibility criteria for the Journeyman examination. If the applicant has met the criteria through employment with one employer, the Employer's Certification must be completed by that employer. However, if the applicant has met the criteria through employment with various employers, then the Employer's Certification must be submitted from each of those employers. Therefore, the Board recommends that the applicant request an employer complete the Employer's Certification each time the applicant discontinues employment with a particular employer. A licensee is required to complete the Employer's Certification form within 30 days of a request by any individual who has worked as a Plumber's Apprentice under the licensee's supervision. It is the responsibility of the Plumber's Apprentice to supply the licensee with the Employer's Certification form ~~]

[~~(4) be a citizen or national of the United States or an alien or non-immigrant eligible for licensure by the State of Texas.~~]

(e) Tradesman Plumber-Limited Licensee. Each applicant must:

(1) be a citizen or national of the United States or an alien or non-immigrant eligible for licensure by the State of Texas; and

(2) have either of the following:

(A) Plumber's Apprentice Registration and have completed at least 4,000 hours of experience working at the trade as a Registered Plumber's Apprentice under the direct supervision of a Journeyman or Master Plumber, as verified by employers; or

(B) a valid Journeyman or Master License from another state and at least 4,000 hours of experience working at the trade under the supervision of a Master Plumber.

(f) [~~(d)~~] Plumbing Inspector. Each applicant must:

(1) be a citizen or national of the United States or an alien or non-immigrant eligible for licensure by the State of Texas;

(2) [~~(1)~~] be a high school graduate or hold a General Equivalency Diploma (GED) and

(3) [~~(2)~~] have one of the following:

(A) a Journeyman or Master Plumber License issued in the state of Texas;

(B) a Journeyman or Master Plumber License issued in another state, provided he or she passes the Texas State Board of Plumbing Examiners Journeyman exam; [~~or~~]

(C) a Plumbing Inspector license issued by another state with licensing requirements substantially equivalent to the licensing requirements of the Texas State Board of Plumbing Examiners;

(D) a professional engineer or a professional architect license issued in this state; or

(E) a total of 500 hours training or experience in the plumbing industry, that shall be credited by any combination of the following:

[~~(C) successful completion of the International Association of Plumbing and Mechanical Officials (IAPMO), International Conference of Building Officials (ICBO),or Southern Building Code Congress International (SBCCI) certification. and one of the following:~~]

(i) 100 hours credit for successful completion of a certification in the Uniform Plumbing Code or the International Plumbing Code, issued by the International Association of Plumbing and Mechanical Officials (IAPMO), International Conference of Building Officials (ICBO), Building Officials and Code Administrators International (BOCA) or Southern Building Code Congress International (SBCCI) plumbing code certification; [~~have completed 5,000 hours of experience working at the plumbing trade or similar skilled work experience and technological training combined to equal 5,000 hours as verified by employers;~~]

(ii) 100 hours credit for successful completion of a Board approved Medical Gas Piping Installation Endorsement Training Program; [~~have completed 500 hours of on-the-job training in enforcement of plumbing codes, supervised under a Licensed Plumbing Inspector, plus 28 hours of approved training academy or educational sessions;~~]

(iii) 50 hours credit for successful completion of a Board approved Water Supply Protection Specialist Endorsement Training Program; [~~be licensed as a Plumbing Inspector by another~~

state with licensing requirements substantially equivalent to the licensing requirements of the Texas State Board of Plumbing Examiners;]

(iv) 100 hours credit for successful completion of an approved Backflow Tester Certification program; [be licensed by the State of Texas as an architect or engineer.]

(v) 6 hours credit for successful completion each different Board approved Continuing Professional Education for Licensed Plumbers and Plumbing Inspectors Course;

(vi) actual hours, with a maximum of 100 hours credit for approved, documented and verified plumbing related training academy or educational sessions;

(vii) actual hours, with a maximum of 200 hours credit for on the job work experience in the plumbing trade or approved similar plumbing related trade, as verified by former employers; or

(viii) actual hours, with a maximum of 200 hours credit for documented and verified on the job training in the enforcement of plumbing codes under the direct supervision of a Licensed Plumbing Inspector.

[(3) be a citizen or national of the United States or an alien or non-immigrant eligible for licensure by the State of Texas.]

[(e) Exemptions. The Board in its discretion may waive any examination or application requirement after consideration of a written request from the applicant for an exemption due to hardship.]

(g) [(f)]Medical Gas Piping Installation Endorsement. Each applicant must:

(1) hold a current Journeyman or Master Plumber License; and

(2) have successfully completed a Board approved training program in medical gas piping installation which includes the standards contained in the latest edition of the National Fire Protection Association (NFPA) 99C Gas and Vacuum Systems.

(h) [(g)]Water Supply Protection Specialist Endorsement. Each applicant must:

(1) hold a current Journeyman or Master Plumber License;

(2) have successfully completed a Board approved training program in backflow prevention; and

(3) have successfully completed a Board approved training program designed around the Federal Safe Drinking Water Act and the Federal Clean Water Act, on-site wastewater and site evaluations and graywater re-use, water quality training and water treatment, water utilities systems and regulations, water conservation, xeriscape irrigation, fire protection systems, and state laws regulating lead contamination in drinking water.

(i) Residential Utilities Installer. Each Applicant must:

(1) be a citizen or national of the United States or an alien or non-immigrant eligible for licensure by the State of Texas;

(2) be registered as a Plumber's Apprentice;

(3) have completed at least 2,000 hours working at the trade as a Registered Plumber's Apprentice; and

(4) complete a Board approved training program:

(A) after registering as a Residential Utilities Installer and prior to March 1, 2003; or

(B) prior to registering as a Residential Utilities Installer, if registering after March 1, 2003.

(j) Drain Cleaner. Each Applicant must:

(1) be a citizen or national of the United States or an alien or non-immigrant eligible for licensure by the State of Texas;

(2) be registered as a Plumber's Apprentice;

(3) have completed at least 4,000 hours working at the trade as a Drain Cleaner-Restricted Registrant; and

(4) complete a Board approved training program:

(A) after registering as a Drain Cleaner and prior to March 1, 2003; or

(B) prior to registering as a Drain Cleaner, if registering after March 1, 2003.

(k) Drain Cleaner-Restricted Registrant. Each Applicant must:

(1) be a citizen or national of the United States or an alien or non-immigrant eligible for licensure by the State of Texas;

(2) be registered as a Plumber's Apprentice;

(3) complete a Board approved training program:

(A) after registering as a Drain Cleaner and prior to March 1, 2003; or

(B) prior to registering as a Drain Cleaner, if registering after March 1, 2003.

(l) Plumber's Apprentice. Each applicant must:

(1) be a citizen or national of the United States or an alien or non-immigrant eligible for licensure by the State of Texas; and

(2) be at least sixteen (16) years of age.

[(h) New construction of a graywater system or modification to an existing graywater system must be carried out in accordance with the rules of the Texas State Board of Plumbing Examiners and:]

[(1) the Uniform Plumbing Code and its appendixes in single family dwelling installations; or]

[(2) the National Standard Plumbing Code and its appendixes and the National Association of Plumbing-Heating-Cooling Contractors Assessment of On-Site Graywater and Combined Wastewater Treatment and Recycling Systems manual in single family dwelling or commercial installations.]

[(3) Unless exempted by Section 3 of the Plumbing License Law, new construction of a graywater system or modification to an existing graywater system must be performed under the supervision of a person licensed under the Plumbing License Law. When an on-site disposal field or system is utilized all work past the storage tank must be undertaken by a licensee who meets the certification requirements of the Texas Natural Resource Conservation Commission for on-site sewage facility installations.]

§363.6. Special Examination Conditions.

(a) The Board, in its discretion, may waive the requirement that an individual hold a Journeyman License for one year prior to eligibility for a Master License, or any examination or registration requirement not required by law, after consideration of a written request for an exemption due to hardship. The written request must fully detail why the requirement/s create a hardship. If applicable to the request, the individual requesting the waiver must complete the Application for Nonstandard Testing Accommodations and the Physician or Licensed Health Care Provider form. Generally, the Board may consider the waiver only if circumstances due to the withholding of the

master license or examination would endanger the public health, safety, or welfare of the state.

(b) The Board may waive any licensing requirement not required by law after consideration of a written request from the holder of a current plumbing license from another state having license requirements substantially equivalent to those of this state. It is the responsibility of the requestor to provide documentation to prove that the requirements are substantially equivalent.

(c) The Board, on request, may conduct examinations with special accommodations for individuals who have a disability. All individuals who wish to take an examination with special accommodations must complete the Application for Non-Standard Testing Accommodations, including the Physician or Licensed Health Care Provider form. The Board shall reserve the right to make all final decisions regarding accommodations and it may require a consultation by experts for a second opinion, if it determines that it is necessary for a particular applicant.

§363.10. Disqualification.

The Board may deny an Applicant eligibility to be registered or to take an [~~the~~] examination if it discovers that the Applicant furnished false information on the application or used any fraudulent means of establishing qualifications. The Board may initiate disciplinary action against any Applicant, Registrant or Licensee who furnishes false information on any certifications, other forms, or renewals distributed 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.

Filed with the Office of the Secretary of State, on September 17, 2001.

TRD-200105553
Robert Maxwell
Administrator
Texas State Board of Plumbing Examiners
Earliest possible date of adoption: October 28, 2001
For further information, please call: (512) 458-2145

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CHAPTER 365. LICENSING

The Texas State Board of Plumbing Examiners proposes amendments to §§365.1, 365.4-365.14 and the repeal of §365.2, concerning Licensing . During the 77th Legislature House Bills 217 and 1505 were signed into law. As a result of these two House Bills, the Plumbing License Law is amended as follows.

House Bill (HB) 217 amends the Plumbing License Law to modify the plumbing codes that the Texas State Board of Plumbing Examiners is required to adopt and authorizes the board by rule to adopt later editions of the adopted plumbing codes. The Southern Standard Plumbing Code and the National Standard Plumbing Code were eliminated from the codes adopted by the Board. The Uniform Plumbing Code was maintained and the International Plumbing Code was added, resulting in two Plumbing Codes to be adopted by the board. All plumbing installed in a political subdivision, in compliance with an adopted state approved code, must be inspected by a licensed Plumbing Inspector. The bill provides that plumbing installed in an area not otherwise subject to regulation under the Plumbing License Law must be installed in accordance with a board adopted plumbing code. The bill authorizes municipalities or owners of a public water system to amend any provisions of the codes and standards to conform to local concerns that do not substantially vary with rules or laws of this state. The bill provides that plumbing installed in compliance with an adopted plumbing code must be inspected by a licensed plumbing inspector. (Section 3)

Under HB 217, the board's jurisdiction was greatly expanded by requiring that all plumbing work connected to a public water system, or performed in any city in the state be performed by a licensed plumber. This eliminated the exemption, which had been in place since 1947, requiring a plumbing license in only cities with populations of 5,000 or more inhabitants (Section 2).

Under HB 217, Licensed Plumbing Inspectors are no longer restricted to being bona fide employees of a political subdivision, but were allowed to contract with a political subdivision as long as they are paid directly by the political subdivision (Section 1 and 3).

House Bill (HB) 1505 amends the Plumbing License Law by clarifying some existing language and effectively regulating all facets of plumbing work and individuals engaged in plumbing work.

HB 1505 clarifies that medical gasses and vacuum are included in the definition of "plumbing" (Section 1).

HB 1505 establishes a new Tradesman Plumber-Limited license and four new registrations. HB 1505 mandates, by law, experience and qualification requirements for all licenses and registrations issued by the Board. The new Tradesman Plumber-Limited license authorizes individuals to engage in the construction and installation of plumbing only in one and two-family dwellings, after passing an examination administered by the Board. HB 1505 provides for registrations authorizing individuals to install residential yard water and sewer lines (Residential Utilities Installer); remove p-traps and install clean-outs to clear obstructions in sewer lines (Drain Cleaner); clear obstructions in sewer lines through existing openings only (Drain Cleaner-Restricted Registrant); and assist in the installation of plumbing work (Plumber's Apprentice). HB 1505 requires all registrants and licensees to work under the general supervision of a Master Plumber and Residential Utilities Installers, Drain Cleaners and Drain Cleaner-Restricted Registrants to maintain registrations as a Plumber's Apprentice. (Sections 1 and 5).

HB 1505 provides the board with express authority to adopt rules and take other actions as the board deems necessary to administer this law including provisions relating to the new classes of registrants and licensees (Sections 5, 9, 11, and 14).

HB 1505 authorizes the board to appoint advisory committees as it considers necessary (Section 5).

HB 1505 requires, rather than authorizes, the board to recognize, approve, and administer continuing education programs for licensees and endorsees (Section 5).

Under HB 1505, the Licensed Sanitary Engineer position on the Board was changed to a Licensed Professional Engineer. Clarification that the Master Plumber Position, Journeyman Plumber Position, and Plumbing Inspector position on the Board, must be licensees of the Board was also included (Section 5).

HB 1505 requires a person who desires to learn the trade of plumbing to register as a Plumber's Apprentice before beginning to assist a licensee at the trade of plumbing (Section 13).

HB 1505 requires that no person, whether as a tradesman plumber-limited licensee, plumber's apprentice, registrant or otherwise to engage in, work at, or conduct the business of

plumbing in this state or serve as a plumbing inspector unless such a person is the holder of a valid license, endorsement, or registration (Section 16).

HB 1505 authorizes the board to monitor insurance requirements for Master Plumbers responsible for the operation of a plumbing business by requiring them to submit a certificate of insurance to the Board (Section 17).

HB 1505 requires that the installation and replacement of water heaters be inspected by a Licensed Plumbing Inspector (Section 17).

HB 1505 also requires municipal plumbing inspections to be performed by licensed plumbing inspectors and provides that if the boundaries of a municipality and a municipal utility district overlap, only the affected municipality may perform a plumbing inspection and collect a permit fee (Section 17).

HB 1505 requires the board to adopt the required rules necessary to implement this law no later than January 1, 2002 (Section 24).

The following is an outline of the sections being added, amended, deleted in Chapter 365:

Section 365.1, regarding license and registration categories; description; scope of work permitted, (4)-(10).

Registration is being added to the section title. Independent contractor is replacing agent in paragraph (4). Also, in new subparagraphs (E) and (F) the definition of plumbing inspector in more defined. The section is also adding new definitions to include: Tradesman Plumber-Limited Licensee; Residential Utilities Installer; Drain Cleaner; Drain Cleaner-Restricted Registrant; and Plumber's Apprentice.

Section 365.2 regarding apprentice registration is being repealed. The language in this rule has been amended and moved into other sections.

Section 365.4, regarding issuance, (a)-(c).

Subsection (a) is being amended to include registration. Also, a new subsection (c) is being added to include licenses, endorsements and registrations.

Section 365.5, regarding renewals, (a)-(g).

This section is being amended to add: "registrant", "registration" to subsections (a)-(c). Also, Tradesman Plumber-Limited Licensee is being added to the individuals wishing to renew a license. Professional and CPE is being added to the applicable course title.

Section 365.6, regarding expirations (a)-(e).

This section is being amended similar to 365.5 to include registration, professional, and endorsement to the existing text.

Section 365.7, regarding duplicate license.

Registration is now included when referencing replacement documents issued by the board.

Section 365.8, regarding change of name or address, (a)-(b).

Registrant and Registration are being added to subsection (a). Subsection (b) is being amended to replace agency with contract.

Section 365.9, regarding reprimand, suspension, revocation, (a)-(c).

The section is being amended to replace old statutory language with the current Government Code, Section 2001. Registrant and Registration are also being added to this section.

Sections 365.10, 365.11, and 365.12 are all being amended to update legal cites to correspond with recent legislation.

Section 365.13, regarding licensing of guaranteed student loan defaulters, (a)-(e).

Registration and registrant are being added throughout this section.

Section 365.14, regarding continuing professional education programs, (a) and (c).

Tradesman Plumber-Restricted Licensee is being added to subsections (a) and (c).

Also, as a result of HB 217 and HB 1505, the Texas State Board of Plumbing Examiners proposes amendments to Chapters 361, 363, and 367 elsewhere in this issue of the *Texas Register*.

Robert L. Maxwell, Administrator of the Texas State Board of Plumbing Examiners, has determined that for the first five-year period the rules are in effect the fiscal impact on state and local government as well as small businesses and persons required to comply with these rules as a result of HB 1505 and HB 217is as follows:

The Board is required to adopt rules necessary for the implementation of HB 1505, no later than January 1, 2002;

The Board is required to develop and administer the one new examination required for the new license category and implement a registration process for the Plumber's Apprentice and the other three new mandatory registrations;

The Board is required to modify its computer programs to automate the examination and renewal process for the new categories, and make necessary changes to other administrative functions;

The addition of the International Plumbing Code, as a code to be adopted by the Board, will require the Board to review and make changes, as necessary, to its examinations to ensure that the answers to examination questions may be found in both the Uniform Plumbing Code and the International Plumbing Code;

Currently the Board is not required to register apprentices. They are issued a one-time apprentice card, but are not required to renew or update information. Therefore, the Board is not able to determine exactly how many apprentices are currently working in the plumbing industry. However, the Board estimates that there are at least two apprentices working with each journeyman. As of February 20, 2001, there were 12,070 licensed journeymen, or an estimated 24,140 apprentices. Therefore, it is estimated that the implementation of HB 1505 will double the size of the Board's current license database. One additional Administrative Technician III will be requested to support the increase in activity in the licensing department at a cost of $29,232 per year. Additionally, license cards at an approximate cost of $0.30 each for 24,000 additional licensees and registrants will cost approximately $7,200. One additional Administrative Technician III will be requested to support the processing of new applications for examination and registration at a cost of $29,232 per year. Material cost for the examination center would increase by approximately $ 10,000 per year.

One-time costs will be the changes to the Board's licensing system by outside programmers for an estimated approximate cost

of $21,650. Updates will be required to the Board's web site at an approximate cost of $1,000. Other one-time costs will be for computers, desks, and telephones for these 2 additional employees, at a cost of $ 7,500.

The Board will have an ongoing cost for Northrop Grumman, who supports the Board's regulatory computer, based on the number of licensees in the system. The cost is currently $0.0764 per month per licensee. Because of the additional estimated number of licensees and registrants that would be added to our system, the additional amount to be charged by Northrop Grumman would be $1,834 per month, or $22,008 per fiscal year.

The Board anticipates there will also be an increase in the number of hearings due to denials (usually due to criminal history issues) of unqualified applicants for registration as Plumber's Apprentice. Since, under current law, there is no requirement for Plumber's Apprentices to register with the Board, denied applicants for registration as a Plumber's Apprentice are not entitled to a hearing. However, under the new legislation, denied applicants will have a right to a hearing on any denial. This would increase the estimated number of cases to be heard by the State Office of Administrative Hearings (SOAH). SOAH costs for an estimated five additional hearings per year for applicants who are denied would cost approximately $6,250 to the State.

The Board's jurisdiction regarding job site monitoring will be increased by the elimination of the current exemption that allows unlicensed plumbers to perform plumbing work in areas outside of cities of 5,000 or more. The Board will perform job site monitoring in those areas previously exempted, to ensure that plumbing work is performed by licensed plumbers. Additionally, there will be an increase in the number of plumbers examined and licensed by the Board. However, since these unlicensed plumbers are not currently regulated or registered by the Board, the Board has no accurate method for determining how many unlicensed individuals are performing plumbing work in these areas. However, the Board estimates that the increase in the number of unlicensed plumbers that decide to become licensed will average two (2) new licensees per county over the 2002-2003 biennium, the estimated increase would total 508 newly licensed individuals over the biennium. Assuming that one-half of these individuals would sit for the journeyman plumber examination during the first year, and the other half over the second year, the increase in fees to the Board would be $12,700 in the first year and $19,050 in the second year, which is a total increase in fees of $ 31,750 for the biennium. Annual renewal fees for the additional licensees in fiscal years 2004-2006, would be $12,700 each year.

The Board was authorized to raise fees to ensure that it will cover the cost of implementation of HB 1505 and HB 217. The proposed reasonable license, examination and registration fees that will be paid by the licensees and registrants are expected to cover the costs of implementation of the new legislation. The Board will monitor the number of new licensees and registrants and the amount of fees collected to ensure that its costs are covered. The Board, at a later date, could deem it necessary to raise or lower the current proposed fees.

Mr. Maxwell also has determined that each year of the first five years the rules are effect the public benefit anticipated as a result of enforcing these rules will be increased public health, safety and welfare. This is expected to be accomplished by ensuring that the proper installation, service, maintenance and repair of plumbing systems is being performed by qualified individuals.

Comments on the proposed rule changes may be submitted within 30 days of publication of these proposed rule amendments in the *Texas Register*, to Robert L. Maxwell, Administrator, Texas State Board of Plumbing Examiners, 929 East 41st Street, P.O. Box 4200, Austin, Texas 78765-4200.

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The amendments in accordance with HB 217 are proposed under Section 3 (Section 5B, Article 6243-101, V.T.C.S; and in accordance with HB 1505 are proposed under Section 5 (Section 5, Article 6243-101, V.T.C.S.), Section 11 (Section 8C, Article 6243-101, V.T.C.S), Section 14 (Section 12, Article 6243-101, V.T.C.S), and Section 24 which authorizes, empowers and directs the Board to prescribe, amend and enforce all rules and regulations necessary to carry out the Act.

No other statute, article, or code is affected by these proposed rule changes.

§365.1. License and Registration Categories; Description; Scope of Work Permitted.

The Board shall establish three separate license categories and two endorsement categories, as described in paragraphs (1) - (5) of this section.

(1) Master Plumber -- a license that entitles the individual to perform plumbing work, enter into contracts or agreements to perform plumbing work for the general public and to secure permits to perform plumbing work.

(2) Journeyman Plumber -- a license that entitles the individual to do plumbing work only under the general supervision of Master plumbers and only under contracts or agreements to perform plumbing work secured by Master Plumbers.

(3) Medical Gas Piping Installation Endorsement -- an endorsement to a Journeyman or Master Plumber license entitling the individual to install piping that is used solely to transport gases used for medical purposes, including, but not limited to oxygen, nitrous oxide, medical air, nitrogen and medical vacuum.

(4) Plumbing Inspector -- a license that entitles the individual to do plumbing inspections as an employee or independent contractor [~~agent~~] of a political subdivision for compliance with health and safety laws and ordinances.

(A) A Plumbing Inspector shall not have any financial or advisory interest in any plumbing company.

(B) All compensation paid for a plumbing inspection shall be paid directly to the individual Licensed Plumbing Inspector by the political subdivision for which the plumbing inspection is performed.

(C) A Plumbing Inspector shall not accept any compensation or anything of value from any contractor or owner whose work is being inspected by the Plumbing Inspector.

(D) Prior to the performance of any Plumbing Inspection, the Plumbing Inspector must have submitted to the Board written proof of employment or contract [~~agency~~] for the purposes of performing plumbing inspections by each political subdivision that the Plumbing Inspector is employed by, or an independent contractor for [~~agent of~~].

(E) A Plumbing Inspector may be employed by or contract with any political subdivision throughout the state and a Plumbing Inspector's authority to enforce the Act , Board Rules and local ordinances lies only within the jurisdiction of the political subdivision/s that the Plumbing Inspector is employed by or has contracted with.

(F) A Plumbing Inspector shall not, in any manner, represent or indicate that the Plumbing Inspector is employed by or a representative of the Board or the State of Texas unless, in fact, the Plumbing Inspector is employed by the Board or the State of Texas.

(5) Water Supply Protection Specialist -- an endorsement to a Journeyman or Master Plumber License certifying the individual to perform [~~inspections of public water system distribution facilities or customer-owned plumbing connected to a public water system's distribution lines. The holder of a Water Supply Protection Specialist Endorsement may perform~~] Customer Service Inspections as defined in the Texas Natural Resource Conservation Commission's Rules and Regulations for Public Water Systems. [~~Within the limits of a municipality of 5,000 or more inhabitants, a~~] A Water Supply Protection Specialist Endorsement shall not be used in lieu of a Plumbing Inspector License as required under §14(a) of the Act to perform plumbing inspections required under Section 5B and §15(a) of the Act.

(6) Tradesman Plumber-Limited Licensee - a license that entitles the individual to construct and install plumbing for only one or two family dwellings, only under the supervision of Master Plumbers and only under contracts or agreements to perform plumbing work secured by Master Plumbers.

(7) Residential Utilities Installer - a registration that entitles the individual to construct and install yard water service piping and building sewers for only one or two family dwellings, only under the supervision of Master Plumbers and only under contracts or agreements to perform plumbing work secured by Master Plumbers.

(8) Drain Cleaner - a registration that entitles the individual to install cleanouts and remove and reset p-traps for the purposes of eliminating obstructions in building drains and sewers, only under the supervision of Master Plumbers and only under contracts or agreements to perform plumbing work secured by Master Plumbers.

(9) Drain Cleaner-Restricted Registrant - a registration that entitles the individual to clear obstructions in sewer and drain lines only through any existing code-approved opening, only under the supervision of Master Plumbers and only under contracts or agreements to perform plumbing work secured by Master Plumbers.

(10) Plumber's Apprentice - a registration that entitles the individual to, as his or her principal occupation, to engage in learning and assisting in the installation of plumbing, only under the supervision of a Master Plumber and the direct supervision of a licensed plumber and only under contracts or agreements to perform plumbing work secured by Master Plumbers.

§365.4. Issuance.

(a) The Board shall promptly issue a license, registration or endorsement to qualified applicants. However, the Board may withhold the license, registration or endorsement and require reexamination of any applicant who has not remitted the appropriate licensing fee within 90 days of completion of the examination.

(b) Within one year from the date of passing the Plumbing Inspector's examination, a political subdivision must submit proof to the Board of the individual's employment or contract with [~~or agency for~~] the political subdivision as a Plumbing Inspector with the appropriate licensing fee. If the individual does not comply with this requirement, he/she must undergo reexamination to be eligible for licensing as a Plumbing Inspector.

(c) Licenses, endorsements and registrations issued by the Board shall be valid throughout the state, but shall not be assignable or transferable.

§365.5. Renewals.

(a) The Board shall inform a licensee or registrant of the impending expiration of a license, registration or endorsement by sending written notice at least 30 days before its expiration date to the licensee's last known mailing address according to Board records.

(b) A licenseeor registrant may renew an unexpired license, registration or endorsement before its expiration date by meeting all renewal requirements and paying the fee required by the Board.

(c) The licensee'sor registrant's failure to receive the notice of expiration will not alter the licensee's or registrant's responsibility to renew the license or registration each year or endorsement every three years by its expiration date.

(d) In the case of the renewal of a Plumbing Inspector's License, the licensee must submit written proof of employment or contract with [~~agency by~~] a political subdivision along with the required renewal fee.

(e) Any Journeyman Plumber, Master Plumber, Tradesman Plumber-Limited Licensee or Plumbing Inspector wishing to renew a license must have proof submitted to the Board of successful completion of the required continuing professional education (CPE) course or courses, subject to the additional requirement in subsection (f) of this section.

(f) Any license holder with a medical gas endorsement must complete a Board approved medical gas continuing professional education class within the three-year period of the endorsement . The classroom hours shall consist of instruction of the most current edition of the National Fire Protection Association (NFPA) 99C, Standard on Gas and Vacuum Systems, and the changes therein. No license holder with a medical gas endorsement may count the same medical gas continuing professional education class twice towards meeting the continuing professional education requirements for renewal of the medical gas endorsement on a plumbing license.

(g) Any license or endorsement holder [~~with a medical gas endorsement~~] who lives in a county having no city with a population in excess of 100,000, or resides out of state, or who submits written proof to the Board from a physician stating the medical reason that the licensee is unable to attend a CPE class, may fulfill the continuing professional education requirements [~~defined in subsection (f) of this section~~] by completing a correspondence course approved by the Board.

§365.6. Expirations.

(a) Any license or registration not properly renewed each year or any endorsement not properly renewed every three years by its expiration date will become invalid on that date and remain invalid until all [~~license~~] renewal requirements are met.

(b) An individual whose license, registration or endorsement has been expired for 90 days or less may renew the license, registration or endorsement by meeting all renewal requirements, paying the Board the scheduled renewal fee and an additional fee equal to one-half the amount of the examination or registration fee for the license, registration or endorsement.

(c) An individual whose license, registration or endorsement has been expired for over 90 days but less than two years may renew the license, registration or endorsement by meeting all renewal requirements and paying the Board a sum equal to all unpaid renewal fees plus the examinationor registration fee required for the license, registration or endorsement.

(d) No individual may renew a license, registration or endorsement that has been expired for two or more years; however, in such cases an individual can apply for a new license or endorsement by taking the current examination and paying the current fees.An individual

may apply for a new Registration by meeting the requirements and procedures for obtaining an original registration and paying the current fees.

(e) Continuing professional education requirements must be satisfied prior to the renewal of any expired license.

§365.7. Duplicate License.

The Board shall issue a duplicate license or registration to replace any license or registration lost, destroyed, or mutilated upon receipt of an application for the duplicate, stating the reasons for the request, together with the appropriate fee.

§365.8. Change of Name or Address.

(a) Each licensee and registrant shall inform the Board in writing of any changes in name or address. After receiving the notification of change of name, together with the appropriate fee, the Board shall issue [~~the licensee~~] a new license or registration reflecting the change.

(b) Each Plumbing Inspector shall inform the Board in writing of each political subdivision that the Plumbing Inspector is employed by or has contracted with [~~is an agent of~~], for the purposes of performing plumbing inspections and any changes in contract [~~agency~~] or employment status within thirty days of status change. The written confirmation of contract [~~agency~~] or employment must be provided by an authorized representative of each political subdivision.

§365.9. Reprimand, Suspension, Revocation.

(a) As provided in the Act and in Texas Government Code, Section 2001, as amended, [~~Civil Statutes, article 6252-13a,~~] the Board shall reprimand a licensee, or registrant, or suspend or revoke his or her license or registration for obtaining a license, registration or endorsement through fraud, false information, or error, a violation of the Act, of these rules, of a Board order, or of local codes, ordinances, or standards of competency, in accordance with procedures set forth in the Act, the Government Code [~~administrative act~~], and these rules.

(b) The Board shall institute an investigation upon receipt of a valid written complaint from any person or agency setting forth the details of alleged fraud, false information, error, or violation within the jurisdiction of the Board.

(c) An [~~A~~] individual [~~person~~] informed by the Board of proposed refusal, suspension, or revocation of a license, registration or endorsement is entitled to a hearing before the Board as described in these rules. In order to determine competency, plumbing examinations may be administered to licensees accused of incompetence or willful violation.

§365.10. Application for License, Registration or Endorsement after Revocation.

Any individual whose license, registration or endorsement has been revoked may apply to the Board for a new license, registration or endorsement after a waiting period of at least one year from the date of revocation. The Enforcement Committee shall be delegated the authority of making the initial review of a previously revoked license or registration. If the committee decides to deny the application for a new license or registration, it shall proceed in the same manner it would if presented any other application it believes should be denied. If the committee makes a decision to approve the applicant's request, it must nonetheless be presented for approval before the Board members, at a regularly scheduled Board meeting to approve the applicant's request, if approved, then the applicant is to follow the same licensing or registration procedures required of a first-time licensee or registrant.

§365.11. Exemptions.

[~~(a)~~] The following plumbing work shall be permitted without a license but shall be subject to inspection and approval in accordance with local city or municipal ordinances:

(1) Plumbing work done by a property owner in a building designated as that individual's [~~person's~~] homestead;

(2) Plumbing work done on a property that is:

(A) located in a subdivision or on a tract of land that is not required to be platted under Section 232.0015, Local Government Code; or

(B) not connected to a public water system; and

(C) located outside the limits of any city, town, or village in Texas [~~or within any such municipality with a population of less than 5,000, unless otherwise stated by ordinance in such city~~];

(3) Installation of on-site sewage disposal systems done outside municipalities of greater than 5,000 inhabitants or done inside municipalities who voluntarily comply with the Plumbing License Law;

(4) Work done on existing plumbing by a maintenance man or maintenance engineer, as defined in the Rules, that is incidental or connected to other maintenance duties, provided that such an individual [~~person~~] does not engage in plumbing work for the general public;

(5) Plumbing work done by a railroad employee on the premises or equipment of a railroad, provided such an individual [~~person~~] does not engage in plumbing work for the general public;

(6) Plumbing work done by employees of any public utility company in the installation, operation, and maintenance of service mains or lines and all types of appurtenances, equipment, and appliances associated with service mains or lines;

(7) Appliance installation or appliance service work done by bona fide appliance dealers and their employees that do not offer to perform plumbing work to the general public, in connecting appliances to existing openings with a code approved appliance connector without cutting into or altering the existing plumbing system [~~piping, unless the connection also requires cutting into existing piping, performing any work on the sewer side of a properly installed trap, or working on the supply side of or replacing valves provided for appliance installation, in which case a licensed plumber must perform the pre-connection work~~];

(8) Irrigation work done by an individual working and licensed by the Texas Natural Resource Conservation Commission [~~under Chapter 34 of the Texas Water Code, as amended,~~] as an irrigator or installer;

(9) LP Gas service and installation work done by an individual working and licensed as a LP Gas Installer; and

(10) Individuals [~~Persons~~] holding a Water Treatment Certificate from the Texas Natural Resource Conservation Commission may engage in residential, commercial or industrial water treatment activities including making connections necessary to complete the installation of a water treatment system. [~~involving the cutting into and making connections with a potable water supply system. However, if the activities involve connections to the sewer, soil, or waste line, only a licensed plumber may perform the connection work.~~]

[~~(b) The Board may waive the requirement that an individual hold a Journeyman License for two years prior to eligibility for a Master License, after consideration of a written request for an exemption due to hardship. Generally, the Board may consider the waiver if circumstances due to the withholding of the master license or examination would:~~]

[~~(1) prevent the continued operation of an established plumbing business;~~]

[~~(2) endanger the public health, safety, or welfare; or~~]

[(3) result in inequity, in the judgment of the Board.]

[(c) The Board may waive any licensing requirement after consideration of a written request from the holder of a current plumbing license from another state having license requirements substantially equivalent to those of this state.]

§365.12. Licensing of Individuals [Persons] with Criminal Backgrounds.

(a) No currently incarcerated felon will be eligible to obtain or renew any license, or registration.

(b) As provided in Chapter 53, Subchapter B §53.021 of the Occupations Code (Authority to Revoke, Suspend, or Deny License) [the Texas Civil Statutes, article 6252-13c and article 6252-13d,] the Board may suspend or revoke an existing valid license, or registration, disqualify an [a] individual [person] from receiving a license, or registration, or deny eligibility to take an examination for a license if that individual [person] has been convicted of a felony or misdemeanor that directly relates to the duties and responsibilities of the licensed or registered occupation.

(c) The Board shall revoke the license or registration of an individual and shall not issue a license or registration to an individual upon his or her felony conviction, felony probation revocation, revocation of parole, or revocation of mandatory supervision if that individual is physically incarcerated. [The Board will not register an individual as a registered apprentice if that person is currently physically incarcerated.]

(d) The Board considers the following crimes to relate directly to the duties and responsibilities of licensed plumbers and plumbing inspectors and individuals registered by the Board (the list is not exclusive):

(1) any felony or misdemeanor of which fraud is a factor;

(2) any criminal violation of the plumbing laws of this or any other state, or of local codes and ordinances;

(3) any criminal violation of statutes that protect consumers against unlawful plumbing practices;

(4) murder;

(5) burglary;

(6) robbery;

(7) rape;

(8) child molesting;

(9) sexual assault;

(10) aggravated assault;

(11) any violent crime against the person involving knowledge or purpose;

(12) theft;

(13) possession of a controlled substance and;

(14) multiple convictions of driving while intoxicated.

§365.13. Licensing of Guaranteed Student Loan Defaulters.

(a) The Board shall refuse to renew the license or registration of a licensee or registrant whose name is on the list of those who have defaulted on student loans published by the Texas Guaranteed Students Loan Corporation (hereinafter TGSLC) unless:

(1) the renewal is the first renewal following the Board's receipt of a TGSLC list including the licensee's or registrant's name among those in default; or

(2) the licensee or registrant presents to the Board a certificate issued by the TGSLC certifying that:

(A) the licensee or registrant has entered into a repayment agreement on the defaulted loan; or

(B) the licensee or registrant is not in default on a loan guaranteed by the Corporation.

(b) The Board may issue an initial license or registration to an [a] individual [person] on TGSLC's list of defaulters who meets all other qualifications for licensing but shall not renew the license or registration unless the licensee presents to the Board a certificate issued by the TGSLC certifying that:

(1) the licensee or registrant has entered into a repayment agreement on the defaulted loan; or

(2) the licensee or registrant is not in default on a loan guaranteed by the TGSLC.

(c) The Board shall not renew the license or registration of a licensee or registrant who defaults on a repayment agreement unless the individual [person] presents to the Board a certificate issued by the TGSLC certifying that:

(1) the licensee or registrant has entered into another repayment agreement on the defaulted loan; or

(2) the licensee or registrant is not in default on a loan guaranteed by the TGSLC or on a repayment agreement.

(d) The Board will provide the licensee or registrant identified by the TGSLC as being in default with written notice of his or her default status at least 30 days before the expiration date of the license or registration to the last known mailing address according to the Board's records.

(e) An [A] individual [person] informed by the Board of his or her default status according to the TGSLC shall be provided an opportunity for a hearing, if requested by the licensee or registrant, in accordance with these rules.

§365.14. Continuing Professional Education Programs.

(a) Course Materials -- Beginning in preparation for the 2000-2001 Continuing Professional Education year (begins on July 1, 2000), the Board will annually approve Course Materials to be used for the Continuing Professional Education (CPE) required for renewal of Journeyman Plumber, Master Plumber, Tradesman Plumber-Limited Licensee and Plumbing Inspector Licenses. The Course Materials are the printed materials that are the basis for a substantial portion of a CPE course and which are provided to the Licensees. Board approval of Course Materials will be subject to all of the terms and conditions of this Section. The following minimum criteria will be used by the Board in considering approval of Course Materials:

(1) The Course Materials will provide the basis for a minimum of six classroom hours of study. Three of the six hours will be in the subjects of health protection, energy conservation and water conservation, with the remaining three hours covering subjects which shall include information concerning the Act, Board Rules, current industry practices and codes, and subjects from lists of approved subjects published by the Board.

(2) The Board will periodically publish lists of approved subjects.

(3) The Course Materials must be presentations of relevant issues and changes within the subject areas as they apply to the plumbing practice in the current market or topics which increase or support the Licensee's development of skill and competence.

(4) The provider of the Course Materials must provide the Course Materials, as needed, in correspondence course form to comply with §12B(d) of the Act, which are to be made available for at least three (3) years or as necessary for renewal of an expired license.

(5) The Course Materials may not advertise or promote the sale of goods, products or services.

(6) The Course Materials must be printed and bound and must meet the following minimum technical specifications for printing and production:

(A) Binding - Perfect or Metal Coiled,

(B) Ink - Full Bleed Color,

(C) Cover Material - 80 Pound Gloss Paper,

(D) Page Material - 70 Pound

(7) The Course Materials will include perforated Board forms within the binding of the Course Materials that may be removed for use by the Licensees. The forms will include CPE evaluation forms, License and Endorsement examination forms and General Complaint forms.

(8) All Course Materials must have the following characteristics:

(A) Correct grammar, spelling and punctuation,

(B) Appropriate illustrations and graphics to show concepts not easily explained in words, and

(C) In depth and comprehensive presentation of subject matter which increases or supports the skills or competence of the Licensees.

(9) The provider of Course materials must have legal ownership of or an appropriate license for the use of all copyrighted material included within the Course materials. Board approved Course materials will contain a prominently displayed approval statement in 10 point bold type or larger containing the following language: "THIS CONTINUING PROFESSIONAL EDUCATION COURSE MATERIAL HAS BEEN APPROVED BY THE TEXAS STATE BOARD OF PLUMBING EXAMINERS FOR USE IN THE (state year) CPE YEAR. BY ITS APPROVAL OF THIS COURSE MATERIAL, THE TEXAS STATE BOARD OF PLUMBING EXAMINERS DOES NOT ASSUME ANY RESPONSIBILITY FOR THE ACCURACY OF THE CONTENTS OF THE COURSE MATERIAL. FURTHER, THE TEXAS STATE BOARD OF PLUMBING EXAMINERS IS NOT MAKING ANY DETERMINATION THAT THE PARTY PUBLISHING THE COURSE MATERIALS HAS COMPLIED WITH ANY APPLICABLE COPYRIGHT AND OTHER LAWS IN PUBLISHING THE COURSE MATERIAL AND THE TEXAS STATE BOARD OF PLUMBING EXAMINERS DOES NOT ASSUME ANY LIABILITY OR RESPONSIBILITY THEREFOR. THE COURSE MATERIAL IS NOT BEING PUBLISHED BY NOR IS IT A PUBLICATION OF THE TEXAS STATE BOARD OF PLUMBING EXAMINERS."

(10) The provider of Course Materials will conduct instructor training in the use of Course Materials.

(11) The provider of Course Materials will be required to have distribution facilities that will ensure prompt distribution of course materials, facsimile ordering and a statewide toll free telephone number for placing orders. The provider of Course Materials must ship any ordered material within ten business days after the receipt of the order and payment for the course materials.

(12) The Board shall annually approve only individuals, businesses or associations to provide Course Materials. Any individual, business or association who wishes to offer to provide Course Materials shall apply to the Board for approval using application forms prepared by the Board. In order to be approved, the application must satisfy the Board as to the ability of the individual, business or association to provide quality Course Materials as required in this Section and must include:

(A) name and address of individual applicant,

(B) names and addresses of all officers, directors, trustees or members of the governing board of any business or association applicant,

(C) statement by individual applicant, and each officer, director, trustee or member of governing board as to whether he or she has ever been convicted of a felony or misdemeanor other than a minor traffic violation,

(D) certificate of good standing issued by the Texas Comptroller of Public Accounts for business or association applicants,

(E) fees to be charged for Course Materials,

(F) taxpayer identification number,

(G) [~~(H)~~] method for quarterly reporting of Course Provider, Instructors, and Licensee evaluations of Course Materials to the Board,

(13) The provider of Course Materials must sell Course Materials to all Course Providers and Licensees at the same price as stated in the application.

(14) The Board may refuse to accept any application for approval as a provider of Course Materials that is not complete. The Board may deny approval of an application for any of the following reasons:

(A) failure to comply with the provisions of this section;

(B) inadequate coverage of the materials required to be included in Course Materials; or

(C) unsatisfactory evaluations of the Course Materials by Course Providers, Instructors, Licensees, or Board staff.

(15) If an application is refused or disapproved, written notice detailing the basis of the decision shall be provided to the applicant.

(16) A provider's authority to offer the Course Materials for which CPE credit is given expires on June 30 of the following calendar year after approval.

[~~(17) Course Materials to be approved for the 2000-2001 CPE year must be submitted in complete draft form (at least 20 copies) to the Board's office no later than May 15, 2000, for Board approval at its May, 2000 Board meeting. At least 50 copies each of all Course Materials that are approved at the Board's May, 2000 Board meeting shall be provided to the Board's office no later than July 1, 2000 at no cost to the Board.~~]

(17) [~~(18)~~] All providers of Course Materials must meet the following time schedule each year for approval of Course Materials to be used for the 2002-2003 [~~2001-2002 and following~~] CPE years:

(A) At least 20 copies each of the final draft version of the Course Materials must be submitted to the Board's office no later than December 1 for Board approval at its January Board meeting [~~, unless an extension is requested at or before the January Board meeting and granted by the Board~~].

(B) At least 20 copies each of the revised and completed version of the Course Materials must be submitted to the Board's office no later than March 1, [15] for Board approval at its April Board meeting [unless an extension is requested at or before the April Board meeting and granted by the Board].

(C) At least 50 copies each of all Course Materials that are approved at the Board's April [March] Board meeting shall be provided to the Board's office no later than July 1 at no cost to the Board.

(18) All providers of Course Materials must meet the following time schedule each year for approval of Course Materials to be used for the 2003-2004 and following CPE years:

(A) At least 20 copies each of the final draft version of the Course Materials must be submitted to the Board's office no later than September 1, for Board approval at its January Board meeting.

(B) At least 20 copies each of the revised and completed version of the Course Materials must be submitted to the Board's office no later than March 1, for Board approval at its April Board meeting.

(C) At least 50 copies each of all Course Materials that are approved at the Board's April Board meeting shall be provided to the Board's office no later than July 1 at no cost to the Board.

(19) A provider's failure to comply with this section constitutes grounds for disciplinary action against the provider or for disapproval of future applications for approval as a provider of Course Materials.

(b) Course Providers [Provider]-- The Board will annually approve only individuals, businesses or associations as Course Providers. Course Providers will offer classroom and correspondence instruction in the Course Materials used for the Continuing Professional Education (CPE) required for renewal of all licenses issued under the Act. Board approval of Course Providers will be subject to all of the terms and conditions of this Section. The following minimum criteria will be used by the Board in considering approval of Course Providers:

(1) CPE courses shall be presented in one of the following formats:

(A) Six classroom hours presented on one day

(B) Two sessions of three classroom hours each presented within a seven day period or

(C) An approved correspondence course.

(2) Not less than three hours of the classroom course will be in the subjects of health protection, energy conservation and water conservation.

(3) Presentations must be based primarily on the Course Materials and any other materials approved by the Board.

(4) In addition to Course Materials, presentations may include videos, films, slides or other appropriate types of illustrations and graphic materials related to the Course Materials.

(5) Course Providers shall limit the number of students for any CPE class to forty-five (45).

(6) A Course Provider may not advertise or promote the sale of any goods, products or services between the opening and closing hours of any CPE class.

(7) Each Course Provider shall furnish a uniquely numbered Certificate of Completion of CPE to each Licensee, but only after the licensee has completed the CPE course. The Board will assign the unique numbers to be used on each Certificate to each Course Provider.

(8) Each Course Provider shall, at its own expense and in a format approved by the Board, electronically transmit to the Board certification of each Licensee's completion of CPE requirements within forty-eight hours of completion.

(A) The Board may provide training to the Course Provider in the method for electronic transmittal.

(B) The Board may charge a fee to recover its costs for computer software and training in the use of the software to the Course Provider.

(9) Each Course Provider shall be reviewed annually by the Board to ensure that classes have been provided equitably across the state of Texas, except as provided in §365.14(b)(15)(J).

(10) Each Course Provider must notify the Board at least 7 days before conducting classes; the notice shall contain the time(s) and place(s) where the classes will occur.

(11) Each Course Provider will perform self-monitoring and reporting as required by the Board.

(12) Each Course Provider shall use only Course Instructors that have been approved by the Board. Each Course Provider shall annually submit to the Board's office a list of Course Instructors it employs and the instructors' credentials for approval. Initial lists of Course Instructors, to be approved for the 2002-2003 and later CPE years, must be submitted each year no later than March 15 for approval by the Board at its April Board meeting. The Board may approve additional Course Instructors at any regularly scheduled Board meeting.

(13) Prior to allowing Course Instructors to teach CPE, Course Providers must provide documentation to the Board showing the instructor's successful completion of Course Materials training.

(14) Course Instructors must comply with Section (c) of this Section. Course Providers shall notify the Board within 10 days of any change of an instructor's employment status with the Course Provider.

(15) Any individual, business or association who wishes to be a Course Provider shall apply to the Board for approval using application forms prepared by the Board. In order to be approved, the application must satisfy the Board as to the ability of the individual, business or association to provide quality instruction in the Course Materials as required in this Section and must include:

(A) name and address of individual applicant,

(B) names and addresses of all officers, directors, trustees or members of the governing board of any business or association applicant,

(C) statement by individual applicant, and each officer, director, trustee or member of governing board as to whether he or she has ever been convicted of a felony or misdemeanor other than a minor traffic violation,

(D) certificate of good standing issued by the Texas Comptroller of Public Accounts for business or association applicants,

(E) taxpayer identification number,

(F) facsimile number, statewide toll free telephone number, Internet web site or electronic mail address,

(G) fees to be charged to Licensees for attending the course, considering the following:

(i) If the Course Provider is not also a provider of Course Materials and will purchase Course Materials, the Course

Provider may not charge the Licensees more than its actual cost for the Course Materials supplied to the Licensees by the Course Provider.

(ii) The fees charged to the Licensees for attending the course will be determined by the Course Provider.

(H) an example of a Licensee's Certificate of Completion of CPE,

(I) CPE class scheduling plan,

(J) plan for providing courses equitably across the state (the following individuals or businesses will not have to comply with this Subparagraph (J) :

(i) Employers applying to be approved as Course Providers for the purpose of providing CPE courses only to the employers' employees, and

(ii) Individuals who will not employ Course Instructors other than themselves),

(K) method for quarterly reporting compilations of Licensee evaluations of Course Provider and Course Instructors to the Board and

(L) method for ensuring that only Licensees who meet one or more of the following requirements may receive CPE credit for taking an CPE correspondence course:

(i) any Licensee that lives outside of the State of Texas, or

(ii) lives in a county that does not have a city with a population in excess of 100,000, or

(iii) who has an expired license that requires a CPE course that is no longer available in the classroom, or

(iv) who submits written proof to the Board from a physician stating the medical reason that the licensee is unable to attend a CPE class;

(M) identification of the Course Materials which will be used by the Course Provider.

(16) The Board may refuse to accept any application for approval as a Course Provider that is not complete. The Board may deny approval of an application for any of the following reasons:

(A) failure to comply with the provisions of this section;

(B) inadequate instruction of the materials required to be included in Course Materials; or

(C) unsatisfactory evaluations of the Course Provider by Licensees or Board staff.

(17) If an application is refused or disapproved, written notice detailing the basis of the decision shall be provided to the applicant.

(18) A Course Provider's authority to offer instruction in the Course Materials for which CPE credit is given expires on June 30, of the following calendar year after approval.

(19) Beginning with the 2000-2001 CPE year, the Board will establish the deadline in which applications must be submitted after the effective date of this rule. For the 2001-2002 and following CPE years, all Course Provider applications must be submitted to the Board office no later than December 1, each year for approval at the Board's January meeting, unless an extension is requested at or before the January Board meeting and granted by the Board.

(20) The Board shall review Course Providers for quality in instruction. The Board shall also investigate and take appropriate action, up to and including revocation of authority to provide CPE, regarding complaints involving approved Course Providers.

(21) A provider's failure to comply with this section constitutes grounds for disciplinary action, up to and including revocation of authority to provide CPE, against the provider or for denial of future applications for approval as a Course Provider.

(c) Course Instructors -- The Board will annually approve Course Instructors to provide the classroom instruction in the Course Materials used for the Continuing Professional Education (CPE) required for renewal of Journeyman Plumber, Master Plumber, Tradesman Plumber-Limited Licensee and Plumbing Inspector Licenses. Board approval of Course Instructors will be subject to all of the terms and conditions of this Section. An individual who wishes to be approved by the Board as a Course Instructor must apply to the Board using an application form approved by the Board. The following minimum criteria will be used by the Board in considering approval of Course Instructors:

(1) Instructors must be licensees of the Board and attend and successfully complete a Course Instructor Certification Workshop each year conducted by the Board (the Board will charge a fee to recover its costs for conducting the Course Instructor Certification Workshop).

(2) Instructors will be required to successfully complete a Board approved program of 160 clock hours which meets the following criteria. The Board will allow credit for approved courses.

(A) 40 hours to provide the Instructor with the basic educational techniques and instructional strategies necessary to plan and conduct effective training programs.

(B) 40 hours to provide the Instructor with the basic techniques and strategies necessary to analyze, select, develop, and organize instructional material for effective training programs.

(C) 40 hours to provide the Instructor with the basic principles, techniques, theories, and strategies to establish and maintain effective relationships with students, co-workers, and other personnel in the classroom, industry, and community.

(D) 40 hours to provide the Instructor with the basic principles, techniques, theories, and strategies to communicate effectively with the use of instructional media.

(E) To maintain his/her status as an approved Course Instructor, the Instructor shall undergo one of the aforementioned training programs every 12 months such that the entire training (160 hours) is complete within four years.

(3) A Course Instructor may not advertise or promote the sale of goods, products, or services between the opening and closing hours of any CPE class.

(4) As a Course Instructor and Licensee of the Board, a Course Instructor must comply with the Plumbing License Law and Board Rules, including §367.2 of the Board Rules regarding Standards of Conduct. An Instructor has a responsibility to his students and employer to:

(A) be well versed in and knowledgeable of the Course Materials,

(B) maintain an orderly and professional classroom environment and

(C) coordinate with the Course Provider to develop an appropriate method for handling disorderly and disruptive students. A Course Instructor shall report to the Course Provider and the Board,

any non-responsive and disruptive student who attends a CPE course. The Board may deny CPE credit to any such student and require, at the student's expense, successful completion of an additional CPE course to receive credit.

(5) The Board shall review Course Instructors for quality of instruction. The Board shall also respond to complaints regarding Course Instructors.

(6) A Course Instructor's failure to comply with this section constitutes grounds for disciplinary action against the Instructor or for disapproval of future applications for approval as a Course Instructor.

This 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 September 17, 2001.

TRD-200105554
Robert Maxwell
Administrator
Texas State Board of Plumbing Examiners
Earliest possible date of adoption: October 28, 2001
For further information, please call: (512) 458-2145

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22 TAC §365.2

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

The repeal in accordance with HB 217 are proposed under Section 3 (Section 5B, Article 6243-101, V.T.C.S; and in accordance with HB 1505 are proposed under Section 5 (Section 5, Article 6243-101, V.T.C.S.), Section 11 (Section 8C, Article 6243-101, V.T.C.S), Section 14 (Section 12, Article 6243-101, V.T.C.S), and Section 24 which authorizes, empowers and directs the Board to prescribe, amend and enforce all rules and regulations necessary to carry out the Act.

No other statute, article, or code is affected by these proposed rule changes.

§365.2. Apprentice Registration.

This 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 September 17, 2001.

TRD-200105555
Robert Maxwell
Administrator
Texas State Board of Plumbing Examiners
Earliest possible date of adoption: October 28, 2001
For further information, please call: (512) 458-2145

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CHAPTER 367. ENFORCEMENT

22 TAC §§367.1 - 367.3, 367.5, 367.7

The Texas State Board of Plumbing Examiners proposes amendments to §§367.1 - 367.3, 367.5, 367.7, concerning enforcement. During the 77th Legislature House Bills 217 and 1505 were signed into law. As a result of these two House Bills, the Plumbing License Law is amended as follows.

House Bill (HB) 217 amends the Plumbing License Law to modify the plumbing codes that the Texas State Board of Plumbing Examiners is required to adopt and authorizes the board by rule to adopt later editions of the adopted plumbing codes. The Southern Standard Plumbing Code and the National Standard Plumbing Code were eliminated from the codes adopted by the Board. The Uniform Plumbing Code was maintained and the International Plumbing Code was added, resulting in two Plumbing Codes to be adopted by the board. All plumbing installed in a political subdivision, in compliance with an adopted state approved code, must be inspected by a licensed Plumbing Inspector. The bill provides that plumbing installed in an area not otherwise subject to regulation under the Plumbing License Law must be installed in accordance with a board adopted plumbing code. The bill authorizes municipalities or owners of a public water system to amend any provisions of the codes and standards to conform to local concerns that do not substantially vary with rules or laws of this state. The bill provides that plumbing installed in compliance with an adopted plumbing code must be inspected by a licensed plumbing inspector. (Section 3)

Under HB 217, the board's jurisdiction was greatly expanded by requiring that all plumbing work connected to a public water system, or performed in any city in the state be performed by a licensed plumber. This eliminated the exemption, which had been in place since 1947, requiring a plumbing license in only cities with populations of 5,000 or more inhabitants (Section 2).

Under HB 217, Licensed Plumbing Inspectors are no longer restricted to being bona fide employees of a political subdivision, but were allowed to contract with a political subdivision as long as they are paid directly by the political subdivision (Section 1 and 3).

House Bill (HB) 1505 amends the Plumbing License Law by clarifying some existing language and effectively regulating all facets of plumbing work and individuals engaged in plumbing work.

HB 1505 clarifies that medical gasses and vacuum are included in the definition of "plumbing" (Section 1).

HB 1505 establishes a new Tradesman Plumber-Limited license and four new registrations. HB 1505 mandates, by law, experience and qualification requirements for all licenses and registrations issued by the Board. The new Tradesman Plumber-Limited license authorizes individuals to engage in the construction and installation of plumbing only in one and two-family dwellings, after passing an examination administered by the Board. HB 1505 provides for registrations authorizing individuals to install residential yard water and sewer lines (Residential Utilities Installer); remove p-traps and install clean-outs to clear obstructions in sewer lines (Drain Cleaner); clear obstructions in sewer lines through existing openings only (Drain Cleaner-Restricted Registrant); and assist in the installation of plumbing work (Plumber's Apprentice). HB 1505 requires all registrants and licensees to work under the general supervision of a Master Plumber and Residential Utilities Installers, Drain Cleaners and Drain Cleaner-Restricted Registrants to maintain registrations as a Plumber's Apprentice. (Sections 1 and 5).

HB 1505 provides the board with express authority to adopt rules and take other actions as the board deems necessary to administer this law including provisions relating to the new classes of registrants and licensees (Sections 5, 9, 11, and 14).

HB 1505 authorizes the board to appoint advisory committees as it considers necessary (Section 5).

HB 1505 requires, rather than authorizes, the board to recognize, approve, and administer continuing education programs for licensees and endorsees (Section 5).

Under HB 1505, the Licensed Sanitary Engineer position on the Board was changed to a Licensed Professional Engineer. Clarification that the Master Plumber Position, Journeyman Plumber Position, and Plumbing Inspector position on the Board, must be licensees of the Board was also included (Section 5).

HB 1505 requires a person who desires to learn the trade of plumbing to register as a Plumber's Apprentice before beginning to assist a licensee at the trade of plumbing (Section 13).

HB 1505 requires that no person, whether as a tradesman plumber-limited licensee, plumber's apprentice, registrant or otherwise to engage in, work at, or conduct the business of plumbing in this state or serve as a plumbing inspector unless such a person is the holder of a valid license, endorsement, or registration (Section 16).

HB 1505 authorizes the board to monitor insurance requirements for Master Plumbers responsible for the operation of a plumbing business by requiring them to submit a certificate of insurance to the Board (Section 17).

HB 1505 requires that the installation and replacement of water heaters be inspected by a Licensed Plumbing Inspector (Section 17).

HB 1505 also requires municipal plumbing inspections to be performed by licensed plumbing inspectors and provides that if the boundaries of a municipality and a municipal utility district overlap, only the affected municipality may perform a plumbing inspection and collect a permit fee (Section 17).

HB 1505 requires the board to adopt the required rules necessary to implement this law no later than January 1, 2002 (Section 24).

The following is an outline of the sections being added, amended, deleted in Chapter 367:

Section 367.1, regarding general provisions, (b), (c), (e) - (k).

Subsection (b) is amended to include registrations. Shall is replacing should in subsection (c). Subsections (e) - (h) are being amended to reference the current plumbing codes. New subsections (i) and (k) are being added.

Section 367.2, regarding standards of conduct, (a) - (e).

The section is being amended to add registrant to subsections (a) - (e).

Section 367.3, regarding requirements for plumbing companies, responsible master plumbers; certificate of Insurance, (a)(5) - (8).

Subsection (a) is being amended to include new paragraphs (5) - (8). The new paragraphs require a responsible master plumber to furnish the board with a certificate of insurance.

Section 367.5, regarding on-site license and registration checks.

The section is being amended to add registration.

Section 367.7, regarding violations of standards and practices, (a) and (b).

Subsection (a) is being amended to include registration in the title of Chapter 365. Subsection (b) will now include registration, unregistered, and person registered for necessary compliance. Subsection (b)(5) is being amended to replace "agent of" with "independent contractor for".

Also, as a result of HB 217 and HB 1505, the Texas State Board of Plumbing Examiners proposes amendments to Chapters 361, 363, and 365 elsewhere in this issue of the *Texas Register*.

Robert L. Maxwell, Administrator of the Texas State Board of Plumbing Examiners, has determined that for the first five-year period the rules are in effect the fiscal impact on state and local government as well as small businesses and persons required to comply with these rules as a result of HB 1505 and HB 217 is as follows:

The Board is required to adopt rules necessary for the implementation of HB 1505, no later than January 1, 2002;

The Board is required to develop and administer the one new examination required for the new license category and implement a registration process for the Plumber's Apprentice and the other three new mandatory registrations;

The Board is required to modify its computer programs to automate the examination and renewal process for the new categories, and make necessary changes to other administrative functions;

The addition of the International Plumbing Code, as a code to be adopted by the Board, will require the Board to review and make changes, as necessary, to its examinations to ensure that the answers to examination questions may be found in both the Uniform Plumbing Code and the International Plumbing Code;

Currently the Board is not required to register apprentices. They are issued a one-time apprentice card, but are not required to renew or update information. Therefore, the Board is not able to determine exactly how many apprentices are currently working in the plumbing industry. However, the Board estimates that there are at least two apprentices working with each journeyman. As of February 20, 2001, there were 12,070 licensed journeymen, or an estimated 24,140 apprentices. Therefore, it is estimated that the implementation of HB 1505 will double the size of the Board's current license database. One additional Administrative Technician III will be requested to support the increase in activity in the licensing department at a cost of $29,232 per year. Additionally, license cards at an approximate cost of $0.30 each for 24,000 additional licensees and registrants will cost approximately $7,200. One additional Administrative Technician III will be requested to support the processing of new applications for examination and registration at a cost of $29,232 per year. Material cost for the examination center would increase by approximately $ 10,000 per year.

One-time costs will be the changes to the Board's licensing system by outside programmers for an estimated approximate cost of $21,650. Updates will be required to the Board's web site at an approximate cost of $1,000. Other one-time costs will be for computers, desks, and telephones for these 2 additional employees, at a cost of $ 7,500.

The Board will have an ongoing cost for Northrop Grumman, who supports the Board's regulatory computer, based on the number

of licensees in the system. The cost is currently $0.0764 per month per licensee. Because of the additional estimated number of licensees and registrants that would be added to our system, the additional amount to be charged by Northrop Grumman would be $1,834 per month, or $22,008 per fiscal year.

The Board anticipates there will also be an increase in the number of hearings due to denials (usually due to criminal history issues) of unqualified applicants for registration as Plumber's Apprentice. Since, under current law, there is no requirement for Plumber's Apprentices to register with the Board, denied applicants for registration as a Plumber's Apprentice are not entitled to a hearing. However, under the new legislation, denied applicants will have a right to a hearing on any denial. This would increase the estimated number of cases to be heard by the State Office of Administrative Hearings (SOAH). SOAH costs for an estimated five additional hearings per year for applicants who are denied would cost approximately $6,250 to the State.

The Board's jurisdiction regarding job site monitoring will be increased by the elimination of the current exemption that allows unlicensed plumbers to perform plumbing work in areas outside of cities of 5,000 or more. The Board will perform job site monitoring in those areas previously exempted, to ensure that plumbing work is performed by licensed plumbers. Additionally, there will be an increase in the number of plumbers examined and licensed by the Board. However, since these unlicensed plumbers are not currently regulated or registered by the Board, the Board has no accurate method for determining how many unlicensed individuals are performing plumbing work in these areas. However, the Board estimates that the increase in the number of unlicensed plumbers that decide to become licensed will average two (2) new licensees per county over the 2002-2003 biennium, the estimated increase would total 508 newly licensed individuals over the biennium. Assuming that one-half of these individuals would sit for the journeyman plumber examination during the first year, and the other half over the second year, the increase in fees to the Board would be $12,700 in the first year and $19,050 in the second year, which is a total increase in fees of $ 31,750 for the biennium. Annual renewal fees for the additional licensees in fiscal years 2004-2006, would be $12,700 each year.

The Board was authorized to raise fees to ensure that it will cover the cost of implementation of HB 1505 and HB 217. The proposed reasonable license, examination and registration fees that will be paid by the licensees and registrants are expected to cover the costs of implementation of the new legislation. The Board will monitor the number of new licensees and registrants and the amount of fees collected to ensure that its costs are covered. The Board, at a later date, could deem it necessary to raise or lower the current proposed fees.

Mr. Maxwell also has determined that each year of the first five years the rules are effect the public benefit anticipated as a result of enforcing these rules will be increased public health, safety and welfare. This is expected to be accomplished by ensuring that the proper installation, service, maintenance and repair of plumbing systems is being performed by qualified individuals.

Comments on the proposed rule changes may be submitted within 30 days of publication of these proposed rule amendments in the *Texas Register*, to Robert L. Maxwell, Administrator, Texas State Board of Plumbing Examiners, 929 East 41st Street, P.O. Box 4200, Austin, Texas 78765-4200.

The amendments in accordance with HB 217 are proposed under Section 3 (Section 5B, Article 6243-101, V.T.C.S; and in accordance with HB 1505 are proposed under Section 5 (Section 5, Article 6243-101, V.T.C.S.), Section 11 (Section 8C, Article 6243-101, V.T.C.S), Section 14 (Section 12, Article 6243-101, V.T.C.S), and Section 24 which authorizes, empowers and directs the Board to prescribe, amend and enforce all rules and regulations necessary to carry out the Act.

No other statute, article, or code is affected by these proposed rule changes.

§367.1. General Provisions.

(a) Enforcement of all applicable laws including the Act, Board rules, and Board orders vests in the Board.

(b) Enforcement of the Act, local codes, and ordinances, and local standards of competency vests in local authorities. The Board may take disciplinary actions as specified in Chapter 365 of this title, related to licensing and registrations, in the event of any violation of any of these requirements.

(c) Each locally designated plumbing inspector shall [~~should~~] enforce the Act and municipal ordinances and should file complaints with the Board and with local prosecutors.

(d) The Board shall employ individuals [~~a person~~] knowledgeable of plumbing practice and law as field representative to assist in the enforcement of the Act. A field representative may:

(1) Inspect plumbing work sites to assess compliance with the Law;

(2) Inquire into consumer complaints and reported violations of the Law;

(3) Assist municipal authorities in enforcing the Act; and

(4) Issue citations for violations of the Act.

(e) To protect the health and safety of the citizens of this state, the Board adopts the following plumbing codes, as those codes existed on May 31, 2001: [~~The Board adopts the Southern Standard Plumbing Code, the Uniform Plumbing Code, and the National Standard Plumbing Code as approved plumbing codes for the State of Texas.~~]

(1) the Uniform Plumbing Code, as published by the International Association of Plumbing and Mechanical Officials; and

(2) the International Plumbing Code, as published by the International Code Council.

(f) The Board may by rule adopt later editions of the plumbing codes listed under Subsection (e) of this section. [~~A city, town, or village must adopt a plumbing code that does not substantially vary with the approved state codes, conflict with other state laws, or reduce the overall standards of a minimum code. Political subdivisions may require higher minimum standards as needed in order to protect the health and safety of their citizens.~~]

(g) Plumbing installed in an area not otherwise subject to regulation under the Act by an individual licensed under the Act must be installed in accordance with a plumbing code adopted by the Board under subsection (e) or (f) of this section.

(h) In adopting plumbing codes and standards for the proper design, installation, and maintenance of a plumbing system under this section, a municipality or an owner of a public water system may amend any provisions of the codes and standards to conform to local concerns that do not substantially vary with rules or laws of this state.

(i) Plumbing installed in compliance with a code adopted under subsection (e), (f), or (h) of this section must be inspected by a plumbing inspector. To perform this inspection, the political subdivision may contract with any plumbing inspector paid directly by the political subdivision. The plumbing inspector must be licensed as required by Section 14(a) of the Act.

~~[(g) Any owner of a public water system other than a city, town or village may adopt a plumbing code that does not substantially vary with the approved state codes, conflict with other state laws, or reduce the overall standards of a minimum code, and shall otherwise ensure that standards for the design, installation and maintenance of water utility systems comply with minimum requirements promulgated by the Texas Natural Resource Conservation Commission, including but not limited to those provisions ensuring detection and elimination of cross connections and those provisions preventing the use of pipes and pipe fittings containing unacceptable levels of lead.]~~

(j) ~~[(h)]~~ The potable water supply piping for every plumbing fixture, including water closet plumbing fixtures and other equipment that use water shall be installed to prevent the back flow of non-potable substances into the potable water system according to the provisions of an adopted plumbing code. Water closet fill valves (ball cocks) shall be of the anti-siphon, integral vacuum breaker type with the critical level (the air inlet portion of the vacuum breaker) installed at least one inch (1") above the flood level rim of the fixture (the inlet of the water closet overflow tube).

(k) New construction of a graywater system or modification to an existing graywater system must be carried out in accordance with the rules of the Texas State Board of Plumbing Examiners and the Texas Natural Resource Conservation Commission.

§367.2. Standards of Conduct.

(a) Offer to Perform Services. The Licensee and Registrant:

(1) shall accurately and truthfully represent to any prospective client or employer, his or her capabilities and qualifications to perform the services to be rendered;

(2) shall not offer to perform, nor perform, technical services for which he or she is not qualified by education or experience, without retaining the services of another who is so qualified; and

(3) shall not evade responsibility to a client or employer.

(b) Conflicts of Interest. The Licensee and Registrant:

(1) shall not agree to perform services if any significant financial or other interest exists that may be in conflict with:

(A) the obligation to render a faithful discharge of such services; or

(B) would impair independent judgment in rendering such services;

(2) shall withdraw from employment when it becomes apparent that it is not possible to faithfully discharge the duty and performance of services owed the client or employer, but then only upon reasonable notice to the client or employer; and

(3) shall not accept remuneration from any person other than the client or employer for a particular project, nor have any other financial interest in other service or phase of service to be provided for the project, unless the client or employer has full knowledge and so approves.

(c) Representations. The Licensee and Registrant:

(1) shall not indulge in advertising that is false, misleading, deceptive, or which does not clearly display the licensees' state license number;

(2) shall not misrepresent the amount or extent of prior education or experience to any employer or client, or to the Board;

(3) shall, when providing estimates for costs or completion times of a proposed project, represent to a prospective client or employer as accurately and truthfully as is reasonably possible the costs and completion time of the proposed project; and

(4) shall not hold out as being engaged in partnership or association with any person unless a partnership or association exists in fact.

(d) Compliance with Board Orders. The Licensee and Registrant shall comply fully with all Board Orders.

(e) Responsibilities of Plumbing Licensees and Registrants [~~outside municipal limits~~].

(1) [~~The responsibilities of~~] Licensees and Registrants must abide by all laws and rules regulating plumbing, including the Standards of Conduct set forth in this section, within any geographic location in this state when performing or offering to perform plumbing work or plumbing inspections. [~~outside the municipal limits of any organized city, town or village in this state, or within any such city, town or village of less than 5,000 inhabitants are the same as those responsibilities within any city, town or village in excess of 5,000 inhabitants~~].

(2) In areas where no plumbing code is adopted one of the state approved codes shall be followed by the Licensee and Registrant.

§367.3. Requirements for Plumbing Companies, Responsible Master Plumbers; Certificate of Insurance.

(a) A company or person offering to do plumbing work must secure the services of at least one Responsible Master Plumber holding a current Master Plumber License.

(1) A Responsible Master Plumber shall not allow any person, firm, company, or corporation to use his or her Master Plumber License[~~.~~] for any purpose unless the Master Plumber is a bona fide employee of the person, firm, company, or corporation or is the owner of the firm, company, or corporation that will use the master plumber's license.

(2) A Master Plumber may act as the Responsible Master Plumber for only one such person, company, firm, or corporation.

(3) The Responsible Master Plumber shall be knowledgeable of and responsible for all permits, contracts, and agreements to perform plumbing work secured and plumbing work performed under his or her Master Plumber License.

(4) All work performed under the license of the Responsible Master Plumber shall be under the on-the-job direct supervision [~~within the sight of and under the direct control and on-the-job supervision~~] of a licensed plumber that is a bona fide employee of[~~,~~] or[~~,~~] the owner of the firm, company, or corporation using the Master Plumber's License.

(5) Prior to acting as a Responsible Master Plumber as defined in these Rules, a Master Plumber shall furnish the Board with a certificate of insurance using a Certificate of Insurance form provided by the Board. The certificate of insurance must:

(A) be written by a company licensed to do business in this state;

(B) provide for commercial general liability insurance for the Master Plumber for claims for property damage or bodily injury, regardless of whether the claim arises from a negligence claim or on a contract claim;

(C) be in a coverage amount of not less than $300,000 for all claims arising in any one-year period;

(D) state the name and license number of the Master Plumber for whom the coverage is provided;

(E) state the name of the plumbing company for which the Master Plumber is acting as the Responsible Master Plumber.

(6) Insurance coverage specified in paragraph (5) of this subsection, shall be maintained at all times during which a Master Plumber acts as a Responsible Master Plumber.

(7) The Certificate of Insurance form expires on the date that the insurance coverage, specified in paragraph (5) of this subsection, expires.

(8) The Responsible Master Plumber shall furnish the Board with a completed Certificate of Insurance form not later than 10 days after the expiration of the previously furnished Certificate of Insurance form.

(b) A company or person offering to install pipe used solely to transport gases for medical purposes must first secure the services of at least one Responsible Master Plumber that holds a current Master Plumber License that contains a current Medical Gas Installation Endorsement issued by the Board to be responsible for the installation of all pipe used solely to transport gases for medical purposes installed by that company and permits required to install the piping.

(1) The Responsible Master Plumber with the Medical Gas Installation Endorsement shall be responsible for generally supervising any individuals involved in the installation of pipe used solely to transport gases for medical purposes installed by that company and ensuring that all medical gas pipe assembly, brazing, and installation of required pipe markings is performed only by a Licensed Plumber holding a current Medical Gas Installation Endorsement issued by the Board.

(2) The relationship between the Master Plumber and the company or person using the Responsible Master Plumber's License with the Medical Gas Installation Endorsement must be as defined in subsection (a) of this section.

§367.5. On-Site License and Registration Checks.

The Board [~~board~~] may conduct on-site license and registration checks of individuals engaged in plumbing or plumbing inspection as it deems appropriate. The Board [~~board~~] may initiate disciplinary actions against those discovered without a license or registration, or may refer the violations to local authorities for enforcement and disposition.

§367.7. Violations of Standards and Practices.

(a) The Board may take disciplinary actions as specified in chapter 365 of these rules (relating to Licensing and Registration) in the event of any violation of any of these requirements.

(b) A person commits a Class C misdemeanor by:

(1) Violating the act or the rules adopted under it;

(2) Performing non-exempt plumbing work without holding a valid license, registration or endorsement issued through the Board;

(3) Employing an unlicensed or unregistered individual to perform activities that by law require the skills and supervision of an individual registered or [~~a~~] licensed by the Board [~~plumber~~] without providing for that [~~unlicensed~~] individual's supervision as specified by the Act and Board Rules [~~Section 367.3 of this title (relating to requirement for plumbing companies)~~].

(4) Proclaiming through advertising or by producing another's plumbing license, registration or license or registration number or by other means claiming that:

(A) an individual [~~a person~~] is a licensed plumber or is registered with the Board when in fact that individual [~~person~~] is not a plumber licensed or registered by the Board, or

(B) that a person or plumbing company has secured the services of a Responsible Master Plumber as specified in Section 367.3 of this title, when in fact that company has not;

(5) Acting, serving, or representing oneself as a Plumbing Inspector, or conducting plumbing inspections as defined in the Act and Board Rules without holding a valid Plumbing Inspector License and without being employed by, or an independent contractor for [~~agent of~~] a political subdivision.

(c) A person who violates any provision of the act or these rules or any other order of the Board is subject to a penalty of not less than $50 or more than $1,000 for each violation and for each day of violation after notification.

This 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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Robert Maxwell
Administrator
Texas State Board of Plumbing Examiners
Earliest possible date of adoption: October 28, 2001
For further information, please call: (512) 458-2145

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PART 23. TEXAS REAL ESTATE COMMISSION

CHAPTER 535. PROVISIONS OF THE REAL ESTATE LICENSE ACT

SUBCHAPTER R. REAL ESTATE INSPECTORS

22 TAC §535.215

The Texas Real Estate Commission (TREC) proposes an amendment to §535.215, concerning inactive inspector status.

TREC issues licenses to apprentice inspectors, real estate inspectors, and professional inspectors. Apprentices and real estate inspectors must be sponsored by a professional inspector in order to hold an active license and perform inspections. The amendment to §535.215 would clarify that an inspector on inactive status may not practice and that a professional inspector may be disciplined for permitting an inactive licensee to perform inspections. The amendment also would list the conditions that may result in an apprentice or real estate inspector becoming inactive, such as the death of the sponsoring professional inspector. The amendment also would provide guidelines for the

process to be followed for an inactive inspector to regain an active license. If the inactive inspector renewed the previous license without satisfying applicable continuing education requirements, the inspector must satisfy those requirements before becoming active. If the inspector was placed on inactive status at the inspector's request, the inspector must make a written request for return to active status, accompanied by the statutory fee, now $20.

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

Mr. Moseley also has determined that for each year of the first five years the section as proposed is in effect the public benefit anticipated as a result of enforcing the section will be a possible reduction in unauthorized practice by inactive inspectors. There is no anticipated economic cost to persons who are required to comply with the proposed section, other than payment of the statutory fee of $20 for requesting return to active status.

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

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

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

§535.215. Inactive Inspector Status.

(a) For the purposes of this section, an "inactive" inspector is a licensed professional inspector, real estate inspector, or apprentice inspector who is not authorized by law to [~~does not~~] engage in the business of performing real estate inspections as defined by Texas Civil Statutes, Article 6573a, §23, (the Act), and who has been placed on inactive status by the commission for any of the following reasons: [~~either at the inspector's request, or as otherwise provided by this section~~].

(1) the written request of the inspector to be placed on inactive status;

(2) termination of sponsorship by a professional inspector;

(3) the death of the inspector's sponsoring professional inspector;

(4) the failure of the licensee to satisfy continuing education requirements for an active license; or

(5) the expiration, suspension, or revocation of the license of the inspector's sponsoring professional inspector

(b)-(e) (No change.)

(f) Inactive inspectors may not perform inspections. Performance of inspections while on inactive status is grounds for disciplinary action against the inactive licensee. A professional inspector who has been placed on inactive status may not return to practice or sponsor apprentices or inspectors until the professional inspector has completed applicable continuing education requirements and , if the inspector was placed on inactive status at the inspector's own request, applied to the commission for return to active status and paid the applicable fee for the filing [~~received a new license certificate from the commission~~]. An apprentice inspector or real estate inspector who has been placed on inactive status may return to practice if the inspector has completed applicable continuing education requirements, and the inspector's sponsoring professional inspector has requested that the apprentice inspector or real estate inspector be returned to active status under the professional inspector's sponsorship in accordance with the provisions of this section. It is a violation of this section and grounds for disciplinary action against a professional inspector for the professional inspector to permit an inactive apprentice inspector or an inactive real estate inspector to perform inspections in association with, or on behalf of, the professional inspector.

This 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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Mark A. Moseley
General Counsel
Texas Real Estate Commission
Earliest possible date of adoption: October 28, 2001
For further information, please call: (512) 465-3900

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CHAPTER 537. PROFESSIONAL AGREEMENTS AND STANDARD CONTRACTS

22 TAC §§537.11, 537.21, 537.22, 537.28, 537.33, 537.37, 537.41, 537.45 - 537.48

The Texas Real Estate Commission (TREC) proposes amendments to §§537.11, 537.21, 537.22, 537.28, 537.33, 537.37, 537.41, 537.45, and 537.46. New §537.47 and §537.48, concerning standard contract forms. These amendments and new sections would adopt by reference ten new or revised contract forms to be used by Texas real estate licensees.

Texas real estate licensees are generally required to use forms promulgated by TREC when negotiating contacts for the sale of real property. These forms are drafted by the Texas Real Estate Broker-Lawyer Committee, an advisory body consisting of six attorneys appointed by the President of the State Bar of Texas and six brokers appointed by TREC.

The amendment to §537.11 would renumber the revised forms and add the new forms to a list of forms promulgated by TREC.

The amendment to §537.21 would adopt by reference Standard Contract Form TREC No. 10-4, Addendum for Sale of Other Property Belonging to Buyer, an addendum creating a contingency for the sale of other property belonging to the buyer. The form has been modified to delete reference to an inapplicable paragraph number so as to permit its use with the revised one-to-four family residential resale contract form.

The amendment to §537.22 would adopt by reference Standard Contract Form TREC No. 11-4, Addendum for "Back-Up" Contract, an addendum for use with a contract that is contingent upon the termination of a prior contract between the seller and another buyer. The form has been modified to clarify that the second contract is the "back-up" contract and to permit its use with the revised one-to-four family contract by deleting a reference to an inapplicable paragraph number.

The amendment to §537.28 would adopt by reference Standard Contract Form TREC No. 20-5, One to Four Family Residential Contract (Resale). The form would be revised to permit its use as a contract for in all residential resale transactions, other than condominium transactions, by use of addenda for various kinds of financing. The contract form also has been modified to reorganize the list of improvements or accessories included in sale. The revised form permits a prequalified buyer to make the contract subject only to the property satisfying lender's loan underwriting requirements. Other changes permit the buyer to have survey exception to title policy deleted at the buyer's expense and rely upon the seller's existing survey in lieu of having a new survey. The parties may agree when the buyer must be furnished or obtain a new survey and the period of time for the buyer to make title objections. Financing conditions, seller financing details and loan assumption provisions would be moved to new separate addenda. A provision has been added for payment for a residential service contract. An automatic extension of closing for up to 15 days for satisfaction of lender's closing requirements would be eliminated. The revised form also clarifies when the buyer takes possession. Closing cost provisions are combined for conventional and FHA/VA transactions. A blank has been added for the seller to pay a portion of the buyer's expenses. The revised form also permits the parties to agree to mediate their disputes without using an addendum. A list of contract addenda has been added along with boxes to indicate which addenda have been made part of the contract. Adds list of addenda with check boxes. An option clause has been moved to a new paragraph and made applicable only if all blanks have been filled in and the option fee has been paid. A receipt has been added for the option fee. Office addresses and facsimile numbers have been added to the contract for listing and selling associates.

The amendment to §537.33 would adopt by reference Standard Contract Form TREC No. 26-4, Seller Financing Addendum. The form is an addendum used to create an agreement between the buyer and the seller in a seller-financed transaction to establish the provisions of the promissory note and deed of trust. A provision has been added to the form to list the documentation the buyer will supply the seller to establish the buyer's creditworthiness. Previously, this information has been contained in the main contract between the parties.

The amendment to §537.37 would adopt by reference Standard Contract Form TREC No. 30-3, Residential Condominium Contract (Resale). The form has been revised to permit its use as a resale contract for a condominium unit involving all cash, third party financing, FHA/VA loans, assumptions or seller financing, combining two prior contract forms in the same manner and with many of the same text changes proposed for the revised TREC residential resale contract form.

The amendment to §537.41 would adopt by reference Standard Contract Form TREC No.34-1, Addendum for Property Located Seaward of the Gulf Intracoastal Waterway, which has been modified to reflect a change in the notice required by the Natural Resources Code. Under §61.025, Natural Resources Code, a seller of property located seaward of the Gulf Intracoastal Waterway is required to provide the buyer with a notice relating to public rights affecting beach property. Effective September 1, 1999, §61.025 was amended to include a statement that the buyer should determine the rate of shoreline erosion in the vicinity of the property. The amendment would revise the statutory notice in the TREC form to consistent with the change in the law.

The amendment to §537.45 would adopt by reference Standard Contract Form TREC No. 38-1, Notice of Termination of Contract, a form which a buyer may use to terminate the contract under an option clause contained in the contract. The form has been modified to eliminate a reference to a specific paragraph of the contract, because the option clause may be in different paragraphs of the various TREC contract forms once the revised contract forms are adopted.

The amendment to §537.46 would adopt by reference Standard Contract Form TREC No. 39-3, Amendment, a form used by the parties to amend a contract. The form has been revised to eliminate references to a specific paragraph containing the option clause, since the paragraph number may vary in the TREC contract forms, and to clarify that the amount of expenses that the seller may agree to pay for the buyer is in addition to the amounts which Seller is obligated to pay under the provisions of the main contract.

New §537.47 would adopt by reference Standard Contract Form TREC No. 40-0, Third Party Financing Condition Addendum, a new form developed by the Texas Real Estate Broker-Lawyer Committee. Those provisions concerning a contingency for the buyer to obtain a loan have been relocated from the main TREC contract forms to the addendum primarily to save space in the main contract. The addendum would be used if the contract is to be contingent upon the buyer obtaining conventional financing, a Texas Veterans' Housing Assistance Program Loan, FHA insured financing, or VA guaranteed financing.

New §537.48 would adopt by reference Standard Contract Form TREC No. 41-0, Loan Assumption Addendum, a new form developed by the Texas Real Estate Broker-Lawyer Committee. The addendum contains provisions relating to the assumption of an existing loan by the buyer previously contained in the TREC main contract form.

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

Mr. Moseley also has determined that for each year of the first five years the sections as proposed are in effect the public benefit anticipated as a result of enforcing the sections will be the availability of current standard contract forms. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the proposed sections, other than the costs of obtaining copies of the forms, which would be available at no charge through the TREC web site, and available from private printers at an estimated cost of $7.50 per set of 50 copies.

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

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

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

§537.11. Use of Standard Contract Forms.

(a) Standard Contract Form TREC No. 9-4 is promulgated for use in the sale of unimproved property where intended use is for one to four family residences. Standard Contract Form TREC No. 10-4 [~~10-3~~] is promulgated for use as an addendum concerning sale of other property by a buyer to be attached to promulgated forms of contracts. Standard Contract Form TREC No. 11-4 [~~11-3~~] is promulgated for use as an addendum to be attached to promulgated forms of contracts which are second or "back-up" contracts. Standard Contract Form TREC No. 12-1 is promulgated for use as an addendum to be attached to promulgated forms of contracts where there is a Veterans Administration release of liability or restoration entitlement. Standard Contract Form TREC No. 15-2 is promulgated for use as a residential lease when a seller temporarily occupies property after closing. Standard Contract Form TREC No. 16-2 is promulgated for use as a residential lease when a buyer temporarily occupies property prior to closing. Standard Contract Form 20-5 [~~20-4~~] is promulgated for use in the resale of residential real estate [~~where there is all cash or owner financing, an assumption of an existing loan, or a conventional loan~~]. [~~Standard Contract Form TREC No. 21-4 is promulgated for use in the resale of residential real estate where there is a Veterans Administration guaranteed loan or a Federal Housing Administration insured loan.~~] Standard Contract Form TREC No. 23-4 is promulgated for use in the sale of a new home where construction is incomplete. Standard Contract Form TREC No. 24-4 is promulgated for use in the sale of a new home where construction is completed. Standard Contract Form TREC No. 25-3 is promulgated for use in the sale of a farm or ranch. Standard Contract Form TREC No. 26-4 [~~26-3~~] is promulgated for use as an addendum concerning seller financing. Standard Contract Form TREC No. 28-0 is promulgated for use as an addendum to be attached to promulgated forms of contracts where reports are to be obtained relating to environmental assessments, threatened or endangered species, or wetlands. Standard Contract Form TREC No. 29-1 is promulgated for use as an addendum to be attached to promulgated forms of contracts where an abstract of title is to be furnished. Standard Contract Form TREC No. 30-3 [~~30-2~~] is promulgated for use in the resale of a residential condominium unit [~~where there is all cash or seller financing, an assumption of an existing loan, or a conventional loan. Standard Contract Form TREC No. 31-2 is promulgated for use in the resale of a residential condominium unit where there is a Veterans Administration guaranteed loan or a Federal Housing Administration insured loan.~~] Standard Contract Form TREC No. 32-0 is promulgated for use as a condominium resale certificate. Standard Contract Form TREC No. 33-0 is promulgated for use as an addendum to be added to promulgated forms of contracts in the sale of property adjoining and sharing a common boundary with the tidally influenced submerged lands of the state. Standard Contract Form TREC Form No. 34-1 [~~34-0~~] is promulgated for use as an addendum to be added to promulgated forms of contracts in the sale of property located seaward of the Gulf Intracoastal Waterway. Standard Contract Form TREC No. 35-2 is promulgated for use as an addendum to be added to promulgated forms of contracts as an agreement for mediation. Standard Contract Form TREC Form No. 36-1 is promulgated for use as an addendum to be added to promulgated forms in the sale of property subject to mandatory membership in an owners' association. Standard Contract Form TREC Form No. 37-1 is promulgated for use as a resale certificate when the property is subject to mandatory membership in an owners' association. Standard Contract Form TREC Form No. 38-1[~~38-0~~] is promulgated for use as a notice of termination of contract. Standard Contract Form TREC Form No. 39-3 [~~39-2~~] is promulgated for use as an amendment to promulgated forms of contracts. TREC Form No. 40-0 is promulgated for use as an addendum to be added to promulgated forms of contracts when there is a condition for third party financing. TREC Form No. 41-0 is promulgated for use as an addendum to be added to promulgated forms of contracts when there is an assumption of a loan.

(b) - (j) (No change.)

§537.21. Standard Contract Form TREC No. 10-4 [~~10-3~~].

The Texas Real Estate Commission adopts by reference standard contract form TREC No. 10-4 [~~10-3~~] approved by the Texas Real Estate Commission in 2001 [~~1999~~]. This document is published by and available from the Texas Real Estate Commission, P.O. Box 12188, Austin, Texas 78711-2188.

§537.22. Standard Contract Form TREC No. 11-4 [~~11-3~~].

The Texas Real Estate Commission adopts by reference standard contract form TREC No.11-4 [~~11-3~~] approved by the Texas Real Estate Commission in 2001 [~~1998~~]. This document is published by and available from the Texas Real Estate Commission, P.O. Box 12188, Austin, Texas 78711-2188.

§537.28. Standard Contract Form TREC No. 20-5 [~~20-4~~].

The Texas Real Estate Commission adopts by reference standard contract form TREC No.20-5 [~~20-4~~] approved by the Texas Real Estate Commission in 2001 [~~1999~~]. This document is published by and available from the Texas Real Estate Commission, P.O. Box 12188, Austin, Texas 78711-2188.

§537.33. Standard Contract Form TREC No. 26-4 [~~26-3~~].

The Texas Real Estate Commission adopts by reference standard contract form TREC No. 26-4 [~~26-3~~] approved by the Texas Real Estate Commission in 2001 [~~2000~~]. This document is published by and available from the Texas Real Estate Commission, P.O. Box 12188, Austin, Texas 78711-2188.

§537.37. Standard Contract Form TREC No. 30-3 [~~30-2~~].

The Texas Real Estate Commission adopts by reference standard contract form TREC No. 30-3 [~~30-2~~] approved by the Texas Real Estate Commission in 2001 [~~1999~~]. This document is published by and available from the Texas Real Estate Commission, P.O. Box 12188, Austin, Texas 78711-2188.

§537.41. Standard Contract Form TREC No. 34-1 [~~34-0~~].

The Texas Real Estate Commission adopts by reference standard contract form TREC No.34-1 [~~34-0~~] approved by the Texas Real Estate Commission in 2001 [~~1994~~]. This document is published by and available from the Texas Real Estate Commission, P.O. Box 12188, Austin, Texas 78711-2188.

§537.45. Standard Contract Form TREC No.38-1 [~~38-0~~].

The Texas Real Estate Commission adopts by reference standard contract form TREC No.38-1 [~~38-0~~] approved by the Texas Real Estate Commission in 2001 [~~1998~~]. This document is published by and available from the Texas Real Estate Commission, P.O. Box 12188, Austin, Texas 78711-2188.

§537.46. Standard Contract Form TREC No. 39-3 [~~39-2~~].

The Texas Real Estate Commission adopts by reference standard contract form TREC No.39-3 [~~39-2~~] approved by the Texas Real Estate Commission in 2001 [~~2000~~]. This document is published by and available from the Texas Real Estate Commission, P.O. Box 12188, Austin, Texas 78711-2188.

§537.47. Standard Contract Form TREC No. 40-0.

The Texas Real Estate Commission adopts by reference standard contract form TREC No. 40-0 approved by the Texas Real Estate Commission in 2001. This document is published by and available from the Texas Real Estate Commission, P.O. Box 12188, Austin, Texas 78711-2188.

§537.48. Standard Contract Form TREC No. 41-0.

The Texas Real Estate Commission adopts by reference standard contract form TREC No. 41-0 approved by the Texas Real Estate Commission in 2001. This document is published by and available from the Texas Real Estate Commission, P.O. Box 12188, Austin, Texas 78711-2188.

This 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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Mark A. Moseley
General Counsel
Texas Real Estate Commission
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For further information, please call: (512) 465-3900

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22 TAC §537.29, §537.38

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

The Texas Real Estate Commission (TREC) proposes the repeal of §537.29 and §537.38, concerning standard contract forms, in connection with an anticipated adoption of new contract forms combining certain of its residential resale and condominium resale forms. TREC has traditionally maintained separate contract forms for transactions involving FHA insured or VA guaranteed financing. TREC is now proposing to combine its residential contract forms and thereby reduce the number of forms used by its licensees.

Section 537.29 concerns a form intended for use in the resale of residential property involving FHA/VA financing. The form would no longer be needed if TREC adopts a proposed new residential resale contract form permitting use of a wide range of financing alternatives, including FHA/VA financing.

Section 537.38 concerns a form intended for use in the resale of a residential condominium unit with FHA/VA financing, which also would be unneeded if TREC adopts a proposed combined version of the current condominium resale contract forms.

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

Mr. Moseley also has determined that for each year of the first five years the repeals proposed are in effect the public benefit anticipated as a result of enforcing the repeals will be the availability of current standard contract forms. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the proposed repeals, other than the costs of obtaining copies of replacement forms, which would be available at no charge through the TREC web site, and available from private printers at an estimated cost of $7.50 per set of 50 copies.

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

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

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

§537.29. Standard Contract Form TREC No. 21-4.

§537.38. Standard Contract Form TREC No. 31-2.

This 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 September 13, 2001.

TRD-200105460
Mark A. Moseley
General Counsel
Texas Real Estate Commission
Earliest possible date of adoption: October 28, 2001
For further information, please call: (512) 465-3900

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TITLE 30. ENVIRONMENTAL QUALITY

PART 1. TEXAS NATURAL RESOURCE CONSERVATION COMMISSION

CHAPTER 17. TAX RELIEF FOR PROPERTY USED FOR ENVIRONMENTAL PROTECTION

30 TAC §§17.2, 17.4, 17.10, 17.12, 17.15, 17.17, 17.20, 17.25

The Texas Natural Resource Conservation Commission (TNRCC or commission) proposes amendments to §17.2, Definitions; §17.4, Applicability; §17.10, Application for Use Determination; §17.12, Application Review Schedule; and §17.20, Application Fees. The commission also proposes new §17.15, Review Standards; §17.17, Partial Determinations; and §17.25, Appeals Process.

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE PROPOSED RULES

The program for providing tax relief for pollution control property was established under a constitutional amendment listed as Proposition 2 on the state ballot on November 2, 1993. This amendment added §1-l to the Texas Constitution, Article VIII, which provides, in part, that "{t}he legislature by general law may exempt from ad valorem taxation all or part of real and personal property used, constructed, acquired, or installed wholly or partly to meet or exceed rules or regulations adopted by any environmental protection agency ...for the prevention, monitoring, control or reduction of air, water, or land pollution." The 73rd Legislature added §11.31, Pollution Control Property, to Texas Tax Code (TTC), Chapter 11 and §26.045 to TTC, Chapter 26 to implement the new constitutional provision. In accordance with TTC, §11.31, obtaining a tax exemption for pollution control property is a two-step process. First, the person seeking the exemption must obtain a positive determination from the commission

that the property is used wholly or partially for pollution control (i.e. to meet or exceed environmental regulatory requirements). Second, once a person obtains a positive determination, it then applies to the local appraisal district, which completes the second step by granting the tax exemption.

The commission adopted Chapter 277 of its regulations on September 30, 1994, to establish the procedures for obtaining a use determination for pollution control property under Proposition 2. In 1998, Chapter 277 was changed to Chapter 17 to be consistent with the commission's policy to place general or multimedia rules within the Chapter 1 - 100 series of the commission's rules in Title 30 of the Texas Administrative Code (TAC).

In 2000, program staff assembled a workgroup consisting of representatives of industry, appraisal districts, taxing authorities, and consumer and environmental groups to discuss potential changes to the program guidelines manual, which describes procedures for processing use determination applications, including applications for property that is used only partially for pollution control. Potential changes developed in meetings with the workgroup were discussed with the commission at a work session in November 2000. Based on guidance provided at that work session, in January 2001, a number of changes were made to the procedures set out in the program guidelines manual for processing use determination applications. These changes include revision of the standards used for determining if property qualifies as pollution control property, the establishment of a cost analysis procedure for calculating partial determinations, and the development of several definitions as discussed in the SECTION BY SECTION DISCUSSION. The program guidelines manual, as revised, forms the basis for this proposed rulemaking in the implementation of House Bill (HB) 3121, enacted by the Texas Legislature, during the 77th Legislature, 2001.

House Bill 3121 amended TTC, §11.31 in several respects. First, HB 3121 requires that the commission adopt specific standards for considering applications to ensure that use determinations including partial determinations, are equal and uniform. Second, HB 3121 creates an appeals process for a person seeking a use determination from the executive director (ED), or for the chief appraiser of the appraisal district for the county in which the property is located. Third, HB 3121 requires the commission's ED to provide a copy of the use determination to the chief appraiser of the appraisal district for the county in which the property is located.

The proposed amendments to Chapter 17 and the proposed new sections in Chapter 17 will implement the requirements of HB 3121. In addition, the proposed change to §17.20 will raise the Tier I application fee from $50 to $150. This fee increase is necessary for the commission to continue to recover its operating costs to run the use determination program. There is a variable mix of Tier I, Tier II, and Tier III applications from year-to-year and the total revenue generated by the program for the last two years has been insufficient to meet budgetary requirements. Since the program is required to be self-funded in accordance with TTC, §11.31, fees must be increased. The vast majority of applications submitted each year are Tier I. Also, the complexity of Tier I applications has increased over the last several years, requiring increased staff time to review them. It is appropriate, therefore, to increase the Tier I fee in order to recoup a higher percentage of the operating costs attributable to processing those applications.

SECTION BY SECTION DISCUSSION

The proposed changes to §17.2 include the addition of language to clarify that terms used in this chapter are also used in the field of property taxation, not just pollution control; and the addition of the following term definitions: byproduct, capital cost new, capital cost old, cost analysis procedure, decision flow chart, partial determination, production capacity factor, Tier I, Tier II, and Tier III. These terms are used in proposed new §17.15 and §17.17; and the definitions are needed to explain the cost analysis procedure.

The proposed changes to §17.4 will correct a grammatical error and add a requirement for the ED to follow the standards established within this chapter in making a final use determination on pollution control property.

The proposed change to §17.10 will add a requirement that for property which is not used wholly for pollution control purposes, the cost analysis procedure listed in §17.17 must be followed and the calculation must be shown in the application and that the Decision Flow Chart, §17.15, must be included in the application.

The proposed change to §17.12 will add a requirement that the ED provide a copy of the final use determination to the appraisal district where the property is located. The final use determination contains a description of the pollution control property for which a use determination was requested.

Proposed new §17.15 will describe the review standards to be used in determining the pollution control property status of each property item for which a use determination is requested. A decision flow chart is provided to determine whether a particular property item qualifies as pollution control property and whether it qualifies as pollution control equipment under the Tier I, Tier II, or Tier III fee structure. Tier I property is property which is included on the predetermined equipment list (PEL). The PEL is a list of property that the ED has determined is either wholly or partially for pollution control purposes. Tier II property is that property which is 100% pollution control property but is not contained on the PEL. Tier III property is partially for pollution control and partially for process or product improvement and is therefore only eligible for a partial pollution control property use determination.

Proposed new §17.17 will describe the required calculation procedure for a Tier III partial pollution control property use determination. This procedure is followed for applications that are partially for pollution control and partially for process or product improvement and thereby do not qualify as 100% pollution control property.

The proposed change to §17.20 will raise the Tier I application fee from $50 to $150. This fee increase is necessary for the commission to continue to recover its operating costs to run the use determination program.

Proposed new §17.25 will describe the procedures for appealing a use determination made by the ED. This section allows an appeal by only the use determination applicant or the chief appraiser of the appraisal district for the county in which the property is located. Section 17.25 also describes the procedures followed by the TNRCC chief clerk to process the appeal, possible actions by the commission after hearing the appeal, and required action by the ED if the determination is remanded to the ED by the commission.

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 rulemaking is in effect, significant fiscal implications are not anticipated for the agency or other units of state government, but there may be significant fiscal implications for certain units of local government as a result of administration or enforcement of the proposed rulemaking.

The proposed rulemaking would implement HB 3121 (relating to exemptions from ad valorem taxation for property used to control pollution), 77th Legislature, 2001. House Bill 3121 established new requirements for the agency when considering applications for use determinations for exemptions from ad valorem taxation for pollution control property. The bill requires the agency to adopt specific standards when reviewing applications for obtaining a use determination for use in obtaining a property tax exemption. In addition, the bill requires that a copy of the ED's use determination for a property tax exemption be provided to the appropriate appraisal district. The bill also establishes an appeals process. Finally, proposed rulemaking would increase the Tier I application fee from $50 to $150. The fee increase was not part of HB 3121.

The program consists of three levels or tiers of applications for use determinations for property tax exemptions on newly installed pollution control property. Tier I is for property on the agency's PEL. The PEL consists of property which the agency has previously reviewed and determined to be pollution control property, and therefore is eligible for property tax exemption. Tier II applications are those which request a 100% use determination for property which is not on the PEL and, if it is determined by the agency that the property is completely for pollution control, it is eligible for property tax exemption. Tier III applications are those which request a partial determination for property which is not listed on the PEL. This property is eligible for a partial tax exemption.

In order to meet requirements for specific standards and to ensure that use determinations are equal and uniform, the proposed rulemaking would provide a decision flow chart to determine whether a property item qualifies as pollution control property and whether it qualifies as pollution control property under the Tier I, Tier II, or Tier III structure. No significant fiscal implications are anticipated to the agency to implement the new standards.

The proposed rulemaking would increase the Tier I application fee from $50 to $150. The Proposition 2 program is funded from fees, and the fee increase is expected to recover the costs of administering the program. The fee increase is estimated to generate an additional $55,000 per year, based upon an estimated 550 Tier I applications expected to be received during the year. The fiscal implications for individuals and businesses applying for Tier I determinations is generally expected to be $100, though some companies may file as many as 50 applications and the impact for them would be up to $5,000. The fiscal implications of the fee increase are not considered significant and are not expected to impact the number of applications received.

The proposed rulemaking would require the ED to provide a copy of the final use determination for each tax exemption application to the appraisal district where the property is located. No significant fiscal implications are anticipated to the TNRCC to implement this provision.

The proposed rulemaking would provide procedures for appealing a use determination made by the ED. The appeal could be made only by the applicant or the chief appraiser of the appraisal district for the county in which the property is located. The appeal is made to the commission, and the commission may remand the matter to the ED for a new determination or deny the appeal and affirm the ED's use determination. Because the appeal process is not a contested case hearing, no significant fiscal implications are anticipated to the agency to implement this provision. There will be costs to the applicant or the chief appraiser to appeal use determinations, though these costs are not anticipated to be significant, as they will for the most part consist of travel to appear before the commission.

The proposed rulemaking would conform current practices and legislative mandates with agency rules and provide a standard method of calculation for a Tier III partial determination. The new cost analysis procedure places more emphasis upon the cost of the new pollution control equipment with less emphasis upon the amount of pollution reduced. This procedure was put into practice in January of this year.

Historically, Tier III applications have accounted for approximately 3% of the total number of Proposition 2 applications received. Since the agency began using the new guidelines in January 2001 for determining property eligible for tax exemptions, the number of applications and the dollar amount of positive use determinations has decreased. For fiscal year 2001, seven applications were certified, representing $172,684,521 worth of new pollution control equipment eligible for property tax exemption compared to fiscal year 2000 when 22 were approved for $866,398,164.

It is estimated that the number of applications will drop by 50% from the 2001 level due to the new Tier III cost analysis procedure, if the current trend continues. It is estimated that approximately four applications will be certified for approximately $86 million. Further, from the 2001 level, it is assumed that some businesses may have higher property appraisals of approximately $86 million due to the new cost analysis procedures. Consequently, some taxing districts may realize an increase in the appraised value of property of approximately $86 million. The amount of additional tax revenue received will depend upon the tax rate of the taxing jurisdiction affected.

PUBLIC BENEFITS AND COSTS

Mr. Horvath also determined that for each year of the first five years the proposed rulemaking is in effect, the public benefit anticipated from enforcement of and compliance with the proposal will be a more equitable and standard procedure for determining whether business capital investments used to comply with environmental mandates meet legal requirements for property tax exemptions.

In accordance with the Proposition 2 constitutional amendment and HB 3121 as proposed to be implemented, there are fiscal implications which are anticipated to be significant for certain businesses or individuals seeking exemption from property taxes as a result of purchasing and installing certain pollution control equipment.

The proposed rulemaking would implement HB 3121 (relating to exemptions from ad valorem taxation for property used to control pollution), 77th Legislature, 2001. House Bill 3121 established new requirements for the agency when considering applications for use determinations for exemptions from ad valorem taxation for pollution control property. The bill requires the agency to

adopt specific standards when reviewing applications for obtaining use determination for use in obtaining a property tax exemption. In addition, the bill requires that a copy of the ED's use determination for a property tax exemption be provided to the appropriate appraisal district. The bill also establishes an appeals process. Finally, proposed rulemaking would increase the Tier I application fee from $50 to $150. The fee increase was not part of HB 3121.

The program consists of three levels or tiers of applications for use determinations for property tax exemptions for newly installed pollution control property. Tier I is for property on the agency's PEL. The PEL consists of property which the agency has previously reviewed and determined to be pollution control property, and therefore is eligible for property tax exemption. Tier II applications are those which request a 100% use determination for property which is not on the PEL and, if it is determined by the agency that the property is completely for pollution control, it is eligible for property tax exemption. Tier III applications are those which request a partial determination for property which is not listed on the PEL. This property is eligible for a partial tax exemption.

In order to meet requirements for specific standards and to ensure that use determinations are equal and uniform, the proposed rulemaking would provide a decision flow chart to determine whether a property item qualifies as pollution control property and whether it qualifies as pollution control property under the Tier I, Tier II, or Tier III structure.

The proposed rulemaking would increase the Tier I application fee from $50 to $150. The Proposition 2 program is funded from fees, and the fee increase is expected to recover the costs of administering the program. The fee increase is estimated to generate an additional $55,000 per year, based upon an estimated 550 Tier I applications expected to be received during the year. The fiscal implications for individuals and businesses applying for Tier I determinations is generally expected to be $100, though some companies may file as many as 50 applications and the impact would be up to $5,000. The fiscal implications of the fee increase are not considered significant and are not expected to impact the number of applications received.

The proposed rulemaking would require the ED to provide a copy of the final use determination for each tax exemption application to the appraisal district where the property is located. No significant fiscal implications are anticipated to the TNRCC to implement this provision.

The proposed rulemaking would provide procedures for appealing a use determination made by the ED. The appeal could be made only by the applicant or the chief appraiser of the appraisal district for the county in which the property is located. The appeal is made to the commission, and the commission may remand the matter to the ED for a new determination or deny the appeal and affirm the ED's use determination. Because the appeal process is not a contested case hearing, no significant fiscal implications are anticipated to the agency to implement this provision. There will be costs to the applicant or the chief appraiser to appeal use determinations, though these costs are not anticipated to be significant, as they will for the most part consist of travel to appear before the commission.

The proposed rulemaking would conform current practices and legislative mandates with agency rules and provide a standard method of calculation for a Tier III partial determination. The new cost analysis procedure places more emphasis upon the cost of the new pollution control equipment with less emphasis upon the amount of pollution reduced. This procedure was put into practice in January of this year.

Historically, Tier III applications have accounted for approximately 3% of the total number of Proposition 2 applications received. Since the agency began using the new guidelines for determining property tax exemptions in January 2001, the number of applications and the dollar amount of positive use determinations has decreased. For fiscal year 2001, seven applications were certified, representing $172,684,521 worth of new pollution control equipment eligible for property tax exemption compared to fiscal year 2000 when 22 were approved for $866,398,164.

It is estimated that the number of applications will drop by 50% from the 2001 level due to the new Tier III cost analysis procedure. It is estimated that approximately four applications will be certified for approximately $86 million, if current trends continue. Further, from the 2001 level, it is assumed that some businesses may have higher property appraisals of approximately $86 million due to the new procedures. Consequently, these businesses and individuals may receive increases to the appraised value of their property by a total of $86 million or an average of $21.5 million per individual or business. The amount of additional tax revenue that will be required to be paid by these entities will depend upon the tax rate of that district.

SMALL BUSINESS AND MICRO-BUSINESS ASSESSMENT

There are adverse fiscal implications to small or micro-businesses seeking a property tax exemption from the purchase and installation of certain pollution control equipment which are not anticipated to be significant as a result of implementation of the proposed rulemaking.

The proposed rule amendments would implement HB 3121 (relating to exemptions from ad valorem taxation for property used to control pollution), 77th Legislature, 2001. House Bill 3121 established new requirements for the agency when considering applications for use determinations for exemptions from ad valorem taxation for pollution control property. The bill requires the agency to adopt specific standards when reviewing applications for obtaining a use determination for use in obtaining a property tax exemption. In addition, the bill requires that a copy of the ED's use determination for a property tax exemption be provided to the appropriate appraisal district. The bill also establishes an appeals process. Finally, proposed rule amendments would increase the Tier I application fee from $50 to $150. The fee increase was not part of HB 3121.

The program consists of three levels or tiers of applications for use determinations for property tax exemptions for newly installed pollution control property. Tier I is for property on the agency's PEL. The PEL consists of property which the agency has previously reviewed and determined to be pollution control property, and therefore is eligible for property tax exemption. Tier II applications are those which request a 100% use determination for property which is not on the PEL and, if it is determined by the agency that the property is completely for pollution control, it is eligible for property tax exemption. Tier III applications are those which request a partial determination for property which is not listed on the PEL. This property is eligible for a partial tax exemption.

In order to meet requirements for specific standards and to ensure that use determinations are equal and uniform, the proposed rulemaking provides a decision flow chart to determine

whether a property item qualifies as pollution control property and whether it qualifies as pollution control property under the Tier I, Tier II, or Tier III structure. No significant fiscal implications are anticipated to the agency to implement the new standards.

The proposed rulemaking would increase the Tier I application fee from $50 to $150. The fee increase is estimated to generate an additional $55,000 per year, based upon an estimated 550 Tier I applications expected to be received during the year. The fiscal implication for individuals and businesses applying for Tier I determinations is generally expected to be $100, though some companies may file as many as 50 applications and the impact would be up to $5,000. The fiscal implications of the fee increase are not considered significant and are not expected to impact the number of applications received.

The proposed rulemaking would provide procedures for appealing a use determination made by the ED. The appeal could be made only by the applicant or the chief appraiser of the appraisal district for the county in which the property is located. The appeal is made to the commission, and the commission may remand the matter to the ED for a new determination or deny the appeal and affirm the ED's use determination. Because the appeals process is not a contested case hearing, no significant fiscal implications are anticipated to the agency to implement this provision. There will be costs to the applicant or the chief appraiser to appeal use determinations, though these costs are not anticipated to be significant as they will for the most part, consist of travel to appear before the commission.

The proposed rulemaking would conform current practices and legislative mandates with agency rules and provide a standard method of calculation for a Tier III partial determination. The new cost analysis procedure places more emphasis upon the cost of the new pollution control equipment with less emphasis upon the amount of pollution reduced. This procedure was put into practice in January of this year.

No small or micro-businesses has applied for a Tier III determination in the last two years, even though they are eligible. Small businesses such as spray paint companies, dry cleaners, and others have accounted for approximately 10% of all facilities receiving Proposition 2 certifications, mostly for air pollution controls. Paint spray booths, hoods, collection systems used to route air contaminants to a collection device, closed loop dry cleaning machines, and vapor recovery systems are some equipment items eligible on the PEL preauthorized for Proposition 2 certification.

The following is an analysis of the potential costs per employee for small or micro-businesses affected by the proposed rulemaking. Small and micro-businesses are defined as having fewer than 100 or 20 employees respectively. A small business that decides to apply for a Tier I application would incur additional costs of $100 per application or $1.00 per employee. A micro-business that decides to apply for a Tier I application would incur additional costs of $100 or $5.00 per employee. The overall costs to small or micro-businesses will vary depending on how many Tier I applications are filed.

LOCAL EMPLOYMENT IMPACT STATEMENT

The commission has review this proposed rulemaking and determined that a local employment impact statement is not required because the proposed rule does not adversely affect a local economy in a material way for the first five years that the proposed rules are in affect.

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 proposed rulemaking is not subject to §2001.0225 because it does not meet the definition of a "major environmental rule" as defined in that statute. 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, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. The proposed rulemaking does not meet the definition of "major environmental rule" because the specific intent of the proposed rulemaking is procedural in nature. The proposed rulemaking revises procedures for providing notice to the chief appraiser of the county in which the property is located, adds procedures and definitions contained in the program guidelines manual as revised, for determining whether property is used for the control of air pollution, adds procedures describing how certain persons may appeal a decision by the ED, and increases the fee for a Tier 1 application.

In addition, even if the proposed rule is a major environmental rule, a draft regulatory impact assessment is not required because the rule does not exceed a standard set by federal law, exceed an express requirement of state law, exceed a requirement of a delegation agreement, or propose to adopt a rule solely under the general powers of the agency. This proposal does not exceed a standard set by federal law. This proposal does not exceed an express requirement of state law because it is authorized by the following state statutes: Texas Government Code, §2001.004, which requires state agencies to adopt rules of practice stating the nature and requirements of all available formal and informal state agency procedures; and TTC, §11.31, which authorizes the ED to determine if property is used for the control of air pollution, as well as the other statutory authorities cited in the STATUTORY AUTHORITY section of this preamble. In addition, this proposal is in direct response to HB 3121, and does not exceed any of the requirements of this bill, nor does it exceed the requirements of the Texas Constitution, Article VIII, §1-l. This proposal does not adopt a rule solely under the general powers of the agency, but rather under a specific state laws (i.e., TTC, Chapter 11, Subchapter B (Exemptions); and Texas Government Code, §2001.004). 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 evaluated this proposed rulemaking action and performed an analysis of whether these proposed rules are subject to Texas Government Code, Chapter 2007. The following is a summary of that analysis. The specific primary purpose of the proposed rulemaking is to revise commission rules relating to procedures for processing use determinations applications requesting a determination of whether certain property qualifies as pollution control property as required by HB 3121. As amended by HB 3121, TTC, §11.31(d) requires the ED to provide a copy of a use determination to the appraisal district, §11.31(e) allows appeal by the applicant or the appraisal district to the commission of a use determination by the ED, and §11.31(g) requires the commission to establish specific standards to be followed for considering use determination applications. These

new requirements and other revisions to §11.31 are described in the BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE PROPOSED RULES and SECTION BY SECTION DISCUSSION portions of this proposal. The proposed rule revisions and new sections do not substantively change the program requirements that are already in place. The proposed rules will substantially advance the stated purpose by providing specific procedural requirements for processing use determination applications. Promulgation and enforcement of these rules will not burden private real property. The proposed rule revisions and new sections do not affect private property in a manner which restricts or limits an owner's right to the property that would otherwise exist in the absence of governmental action. Consequently, these proposed rule revisions and new sections do not meet the definition of a taking under Texas Government Code, §2007.002(5).

CONSISTENCY WITH THE COASTAL MANAGEMENT PROGRAM

The commission has determined that the proposed rulemaking does not relate to an action or actions subject to the Texas Coastal Management Program (CMP) in accordance with the Coastal Coordination Management Act of 1991, as amended (Texas Natural Resources Code, §§33.201 *et seq.*) and the commission's rules in 30 TAC Chapter 281, Subchapter B, concerning Consistency with the Texas Coastal Management Program. The rules do not govern air pollutant emissions, on-site sewage disposal systems, or underground storage tanks. The proposed rulemaking revises procedures for providing notice to the chief appraiser of the county in which the property is located, adds procedures and definitions contained in the program guidelines manual as revised, for determining whether property is used for the control of air pollution, adds procedures describing how certain persons may appeal a decision by the ED, and increases the fee for a Tier 1 application. The proposed actions concern only the procedural rules of the commission, are not substantive in nature, do not govern or authorize any actions subject to the CMP, and are not themselves capable of adversely affecting a coastal natural resource area (Title 31 Natural Resources and Conservation Code, Chapter 505; 30 TAC §§281.40, *et seq.*).

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

ANNOUNCEMENT OF HEARING

A public hearing on this proposal will be held in Austin on October 23, 2001 at 10:00 a.m., in Building F, Room 2210, at the commission's central office located at 12100 Park 35 Circle. The hearing will be structured for the receipt of oral or written comments by interested persons. Individuals may present oral statements when called upon in order of registration. There will be no open discussion during the hearing; however, an agency staff member will be available to discuss the proposal 30 minutes prior to the hearing and will answer questions before and after the hearing.

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

SUBMITTAL OF COMMENTS

Comments may be submitted to Patricia Durón, 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 2001-045-017-AD. Comments must be received by 5:00 p.m., October 29, 2001. For further information, please contact Auburn Mitchell at (512) 239-1873.

STATUTORY AUTHORITY

The amendments and new sections are proposed under Texas Water Code (TWC), §5.102, which authorizes the commission to perform any acts authorized by TWC or other law which are necessary and convenient to the exercise of its jurisdiction and powers and §5.103, which authorizes the commission to adopt rules necessary to carry out its powers and duties under TWC. The amendments and new sections are also proposed under TTC, §11.31, which authorizes an exemption from taxation of all or part of real and personal property that is used wholly or partly as a facility, device, or method for the control of air, water, or land pollution.

The amendments and new sections implement TWC, §5.102 and §5.103, and TTC, §11.31.

§17.2. Definitions.

Unless specifically defined in the TCAA, the TSWDA, the Texas Water Code (TWC), or the Texas Health and Safety Code (THSC), or in the rules of the commission, the terms used by the commission have the meanings commonly ascribed to them in the fields [~~field~~] of pollution control or property taxation. In addition to the terms which are defined by the TCAA, the TSWDA, TWC, and THSC, the following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise.

(1) Byproduct - A chemical or material that would normally be considered a waste material requiring disposal or destruction, but due to pollution control property is now used as a raw material in a manufacturing process or as an end product. The pollution control property extracts, recovers, or processes the waste material so that it can be used in another manufacturing process or an end product.

(2) Capital cost new - The estimated total capital cost of the equipment or process.

(3) Capital cost old - This is the cost of comparable equipment or process without the pollution control feature.

(4) Cost analysis procedure - A procedure which uses cost accounting principles to calculate the percentage of a project or process that qualifies for a positive use determination as pollution control property.

(5) Decision flow chart - A flow chart which is used to determine if a property or process is eligible for a determination as pollution control property.

(6) [~~(1)~~] Installation - The act of establishing, in a designated place, property [~~something~~] that is put into place for use or service.

(7) Partial Determination - A determination that an item of property or a process is not used wholly as pollution control. This is property that is not on the predetermined equipment list (PEL) and that is not used wholly for pollution control.

(8) [~~(2)~~] Pollution control property - A facility, device, or method for control of air, water, or land pollution as defined by [~~the~~] Texas Tax Code, §11.31(b).

(9) [~~(3)~~] Predetermined equipment list - A list of property[~~, either wholly or partially,~~] that the executive director has determined is either wholly or partially for pollution control purposes [~~property~~].

(10) Production capacity factor - A calculated value used to adjust the value of a partial use determination to reflect the capacity of the original property or process.

(11) Tier I - An application which contains property that is on the PEL or that is necessary for the installation or operation of property located on the PEL.

(12) Tier II- An application for property that is used wholly for the control of air, water, and/or land pollution, but not on the PEL.

(13) Tier III - An application for property used partially for the control of air, water, and/or land pollution.

(14) [~~(4)~~] Use determination - A finding, either positive or negative, by the executive director that the property is used wholly or partially for pollution control purposes.

§17.4. Applicability.

(a) To obtain a positive use determination, the pollution control property must be used, constructed, acquired, or installed wholly or partly to meet or exceed laws, rules, or regulations adopted by any environmental protection agency of the United States, Texas, or a political subdivision of Texas, for the prevention, monitoring, control, or reduction of air, water, or land pollution. In addition, pollution control property must meet the following conditions.

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

(3) Equipment, structures, buildings, or devices must not have been taxable by any taxing unit in Texas on or before January 1, 1994, except that if construction of pollution control property was [~~is~~] in progress on January 1, 1994, that portion of the property constructed, acquired, or installed after January 1, 1994, is eligible for a positive use determination.

(4) (No change.)

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

(d) The executive director may not make a determination that property is pollution control property unless all requirements of this section and the requirements of §17.15 and §17.17 of this title (relating to Review Standards and Partial Determination) have been met.

§17.10. Application for Use Determination.

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

(d) The application shall contain at least the following:

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

(5) if the installation includes property that is not used wholly for the control of air, water, or land pollution, and is not on the predetermined equipment list, [~~sufficient cost or other information, presented by the person or political subdivision seeking the use determination, that demonstrates to the satisfaction of the executive director the proportion of the installation that is pollution control property~~] a worksheet showing the calculation of the Cost Analysis Procedure, §17.17 of this chapter (relating to Partial Determination), and explaining each of the variables;

(6) (No change.)

(7) if the property for which a use determination is sought has been purchased from another owner who previously used the property as pollution control property, a copy of the bill of sale or other information submitted by the person or political subdivision that demonstrates, to the satisfaction of the executive director, that the transaction involves a bona fide change in ownership of the property and is not a sham transaction for the purpose of avoiding tax liability; [~~and~~]

(8) the name of the appraisal district for the county in which the property is located ; and [~~.~~]

(9) the Decision Flow Chart, §17.15 of this title (relating to Review Standards), showing how each piece of pollution control property flows through the diagram.

§17.12. Application Review Schedule.

Following submission of the information required by §17.10 of this title (relating to Application for Use Determination), the executive director shall determine whether the pollution control property is used wholly or partly for the control of air, water, or land pollution. If the determination is that the property is used partly for pollution control, the executive director shall determine the proportion of the property used for pollution control.

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

(3) The executive director shall determine whether the property is used wholly or partly to control pollution. The executive director is authorized to grant positive use determinations for some or all of the property included in the application that is deemed pollution control property.

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

(C) A copy of the use determination letter shall be sent by regular mail to the chief appraiser of the appraisal district for the county in which the property is located.

§17.15. Review Standards.

The Prop 2 Decision Flow Chart shall be used for each item of pollution control property or process change to determine whether the particular equipment item will qualify as pollution control property. The executive director shall apply the standards in the Prop 2 Decision Flow Chart when acting on a use determination application.
Figure: 30 TAC §17.15

§17.17. Partial Determinations.

(a) A partial determination must be requested for all property that is not on the predetermined equipment list and that is not wholly used for pollution control. In order to calculate a partial determination percentage, the cost analysis procedure described in subsection (b) of this section must be used.

(b) The following calculation (cost analysis procedure) must be used to determine the creditable partial percentage for a property or project which is not used wholly for pollution control:
Figure: 30 TAC §17.17(b)

(c) For property that generates a marketable byproduct (BP), the net present value of the BP is used to reduce the partial determination. The value of the BP is calculated by subtracting the transportation and storage of the BP from the market value of the BP. This value is then used to calculate the net present value (NPV) of the BP over the lifetime of the equipment. The equation for calculating BP is as follows:
Figure: 30 TAC §17.17(c)

(d) If the cost analysis procedure produces a negative number or a zero, the property is not eligible for a positive use determination.

§17.20. Application Fees.

(a) Fees shall be remitted with each application for a use determination as required in paragraphs (1) - (3) of this subsection.

(1) Tier I Application - A $150 [~~$50~~] fee shall be charged for applications for property that is on the predetermined equipment

list, as long as the application seeks no variance from that use determination.

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

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

§17.25. Appeals Process.

(a) Applicability.

(1) This subchapter applies to appeals of use determinations issued by the executive director for use determination applications that are declared administratively complete on or after September 1, 2001. A proceeding based upon an appeal filed under this subchapter is not a contested case for purposes of Texas Government Code, Chapter 2001.

(2) Persons who may appeal a determination by the executive director. The following persons may appeal a use determination issued by the executive director:

(A) the applicant seeking a use determination; and

(B) the chief appraiser of the appraisal district for the county in which the property for which a use determination is sought is located.

(b) Form and timing of appeal. An appeal must be in writing and be filed by United States mail, facsimile, or hand delivery with the chief clerk of the Texas Natural Resource Conservation Commission within 20 days after the receipt of the executive director's determination letter. A person is presumed to have been notified on the third regular business day after the date the notice of the executive directors action is mailed by first class mail. An appeal filed under this subchapter must:

(1) provide the name, address, and daytime telephone number of the person who files the appeal;

(2) give the name and address of the entity to which the use determination was issued;

(3) provide the use determination application number for the application for which the use determination was issued;

(4) request commission consideration of the use determination; and

(5) explain the basis for the appeal.

(c) Appeal processing. The chief clerk shall:

(1) deliver or mail to the executive director a copy of the appeal;

(2) deliver or mail a copy of the appeal to the applicant if the appeal was filed by the chief appraiser or to the chief appraiser if the appeal was filed by the applicant; and

(3) schedule the appeal for consideration at the next regularly scheduled commission meeting for which adequate notice can be given.

(d) Action by the commission.

(1) The person seeking the determination and the chief appraiser may testify at the commission meeting at which the appeal is considered.

(2) The commission may remand the matter to the executive director for a new determination or deny the appeal and affirm the executive director's use determination.

(e) Action by the executive director.

(1) If the commission remands a use determination to the executive director, the executive director shall:

(A) conduct a new technical review of the application which includes an evaluation of any information presented during the commission meeting; and

(B) upon completion of the technical review, issue a new determination. A copy of the new determination shall be mailed to both the applicant and the chief appraiser of the county in which the property is located.

(2) A new determination by the executive director may be appealed to the commission in the manner provided by this subchapter.

(f) Withdrawn appeals. An appeal may be withdrawn by the entity who requested the appeal. The withdrawal must be in writing, and give the name, address, and daytime telephone number of the person who files the withdrawal, and the withdrawal shall indicate the identification number of the use determination. The withdrawal must be filed by United States mail, facsimile, or hand delivery with the chief clerk of the Texas Natural Resource Conservation Commission.

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

Filed with the Office of the Secretary of State, on September 14, 2001.

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Stephanie Bergeron
Director, Environmental Law Division
Texas Natural Resource Conservation Commission
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For further information, please call: (512) 239-6087

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CHAPTER 30. OCCUPATIONAL LICENSES AND REGISTRATIONS

The Texas Natural Resource Conservation Commission (commission) proposes new §§30.1, 30.3, 30.5, 30.7, 30.10, 30.14, 30.18, 30.20, 30.24, 30.26, 30.28, 30.30, 30.33, 30.35, 30.51, 30.57, 30.60, 30.62, 30.81, 30.87, 30.90, 30.92, 30.95, 30.111, 30.117, 30.120, 30.122, 30.125, 30.129, 30.171, 30.177, 30.180, 30.185, 30.190, 30.192, 30.195, 30.201, 30.207, 30.210, 30.212, 30.231, 30.237, 30.240, 30.242, 30.244 - 30.246, 30.261, 30.267, 30.270, 30.272, 30.274, 30.279, 30.301, 30.307, 30.310, 30.312, 30.315, 30.317 - 30.319, 30.331, 30.337, 30.340, 30.342, 30.346, 30.348 - 30.350, 30.355, 30.381, 30.387, 30.390, 30.392, 30.396, 30.398 - 30.400, and 30.402.

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE PROPOSED RULES

The proposed rules implement requirements in House Bill (HB) 3111 and HB 2912 of the 77th Legislature, 2001, as well as Sunset Commission recommendations for occupational licenses and registrations. House Bill 3111 created new Texas Water Code (TWC), Chapter 37, to consolidate the administrative requirements for ten licensing and registration programs administered by the commission. House Bill 3111 required the commission to implement this consolidation by December 2001. The proposed

rules also establish uniform procedures for issuing and renewing licenses, setting terms and fees, enforcing licensing requirements, and approving training. A person must be licensed or registered by the commission before engaging in an activity, occupation, or profession described by TWC, §§26.0301, 26.3573, 26.452, 26.456, 34.007, or 37.003, or Texas Health and Safety Code (THSC), §§341.033, 341.034, 341.102, 361.027, 366.014, or 366.071. This rulemaking would also implement HB 2912, Articles 7 and 18.04, which require the commission to adopt rules for the licensing of water treatment specialists, and establish renewal requirements, fees, and sanctions for this new program. The proposed rules also implement HB 2912, Article 8, amending THSC, Chapter 341, establishing new requirements for irrigators and on-site sewage facility (OSSF) installers. The proposed rules also reinstate the site evaluators licensing for the OSSF programs.

This rulemaking also incorporates the proposed quadrennial review of Chapter 290, Subchapter A, Residential Water Treatment Facility Operators, being concurrently proposed in this issue of the *Texas Register*. Chapter 290, Subchapter A, is proposed to be repealed and proposed as new language in Chapter 30, Subchapter H, Water Treatment Specialists. In 1992 when the certification program was transferred to the commission, the existing rules which had been promulgated by Texas Department of Health as 25 TAC Chapter 337, Subchapter A, were also transferred.

The commission administers ten occupational licensing programs which originated in several agencies, under statutory authority in TWC, THSC, and Texas Plumbing License Law. As a result, requirements for applications, fees, renewals, continuing education, revocation, and suspension have varied.

The proposed rules would create new Chapter 30, Occupational Licenses and Registrations. This new chapter would consolidate the administrative requirements for backflow prevention assembly testers; customer service inspectors; landscape irrigators and installers; leaking petroleum storage tank (LPST) corrective action project managers and specialists; municipal solid waste facility supervisors; OSSF installers, apprentices, designated representatives, site evaluators; water treatment specialists; underground storage tank contractors and on-site supervisors; wastewater operators and operations companies; and public water system operators and operations companies. The proposed rules also establish uniform procedures for issuing and renewing licenses and registrations, setting terms and fees, enforcement activities, and training approval. The proposed rules also allow the Compliance Support Division (CSD) to contract for certain functions of occupational licensing if necessary. The proposed rules also establish rules for renewal requirements, fees, and sanctions for the customer service inspectors, and backflow prevention assembly testers programs for the first time. The commission has determined that the standard licensing fee for all programs will be $70 for a two-year license. The registration fees will be established in the subchapters for the applicable programs.

New Subchapter A, Administration of Occupational Licenses and Registrations, contains information related to administration of all the licensing and registration programs included in this chapter. The main objective is to consolidate the administrative requirements for these ten licensing and registration programs administered in the CSD. New Subchapters B - K contain the program- specific requirements such as work experience; levels of licensing; and appropriate training and education requirements identified by job analysis for the particular programs. Each subchapter would address a specific occupation administered by the CSD. The current program rules are amended to accommodate moving the licensing requirements into Chapter 30. The standards in the program rules would remain in effect to address the technical portions of the programs such as design criteria, construction, and planning while excluding the elements included in the administration of occupational licensing. As the ten occupational licensing rules are created in the new chapter, the affected rules would change while all the licensing and registration requirements are standardized.

The Sunset Commission recommendations addressed by these proposed rules include: establish requirements for standard time frames for licensees who are delinquent in the renewal of licenses; require continuing education; provide timely examination results and analyses to persons taking examinations; establish procedures for licensing applicants who hold a license in another state; establish the staggered renewal of licenses; use the full range of penalties; and revise restrictive rules to allow advertising and competitive bidding practices that are not deceptive or misleading.

SECTION BY SECTION DISCUSSION

Subchapter A - Administration of Occupational Licenses and Registrations

New §30.1, Authority, cites TWC, Chapter 37, which establishes the authority for Chapter 30 relating to occupational licensing and registration.

New §30.3, Purpose and Applicability, containing portions of existing 30 TAC §§285.50, 325.2, 325.101, 330.381, and 334.451, consolidates the administrative requirements and establishes uniform procedures for issuing, renewing, denying, suspending, and revoking occupational licenses and registrations. This section also identifies the ten occupational licenses and registrations administered under this chapter.

New §30.5, General Provisions, containing portions of existing §§285.50, 325.2, 325.101, 325.106, 325.110, 325.126, 334.401, 334.414, 334.453, and 344.20, is consolidated to state that persons must be licensed or registered before engaging in any activities requiring a license under this chapter. Licenses or registrations would be issued only after applicants meet the requirements specified in this chapter. This section prohibits persons that are not licensed or registered from advertising and transferring licenses or registrations. This section also prohibits issuing new licenses to employees of this commission, and establishes provisions for contracting for services and functions, and collecting fees for contract services and functions.

New §30.7, Definitions, contains definitions used throughout this chapter. A new definition is provided for continuing education. The commission proposes a new definition for license, as defined in existing §§285.2, 325.4, 325.102, and 334.412. The proposed new definition combines portions of the definitions from these existing sections. The phrase "certificate of competency" is proposed from existing §325.4 and §325.102 with the term "license" replacing "certificate of competency" to comply with the new statutory requirements. The new definition of registration as defined in existing §325.4 and §325.10, is proposed with the deletion of the words "certificate of" to comply with the new statutory requirements. The new definition of new training credit as defined in existing §§330.382, 325.4, and 325.102 is proposed and consolidated.

New §30.10, Administration, is existing language in §§285.52, 330.383, 344.20, 344.80 - 344.83, 344.85, 325.6, and 325.104, is consolidated and addresses the administrative duties of the commission pertaining to occupational licensing and registration.

New §30.14, Applications for Initial Registrations, containing portions of existing §§334.402, 334.403, 334.456, 334.458, 325.7, 325.12, 325.105, 325.126, and 325.128, is consolidated to establish the procedures for submittal of applications and issuance of registrations.

New §30.18, Applications for Initial License, containing portions of existing §§285.53, 285.56, 325.7, 325.12, 325.105, 325.110, 325.112, 330.384, 334.416, 334.417, 334.420, 334.457, 334.458, 344.23, 344.26, 344.27, 344.29, 344.30, 344.43, and 344.46, is consolidated and grammatical corrections are made to standardize the procedures for applying and issuing new licenses.

New §30.20, Examinations, containing portions of existing §§285.55, 325.12, 325.110, 330.385, 334.418, 334.419, 334.457, 344.34, and 344.37 - 344.42, is consolidated with grammatical improvements to authorize the executive director to prescribe the content of licensing examinations based on laws, rules, job duties, and standards relating to the particular license. This section establishes that the commission would grade examinations and notify applicants of the results and analysis. This section also states that individuals with disabilities may request accommodations to take examinations.

New §30.24, License and Registration Applications for Renewal, containing portions of existing §§285.58, 325.18, 325.28, 325.116, 325.126, 330.386, 334.404, 334.421, 334.460, 344.51, and 344.55 - 344.57, is consolidated to address the administrative procedures for the renewal of licenses and registrations. This section also refers to the subchapters for the continuing education requirements that have been specified by job analysis, fees related to registration companies, or for prorated fees to applicable programs to stagger the renewal dates of the licenses mandated by HB 2912 of the 77th Legislature, 2001.

New §30.26, Recognition of Licenses from Out-of-State, containing portions of existing §§325.16, 325.114, 330.385, 344.20, and 344.28, is consolidated to provide for the recognition of similar licenses and requirements from other states. Recognition of licenses from out-of- state was also mandated by HB 2912. Proposed new §30.26(a), in accordance with TWC, §37.005(b), would allow the executive director to waive qualifications, training, or examination for individuals with a good compliance history who hold a current license from another state, territory, or country if that state, territory, or country has requirements equivalent to those in this chapter.

New §30.28, Approval of Training, containing portions of existing §§285.54, 325.26, 325.124, 330.385, 334.416, 334.459, and 344.20, is consolidated to establish requirements to approve training that will be used for obtaining and renewing a license.

New §30.30, Terms and Fees for Licenses and Registrations, containing portions of existing §§285.60, 325.14, 325.112, 325.116, 330.389, 334.406, 334.423, 334.467, 344.26, 344.42, 344.50, 344.51, 344.55, and 344.56, is consolidated to standardize language establishing a $70 license fee for all licensing programs and a two-year term for licenses and registrations. The registration fees are established in the specific subchapters which have a registration fee.

New §30.33, License or Registration Denial, Warning, Suspension, or Revocation, containing portions of existing §§285.59, 285.64, 325.30, 325.120, 325.122, 325.128, 330.387, 334.405, 334.409, 334.411, 334.422, 334.426, 334.428, 334.461 - 334.463, 334.465, 334.466, and 344.84, is consolidated to establish requirements applicable to all licenses and registrations. Proposed new §30.33, in accordance with TWC, §37.005(c), would also allow the executive director, after notice and opportunity for a hearing, to deny an application for a license or registration by an applicant who provides fraudulent information or falsifies the application or has a poor compliance history as a licensee in another state, in the commission's program, or another agency's program.

New §30.35, Hearings, containing portions of existing §§285.65, 330.387, 334.410, 334.427, and 344.84, is consolidated to standardized language which references 30 TAC Chapter 70, Enforcement, and 30 TAC Chapter 80, Contested Case Hearings.

Subchapter B - Backflow Prevention Assembly Testers

New §30.51, Purpose and Applicability, establishes the purpose of this subchapter. New §30.51(a) states that the purpose of this subchapter is to establish qualifications for issuing and renewing licenses. New §30.51(b) indicates that individuals who test and repair backflow prevention assemblies must be qualified and licensed. New §30.51(c) establishes that previously held accreditations will expire on December 1, 2002.

New §30.57, Definitions, provides the definition of backflow prevention assembly tester, which is an individual who tests and repairs backflow prevention assemblies.

New §30.60, Qualification for Initial License, explains the minimum qualifications, education, training, and work experience required to obtain a license.

New §30.62, Qualification for License Renewal, describes the renewal requirements which include meeting the requirements of Subchapter A, continuing education, and approved practical skills training.

Subchapter C - Customer Service Inspectors

New §30.81, Purpose and Applicability, establishes the purpose of this subchapter. New §30.81(a) establishes qualifications for issuing and renewing licenses for individuals who conduct customer service inspections. New §30.81(b) establishes that individuals who perform customer service inspections must meet the qualifications of this subchapter and Subchapter A. New §30.81(c) establishes that previously held endorsements will expire and individuals will be required to apply for a renewable license at the time their water operator license expires. New §30.81(d) establishes that an individual with a customer service license may not conduct plumbing inspections.

New §30.87, Definitions, provides definitions for this subchapter. Definitions are provided for cross-connection, customer service inspection, and customer service inspector.

New §30.90, Qualifications for Initial License, establishes the minimum qualifications, education, training, and work experience required to obtain a license.

New §30.92, Qualifications for License Renewal, references renewal requirements according to Subchapter A and establishes continuing education requirements.

New §30.95, Exemptions, exempts plumbing inspectors and water supply protection specialists licensed by the State Board of

Plumbing Examiners from the licensing requirements of this subchapter.

Subchapter D - Landscape Irrigators and Installers

New §30.111, Purpose and Applicability, provides a uniform procedure for issuing licenses to licensed irrigators and licensed installers.

New §30.117, Definitions, proposes amended definitions of irrigator and installer from existing §344.1 with modifications to improve readability. No change in the meaning or purpose was created by these changes. These two definitions will also remain in 30 TAC Chapter 344, Landscape Irrigators and Installers.

New §30.120, Qualifications for Initial License, lists the minimum requirements for obtaining a license and states that additional requirements are located in Subchapter A.

New §30.122, Qualifications for License Renewal, lists the specific requirements to renew a license and states that additional requirements are located in Subchapter A. This section also establishes the number of continuing education hours required for a two-year renewal period.

New §30.125, Renewal of Certificates of Registrations, existing §344.51 and §344.56, defines the term of the licenses. The proposed language clarifies the change of the section title from "Certificates of Registration" to "Licenses." This change would become effective when the certificates of registration expire on August 31, 2002. The proposed language establishes the term of the licenses for two years, alternates the term of the license expiration, and defines the manner in which this change would be implemented by the commission. The proposed language establishes that the licenses will continue to be renewed.

New §30.129, Exemptions, existing §344.2(a) is proposed with changes. New §30.129(a) changes the word "licensure" to "license" to improve readability. New §30.129(a)(1), existing §344.2(a)(1), changes the existing language from "any person" to "an individual", to clarify that the exemption applies to an individual as defined in 30 TAC Chapter 3, Definitions. New §30.129(a)(2), existing §344.2(a)(2), changes the existing language from "a" to "an individual," and adds "or licensed" to improve readability. The existing language is also changed to remove gender references. New §30.129(a)(3) and (4), existing §344.2(a)(3) and (4), is changed to remove gender references. New §30.129(a)(5) and (6), existing §344.2(a)(5) and (6), is proposed with no changes. New §30.129(a)(7), existing §344.2(a)(7), adds the new language "irrigation or yard sprinkler work done by a person using," and adds the word "including" before soaker hose. The amendment is made for clarity to show that the activity rather than the product is exempt. New §30.129(a)(8), existing §344(a)(8), changes "a portable or solid set or other type of" to "activities involving a." This amendment is being made for clarity to show that the activity rather than the product qualifies for an exemption. New §30.129(a)(9), existing §344.2(a)(9), changes "himself or herself" to "work performed by the owner" to eliminate a gender reference. New §30.129(a)(10), existing §344.2(a)(10), is proposed without changes. New §30.129(a)(11) and (12), contains language from existing §344.1(A) and (B), concerning the definition of an irrigator. The new language clarifies the exemption under the statute. New §30.129(b), existing §344.2(b), adds the phrase "Chapter 344 of this title. The term." This amendment also reverses the order which the reference is given for the Texas Agricultural Code and the cite. These amendments improve readability and do not change the intent or the meaning of the existing rule.

Subchapter E - Leaking Petroleum Storage Tank Project Managers and Corrective Action Specialists

New §30.171, Purpose and Applicability, provides uniform procedures for issuing licenses to corrective action project managers and for issuing registrations to corrective action specialists. Portions of the new language are existing §334.451, and is proposed with amendments to improve readability.

New §30.177, Definitions, provides definitions for corrective action and LPST and are proposed without change. Corrective action services and corrective action specialist are proposed new definitions.

New §30.180, Qualifications for Initial License, is proposed new language from existing 334.457. Portions of the new language are proposed with changes to the format, to make the section grammatically correct, and to improve readability. The title changed by replacing "Application" with "Qualifications" and removing "Certificate of Registration for Corrective Action Project Manager"and replacing this with "Initial License" to incorporate the new requirements from revisions to TWC, Chapter 37, by the 77th Legislature, 2001. Also, language from existing §334.457 is proposed in §30.180 with changes by deleting "certificate of registration" and replacing it with "license." The proposed amendment is to implement the changes to the new title of the license and also to add "corrective action project manager" to clarify the type of license issued by the commission.

New §30.185, Qualifications for License Renewal, existing §334.460, is reformatted to make the section grammatically correct and improve readability. The title is changed by adding "Qualifications for License" and removing "of Certificate of Registration for Corrective Action Specialist and Corrective Action Project Manager" to incorporate new revisions to TWC, Chapter 37. Also, language in existing §334.457 is proposed in §30.185 with changes by deleting "certificate of registration" and replacing it with "license." The proposed amendment is to implement the changes to the new title of the license, and to delete "corrective action specialist" to clarify the type of license issued by the commission.

New §30.190, Qualifications for Initial Registration, containing portions of existing §334.456, is reformatted to make the section grammatically correct and improve readability. The title is changed by removing "Application" and"Certificate of" and replacing these with "Qualifications"and "Initial," and removing "of Corrective Action Specialist" to incorporate the new revisions to TWC, Chapter 37. Also, existing language in §334.456 is new language in §30.190 with changes by deleting "registered" when referring to a corrective action project manager and replacing it with "licensed" to implement changes to TWC, Chapter 37.

New §30.192, Qualifications for Registration Renewal, containing portions of existing §334.460, is reformatted to make the section grammatically correct and improve readability. The title is changed by adding "Qualifications for Registration" and removing "of Certificate of Registration for Corrective Action Specialist and Corrective Action Project Manager" to incorporate the new requirements. Also, existing language in §334.460 is proposed in §30.192 with changes by deleting "certificates." The proposed amendment is to implement the changes to the new title of the registration; to delete "corrective action project manager"; and to clarify the type of registration. Additional language is proposed

from existing §334.467 establishes fees and is changed to reflect the new fee amount.

New §30.195, Exemptions, containing portions of existing §334.452, is reformatted to make the section grammatically correct, improve readability, and eliminate gender references. The title is proposed with a change by deleting "from Subchapter J" to correct the cross-reference. Also, existing language in §334.452 is proposed in §30.195 with changes by deleting "registered" and replacing it with "licensed" to incorporate the changes to TWC, Chapter 37.

Subchapter F - Municipal Solid Waste Facility Supervisors

New §30.201, Purpose and Applicability, is new language from existing §330.381. New §30.201(a) establishes a license for individuals who supervise or manage the operation of municipal solid waste facilities or the collection, or transportation of municipal solid waste. New §20.201(b) states that an individual must meet licensing and registration requirements in Subchapter A. New §330.381(c) establishes that letters of competency issued before the effective date of these rules will remain in effect until their expiration date, and at the time of renewal, these letters of competency will be replaced with a license. Current municipal solid waste facility supervisors who are not licensed at the time these rules are adopted, must obtain a municipal solid waste facility supervisor license or become a supervisor in training by January 2004.

New §30.207, Definitions, is proposed new language from existing §330.382. The definition of "experience" replaces of the words "letter of competency" with "license" to allow consistency with new definitions. A new definition is provided for "solid waste facility supervisor."

New §30.210, Qualifications for Initial License, existing §330.385, adds the phrase "for initial license." New §30.210(a) specifies requirements to be met in this subchapter. New §30.210(a)(1) replaces the phrase "letter of competency (solid waste facility operation) a person must have" with the word "license." New §30.210(a)(1)(A) and (B) is proposed with reformatting for readability. New §30.210(a)(2) replaces the phrase "letter of competency (solid waste facility operation)" with "license." New §30.210(a)(2)(A) and (C) is proposed for reformatting and for readability. New §30.210(a)(3) replaces of the phrase "letter of competency (solid waste facility operation)" with the word "license." New §30.210(a)(3)(A) and (B) is proposed with reformatting for readability. New §30.210(a)(4) replaces of the phrase "letter of competency (collection system)" with the word "license." New §30.210(a)(4)(A) and (B) is proposed with reformatting for readability. New §30.210(a)(5) is proposed with modification to clarify the use of the provisional letter. New §30.210(a)(5)(A) replaces the word "persons" with the word "individual," and the phrase "position of responsibility that equates to the class of letter applied for," with "equivalent to the applicable class of license." New §30.210(a)(5)(B) replaces of the word "individuals" with the word "persons." New §30.210(b), existing §330.385(a)(6), replaces of the word "engaged" with the phrase "who engages."

New §30.212, Qualifications for License Renewal, existing §330.386, adds the phrase "qualification for license." New §30.212(1) establishes requirements for Subchapter A must be met to renew a license. New §30.212(2), existing §330.386, is reformatted to improve readability. New §30.212(2)(A)(D), existing §330.386(1) - (4), reduces continuing education requirements to renew a license for consistency with other programs.

Subchapter G - On-Site Sewage Facilities Installers, Designated Representatives, and Site Evaluators

New §30.231(a), Purpose and Applicability, describes the purpose of the rule. These statements clearly indicate that the purpose is to provide a comprehensive licensing program for individuals who perform work associated with OSSFs. New §30.231(b) adds that all individuals performing the tasks identified in proposed §30.231(a) must meet the general licensing requirements in Subchapter A and the technical requirements in 30 TAC Chapter 285. New §30.231(c) provides that all licenses, registrations, and certificates of registration issued prior to January 1, 2002, will remain in effect until they expire, or are replaced or revoked. This language matches the new licensing requirements established in these proposed rules as a result of new provisions in TWC, Chapter 37.

New §30.237, Definitions, provides definitions that have either been moved from existing §285.2 or have been added as a result of provisions in TWC, Chapter 37, as explained earlier in this preamble. The definitions for "alter," "apprentice," "authorized agent," "construct," "extend," "install," "installer," and "repair" are proposed from existing §285.2 with no changes. The definition for "designated representative" is proposed from existing §285.2 with changes as required by the language in TWC, Chapter 37. The definition for "site evaluator" has been added to agree with the definition provided in TWC, Chapter 37.

New §30.240, Qualifications for Initial License, contains requirements to obtain an initial license. New §30.240(a) - (c), existing §285.53(a) - (c) and §285.56(b), is proposed to be amended for readability and references licensing requirements in Subchapter A.

New §30.242, Qualifications for License Renewal, adds requirements necessary to obtain a license for site evaluator, which has been added as a result of language in TWC, Chapter 37. New §30.342(a) adds the renewal requirements for Installer I, Installer II, and designated representative licenses after January 1, 2002, and includes language from existing §285.54(b) and a reference to Subchapter A. New §30.242(b) provides requirements for renewal of a site evaluator license, which has been added as a result of language in TWC, Chapter 37.

New §30.244, Exemptions, is language from existing §285.51. Language has been added to the end of proposed §30.244(a) to clarify that the owner must have a site evaluation performed by an individual who possesses either a current site evaluator license or a professional engineer license. New §30.244(b) specifies that an electrician is not required to have an installer license. New §30.244(c), adds the exemption to the site evaluator license allowed in TWC, Chapter 37 regarding professional engineers.

New §30.245, Registration of Apprentices, existing §285.57, is changed for readability and clarity and references language in Subchapter A. New §30.245(a) contains general requirements. New §30.245(b) provides information on completing applications. New §30.245(c) contains notification requirements. New §30.245(d) provides information on expirations or terminations. New §30.245(e) contains information on renewals.

New §30.246, Application for Site Evaluator, provides the requirements for applying for a site evaluator license. The language includes the process for submitting an application if the

individual previously possessed a site evaluator license, previously took the site evaluator basic training course and passed the site evaluator examination, but did not hold a site evaluator license, and had never held a site evaluator license. Language has been proposed for the renewal of licenses for individuals with odd license numbers for one-year initially and renewal of licenses for individuals with even license numbers for two years. This language matches the new licensing terms established in these proposed rules.

Subchapter H - Water Treatment Specialists

New §30.261, Purpose and Applicability, establishes the purpose of this subchapter. New §30.261(a) establishes qualifications for issuing and renewing licenses to water treatment specialists. New §30.261(b) establishes that an applicant must meet the qualifications and licensing requirements under this subchapter and the requirements in Subchapter A.

New §30.267, Definitions, provides definitions for this subchapter. New definitions are provided for "installation of water treatment appliances," "water treatment," "water treatment equipment," and "water treatment specialist."

New §30.270, Qualifications for Initial License, existing §290.23, replaces of the word "requirements" with "for initial license" in the title. The figure contained in §30.270(a)(2) deletes the "validity column" which is covered in Subchapter A.

New §30.272, Qualifications for License Renewal, existing §290.23(b), replaces the phrase "of certificate" with "qualifications for license" in the title. New §30.272(1) establishes requirements of Subchapter A must be met to renew a license. New §30.272(2), existing §290.24(b)(1), is reformatted and grammatical changes made to improve readability.

New §30.274, Classification of Licenses, existing §290.22, is proposed with a change in title from "types of certificates." This section is reformatted to improve readability.

New §30.279, Exemptions, exempts licensed plumbers, and employees of industrial facilities who install or service water treatment equipment at their facilities. The exemption also includes employees of public water systems who have a Class C license and install water treatment equipment at their system.

Subchapter I - Underground Storage Tank On-Site Supervisor Licensing and Contractor Registration

New §30.301, Purpose and Applicability, adds language to clarify who can apply for a license or registration and to establish qualifications for issuing and renewing licenses and registrations.

New §30.307, Definitions, contains eight definitions from existing §334.412, and two definitions that are from existing §334.2. The definitions of "corrosion specialist," "corrosion technician," and "underground storage tank" are proposed without changes from §334.2. The definition of "engineering construction" is changed to remove the word "that." The definition of "on- site supervisor" is revised to improve readability and clarity. The definition of "removal" is changed to correct a cross-reference. Definitions of "repair," "underground storage tank contractor," and "underground utilities" are changed to improve readability and clarity.

New §30.310, Qualifications for Initial License, is proposed language from existing 334.416. New §30.310(1) explains that an applicant must meet the requirements in Subchapter A. New §30.310(2), existing §334.416(c), is changed to improve readability. New §30.310(3), existing §334.416(d), adds the word "document" and "repair, or removal of underground storage tanks" to improve readability; to clarify the qualification requirements; and to provide consistency of terms with other sections of these rules. New §30.310(4), existing §334.417(a)(6), replaces the word "agency" with "executive director" to provide consistency of terms with other sections of these rules. New §30.310(5), existing §334.417(a)(7), adds the word "submit" to improve readability and clarity. New §30.310(6) containing portions of existing §334.416(g) - (h), is changed to improve readability and clarity. New §30.310(7), existing §334.416(f), is changed to improve readability and clarity.

New §30.312, Qualifications for License Renewal, includes language from existing 334.421.New §30.312 explains the requirements to renew a license if issued after January 1, 2002. New §30.312(1) explains that an applicant must meet the requirements in Subchapter A. New §30.312(2) containing portions of existing §334.421(g), is changed to improve readability and clarity.

New §30.315, Qualifications for Initial Registration, includes language from existing 334.402. New §30.315(1) explains the requirements that must be met in Subchapter A. New §30.315(2), existing §334.402(2)(D), replaces the words "documentation of" to "provided" to improve readability and clarity. New §30.315(2)(A), existing §334.402(2)(i), removes the words "Texas Natural Resource Conservation" and replaces the word "agency" to "executive director" to provide consistency of terms with other sections of these rules. New §30.315(2)(B), existing §334.402(2)(ii), changes the word "indicating" to "documentation" to explain that the applicant must provide a document indicating the applicant's net worth. New §30.315(3), existing §334.402(2)(F), is proposed without changes. New §30.315(4), existing §334.406(1)(A), is changes the phrase "initial application/issuance" to "submitted an application fee of" to improve readability and clarity. New §30.315(5), existing §334.402(2)(E), adds the word "provided" to improve readability and clarity. New §30.315(5)(A), existing §334.402(2)(E)(i), replaces the word "agency" to "executive director" to provide consistency of terms with other sections of these rules. The words "(references)" and "other" are deleted to improve readability and clarity. New §30.315(5)(B), existing §334.402(2)(E)(ii), explains in more detail what the applicant must provide when sworn statements are not provided.

New §30.317, Qualifications for Registration Renewal, includes language from existing 334.404. New §30.317(1) explains that the applicant must meet the requirements in Subchapter A. New §30.317(2) - (3), existing §334.404(e), is changed to improve readability, and to clarify the qualification requirements. New §30.317(4), existing §334.406(1)(B), changes the phrase "annual renewal fee - $75" to "submitted a renewal fee of $150." This new language provides the fee change for the two-year renewal and to improve readability and clarity.

New §30.318, Renewal of Licenses and Registrations Issued before the Effective Date of these Rules, includes language from existing §334.421 and §334.404. New language and requirements were added for licenses and registrations to have a first-year transition period for a biennial renewal. License and registration numbers with odd license numbers and registration numbers will renew for one-year for the first year of transition, and license and registration numbers with even license and registration numbers will renew for two years. New §30.318(c)(1)(D), existing §334.406(B), adds the words "submitted a renewal fee of $75" to be consistent with other terms in this chapter, and to explain the fee required

for registrations renewing for one year. New §30.318(2)(D), existing §334.406(B), adds the words "submitted a renewal fee of $150" to be consistent with other terms in this chapter and to explain the fee required for registrations with odd registration numbers renewing for one year. New §30.318(d)(4), existing §334.406(B), adds the words "submitted a renewal fee of $150" to be consistent with other terms in this chapter and to explain the fee required for registrations with even registration numbers renewing for two years.

New §30.319, Exemptions, is a proposed section that includes language from existing §334.425 and §334.408. New §30.319(a), existing §334.425, adds the word "is"; and adding "installs, repairs, or removes"; and deletes the word "installer" to improve readability and to provide consistency of terms with other sections of these rules. New §30.319(b) adds another exemption for persons who assist with the installation, repair, or removal of an UST who is under the direct or on-site supervision of a licensed on-site supervisor. New §30.319(c), existing §334.408, adds the words and phrases "A," "is," "that installs, repairs and removes," and replaces "underground storage tank" with "UST" to improve readability and to provide consistency with other sections of these rules.

Subchapter J - Wastewater Operators and Operations Companies

New §30.331, Purpose and Applicability, is proposed language from existing 325.101. New §30.331(a), existing §325.101(b), changes the phrase "...these rules is to provide a uniform procedure for issuing certificates..." to "...this subchapter is to establish qualifications for issuing and renewing...." New §30.331(b) is proposed with grammatical changes from existing §325.106(a) and (b) and §325.126(a), and establishes who is required to be licensed or registered and adds the requirement to comply with all applicable commission rules. New §30.331(c), existing §325.128(a), deletes the sentence "Operator performance that results in permit violations may subject the operator to administrative penalties or other sanctions imposed by the executive director as described in this section." The meaning of this deleted sentence was transferred to Subchapter A. New §30.331(d), existing §325.101(e), changes the word "certificates" to "licenses." New §30.331(e), existing §325.118(b), explains that an individual possessing an honorary license may not operate a domestic wastewater treatment facility or supervise a wastewater collection system. New §30.331(f), establishes that licenses, certificates of competency, and registrations issued prior to January 1, 2002, remain in effect until they expire or are replaced or revoked. New §30.331(g), existing §325.128(f), changes the word "certificate" to "license or registration" and "certified" to "licensed."

New §30.337, Definitions, is from existing §325.102. A new definition is provided for "honorary license." The word "certificate" or "certificate of competency" is replaced by the word "license," and "certified" the word "licensed" throughout this section. The new definition of "operator- in-charge" deletes the word "responsible" because the operator in charge is defined as the responsible operator. The new definition of "operator-in-training" replaces "person" with "individual" to maintain consistency with new definitions and adds the phrase "who has less than one year of experience and is in training to operate a wastewater treatment facility or supervise a wastewater collection system." The definition for "Wastewater collection system operator" replaces the word "person" with "individual" to allow for consistency with new definitions. The definition for "wastewater system operations company" replaces the phrase "business, company, corporation, firm, partnership, individual" with the word "person" to allow for consistency with new definitions. The definition for "Wastewater treatment facility operator" replaces the word "person" with "individual" to allow for consistency with new requirements.

New §30.340, Qualifications for Initial License, existing §325.108, adds the phrase "initial license" and the deletes the phrase "for wastewater treatment facility and collection system operators." The word "certificate" is changed to "license" throughout this section for consistency. New §30.340(a) contains proposed language from existing §325.108(b) with no changes. The language specifies that operators must meet the requirements in Subchapter A and this subsection. New §30.340(b) and (c) is proposed from existing §325.108(c) and (d) with no changes. New §30.340(d) is proposed from existing §325.108(e) with grammatical changes. New §30.340(e) is proposed from existing §325.108(f) with no changes. New §30.340(f), existing §325.108(g), adds two elective courses for the Class A license. New §30.340(g) clarifies that an individual who previously held a Class D license may not apply for a new Class D license if the individual currently operates facilities listed in §30.342(c). The abbreviation of "RBC" is replaced with "rotating biological contactor" and adds an explanation of these facilities.

New §30.342, Qualifications for License Renewal, is proposed new language from existing 325.116. The word "certificate(s)" is changed to "license(s)" throughout this section for consistency. New §30.342(a) provides the license renewal requirements. New §30.342(a)(1), contains the figure from existing §325.116(d) and is reformatting from chart to narrative form and deletes the information in the fee column, which is covered in Subchapter A. It also reduces the term of Class A, B, C, III, and II licenses to two years and reduces the required continuing education to 20 hours. New §30.342(a)(2) explains an individual may renew a license by examination if the individual meets the requirements in Subchapter A. New §30.342(b), existing §325.116(h), adds of the word "operation." New §30.342(c), existing §325.116(b), replaces the abbreviation "RBC" replaced with "rotating biological contactor" and adds an explanation of these facilities.

New §30.346, Qualifications for Initial Registration, states that an applicant must meet the requirements of Subchapter A to obtain initial registration.

New §30.348, Qualifications for Registration Renewal, states that an applicant must meet the requirements of Subchapter A to renew a registration.

New §30.349, Registration Fees, existing §325.126(d), deletes of the phrase "prior to issuance or renewal of a wastewater system operations company certificate, an application must be submitted with the appropriate fee." The meaning of this deleted phrase was transferred to Subchapter A.

New §30.350, Classification of Wastewater Treatment Facilities, Wastewater Collection Systems, and Licenses Required, existing §325.106, changes the word "Certificates" to "Licenses" in the title. Throughout this section, the word "certificate" and "certificate of competency" is changed to "license" or "registration", as applicable, and "certified" is changed to "licensed" for consistency. New §30.350(a) - (i), existing §325.106(c) - (k), is changed for consistency with new requirements and changes the word "person" changed to "individual" in subsection (c). New §30.350(j), existing §325.106(l), clarifies that each category of facility must be operated a minimum of five days per week by the

chief operator or operator holding a license of the same class or higher, and must be available by telephone or pager seven days per week. New §30.350(k) - (n) is proposed from existing §325.106(m) - (p) with no changes.

New §30.355, Additional Requirements for Wastewater Operations Companies, changes the words "certificate" or "certified" to "license" or "licensed" throughout this section for consistency. New §30.355(a), existing §325.126(g), replaces the word "yearly" with "annual." New §30.355(b) - (c), existing §325.126(h) and (k), is proposed with no changes. New §30.355(d), existing §325.126(l), replaces the phrase "governmental entities or quasi- governmental entities, such as river authorities" with "political subdivisions" and changes a citation for correct reference.

Subchapter K - Public Water System Operators and Operations Companies

New §30.381, Purpose and Applicability, is proposed language from existing §325.2. New §30.381(a), existing §325.2.(b), deletes of the phrase "the rules in" and deletes the phrase "establish qualifications for issuing and renewing licenses." New §30.381(a)(1) establishes that individuals who perform process control duties must be licensed. New §30.381(a)(2) establishes registrations for persons that operate public water systems on a contract basis. New §30.381(b) establishes licensing and registration requirements. New §30.381(c) establishes that licenses, certificates of competency, and registrations issued before January 1, 2002, remain in effect until they expire, or are replaced or revoked. New §30.381(d), existing §325.2.(h), is proposed with grammatical changes and corrects the cross-reference. New §30.381(e) establishes that an individual issued a license under this subchapter must perform adequate process control as recognized by current best management practices. New §30.381(f), existing §325.20(b), explains that an individual possessing an honorary license may not perform process control duties for a public water system. These amendments incorporate changes to TWC, Chapter 37, with grammatical corrections and to provide consistency with new definitions.

New §30.387, Definitions, proposes new definitions and contains some definitions from existing §325.4. New definitions are provided for "honorary license," "process control duties," and "public water system operator." The definition for "chief operator" replaces the word "person" with "individual" to allow consistency with new definitions. The definition for "operator-in-charge" deletes the word "responsible" and replaces the phrase "certified operator who has been charged with the on-site supervision of the" with "an individual who has overall responsibility for the operation of a." The definition for "operator-in-training" replaces the word "person" with "an individual" to maintain consistency with new definitions. The definition for "process control duties" is a new term used in the this subchapter. The definition for "public water system operator" replaces the phrase "a person" with "any business, company, corporation, firm, partnership, individual" because the word "person" is defined in 30 TAC Chapter 3.

New §30.390, Qualifications for Initial License, existing §325.10, adds the phrase "initial license" and deletes the phrase "for public water system operators" to the title. New §30.390(a) specifies requirements to be met in this subsection. Changes were made to the figure to clarify educational requirements. New §30.390(b), existing §325.10(d), improves readability and clarifies work experience substitution requirements. New §30.390(c), existing §325.10(c), clarifies that Class C or B licenses must obtain at least one-half of the total work experience in that specified field. New §30.390(c)(1) - (3), existing §325.10(c)(1) - (3), is reformatted only. New §30.390(d), existing §325.10(c)(4), clarifies that laboratory experience must involve consultation with individuals who perform process control duties. New §30.390(e), existing §325.10(e), is reformatted only. New §30.390(f), existing §325.10(f), reformats the figure only. In the figure which includes the Class B water distribution license training requirements, the training classes under elective courses "Pump and Motor Maintenance" and "Valve and Hydrant Maintenance" are deleted as a result of these classes being erroneously listed as elective courses when they are actually required training classes for the Class B distribution license. These two training classes were also listed under both required courses and elective courses. New §30.390(g) clarifies that an individual who previously held a Class D license may not apply for a new Class D license if the individual currently operates facilities listed in §30.390(g)(1) - (5).

New §30.392, Qualifications for License Renewal, is existing language in §325.18. New §30.392(a) states the license renewal requirements. New §30.392(a)(1), is the figure that is contained in existing §325.18(d) and is reformatted from chart to narrative form. The information in the fee column is provided in Subchapter A. New §30.392(a)(2) explains that an individual may renew a license by examination if the individual meets the requirements of Subchapter A. New §30.392(b), existing §325.18(h), is proposed with no change. New §30.392(c) and (c)(1) - (4), existing §325.18(b) and (b)(1) - (4), is reformatted only. New §30.392(c)(5) prohibits an individual from renewing a Class D license if the individual operates multiple groundwater systems and the cumulative number of connections exceeds 250.

New §30.396, Qualifications for Initial Registration, establishes that an applicant must meet the requirements of Subchapter A to obtain a registration.

New §30.398, Qualifications for Registration Renewal, establishes that an applicant must meet the requirements of Subchapter A to renew a registration.

New §30.399, Registration Fees, existing §325.28(d), deletes the phrase "prior to issuance or renewal of an operations company's certificate, an application must be submitted with the appropriate fee" because this requirement is provided in Subchapter A.

New §30.400, Additional Requirements for Public Water System Operations Companies, is a proposed new section. New §30.400(a) - (d), existing §325.28(g), (i), (k), and (l), is proposed with grammatical changes to improve readability.

New §30.402, Exemptions, is a proposed new section. New §30.402(a), existing §325.2(d) and (d)(1) and (2), is proposed with formatting changes which combine §325.2(d) and (d)(1) and (2) into one subsection. Grammatical changes are made to improve readability. New §30.402(b) exempts an operator-in-training from the licensing requirements of this chapter. This new language is necessary to allow individuals an opportunity to enter the field of public drinking water for the purpose of training. New §30.402(c), existing §325.8(f), is grammatical changed to improve readability.

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 fiscal implications, which are not anticipated to be significant, for any single unit of state

and local government as a result of administration and enforcement of the proposed rules. The commission proposes to standardize the occupational license renewal fee by setting the fee for individuals to $70, payable every two years. The commission estimates that 23,919 requests for occupational licenses will be received every two years. The overall fiscal impact to units of state and local government which pay the fees for individuals licensed by the commission will be approximately $707,130 in increased fees paid every two years. There will be no fiscal impacts to units of state and local government that are not required to pay for renewal of occupational licenses. It is anticipated that the new fee level will result in approximately $1.8 million in additional revenues to the commission, which will be used to recover the costs of administering and enforcing the occupational licensing program.

The proposed rules are intended to implement provisions of HB 3111 (an act relating to occupational licenses and registrations issued by the commission), and certain provisions of HB 2912 (an act relating to the continuation and functions of the commission; providing penalties), 77th Legislature, 2001.

House Bill 3111 requires the commission to establish rules standardizing fees and administration for ten occupational licensing programs by December 1, 2001. The proposed rules intend to achieve this requirement by consolidating into one chapter the administrative requirements for backflow prevention assembly testers (BPAT), customer service inspectors (CSI), landscape irrigators and installers, LPST corrective action project managers and specialists. Additionally, the administrative requirements for municipal solid waste (MSW) facility supervisors, OSSF installers, apprentices, site evaluators, and designated representatives, water treatment specialists, underground storage tank (UST) contractors and on-site supervisors, wastewater operators and operations companies, and public water system operators and operation companies would also be consolidated into the same regulatory chapter. The bill also consolidates the deposit of licensing fees from different funds or accounts into the Occupational Licensing Account, and exempts geoscientists from certain commission licensing fees and requirements.

House Bill 2912 requires the commission to adopt rules for the licensing of water treatment specialists and establishes new requirements for the irrigator and OSSF licensing program. The commission anticipates no additional fiscal impacts due to implementation of the HB 2912 provisions, because they only change the license renewal term for water treatment specialists.

House Bill 3111 requires the commission to establish, standardize, and collect fees sufficient to recover the costs of administering and enforcing the occupational licensing programs administered by the commission. In order to meet these requirements, the commission proposes a standard individual licensing fee of $70 payable every two years. The new fee level would decrease the amount paid by landscape irrigators and installers, LPST corrective action project managers, OSSF Installers, OSSF designated representatives, and UST on-site supervisors. The registration fee for affected companies would be set at $150 payable every two years. The registration fee for wastewater, water, and underground storage companies would not change, while the two year registration fee for LPST companies would decrease from $350 to $150.

The commission estimates that approximately 23,919 license holders that work for units of state and local government would be required to pay more for each license to comply with the proposed rules. These license holders are MSW operators, OSSF designated representatives, wastewater operators, and water operators. The total impact to units of state and local government due to the increased two-year license renewal fee is estimated to be approximately $707,130. The following table provides further details concerning the overall fiscal impact to units of state and local government.

Figure: 30 TAC Chapter 30 Preamble-1

House Bill 3111 exempts geoscientists from certain commission licensing fees and requirements. The commission estimates that approximately 300 geoscientists would not be required to pay the license renewal fee, resulting in a loss of $21,000 in revenues to the commission. However, the commission anticipates the restructured occupational licensing fee will be sufficient to recover costs to administer and enforce the occupational licensing program.

PUBLIC BENEFITS AND COSTS

Mr. Davis also determined that for each year of the first five years the proposed rules are in effect, the public benefit anticipated from enforcement of and compliance with this rulemaking will be the implementation of certain provisions of HB 3111 and HB 2912, and increased compliance through the consolidation and standardization of commission occupational licensing programs.

The proposed rules are intended to implement provisions of HB 3111 and certain provisions of HB 2912. House Bill 3111 requires the commission to establish rules standardizing fees and administration for ten occupational licensing programs by December 1, 2001. The bill also consolidates the deposit of licensing fees from different funds or accounts into the Occupational Licensing Account, and exempts geoscientists from certain commission licensing fees and requirements.

House Bill 2912 requires the commission to adopt rules for the licensing of water treatment specialists and establishes new requirements for the irrigator and OSSF licensing program. The commission anticipates no additional fiscal impacts due to implementation of the HB 2912 provisions, because they only change the license renewal term for water treatment specialists.

House Bill 3111 requires the commission to establish, standardize, and collect fees sufficient to recover the costs of administering and enforcing the occupational licensing programs administered by the commission. In order to meet these requirements, the commission proposes a standard individual licensing fee of $70 payable every two years. This fee would decrease the amount paid by landscape irrigators and installers, LPST corrective action project managers, OSSF installers and designated representatives, and UST on-site supervisors. The registration fee for affected companies would be set at $150 payable every two years. The registration fee for wastewater, water, and underground storage companies would not change, while the two-year registration fee for LPST companies would decrease from $350 to $150.

The commission estimates that approximately 17,454 license holders that work for industry would be affected by the new fee requirements. These license holders include: BPATs, CSIs, OSSF site evaluators, residential water treatment specialists, wastewater operators, and water operators. Backflow prevention assembly testers, CSIs and OSSF site evaluators were not previously required to pay renewal fees. Backflow prevention assembly testers and CSIs were not previously required to pay renewal application fees, while site evaluators licensing is a new requirement. Although some businesses will be required to pay more

for licensing of employees, the overall fiscal impact to industry is a $548,870 reduction in licensing fees.

Additionally, in order to be eligible for license renewal, BPATs, CSIs, and site evaluators will have to attend continuing education classes prior to each renewal. The cost per person is estimated to be as high as $400, with a total additional cost of $2.4 million every two years. The overall net fiscal impact on individuals and businesses due to the $70 two-year license renewal fee and education requirement is estimated to be approximately $1,851,530. The following table provides further details concerning the overall fiscal impact to individuals.

Figure: 30 TAC Chapter 30 Preamble-2

SMALL BUSINESS AND MICRO-BUSINESS ASSESSMENT

There will be adverse fiscal impacts, which are not anticipated to be significant for certain small or micro-business that pay occupational license fees to the commission as a result of the proposed rules, which are intended to implement provisions of HB 3111 and certain provisions of HB 2912. There should be no fiscal implications to small and micro-businesses which do not pay occupational license fees to the commission.

The proposed rules are intended to implement provisions of HB 3111 and certain provisions of HB 2912. House Bill 3111 requires the commission to establish rules standardizing fees and administration for ten occupational licensing programs by December 1, 2001. The bill also consolidates the deposit of licensing fees from different funds or accounts into the Occupational Licensing Account, and exempts certain commission licensing fees and requirements.

House Bill 2912 requires the commission to adopt rules for the licensing of water treatment specialists and establishes new requirements for the irrigator and OSSF licensing program. The commission anticipates no additional fiscal impacts due to implementation of the HB 2912 provisions, because they only change the license renewal term for water treatment specialists.

House Bill 3111 requires the commission to establish, standardize, and collect fees sufficient to recover the costs of administering and enforcing the occupational licensing programs administered by the commission. In order to meet these requirements, the commission proposes a standard individual licensing fee of $70 payable every two years. This fee would decrease the amount paid by landscape irrigators and installers, LPST corrective action project managers, OSSF installers and designated representatives, and UST on-site supervisors. The registration fee for affected companies would be set at $150 payable every two years. The registration fee for wastewater, water, and underground storage companies would not change, while the two-year registration fee for LPST companies would decrease from $350 to $150.

The commission estimates that the majority of the approximately 17,454 affected license holders that work for industry will be employed by small or micro-businesses. These license holders include BPATs, CSIs, OSSF site evaluators, residential water treatment specialists, wastewater operators, and water operators. Backflow prevention assembly testers, CSIs and OSSF site evaluators were not previously required to pay renewal fees. Backflow prevention assembly testers and CSIs were not previously required to pay renewal application fees, while site evaluators licensing is a new requirement. Although some businesses will be required to pay more for licensing of employees, the overall fiscal impact to industry is a $548,870 reduction in licensing fees.

Additionally, in order to be eligible for license renewal, BPATs, CSIs, and site evaluators will have to attend continuing education classes prior to each renewal. The cost per person is estimated to be as high as $400, with a total additional cost of $2.4 million every two years. The overall net fiscal impact on individuals and businesses (including small and micro-businesses) due to the $70 two-year license renewal fee and education requirement is estimated to be approximately $1,851,530.

House Bill 3111 exempts geoscientists from certain commission licensing fees and requirements. The commission estimates that approximately 300 geoscientists, many of which work for small or micro-businesses, would not be required to pay the license renewal fee, resulting in a cost savings of approximately $21,000.

The following is an analysis of the potential costs 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 or micro-business that currently is not required to pay for license renewal, and is required to send certain staff to continuing education classes prior to license renewal would incur costs of approximately $470 per employee every two years to comply with the proposed rules.

LOCAL EMPLOYMENT IMPACT STATEMENT

The commission has reviewed this proposed rulemaking and determined that a local employment impact statement is not required because the proposed rules do not adversely affect a local economy in a material way for the first five years that the proposed rules are in effect.

DRAFT REGULATORY IMPACT ANALYSIS DETERMINATION

The commission reviewed the proposed rules in light of the regulatory analysis requirements of the Texas Government Code, §2001.0225, and determined that the proposed rules are not subject to that statute. Section 2001.0225 only applies to rules that are specifically intended to protect the environment, or reduce risks to human health from environmental exposure. The intent of the proposed rules is to consolidate the requirements for the various occupations, licensed or registered by the commission, into one chapter; not to protect the environment or human health. Protection of human health and the environment may be a by-product of the proposed rules, but it is not the specific intent of the proposed rules. Furthermore, the proposed rules would not adversely affect, in a material way, the economy, a section of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state, because the rules would simply consolidate existing rule language into one chapter. Thus, the proposed rules do not meet the definition of a "major environmental rule" as defined in the Texas Government Code, §2001.0225(g)(3), and thus, do not require a full regulatory impact analysis. The commission invites public comment on the draft regulatory impact analysis determination.

TAKINGS IMPACT ASSESSMENT

The commission has prepared a takings impact assessment for these proposed rules pursuant to Texas Government Code, §2007.43. The following is a summary of that assessment. The specific purpose of the proposed rules is to consolidate the requirements for the various occupations, licensed or registered by the commission, into one chapter. The proposed rules

would substantially advance this specific purpose by setting forth detailed procedures for obtaining an occupational licenses or registration including procedures for: the initial application; examinations; and renewal applications. The proposed rules do not constitute a takings because they would not burden private real property.

CONSISTENCY WITH THE COASTAL MANAGEMENT PROGRAM

The commission reviewed the proposed rulemaking and found that the rules are neither identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11(b)(2), relating to Actions and Rules Subject to the Texas Coastal Management Program (CMP), nor would it affect any action or authorization identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11(a)(6). Therefore, the proposed rules are not subject to the CMP.

ANNOUNCEMENT OF HEARING

A public hearing on the proposal will be held October 11, 2001, at 10:00 a.m. in Room 131E, Building C, at the Texas Natural Resource Conservation Commission complex, located at 12100 Park 35 Circle, Austin. The hearing is structured for the receipt of oral or written comments by interested persons. Individuals may present oral statements when called upon in order of registration. Open discussion will not occur during the hearing; however, an agency staff member will be available to discuss the proposal 30 minutes prior to the hearing and answer questions before and after the hearing.

Persons with disabilities who have special communication or other accommodation needs who are planning to attend the meeting should contact the agency at (512) 239-4900. Requests should be made as far in advance as possible.

SUBMITTAL OF COMMENTS

Comments may be submitted to 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 2001-044-325-WT. Comments must be received by 5:00 pm., October 18, 2001. For further information, contact Melissa Estes, Policy and Regulations Division, at (512) 239-3937.

SUBCHAPTER A. ADMINISTRATION OF OCCUPATIONAL LICENSES AND REGISTRATIONS

30 TAC §§30.1, 30.3, 30.5, 30.7, 30.10, 30.14, 30.18, 30.20, 30.24, 30.26, 30.28, 30.30, 30.33, 30.35

STATUTORY AUTHORITY

The new sections are proposed under the authority granted to the commission by the Texas Legislature in TWC, Chapter 37. Furthermore, TWC, Chapter 37 provides the commission the authority to: establish classes and terms of occupational licenses and registrations; establish procedures for granting, denying, suspending occupational licenses and registrations; establish fees for occupational licenses and registrations; and establish training, continuing and examination requirements.

The new sections are also authorized under the general authority granted in TWC, §5.013, which establishes the general jurisdiction of the commission over other areas of responsibility as assigned to the commission under TWC and other laws of the state; TWC, §5.103 and §5.105, which authorize the commission to adopt rules and policies necessary to carry out its responsibilities and duties under the TWC, §5.013(15); and TWC, §7.002, which authorizes the commission to enforce provisions of the TWC and THSC.

The new sections implement TWC, §37.002, which requires the commission to adopt rules to establish occupational licenses and registrations for: BPATs, (THSC, §341.033 and §341.034); CSIs, (THSC, §341.033 and §341.034); landscape irrigators and installers, (TWC, §34.007); LPST project managers and corrective action specialists, (TWC, §26.3573); solid waste facility supervisors, (THSC, §361.027); OSSF installers, apprentices, designated representatives, and site evaluators (THSC, §366.071); water treatment specialists, (THSC, §341.033 and §341.034); UST contractors and on-site supervisors, (TWC, §26.452); wastewater operators and operations companies, (TWC, §26.0301); and public water system operators and operations companies, (THSC, §341.033 and §341.034).

§30.1. Authority.

The provisions in this chapter are issued under the authority of Texas Water Code, Chapter 37.

§30.3. Purpose and Applicability.

(a) The purpose of this chapter is to consolidate the administrative requirements and establish uniform procedures for the occupational licensing and registration programs prescribed by Texas Water Code, Chapter 37. This subchapter contains general procedures for issuing, renewing, denying, suspending, and revoking occupational licenses and registrations. Subchapters B - K of this chapter (relating to Backflow Prevention Assembly Testers; Customer Service Inspectors; Landscape Irrigators and Installers; Leaking Petroleum Storage Tank Corrective Action Project Managers and Specialists; Municipal Solid Waste Facility Supervisors; On-Site Sewage Facilities Installers, Apprentices, Designated Representatives, and Site Evaluators; Water Treatment Specialists; Underground Storage Tank On-Site Supervisor Licensing and Contractor Registration; Wastewater Operators and Operations Companies; and Public Water System Operators and Operations Companies) contain the program- specific requirements related to each program.

(b) This chapter applies to applications for issuance or renewal of licenses or registrations that are received on or after January 1, 2002.

(c) The requirements of this chapter apply to the following occupational licenses and registrations:

(1) backflow prevention assembly testers;

(2) customer service inspectors;

(3) landscape irrigators and installers;

(4) leaking petroleum storage tank corrective action specialists and project managers;

(5) municipal solid waste facility supervisors;

(6) on-site sewage facility (OSSF) installers, designated representatives, apprentices, and site evaluators;

(7) water treatment specialists;

(8) underground storage tank contractors and on-site supervisors;

(9) wastewater operators and operations companies; and

(10) public water system operators and operations companies.

§30.5. General Provisions.

(a) A person must be licensed or registered by the commission before engaging in an activity, occupation, or profession described by Texas Water Code, §§26.0301, 26.3573, 26.452, 26.456, 34.007, or 37.003, or Texas Health and Safety Code, §§341.033, 341.034, 341.102, 361.027, 366.014, or 366.071. The commission shall issue a license or registration only after an applicant has met the minimum requirements for a license or registration as specified in this chapter.

(b) A person may not advertise or represent themselves to the public as a holder of a license or registration unless they possess a current license or registration. A person may not advertise or represent to the public that it can perform services for which a license or registration is required unless it holds a current license or registration, or unless it employs individuals who hold current licenses.

(c) The executive director may contract with persons to provide services required by this chapter. The commission may authorize contractors to collect reasonable fees for the services provided.

(d) Licenses and registrations are not transferrable.

(e) New licenses shall not be issued to employees of the commission who have regulatory authority over the rules of this chapter.

§30.7. Definitions.

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

(1) Continuing education--Job-related training approved by the executive director used for renewal of licenses and registrations.

(2) License--An occupational license issued by the commission to an individual authorizing the individual to engage in an activity covered by this chapter.

(3) Registration--An occupational registration issued by the commission to a person authorizing the person to engage in an activity covered by this chapter.

(4) Training credit--Hours of credit allowed by the executive director for attendance at an approved training event.

§30.10. Administration.

The executive director is responsible for:

(1) reviewing applications;

(2) developing, administering, and grading examinations;

(3) issuing and renewing licenses and registrations;

(4) maintaining records related to licenses and registrations;

(5) maintaining a roster of current licenses and registrations;

(6) collecting fees;

(7) approving training for licensing credits; and

(8) responding to complaints against licensees and registrants.

§30.14. Applications for Initial Registration.

(a) Applications for initial registrations shall be made on a standard form approved by the executive director. The application must be submitted to the executive director with the appropriate fee.

(b) Supplemental information for each individual program shall be submitted according to the specific requirements for each program.

(c) Within 45 days after the date the executive director receives the application, the executive director shall notify the applicant in writing if all the registration requirements have been met.

(d) All statements and qualifications provided by the applicant are subject to verification by the executive director.

(e) Misrepresentation or falsification of any information may be grounds for rejection of an application or for enforcement action.

(f) All applications must be completed in full. All deficiencies must be corrected within two months of notification, or the application shall be considered invalid.

(g) After verification that the requirements for registration have been met, the executive director shall mail the registration no later than 45 days after the effective date of the registration. The registration shall be for the term specified in §30.30 of this title (relating to Terms and Fees for Licenses and Registrations). The effective date of the registration shall be the date the executive director issues the registration.

§30.18. Applications for an Initial License.

(a) Applications for initial licenses shall be made on a standard form provided by the executive director. The application must be submitted to the executive director with the fee according to §30.30 of this title (relating to Terms and Fees for Licenses and Registrations). The application must be submitted to the executive director before the applicant may take the examination.

(b) Supplemental information for each individual program shall be submitted according to the specific requirements for each program.

(c) Within 45 days after the date the executive director receives the application, the executive director shall notify the applicant in writing if the applicant is eligible to take the examination.

(d) An approved application shall be valid for one year from the date of approval.

(e) All statements and qualifications provided by each applicant are subject to verification by the executive director.

(f) Misrepresentation or falsification of any information may be grounds for rejection of an application or for enforcement action.

(g) All applications must be completed in full. All deficiencies must be corrected within two months of notification, or the application shall be considered invalid.

(h) An applicant must furnish evidence of any training credit, proof of education, or work experience when requested.

(i) After verification that the requirements for license have been met, the executive director shall mail the license no later than 45 days after the effective date of the license. The license shall be for the term specified in §30.30 of this title. The effective date of the license shall be the date the executive director issues the license.

§30.20. Examinations.

(a) The executive director shall prescribe the content of licensing examinations. Examinations shall be based on laws, rules, job duties, and standards relating to the particular license.

(b) Examinations shall be graded and the results forwarded to the applicant no later than 45 days after the examination date. The minimum passing score for an examination is 70%.

(c) Any individual who fails an examination may repeat the examination after waiting 60 days. The examination may not be repeated

more than three times within 12 months of the initial application approval. After one year or four examinations, whichever occurs first, a new application with a new fee must be submitted before the applicant may take the examination again.

(d) Any qualified applicant with a physical, mental, or developmental disability may request reasonable accommodations to take an examination.

(e) Examinations shall be given at places and times approved by the executive director.

(f) The executive director shall provide an analysis of an examination when requested in writing by the applicant. The executive director shall ensure that an examination analysis does not compromise the fair and impartial administration of future examinations.

§30.24. License and Registration Applications for Renewal.

(a) A license or registration may be renewed unless it has been:

(1) expired for more than 30 days;

(2) revoked; or

(3) replaced by a higher class of license.

(b) Applications for renewal must be made on a standard form provided by the executive director.

(1) The executive director shall mail a renewal application at least 60 days before the license or registration expires to the most recent address provided to the executive director. If a person does not receive a renewal application, the person is not relieved of the responsibility to timely submit a renewal application.

(2) The person is responsible for ensuring that the completed renewal application, the renewal fee, and other required information are submitted to the executive director by the expiration date of the license or registration.

(c) The continuing education used to renew a license must be earned after the issuance date and before the expiration date of the license. Any remaining continuing education hours shall not be carried over to the next renewal period.

(d) The executive director may renew a license or registration, within 30 days after the license expires, if the person meets the requirements for renewal by the expiration date of the license or registration and pays all fees.

(e) An individual who fails to renew a license within 30 days after the license expiration date must meet the current education, training, and experience requirements, submit a new application with the appropriate fee, and pass the examination. A person who fails to renew a registration within 30 days after the expiration date must submit a new application with the appropriate fee and meet all applicable requirements for a new registration.

(f) The executive director may require specific training courses for renewal of a license on a case-by- case basis.

(g) All licensees must notify the executive director of any change in the previously submitted application information within ten days from the date the change occurs.

(h) All registration holders must notify the executive director of any change in the previously submitted application information within ten days after the month in which the change occurs.

(i) Licenses and registrations that have renewal cycles in transition shall follow the renewal requirements in the applicable subchapter.

(j) The executive director shall determine whether an applicant meets the renewal requirements of this subchapter. If all requirements have been met, the executive director shall renew the license or registration and send it to the applicant within 45 days after the date the executive director receives the renewal application.

(k) The license or registration shall be valid for the term specified.

(l) If the application is denied because the applicant does not meet the requirements, the executive director shall notify the applicant in writing within 45 days after the date the executive director receives the renewal application.

(m) A person whose license or registration has expired may not engage in activities that require a license or registration until the license or registration is renewed or a new license or registration has been obtained.

§30.26. Recognition of Licenses from Out-of-State.

(a) Except for landscape irrigators and installers, the executive director may waive qualifications, training, or examination for individuals with a good compliance history who hold a current license from another state, territory, or country if that state, territory, or country has requirements equivalent to those in this chapter.

(b) A license may be issued after review and approval of the application, receipt of the appropriate fee, and verification of the license from the corresponding state, territory, or country.

(c) The executive director may waive any of the prerequisites for obtaining a landscape irrigator or installer license, if the applicant is licensed as an irrigator in another jurisdiction that has a reciprocity agreement with the State of Texas.

(d) The executive director may require the applicant to provide information about other occupational licenses and registrations held by the person, including:

(1) the state in which the other license or registration was issued;

(2) the current status of the other license or registration; and

(3) whether the other license or registration was ever denied, suspended, revoked, surrendered, or withdrawn.

§30.28. Approval of Training.

(a) Training used to meet the requirements for obtaining or renewing a license must be approved by the executive director before the training begins.

(b) The executive director shall determine the number of hours of credit that shall be granted for approved training.

(c) Training credit may be approved by the executive director for:

(1) attendance at training courses, events, and seminars;

(2) completion of computer or web-based training, correspondence course, or similar training;

(3) association meetings, only when the meetings include training sessions containing subject matter related to the particular license; or

(4) other professional activities, such as publication of articles or teaching training courses.

(d) The executive director may rescind or deny training approval for good cause.

§30.30. Terms and Fees for Licenses and Registrations.

(a) All licenses and registrations are valid for two years from the date of issuance.

(b) The following licenses and registrations shall be transitioned from a one-year cycle to a two-year cycle:

(1) landscape irrigator and installer, according to Subchapter D of this chapter (relating to Landscape Irrigators and Installers); and

(2) underground storage tank on-site supervisor and contractor, according to Subchapter I of this chapter (relating to Underground Storage Tank Contractors and On-Site Supervisor Licensing and Contractor Registration).

(c) The license fee is $70 for the entire term of the license. It shall be paid with each initial and renewal application and is nonrefundable.

(d) Registration fees are established in the applicable subchapters of this chapter.

(e) A fee of $20 shall be charged for each copy of the license or registration, or to replace a lost or damaged license or registration.

(f) A convenience fee may be set by the executive director or service provider for alternative fee payment methods. A person using an alternative payment method is responsible for paying the convenience fee.

(g) An examination or reexamination fee may be charged if the executive director designates an entity to administer the examinations.

§30.33. License or Registration Denial, Warning, Suspension, or Revocation.

(a) Denial. The executive director may deny an initial or renewal application for:

(1) insufficiency. The executive director shall notify the applicant of the executive director's intent to deny the application and advise the applicant of the opportunity to file a motion for reconsideration under §50.39 of this title (relating to Motion for Reconsideration). The executive director may determine an application is insufficient for the following reasons:

(A) failing to meet the licensing or registration requirements of this chapter;

(B) being delinquent in the payment of any fee or penalty imposed by the commission, unless:

(i) a person pays the fee or penalty to the executive director within 30 days after submitting an application; or

(ii) the executive director has agreed to a payment plan within 30 days after a person submits an application;

(C) being in default on loans guaranteed by Texas Guaranteed Student Loan Corporation (TGSLC) (the executive director shall proceed as described in Texas Education Code, Chapter 57) if identified by TGSLC and the application is for a renewal license or registration; or

(D) if an out-of-state licensing program does not have requirements substantially equivalent to those of this chapter;

(2) cause. After notice and opportunity for a hearing, the executive director may deny an application for a license or registration by an applicant who:

(A) provides fraudulent information or falsifies the application;

(B) has a poor compliance history as a licensee in another state; or

(C) has a poor compliance history in this or another agency program.

(b) Warning. If a person causes, contributes to, or allows a violation of this chapter, the executive director may issue a warning letter. The letter shall be placed in the person's permanent file maintained by the executive director. This letter shall be a warning that further violations or offenses by the person may be grounds for suspension, revocation, enforcement action, or some combination thereof. A warning is not a prerequisite for initiation of suspension, revocation, or enforcement proceedings.

(c) Suspension or revocation. After notice and opportunity for a hearing, the executive director may suspend or revoke a license or registration on any of the grounds in Texas Water Code, §7.303(b). A license may also be suspended if a person is identified by the Office of the Attorney General as being delinquent on child support payments (upon receipt of a final order suspending a license or registration, the executive director shall proceed as described in Texas Family Code, Chapter 232).

(d) A license or registration may be suspended for a period of up to one year, depending upon the seriousness of the violations. A license or registration shall be revoked automatically upon a second suspension.

(e) The commission may revoke a license or registration for a designated term or permanently. If a license or registration is revoked a second time, the revocation shall be permanent.

(f) The following procedures for renewal apply to persons who have had their license or registration suspended.

(1) If a license or registration expiration date falls within the suspension period, a person may renew the license or registration during the suspension period according to §30.24 of this title (relating to License and Registration Applications for Renewal) and the applicable subchapters.

(2) After the suspension period has ended, the license or registration shall be automatically reinstated unless the person failed to renew the license or registration during the suspension period.

(g) Persons who have had their license or registration revoked shall not have their license or registration automatically reinstated after the revocation period. After the revocation period has ended, a person may apply for a new license or registration according to this chapter.

§30.35. Hearings.

All hearings are to be conducted according to Chapters 70 and 80 of this title (relating to Enforcement and Contested Case Hearings).

This 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 September 14, 2001.

TRD-200105503
Stephanie Bergeron
Director, Environmental Law Division
Texas Natural Resource Conservation Commission
Earliest possible date of adoption: October 28, 2001
For further information, please call: (512) 239-4712

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SUBCHAPTER B. BACKFLOW PREVENTION ASSEMBLY TESTERS

30 TAC §§30.51, 30.57, 30.60, 30.62

STATUTORY AUTHORITY

The new sections are proposed under the authority granted to the commission by the Texas Legislature in TWC, Chapter 37. The new sections are authorized under the general authority granted in TWC, §5.013, which establishes the general jurisdiction of the commission over other areas of responsibility as assigned to the commission under TWC and other laws of the state; TWC, §5.103 and §5.105, which authorize the commission to adopt rules and policies necessary to carry out its responsibilities and duties under TWC, §5.013(15); and TWC, §7.002, which authorizes the commission to enforce provisions of TWC and THSC.

The new sections implement TWC, §37.002 and THSC, §341.033 and §341.034, which provide that the commission must ensure that connections between a public drinking water supply and a sprinkling, condensing, cooling plumbing or other system will prevent backflow.

§30.51. Purpose and Applicability.

(a) The purpose of this subchapter is to establish qualifications for issuing and renewing licenses to an individual who tests and repairs backflow prevention assemblies.

(b) An individual who tests and repairs backflow prevention assemblies must meet the qualifications of this subchapter and be licensed according to Subchapter A of this chapter (relating to Administration of Occupational Licenses and Registrations).

(c) All previously issued backflow prevention assembly tester accreditations shall expire December 1, 2002. To obtain a license, an individual holding an accreditation must submit a new application with the appropriate fee. If an individual with an accreditation does not obtain a license by December 1, 2002, the individual must meet the qualifications of this subchapter for initial licenses. Until December 1, 2002, individuals with accreditations may test and repair backflow prevention assemblies.

§30.57. Definitions.

The following word and term, when used in this subchapter, shall have the following meaning, unless the context clearly indicates otherwise. Backflow prevention assembly tester (BPAT)--An individual who tests and repairs backflow prevention assemblies.

§30.60. Qualifications for Initial License.

To obtain a license, an individual must have:

(1) met the requirements in Subchapter A of this chapter (relating to Administration of Occupational Licenses and Registrations);

(2) passed an examination;

(3) received a high school diploma or equivalent certificate;

(4) completed an approved 40-hour training course; and

(5) worked at least two years in an approved area.

(A) Approved areas are:

(i) operating or maintaining a public drinking water system;

(ii) installing or repairing residential, commercial, or industrial drinking water treatment equipment;

(iii) installing or repairing lawn irrigation systems;

(iv) performing activities requiring a master or journeyman plumbing license;

(v) testing and repairing backflow prevention assemblies on fire suppression systems and lines; or

(vi) performing other duties approved by the executive director.

(B) An individual may substitute one year of the required experience with:

(i) one year of college credit (32 semester hours); or

(ii) 20 hours of approved training in addition to the required 40-hour training course.

§30.62. Qualifications for License Renewal.

To renew a license, an individual must have:

(1) met the requirements in Subchapter A of this chapter (relating to Administration of Occupational Licenses and Registrations); and

(2) completed 16 hours of approved continuing education which includes eight hours of approved practical skills training.

This 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 September 14, 2001.

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Stephanie Bergeron
Director, Environmental Law Division
Texas Natural Resource Conservation Commission
Earliest possible date of adoption: October 28, 2001
For further information, please call: (512) 239-4712

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SUBCHAPTER C. CUSTOMER SERVICE INSPECTORS

30 TAC §§30.81, 30.87, 30.90, 30.92, 30.95

STATUTORY AUTHORITY

The new sections are proposed under the authority granted to the commission by the Texas Legislature in TWC, Chapter 37. The new sections also authorized under the general authority granted in TWC, §5.013, which establishes the general jurisdiction of the commission over other areas of responsibility as assigned to the commission under TWC and other laws of the state; TWC, §5.103 and §5.105, which authorize the commission to adopt rules and policies necessary to carry out its responsibilities and duties under TWC, §5.013(15); and TWC, §7.002, which authorizes the commission to enforce provisions of TWC and THSC.

The new sections implement TWC, §37.002 and THSC, §341.033 and §341.034, which provide that the commission must ensure that the public drinking water supply may not be connected until the commission has approved the connection.

§30.81. Purpose and Applicability.

(a) The purpose of this subchapter is to establish qualifications for issuing and renewing licenses to individuals who conduct and certify customer service inspections.

(b) An individual who performs customer service inspections must meet the qualifications of this subchapter and be licensed according to Subchapter A of this chapter (relating to Administration of Occupational Licenses and Registrations).

(c) An endorsement for customer service inspections shall expire when an individual renews a water operators license or the license expires. To obtain a customer service inspector license, an individual holding an endorsement must submit a new application with the appropriate fee.

(d) A licensed customer service inspector may not perform plumbing inspections required under Plumbing Licensing Law 15(a)(Texas Civil Statutes, Volume 17-1/2, Article 6243-101).

§30.87. Definitions.

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

(1) Cross-connection--A physical connection between a public water system and either another supply of unknown or questionable quality, any source which may contain contaminating or polluting substances, or any source of water treated to a lesser degree in the treatment process.

(2) Customer service inspection--An examination of the private water distribution facility for the purpose of providing or denying water service. The inspection is limited to the identification and prevention of cross-connections, potential contaminant hazards, and illegal lead materials. Customer service inspections are completed before providing continuous water service to new construction, on any existing service where there is reason to believe that cross-connections or other potential contaminant hazards exist, or after any material improvement, correction, or addition to private water distribution facilities (see §290.46(j) of this title (relating to Minimum Acceptable Operating Practices for Public Drinking Water Systems)).

(3) Customer service inspector--The person who is licensed by the executive director to perform customer service inspections.

§30.90. Qualifications for Initial License.

To obtain a license, an individual must have:

(1) met the requirements in Subchapter A of this chapter (relating to Administration of Occupational Licenses and Registrations);

(2) received a high school diploma or equivalent certificate;

(3) completed an approved customer service inspector training course;

(4) worked at least two years in an approved area. Approved areas include, but are not limited to, operation or maintenance of a public drinking water treatment or distribution system, or building or construction inspections;

(5) one year of college (32 semester hours) or an additional 20 hours of training credits may be substituted for one year of the experience requirement.

§30.92. Qualifications for License Renewal.

To renew a license, an individual must have:

(1) met the requirements in Subchapter A of this chapter (relating to Administration of Occupational Licenses and Registrations); and

(2) completed 16 hours of approved continuing education.

§30.95. Exemptions.

Plumbing inspectors and water supply protection specialists licensed by the State Board of Plumbing Examiners are exempt from these requirements.

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

Filed with the Office of the Secretary of State, on September 14, 2001.

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Stephanie Bergeron
Director, Environmental Law Division
Texas Natural Resource Conservation Commission
Earliest possible date of adoption: October 28, 2001
For further information, please call: (512) 239-4712

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SUBCHAPTER D. LANDSCAPE IRRIGATORS AND INSTALLERS

30 TAC §§30.111, 30.117, 30.120, 30.122, 30.125, 30.129

STATUTORY AUTHORITY

The new sections are proposed under the authority granted to the commission by the Texas Legislature in TWC, Chapter 37. The new sections are also authorized under the general authority granted in TWC, §5.013, which establishes the general jurisdiction of the commission over other areas of responsibility as assigned to the commission under TWC and other laws of the state; TWC, §5.103 and §5.105, which authorize the commission to adopt rules and policies necessary to carry out its responsibilities and duties under TWC, §5.013(15); and TWC, §7.002, which authorizes the commission to enforce provisions of TWC and THSC.

The new sections implement TWC, §37.002 and §34.007, which require the commission to adopt rules to establish occupational licenses and registrations for landscape irrigators and installers.

§30.111. Purpose and Applicability.

(a) The purpose of this subchapter is to establish qualifications for issuing and renewing licenses to individuals who:

(1) sell, design, install, maintain, alter, repair, or service an irrigation system;

(2) provide consulting services relating to an irrigation system; or

(3) connect an irrigation system to any water supply.

(b) An individual who performs any of the tasks listed in subsection (a) of this section must meet the qualifications of this subchapter and be licensed according to Subchapter A of this chapter (relating to Administration of Occupational Licenses and Registrations), unless they are exempt under §30.129 of this title (relating to Exemptions); and must comply with the requirements in Chapter 344 of this title (relating to Landscape Irrigation).

(c) Licenses and certificates of registrations issued before January 1, 2002, remain in effect until they expire or are revoked by the commission.

§30.117. Definitions.

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

(1) Installer--An individual who connects irrigation systems to any water supply.

(2) Irrigator--An individual who sells, designs, installs, maintains, alters, repairs, or services an irrigation system; provides consulting services relating to an irrigation system; or connects an irrigation system to any water supply.

§30.120. Qualifications for Initial License.

(a) To obtain an installer license, an individual must have:

(1) met the requirements in Subchapter A of this chapter (relating to Administration of Occupational Licenses and Registrations); and

(2) passed an approved examination.

(b) To obtain an irrigator license, an individual must have:

(1) met the requirements in Subchapter A of this chapter;

(2) completed an approved training course; and

(3) passed all sections of the examination.

§30.122. Qualifications for License Renewal.

(a) To renew an installer license, issued after January 1, 2002, an individual must meet the requirements in Subchapter A of this chapter (relating to Administration of Occupational Licenses and Registrations).

(b) To renew an irrigator license, issued after January 1, 2002, an individual must:

(1) meet the requirements in Subchapter A of this chapter; and

(2) complete 16 hours of approved continuing education.

§30.125. Renewal of Certificates of Registrations.

Both installer certificates of registration and irrigator certificates of registration that are current on the effective date of these rules shall be renewed as licenses. The executive director shall determine the expiration dates for the individual licenses. The expiration dates may be set throughout the year. Certificates of registration that expire on August 31, 2002, shall be renewed in the following manner.

(1) Installers.

(A) Installer certificates of registration with odd certificate numbers shall be initially renewed as a license for a period of 12 to 23 months and shall have an expiration date of the last day of a month in that period, as determined by the executive director.

(i) To renew for the first period, an installer must follow the procedures specified in §30.24 of this title (relating to License and Registration Applications for Renewal) and pay the renewal fee as specified in §30.30 of this title (relating to Terms and Fees for Licenses and Registrations); however, the license fee shall be prorated so that the installer only pays for the actual months licensed.

(ii) Following that period, to renew a license the installer must meet the requirements specified in §30.122 of this title (relating to Qualifications for Renewal).

(B) Installer certificates of registration with even certificate numbers shall be renewed as a license for a period of 24 to 35 months and shall expire on the last day of a month in that period, as determined by the executive director. The installer must follow the procedures specified in §30.24 of this title. Additionally, the installer must pay the license fee specified in §30.30 of this title plus a prorated amount for the months beyond two years.

(2) Irrigators.

(A) Certificates of registration with odd numbers shall be initially renewed for a period of 12 to 23 months and shall expire on the last day of a month in that period, as determined by the executive director.

(i) To renew for the first period, an irrigator must follow the procedures specified in section §30.24 of this title, and pay the renewal fee as specified in §30.30 of this title; however, the license fee shall be prorated so that the irrigator only pays for the actual months licensed. Additionally, the irrigator must meet the renewal qualifications specified in §30.122 of this title, except only eight hours of continuing education is required.

(ii) Following that period, to renew a license the irrigator must meet the requirements specified in §30.122 of this title.

(B) Certificates of registration with even certificate numbers shall be renewed as a license for a period of 24 to 35 months and shall expire on the last day of a month in that period, as determined by the executive director.

(i) To renew for the first period, an irrigator must follow the procedures specified in §30.24 of this title, and pay the renewal fee as specified in §30.30 of this title, plus a prorated amount for the month beyond two years. Additionally, the irrigator must meet the renewal qualifications specified in §30.122 of this title.

(ii) Following that period, to renew a license the irrigator must meet the requirements specified in §30.122 of this title.

§30.129. Exemptions.

(a) The license requirements of this chapter do not apply to:

(1) an individual licensed by the Texas State Board of Plumbing Examiners;

(2) an individual registered or licensed as a professional engineer or architect or landscape architect if the work is incidental to the pursuit of the profession;

(3) irrigation or yard sprinkler work done by a property owner in a building or on premises owned or occupied by the owner as the owner's home;

(4) irrigation or yard sprinkler repair work, other than extension of an existing irrigation or yard sprinkler system or installation of a replacement system, done by a maintenance person incidental to and on premises owned by the business in which the individual is regularly employed or engaged and who does not engage in the occupation of licensed irrigator or in yard sprinkler construction or maintenance for the general public;

(5) irrigation or yard sprinkler work done on the premises or equipment of a railroad by a regular employee of the railroad who does not engage in the occupation of licensed irrigator or in yard sprinkler construction or maintenance for the general public;

(6) irrigation and yard sprinkler work done by a person who is regularly employed by a county, city, town, special district, or political subdivision of the state on public property;

(7) irrigation or yard sprinkler work done by a person using a garden hose, hose sprinkler, hose-end product, including soaker hose, or agricultural irrigation system;

(8) activities involving a commercial agricultural irrigation system;

(9) irrigation or yard sprinkler work done by an agriculturist, agronomist, horticulturist, forester, gardener, contract gardener, garden or lawn caretaker, nurseryman, or grader or cultivator of land on land owned by the individual performing the work;

(10) irrigation or yard sprinkler work done by a member of a property owners' association as defined by Property Code, §202.001, on real property owned by the association or in common by the members of the association if the irrigation or yard sprinkler system water real property that is less than 1/2 acre in size and is used for aesthetic or recreational purposes;

(11) a person who assists in the installation, maintenance, alteration, repair, or service of an irrigation system under the direct supervision of a licensed irrigator; or

(12) an owner of a business that employs a licensed irrigator to supervise the business's sale, design, consultation, installation, maintenance, alteration, repair, and service of irrigation systems. For the purpose of this subchapter, "employs" means steadily, uniformly or habitually working in an employer- employee relationship with a view of earning a livelihood, as opposed to working casually or occasionally.

(b) A person who is exempt from the license requirements of this subchapter shall comply with the standards established by Chapter 344 of this title (relating to Landscape Irrigations). The term "irrigation system" does not include a system used on or by an agricultural operation as defined in Texas Agriculture Code, §251.002.

This 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 September 14, 2001.

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Stephanie Bergeron
Director, Environmental Law Division
Texas Natural Resource Conservation Commission
Earliest possible date of adoption: October 28, 2001
For further information, please call: (512) 239-4712

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SUBCHAPTER E. LEAKING PETROLEUM STORAGE TANK CORRECTIVE ACTION PROJECT MANAGERS AND SPECIALISTS

30 TAC §§30.171, 30.177, 30.180, 30.185, 30.190, 30.192, 30.195

STATUTORY AUTHORITY

The new sections are proposed under the authority granted to the commission by the Texas Legislature in TWC, Chapter 37. The new sections are also authorized under the general authority granted in TWC, §5.013, which establishes the general jurisdiction of the commission over other areas of responsibility as assigned to the commission under TWC and other laws of the state; TWC, §5.103 and §5.105, which authorize the commission to adopt rules and policies necessary to carry out its responsibilities and duties under TWC, §5.013(15); and TWC, §7.002, which authorizes the commission to enforce provisions of TWC and THSC.

The new sections implement TWC, §37.002 and §26.3573, which require the commission to adopt rules to establish occupational licenses and registrations for leaking petroleum storage tank project managers and corrective action specialists.

§30.171. Purpose and Applicability.

(a) The purpose of this section is to establish qualifications for issuing and renewing licenses to individuals who supervise leaking petroleum storage tank (LPST) corrective actions. This subchapter also establishes qualifications for issuing and renewing registrations to persons that contract to perform LPST corrective actions.

(b) An individual who performs or supervises regulated corrective action services as a project manager on LPST sites must meet the qualifications of this subchapter and be licensed according to Subchapter A of this chapter (relating to Administration of Occupational Licenses and Registrations), unless exempt under §30.195 of this title (relating to Exemptions).

(c) A person that contracts or performs regulated corrective action services on LPST sites as a corrective action specialist must meet the qualifications of this subchapter and be licensed according to Subchapter A of this chapter.

(d) Registrations issued before January 1, 2002, remain in effect until they expire, or are replaced or revoked by the commission.

§30.177. Definitions.

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

(1) Corrective action--Any assessment, monitoring, and remedial activities undertaken to investigate the extent of, and to remediate contamination.

(2) Corrective action services--Activities required to accomplish regulated corrective action at a leaking petroleum storage tank (LPST) site.

(3) Corrective action specialist--A person that is registered to perform regulated corrective action services on LPST sites.

(4) Leaking petroleum storage tank (LPST)--An aboveground or underground storage tank which has a confirmed release of a petroleum substance.

(5) Project manager--An individual who is licensed to perform or supervise regulated corrective action services on LPST sites.

§30.180. Qualifications for Initial License.

To obtain a license as a corrective action project manager, an individual must have:

(1) met the requirements in Subchapter A of this chapter (relating to Administration of Occupational Licenses and Registrations);

(2) provided documentation of quality of performance including one of the following:

(A) sworn statements, on forms approved by the executive director, from at least three individuals, not related by blood or marriage, for whom the applicant performed corrective action services, within the preceding 24 months. The statements shall attest to the applicant's job reliability and the client's satisfaction. The statements

shall also include a description of the type or types of corrective action services performed by the applicant and the physical address where the services occurred. Corrective action services are not limited to experience gained at leaking petroleum storage tank sites, but may also include corrective actions conducted under any environmental program administered by a state or by the federal government under RCRA; CERCLA; the Oil Spill Prevention and Response Act; 33 United States Code, Chapter 40, Subchapter I; and Texas Water Code, Chapter 26; or

(B) a written explanation of why the sworn statements required by subparagraph (A) of this paragraph are not available. An individual's experience, under the supervision of a licensed corrective action project manager, may be sufficient if the executive director determines that the individual had substantial involvement in the decision-making process during the project. The written explanation shall include a detailed description of three case histories of corrective action services performed by the individual during the previous 24 months;

(3) passed an approved examination;

(4) documented education and experience:

(A) an individual must have received a high school diploma or equivalent and a minimum of four years experience in corrective action services; or

(B) an individual must have received a bachelor's degree in the physical, natural, biological, or environmental sciences, engineering, applied geography, or a subject directly relevant to the environmental field, as approved by the executive director; and documented a minimum of two years' experience in corrective action services; and

(5) submitted a sworn statement from the applicant attesting to the accuracy of the information provided on the application.

§30.185. Qualifications for License Renewal.

To renew a license, an individual must:

(1) meet the requirements in Subchapter A of this chapter (relating to Administration of Occupational Licenses and Registrations); and

(2) complete 16 hours of approved continuing education;

(3) with the exception of professional engineers and professional geoscientist, an application for renewal of a corrective action project manager license is complete when the executive director has received an application for renewal on a form provided by the executive director, completed in a manner acceptable to the executive director, and is accompanied with the required training certificate indicating 32 hours of continuing education; and payment of applicable fees specified in §30.30 of this title (relating to Terms and Fees for Licenses).

§30.190. Qualifications for Initial Registration.

To obtain a corrective action specialist registration, a person must have:

(1) met the requirements in Subchapter A of this chapter (relating to Administration of Occupational Licenses and Registrations);

(2) provided:

(A) proof of a comprehensive general liability insurance policy designating the commission as the certificate holder in an amount of not less than $1 million and of a type approved by the executive director; and

(B) a financial statement (balance sheet) prepared in conformity with accounting principles as defined by the American Institute of Public Accountants, documenting an applicant's current net worth of not less than $25,000; or a letter from a certified public accountant who is not employed by the applicant or does not receive payment from the applicant on a regular basis verifying that the applicant's current net worth is not less than $25,000;

(3) submitted a sworn statement from the applicant attesting to the accuracy of the information provided on the application;

(4) submitted an application fee of $150; and

(5) documented quality of performance including one of the following:

(A) sworn statements, on forms approved by the executive director, from at least three persons, not related by blood or marriage, for whom the applicant performed corrective action services, within the preceding 24 months. The statements shall attest to the applicant's job reliability and the client's satisfaction. The statements shall also include description of the type of corrective action services that were performed by the applicant and the physical address where the activity occurred. Applicable corrective action experience is not limited to experience gained at leaking petroleum storage tank sites, but may also include corrective actions conducted under any environmental program administered by a state or by the federal government under RCRA; CERCLA; the Oil Spill Prevention and Response Act; 33 United States Code, Chapter 40, Subchapter I; and Texas Water Code, Chapter 26. The executive director shall evaluate the explanation and case histories on a case-by-case basis; or

(B) a written explanation of why the applicant did not provide the sworn statements required by subparagraph (A) of this paragraph are not available. An applicant's experience, under the supervision of a licensed corrective action project manager, may be sufficient if the executive director determines that the individual had substantial involvement in the decision-making process during the project. The written explanation shall include a detailed description of three case histories of corrective action services performed by the individual during the previous 24 months. The executive director shall evaluate the explanation and case histories on a case-by-case basis.

§30.192. Qualifications for Registration Renewal.

To renew a registration, a person must:

(1) meet the requirements in Subchapter A of this title (relating to Administration of Occupational Licenses and Registrations); and

(2) complete an application for registration renewal for a corrective action specialist approved by the executive director, certifying that the company has continued to meet the financial requirements of §30.190 of this title (relating to Qualifications for Initial Registration for Corrective Action Specialist); and pay a registration renewal fee of $150.

§30.195. Exemptions.

(a) An individual licensed to practice engineering by the Texas Board of Professional Engineers (TBPE), may become licensed as a corrective action project manager and is exempt from the requirements in this subchapter by submitting:

(1) an application form provided by the executive director;

(2) a signed written request;

(3) a copy of the license as a professional engineer; and

(4) a written statement from the TBPE that the applicant is currently licensed to practice engineering in the State of Texas and that the TBPE is not aware of any reason that the applicant is not qualified to perform corrective action. An engineer who obtains a license as a corrective action project manager in this manner is exempt from the requirements in this subchapter.

(b) A professional geoscientist licensed to engage in the public practice of geoscience in the State of Texas may become licensed as a corrective action project manager by:

(1) submitting an application form provided by the executive director;

(2) a signed written request;

(3) a copy of the license as a professional geoscientist; and

(4) a written statement from the Texas Board of Professional Geoscientists (TBPG) that the applicant is currently licensed to engage in the public practice of geoscience in the State of Texas and that the TBPG is not aware of any reason that the applicant is not qualified to perform corrective action. A geoscientist who obtains a license as a corrective action project manager in this manner is exempt from the requirements in this subchapter.

(c) The commission shall reserve the authority to pursue all appropriate enforcement actions, sanctions, and or penalties, in accordance with applicable law and rules if the TBPE or the TBPG does not pursue appropriate disciplinary or enforcement actions due to a lack of statutory or regulatory authority or jurisdiction, or for any other reason.

(d) A person does not have to have a license to perform corrective action services if the person claiming the exemption can show the corrective action was performed or offered to be performed at leaking petroleum storage tank (LPST) sites which are:

(1) completely exempt from regulation under §334.3(a) of this title (relating to Exemptions for Underground Storage Tanks (USTs) and UST Systems) or §334.123 of this title (relating to Exemptions for Aboveground Storage Tanks (ASTs)); or

(2) completely excluded from regulation under §334.4(a) of this title (relating to Exclusions for Underground Storage Tanks (USTs) and UST Systems) or §334.124 of this title (relating to Exclusions for Aboveground Storage Tanks (ASTs)).

(e) The requirements of this subchapter do not apply to corrective action specialists when the party claiming the exemption can show that corrective action services were completed on or before October 1, 1994. Any corrective action service started by a corrective action specialist on or after October 1, 1994, is subject to the requirements of this subchapter. Any corrective action service started by a corrective action specialist before October 1, 1994, which is still being performed on or after October 1, 1994, is subject to the requirements of Chapter 334 of this title (relating to Underground and Aboveground Storage Tanks).

(f) The requirements of this subchapter do not apply to corrective action project managers when the party claiming the exemption can show that corrective action services were completed on or before January 1, 1995. Any corrective action service started by a corrective action project manager on or after January 1, 1995, is subject to the requirements of this subchapter. Any corrective action service started by a corrective action project manager before January 1, 1995, which is still being performed on or after January 1, 1995, is subject to the requirements of this subchapter.

(g) The requirements of this subchapter do not apply to:

(1) installation, repair, and removal of USTs when the work is conducted and supervised by persons or entities registered or licensed in accordance with Subchapter I of this chapter (relating to Underground Storage Tank On-Site Supervisors Licensing and Contractor Registration); and

(2) the following activities, but only when such activities are performed as part of a UST permanent removal-from-service project conducted under the direct supervision of an on-site supervisor licensed to remove USTs under Chapter 213 of this title (relating to Edwards Aquifer), and further subject to all appropriate requirements and standards in this subchapter, including enforcement authority:

(A) subject to prior written commission approval, excavation of contaminated soil when necessary for corrective action at the LPST site of an amount not to exceed 300 cubic yards of compacted materials (390 cubic yards of uncompacted materials) beyond the backfill unless specific prior written authorization from the commission is granted for additional excavation yardage;

(B) sampling of the excavated materials described in subparagraph (A) of this paragraph, and the floor and walls of the area excavated as necessary to determine levels of contamination as required by Chapter 334, Subchapter C or D of this title (relating to Technical Standards; and Corrective Action and Release Reporting);

(C) passive aeration and necessary routine tilling and sampling of the excavated materials described in subparagraph (A) of this paragraph according to air program regulations; and

(D) lawful disposal of the excavated materials described in subparagraph (A) of this paragraph.

(h) The requirements of this subchapter do not apply to:

(1) providing alternate water supplies; or

(2) analyzing samples by a laboratory.

(i) The requirements of this subchapter do not apply to emergency abatement actions in compliance with §334.454 of this title (relating to Exception for Emergency Abatement Actions).

(j) The requirements of this subchapter do not apply to facilities which are authorized to store or treat petroleum-substance waste from more than one LPST site under the provisions of Chapter 334 of this title.

(k) The requirements of this subchapter do not apply to owners or operators, their direct employees, parent companies, or subsidiaries that on behalf of the owner or operator coordinate with, manage, or supervise corrective action specialists or corrective action project managers, or coordinate with the commission, or review the corrective action reports. The tank owners or operators, their direct employees, parent companies, or subsidiaries who conduct corrective action services are subject to all provisions of this subchapter.

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Stephanie Bergeron
Director, Environmental Law Division
Texas Natural Resource Conservation Commission
Earliest possible date of adoption: October 28, 2001
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SUBCHAPTER F. MUNICIPAL SOLID WASTE FACILITY SUPERVISORS

30 TAC §§30.201, 30.207, 30.210, 30.212

STATUTORY AUTHORITY

The new sections are proposed under the authority granted to the commission by the Texas Legislature in TWC, Chapter 37.

The new sections are also authorized under the general authority granted in TWC, §5.013, which establishes the general jurisdiction of the commission over other areas of responsibility as assigned to the commission under TWC and other laws of the state; TWC, §5.103 and §5.105, which authorize the commission to adopt rules and policies necessary to carry out its responsibilities and duties under the TWC, §5.013(15); and TWC, §7.002, which authorizes the commission to enforce provisions of TWC and THSC.

The new sections implement TWC, §37.002 and THSC, §361.027, which require the commission to adopt rules to establish occupational licenses and registrations for solid waste facility supervisors.

§30.201. Purpose and Applicability.

(a) The purpose of this section is to establish qualifications for issuing and renewing licenses to an individual who supervises or manages the operation of municipal solid waste facilities, or the collection or transportation of municipal solid waste.

(b) An individual who supervises or manages the operation of municipal solid waste facilities or the collection or transportation of municipal solid waste must meet the qualifications of this subchapter and be licensed according to Subchapter A of this chapter (relating to Administration of Occupational Licenses and Registrations).

(c) Letters of competency issued before the effective date of these rules shall remain in effect until their expiration date. At the time of renewal, letters of competency shall be replaced with a license.

§30.207. Definitions.

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

(1) Experience--Actual experience gained from participating as a principal operator, foreman, supervisor, or manager of a solid waste facility appropriate to the respective class of license or other solid waste management experience approved by the executive director.

(2) Solid waste facility supervisor--An individual who is trained in the practical aspects of the design, operation, maintenance, or supervision of a solid waste facility according to standards, rules, or orders established by the commission.

§30.210. Qualifications For Initial License.

(a) To obtain a license, an individual must have met the following requirements:

(1) Class A license:

(A) high school diploma or equivalent, five years' experience, and 120 hours of training credits; or

(B) eight years' experience and 120 hours of training credits; college credit hours obtained from an accredited institution may be substituted for experience on the basis of 30 hours of credit for one year of experience, up to a maximum of four years.

(2) Class B license:

(A) high school diploma or equivalent, four years' experience, and 80 hours of training credits; or

(B) six years' experience and 80 hours of training credits; college credit hours obtained from an accredited institution may be substituted for experience on the basis of 30 hours of credit for one year of experience, up to a maximum of three years.

(3) Class C license:

(A) high school diploma or equivalent, two years' experience, and 40 hours of training credits; or

(B) four years' experience and 40 hours of training credits; college credit hours obtained from an accredited institution may be substituted for experience on the basis of 30 hours of credit for one year of experience, up to a maximum of one year.

(4) Class D license:

(A) high school diploma or equivalent, two years' experience, and 40 hours of training credits; or

(B) four years' experience and 40 hours of training credits; or college credit hours obtained from an accredited institution may be substituted for experience on the basis of 30 hours of credit for one year of experience, up to a maximum of one year.

(5) Provisional letter. A provisional letter may be issued to an applicant who does not meet all of the requirements for a class A - D license. A provisional letter is not renewable. Before the expiration of the provisional letter, an applicant must complete any missing requirements for the corresponding license within the time specified by the executive director. A provisional letter shall require the same application fee and shall be issued for the same term as the corresponding license.

(A) An individual may be awarded a provisional letter in each class upon completing the required training credits (which includes passing an examination), completing six months in a position equivalent to the applicable class of license, and possessing the minimum education requirements for that class; or

(B) An individual may be awarded a provisional letter after passing the examination in each class upon meeting the education and experience requirements of paragraphs (1) - (4) of this subsection, but lack the required training credits.

(b) An individual who engages in solid waste management activities and does not meet the education, training, or experience requirements established for a license or provisional letter, may be issued a solid waste facility supervisor in training letter after performing duties similar to those performed by a solid waste facility supervisor for six months or after enrolling in a training program to qualify for a license. The solid waste facility supervisor in training letter may be issued upon application and substantiation of these requirements. The letter is nonrenewable and expires on the day before the anniversary of the date the letter was awarded. The executive director shall evaluate the duties performed by the applicant to determine if the duties are similar.

§30.212. Qualifications For License Renewal.

To renew a license, an individual must have:

(1) met the requirements in Subchapter A of this chapter (relating to Administration of Occupational Licenses and Registrations); and

(2) completed the following hours of continuing education:

(A) Class A - 20 hours;

(B) Class B - 16 hours;

(C) Class C - 12 hours;

(D) Class D - 12 hours.

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Stephanie Bergeron
Director, Environmental Law Division
Texas Natural Resource Conservation Commission
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SUBCHAPTER G. ON-SITE SEWAGE FACILITIES INSTALLERS, APPRENTICES, DESIGNATED REPRESENTATIVES, AND SITE EVALUATORS

30 TAC §§30.231, 30.237, 30.240, 30.242, 30.244 - 30.246

STATUTORY AUTHORITY

The new sections are proposed under the authority granted to the commission by the Texas Legislature in TWC, Chapter 37. The new sections are also authorized under the general authority granted in TWC, §5.013, which establishes the general jurisdiction of the commission over other areas of responsibility as assigned to the commission under TWC and other laws of the state; TWC, §5.103 and §5.105, which authorize the commission to adopt rules and policies necessary to carry out its responsibilities and duties under TWC, §5.013(15); and TWC, §7.002, which authorizes the commission to enforce provisions of TWC and THSC.

The new sections implement TWC, §37.002 and THSC, §366.071, which require the commission to adopt rules to establish occupational licenses and registrations for OSSF installers, apprentices, designated representatives, and site evaluators.

§30.231. Purpose and Applicability.

(a) The purpose of this subchapter is to establish qualifications for issuing and renewing licenses for an individual who:

(1) constructs any part of an on-site sewage facility (OSSF);

(2) performs the duties of a designated representative;

(3) performs the duties of a site evaluator; or

(4) performs the duties of an apprentice.

(b) An individual who performs any of the tasks listed in subsection (a) of this section must meet the qualifications of this subchapter and be licensed according to Subchapter A of this chapter (relating to Administration of Occupational Licenses and Registrations), unless exempt under §30.244 of this title (relating to Exemptions), and must comply with the requirements of Chapter 285 of this title (relating to On-Site Sewage Facilities).

(c) Licenses, registrations, and certificates of registrations issued prior to January 1, 2002, remain in effect until they expire, or are replaced or revoked by the commission.

§30.237. Definitions.

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

(1) Alter--To change an on-site sewage facility (OSSF) resulting in:

(A) an increase in the volume of permitted flow;

(B) a change in the nature of permitted influent;

(C) a change from the planning materials approved by the permitting authority;

(D) a change in construction; or

(E) an increase, lengthening, or expansion of the treatment or disposal system.

(2) Apprentice--An individual who has been properly registered with the executive director according to this chapter, and is undertaking a training program under the direct supervision of a licensed installer.

(3) Authorized agent--A local governmental entity that has been delegated the authority by the executive director to implement and enforce the rules adopted under Texas Health and Safety Code, Chapter 366.

(4) Construct--To engage in any activity related to the installation, alteration, extension, or repair of an OSSF, including all activities from disturbing the soils through connecting the system to the building or property served by the OSSF. Activities relating to a site evaluation are not considered construction.

(5) Designated representative--An individual who holds a valid license issued by the executive director according to this chapter, and who is designated by the authorized agent to review permit applications, site evaluations, or planning materials, or conduct inspections on OSSFs.

(6) Extend--To alter an OSSF resulting in an increase in capacity, lengthening, or expansion of the existing treatment or disposal system.

(7) Install--To put in place or construct any portion of an OSSF.

(8) Installer--An individual who is compensated by another to construct an OSSF.

(9) Repair--To replace any components of an OSSF in situations not included under emergency repairs according to §285.35 of this title (relating to Emergency Repairs), excluding maintenance. The replacement of tanks or drainfields is considered a repair and requires a permit for the entire OSSF system.

(10) Site evaluator--An individual who holds a valid license issued by the executive director according to this chapter, or has a current professional engineer license, and who conducts preconstruction site evaluations, including visiting a site and performing soil analysis, a site survey, or other activities necessary to determine the suitability of a site for an OSSF.

§30.240. Qualifications for Initial License.

(a) To obtain an Installer I license, an individual must have:

(1) met the requirements of Subchapter A of this chapter (relating to Administration of Occupational Licenses and Registrations);

(2) completed the Installer I basic training course; and

(3) passed the Installer I examination.

(b) To obtain an Installer II license, an individual must have:

(1) met the requirements of Subchapter A of this chapter;

(2) met one of the following requirements:

(A) held an Installer I license for at least two years;

(B) held an Installer II for six months and possessed an apprentice registration for at least one year before June 13, 2001;

(C) held an apprentice registration for at least two years; or

(D) previously possessed an Installer II license;

(3) completed the Installer II basic training course;

(4) passed the Installer II examination; and

(5) met the experience requirements. Applicants for an Installer II license must submit statements attesting to the individual's work experience. Such statements shall include a description of the type of on-site sewage facility (OSSF) work that was performed by the individual and the physical addresses where the activity occurred. The experience shall be actual work accomplished under the license or registration. The number of systems will not substitute for the time required. Experience requirements are:

(A) verified experience as an Installer I. The individual shall submit either:

(i) sworn statements from at least three individuals for whom the applicant performed construction services, statements cannot be provided by individuals related to the applicant or applicant's spouse, such as a child, grandchild, parent, sister, brother, or grandparent;

(ii) a sworn statement from a designated representative who has approved a minimum of three installations performed by the individual; or

(iii) other documentation of the individual's work experience, approved by the executive director;

(B) verified experience as an apprentice. An individual shall submit either:

(i) a sworn statement from the installer for whom the individual performed construction services;

(ii) a sworn statement from a designated representative who witnessed the individual working on at least six OSSF installations; or

(iii) other documentation of the applicant's work experience, approved by the executive director.

(c) To obtain a designated representative license, an individual must have:

(1) met the requirements of Subchapter A of this chapter;

(2) completed the designated representative basic training course; and

(3) passed the designated representative examination.

(d) To obtain a site evaluator license, an individual must have:

(1) met the requirements of Subchapter A of this chapter; and

(2) previously held a site evaluator license and is currently meeting the license requirements in paragraph (4) of this subsection;

(3) previously taken the site evaluator basic training course and passed the site evaluator examination, but did not possess a site evaluator license, and is currently meeting the license and experience requirements in paragraph (4) of this subsection; or

(4) met the following requirements:

(A) complete the site evaluator basic training course;

(B) pass the site evaluator examination;

(C) possess a current Installer II, designated representative, or professional sanitarian license; and

(D) have at least two years of verified experience as an Installer II, designated representative, or professional sanitarian. Applicants for a site evaluator license must submit statements attesting to the individual's work experience. The statements shall include a description of the type of OSSF work that was performed by the individual and the physical addresses where the activity occurred or for where the activity was proposed. The experience shall be actual work accomplished under the license specified in subparagraph (C) of this paragraph during the time frames required. The number of systems will not substitute for the time required. The statements must be:

(i) sworn statements from at least six individuals for whom the applicant performed OSSF services. Statements cannot be provided by individuals related to the applicant or applicant's spouse, such as a child, grandchild, parent, sister, brother, or grandparent;

(ii) a sworn statement from a designated representative who has approved a minimum of six installations performed by the individual, reviewed six site evaluations performed by the individual before September 1, 2002, or approved six sets of planning materials submitted by the individual; or

(iii) other documentation of the individual's work experience, approved by the executive director.

§30.242. Qualifications for License Renewal.

(a) To renew an Installer I, Installer II, or designated representative license, issued after January 1, 2002, an individual must have:

(1) met the requirements in Subchapter A of this Chapter (relating to Administration of Occupational Licenses and Registrations); and

(2) completed a minimum of 16 hours of approved continuing education.

(b) In addition to the requirements in subsection (a) of this section, an individual renewing a license for site evaluator shall demonstrate possession of the current license specified in §30.240(d)(4)(C) of this title (relating to Qualifications for Initial License).

§30.244. Exemptions.

(a) The individual owner of a single family dwelling is not required to be a licensed installer in order to install or repair an on-site sewage facility (OSSF) on the owner's property. This provision does not apply to developers or to those that develop property for sale or lease. If the owner compensates a person to construct any portion of an OSSF, the individual performing the work must be a licensed installer. The owner must meet all permitting, construction, and maintenance requirements of the permitting authority. The owner must have the site evaluation performed by an individual who possesses either a current site evaluator or a professional engineer license.

(b) A licensed electrician who installs the electrical components, or a person who delivers a treatment or pump tank and sets the tank or tanks into an excavation, is not required to have an installer license.

(c) An individual holding a current professional engineer license is not required to possess a site evaluator license.

§30.245. Registration of Apprentices.

(a) General. An individual who begins an apprentice program under the supervision of a licensed installer shall be registered with the executive director.

(b) Application. The completed application and a $50 fee must be submitted to the executive director by a licensed installer for each individual being registered as an apprentice under that installer's supervision. The application shall be on a form approved by the executive director.

(c) Notification. Within 45 days after the date the executive director receives the application, the executive director will notify the supervising installer in writing of whether the individual has been registered as an apprentice. The apprentice's registration will be effective when the executive director receives the completed apprentice application and fee. An individual's application may be denied according to §30.33 of this title (relating to License or Registration Denial, Warning, Suspension, or Revocation).

(d) Expiration or termination. The apprentice registration will expire on the same date as the supervising installer's license. Either the supervising installer or the apprentice may terminate the apprentice training program by providing written notice to the executive director. No reason for termination is required. Upon receipt of a letter stating that the apprentice training has been terminated, the executive director shall terminate the apprentice's registration under the supervising installer.

(e) Renewal. It is the responsibility of the supervising installer to renew all of the registrations of his apprentices. If an apprentice registration is renewed late, the apprentice will be assigned a new registration date, but will not lose any experience gained under the previous registration.

§30.246. Application for Site Evaluator.

(a) The executive director shall mail an application to the most recent address provided to the executive director at least 60 days before September 1, 2002, to:

(1) all individuals who have previously held a site evaluator license; and

(2) all individuals who have previously taken the site evaluator basic training course and passed the site evaluator examination, but did not hold a site evaluator license.

(b) An individual who previously held a site evaluator license shall submit the application, application fee, and documentation of a current license specified in §30.240(d)(4)(C) of this title (relating to Qualifications for Initial License). The application shall be processed as follows.

(1) Licenses with odd license numbers shall be for a term of one year or less and shall have an expiration date of the last day of the month the license was first issued. The application fee shall be prorated if the term is less than one year.

(A) To renew at the time of the first renewal, the individual must have:

(i) met the requirements of Subchapter A of this chapter (relating to Administration of Occupational Licenses and Registrations);

(ii) demonstrated completion of at least eight hours of approved continuing education training; and

(iii) demonstrated possession of a current license as required in §30.240(d)(4)(C) of this title.

(B) If the individual meets the requirements in subparagraph (A) of this paragraph, the license will be renewed for two years according to the requirements of §30.242 of this title (relating to Qualifications for License Renewal).

(2) Licenses with even license numbers shall be for a term of up to two years, but more than one year, and shall have an expiration date of the last day of the month of the first issue date. The application fee shall be prorated if the term is less than two years. At each subsequent renewal, the individual must meet the requirements in §30.242 of this title.

(c) An individual who has previously taken the site evaluator basic training course and passed the site evaluator examination, but did not hold a site evaluator license, shall submit the application, the required statements for experience, the application fee, and must hold the current license specified in §30.240(d)(4)(C) of this title.

(1) If the individual meets the qualifications of §30.240(d)(4) of this title, the license will be issued for a term of up to two years, but more than one year, and shall have an expiration date of the last day of the month of the date the site evaluator examination was passed.

(2) The application fee shall be prorated if the term is less than two years.

(3) The license shall be renewed for two years according to the requirements in §30.242 of this title.

(d) An individual who begins the process to become eligible for a site evaluator license after September 1, 2002, shall meet the requirements of §30.240(d)(4) of this title.

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Stephanie Bergeron
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Texas Natural Resource Conservation Commission
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SUBCHAPTER H. WATER TREATMENT SPECIALISTS

30 TAC §§30.261, 30.267, 30.270, 30.272, 30.274, 30.279

STATUTORY AUTHORITY

The new sections are proposed under the authority granted to the commission by the Texas Legislature in TWC, Chapter 37. The new sections are also authorized under the general authority granted in TWC, §5.013, which establishes the general jurisdiction of the commission over other areas of responsibility as assigned to the commission under TWC and other laws of the state; TWC, §5.103 and §5.105, which authorize the commission to adopt rules and policies necessary to carry out its responsibilities and duties under TWC, §5.013(15); and TWC, §7.002, which authorizes the commission to enforce provisions of TWC and THSC.

The new sections implement TWC, §37.002 and THSC, §341.033 and §341.034, which require the commission to adopt rules to establish occupational licenses and registrations for water treatment specialists.

§30.261. Purpose and Applicability.

(a) The purpose of this section is to establish qualifications for issuing and renewing licenses to an individual who installs and repairs water treatment equipment.

(b) An individual who installs, repairs, or services water treatment equipment under contract must meet the qualifications of this subchapter and be licensed according to Subchapter A of this chapter (relating to Administration of Occupational Licenses and Registrations).

(c) Licenses issued before January 1, 2002, remain in effect until they expire, or are replaced or revoked by the commission.

§30.267. Definitions.

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

(1) Installation of water treatment appliances--Includes connecting the appliances to all necessary utility connections in residential, commercial, or industrial facilities.

(2) Water treatment--A business conducted under contract that requires the interpretation of analysis of water samples, including the ability to determine how to treat influent or effluent water, alter or purify water, or add or remove a mineral, chemical, or bacteriological content or substance. The term also includes the installation, exchange, connection, maintenance, service, and repair of potable water treatment equipment and appliances in public or private water systems.

(3) Water treatment equipment--Appliances used to alter or purify water or to alter a mineral, or bacteriological content, or substance.

(4) Water treatment specialist--A person who is licensed under this chapter to perform water treatment on a contract basis.

§30.270. Qualifications for Initial License.

To obtain a license, an individual must have:

(1) met the requirements in Subchapter A of this chapter (relating to Administration of Occupational Licenses and Registrations); and

(2) met the following requirements:

Figure: 30 TAC §30.270(2)

§30.272. Qualifications for License Renewal.

To renew a license, an individual must have:

(1) met the requirements in Subchapter A of this chapter (relating to Administration of Occupational Licenses and Registrations); and

(2) completed approved continuing education classes:

(A) Class 1 - eight hours of continuing education;

(B) Class 2 - 16 hours of continuing education;

(C) Class 3 - 16 hours of continuing education.

§30.274. Classification of Licenses.

(a) Class 1 - Individuals issued this license must work under the supervision of an individual holding a higher class license, the local plumbing inspector, or a health official having jurisdiction where the work is performed. Class 1 work is restricted to the following activities:

(1) exchange and regeneration of portable tanks;

(2) regeneration of nonportable tanks; or

(3) other tasks which may be assigned by the supervisor and for which direct supervision is provided.

(b) Class 2 - Individuals issued this license shall have demonstrated a practical working knowledge of the mechanics and servicing principles of water conditioners, and are deemed able to perform water treatment installations, exchanges, services, or repairs of equipment. Holders of this class license are considered to be aware of the public health requirements connected with their activities. Work on reverse osmosis and deionization equipment is specifically excluded unless performed under the supervision of an individual holding a higher class license.

(c) Class 3 - Individuals issued this license meet minimum standards of qualifications established for the installation, exchange, servicing, and repair of water treatment equipment and appliances, including reverse osmosis and deionization equipment.

§30.279. Exemptions.

(a) Individuals who are licensed under the Plumbing License Law (Texas Civil Statutes, Volume 17- 1/2, Article 6243-101) are exempt from the requirements of this subchapter.

(b) Employees of industrial facilities who install or service water treatment equipment at their facilities are exempt from the requirements of this subchapter.

(c) Employees of public water systems installing water treatment equipment at their system who hold a Class C license or higher, are exempt from the requirements of this subchapter.

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SUBCHAPTER I. UNDERGROUND STORAGE TANK ON-SITE SUPERVISOR LICENSING AND CONTRACTOR REGISTRATION

30 TAC §§30.301, 30.307, 30.310, 30.312, 30.315, 30.317 - 30.319

STATUTORY AUTHORITY

The new sections are proposed under the authority granted to the commission by the Texas Legislature in TWC, Chapter 37. The new sections are also authorized under the general authority granted in TWC, §5.013, which establishes the general jurisdiction of the commission over other areas of responsibility as assigned to the commission under TWC and other laws of the state; TWC, §5.103 and §5.105, which authorize the commission to adopt rules and policies necessary to carry out its responsibilities and duties under TWC, §5.013(15); and TWC, §7.002, which authorizes the commission to enforce provisions of TWC and THSC.

The new sections implement TWC, §37.002 and §26.452, which require the commission to adopt rules to establish occupational licenses and registrations for UST contractors and on-site supervisors.

§30.301. Purpose and Applicability.

(a) The purpose of this subchapter is to establish qualifications for issuing and renewing:

(1) licenses to individuals who supervise the installation, repair, or removal of an underground storage tank (UST); and

(2) registrations to persons that offer to undertake, represent themselves as being able to undertake, or undertake the installation, repair, or removal of a UST.

(b) A person that performs any of the tasks listed in subsection (a) of this section must meet the qualifications of this subchapter, and be licensed or registered according to Subchapter A of this chapter (relating to Administration of Occupational Licenses and Registrations), unless exempt under §30.319 of this title (relating to Exemptions), and must comply with the requirements in Chapter 334 of this title (relating to Underground and Aboveground Storage Tanks).

(c) Licenses and certificates of registrations issued before January 1, 2002, remain in effect until they expire, or are replaced or revoked by the commission.

§30.307. Definitions.

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

(1) Corrosion specialist--A person who, by reason of a thorough knowledge of the physical sciences and the principals of engineering and mathematics acquired by a professional education and related practical experience, is qualified to engage in the practice of corrosion control on buried or submerged metal piping systems and metal tanks, and who is either:

(A) certified as a corrosion specialist or a cathodic protection specialist by NACE International; or

(B) licensed as a professional engineer by the Texas Board of Professional Engineers in a branch of engineering that includes education and experience in corrosion control of buried or submerged metal piping systems and metal tanks.

(2) Corrosion technician--A person who can demonstrate an understanding of the principals of soil resistivity, stray current, structure-to-soil potential, and component electrical isolation measurements as they relate to corrosion protection and control on buried or submerged metal tanks and metal piping systems; who is qualified by appropriate training and experience to engage in the practice of inspection and testing for corrosion protection and control on such systems, including the inspection and testing of all common types of cathodic protection systems; and who either:

(A) has been certified by NACE International as a corrosion technician, corrosion technologist, or senior corrosion technologist;

(B) is employed under the direct supervision of a corrosion specialist (as defined in paragraph (1) of this section), where the corrosion specialist is responsible for maintaining control and oversight over all corrosion testing and inspection activities; or

(C) has been officially qualified as a cathodic protection tester, according to the assessment and examination procedures prescribed by NACE International.

(3) Critical junctures--In the case of an installation, repair, or removal of an underground storage tank (UST) system, all of the following steps:

(A) preparing the tank bedding immediately before receiving the tank;

(B) setting the tank and the piping, including placement of any anchoring devices, backfill to the level of the tank, and strapping, if any;

(C) connecting piping systems to the tank;

(D) pressure testing the UST, including associated piping, performed during the installation;

(E) completing backfill and filling the excavation;

(F) anytime during the repair in which the piping system is connected or reconnected to the tank;

(G) anytime during the repair in which the tank or its associated piping is tested; and

(H) anytime during the removal of the tank.

(4) Engineering construction--Construction designed by a civil or mechanical engineer, as opposed to building construction which is designed by an architectural engineer.

(5) Installation--The installation of USTs and ancillary equipment, including, but not limited to, the following activities:

(A) installation of new or used tanks at a new or existing facility;

(B) installation of new or replacement piping for new or existing tanks;

(C) addition of secondary containment equipment for new or existing tanks or piping;

(D) addition or replacement of the following types of equipment at a new or existing facility:

(i) spill and overfill prevention equipment, as required in §334.51 of this title (relating to Spill and Overfill Prevention and Control);

(ii) equipment or devices which are permanently installed for the purpose of providing release detection or release monitoring as required for compliance with §334.50 of this title (relating to Release Detection), except:

(I) observation wells or monitoring wells (excluding equipment and devices therein) constructed by a well driller who possesses the appropriate license required by the Texas Department of Licensing and Regulation pursuant to the Water Well Drillers Act (Texas Civil Statutes, Article 7621e, Water Auxiliary Laws); or

(II) any equipment temporarily installed solely for the purpose of conducting a tank or piping tightness test, as defined in §334.2 of this title (relating to Definitions), except when a tightness test is a prescribed element of a critical juncture of an installation, repair, or removal. Temporarily in this context means the reasonable amount of time required to attach the equipment, make the tests, and remove the equipment, under the given conditions at the site;

(E) installation or replacement of anchoring systems designed to prevent tank flotation;

(F) installation or replacement of vent lines at new or existing facilities;

(G) installation or replacement of submersible pumping systems at new or existing facilities; and

(H) installation or replacement of any underground Stage I or Stage II vapor recovery systems.

(6) On-site supervisor--An individual who supervises the installation, removal, or repair of a UST in the State of Texas, and who meets the licensing requirements of this subchapter for one of the following licenses:

(A) License A for an on-site supervisor who supervises the installation or repair of UST systems; or

(B) License B for an on-site supervisor who supervises the removal of UST systems.

(7) Removal--The process of removing and disposing of a UST that is no longer in service, the process of abandoning a UST in place after purging the tank of vapors and filling the vessel of the tank with a solid inert material, or the change-in-service of a UST.

(8) Repair--The modification or correction of a UST and ancillary equipment. The term does not include:

(A) relining a UST through the application of epoxy resins or similar materials;

(B) performing a tightness test to ascertain the integrity of the tank, except when a tightness test is a prescribed element of a critical juncture of an installation, repair, or removal;

(C) maintaining and inspecting cathodic protection devices by a corrosion specialist or corrosion technician;

(D) performing emergency actions to halt or prevent leaks or ruptures; or

(E) performing minor maintenance on ancillary aboveground equipment.

(9) Underground storage tank--Any one or combination of underground tanks and any connecting underground pipes used to contain accumulation of regulated substances, the volume of which, including the volume of the connecting underground pipes, is 10% or more beneath the surface of the ground.

(10) Underground storage tank contractor (or UST contractor)--A person that offers to undertake, represents itself as being able to undertake, or undertakes the installation, repair, or removal of a UST, and who meets the registration requirements of this subchapter.

(11) Underground utilities--Public underground water systems, sanitary sewers, or storm sewers. The phrase "underground utilities" does not include private underground pipe systems (water or sewer piping), power or communication cables, or natural gas lines.

§30.310. Qualifications for Initial License.

To obtain an on-site supervisor license, an individual must:

(1) have met the requirements in Subchapter A of this chapter (relating to administration of Occupational Licenses and Registrations);

(2) be at least 18 years of age;

(3) document at least two years of active experience in installation, repair, or removal of underground storage tanks (USTs), underground utilities, or other engineering construction;

(4) submit sworn statements, on forms approved by the executive director, from at least four persons (three from clients not related by blood or marriage and one from a current or previous employer, or employer's representative) who have engaged the applicant or the applicant's employer within the previous 24 months to perform: UST installations, repairs, or removals; underground utility construction; or engineering construction. These statements shall attest to the applicant's character, knowledge of construction, and ability to supervise the construction activity. Such statements shall also include a description of the type of construction performed by the applicant;

(5) submit a sworn statement by the applicant as to the authenticity of the information provided on the application;

(6) submit, before the examination, certificates of completion for one of the following:

(A) for License A - 28 hours of training and education courses in the installation and repair of USTs; or

(B) for License B - 12 hours of training and education courses in the removal of USTs; and

(7) pass the appropriate licensing examination.

§30.312. Qualifications for License Renewal.

To renew an on-site supervisor license issued after January 1, 2002, an individual must have:

(1) met the requirements in Subchapter A of this chapter (relating to Administration of Occupational Licenses and Registrations); and

(2) completed eight hours of approved continuing education for each license held.

§30.315. Qualifications for Initial Registration.

To obtain an underground storage tank (UST) contractor registration, a person must have:

(1) met the requirements in Subchapter A of this chapter (relating to Administration of Occupational Licenses and Registrations);

(2) provided:

(A) proof of commercial liability insurance designating the commission as the certificate holder in an amount of not less than $1 million and of a type approved by the executive director; and

(B) a financial statement (balance sheet) prepared in conformity with accounting principles as defined by the American Institute of Public Accountants, documenting an applicant's current net worth of not less than $25,000; or a letter from a certified public accountant who is not employed by the applicant or does not receive payment from the applicant on a regular basis verifying that the applicant's current net worth is not less that $25,000;

(3) submitted a sworn statement from the applicant attesting to the accuracy of the information provided on the application;

(4) submitted an application fee of $150; and

(5) provided documentation of quality of performance including one of the following:

(A) sworn statements, on forms approved by the executive director, from at least three persons, not related by blood or marriage, who have engaged the applicant within the previous 12 months to perform: UST installations, repairs, or removals; underground utility construction; or engineering construction. These statements shall attest to the applicant's business integrity and quality of performance. Such statements shall also include a description of the type of construction performed by the applicant; or

(B) a written explanation indicating the reason the applicant did not provide the sworn statements required in subparagraph (A) of this paragraph and a detailed description of at least three case histories of typical UST construction activities performed by the applicant during the previous 12 months. The executive director shall evaluate the explanation and case histories on a case-by-case basis.

§30.317. Qualifications for Registration Renewal.

To renew an underground storage tank (UST) contractor registration, issued after January 1, 2002, a person must have:

(1) met the requirements in Subchapter A of this chapter (relating to Administration of Occupational Licenses and Registrations);

(2) certified that the UST contractor has commercial liability insurance designating the commission as the certificate holder in an amount of not less than $1 million and of a type approved by the executive director;

(3) certified that the UST contractor has a net worth of not less than $25,000; and

(4) submitted a renewal fee of $150.

§30.318. Renewal of Licenses and Registrations Issued before the Effective Date of these Rules.

(a) Licenses with odd license numbers shall be initially renewed for one year.

(1) To renew for the first-year (transitional year), an on-site supervisor must have met the requirements in Subchapter A of this chapter (relating to Administration of Occupational Licenses and Registrations).

(2) At the end of the transitional year, the next renewal shall be for two years. To renew at the end of the transitional year and for all following renewals, an on-site supervisor must have:

(A) met the requirements in Subchapter A of this chapter; and

(B) completed eight hours of approved continuing education for each license held.

(b) Licenses with even license numbers shall be renewed for two years. To renew for the first two years and for all following renewals, an on-site supervisor must have:

(1) met the requirements in Subchapter A of this chapter; and

(2) completed eight hours of approved continuing education for each license held.

(c) Registrations with odd license numbers shall be initially renewed for one year.

(1) To renew for the first-year (transitional year), an underground storage tank (UST) contractor must have:

(A) met the requirements in Subchapter A of this chapter;

(B) certified that the UST contractor has maintained commercial liability insurance designating the commission as the certificate holder in an amount of not less than $1 million and of a type approved by the executive director;

(C) certified that the UST contractor has maintained a net worth of not less than $25,000; and

(D) submitted a renewal fee of $75.

(2) At the end of the transitional year, the next renewal shall be for two years. To renew at the end of the transitional year and for all following renewals, a UST contractor must have:

(A) met the requirements in Subchapter A of this chapter;

(B) certified that the UST contractor has maintained commercial liability insurance designating the commission as the certificate holder in an amount of not less than $1 million and of a type approved by the executive director;

(C) certified that the UST contractor has maintained a net worth of not less than $25,000; and

(D) submitted a renewal fee of $150.

(d) Registrations with even registration numbers shall be renewed for two years. To renew for the first two years and for all following renewals, a UST contractor must have:

(1) met the requirements in Subchapter A of this chapter;

(2) certified that the UST contractor has maintained commercial liability insurance designating the commission as the certificate holder in an amount of not less than $1 million and of a type approved by the executive director;

(3) certified that the UST contractor has maintained a net worth of not less than $25,000; and

(4) submitted a renewal fee of $150.

§30.319. Exemptions.

(a) A license is not required for an on-site supervisor who installs, repairs, or removes underground storage tank (UST) systems when such systems are completely exempt from regulation under §334.3(a) of this title (relating to Statutory Exemptions) or completely excluded from regulation under §334.4(a) of this title (relating to Commission Exclusions). An on-site supervisor who installs, repairs, or removes UST systems regulated under Chapter 213 of this title (relating to Edwards Aquifer) are not exempt from the licensing requirements of this subchapter.

(b) A license is not required for an individual who assists with the installation, repair, or removal of UST systems and is under the direct, on-site supervision of a licensed on-site supervisor.

(c) A registration is not required for a person that installs, repairs, or removes UST systems that are completely exempt from regulation under §334.3(a) of this title, or completely excluded from regulation under §334.4(a) of this title. A person that installs, repairs, or removes UST systems regulated under Chapter 213 of this title is not exempt from the contractor registration requirements of this subchapter.

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SUBCHAPTER J. WASTEWATER OPERATORS AND OPERATIONS COMPANIES

30 TAC §§30.331, 30.337, 30.340, 30.342, 30.346, 30.348 - 30.350, 30.355

STATUTORY AUTHORITY

The new sections are proposed under the authority granted to the commission by the Texas Legislature in TWC, Chapter 37. The new sections are also authorized under the general authority granted in TWC, §5.013, which establishes the general jurisdiction of the commission over other areas of responsibility as assigned to the commission under TWC and other laws of the state; TWC, §5.103 and §5.105, which authorize the commission to adopt rules and policies necessary to carry out its responsibilities and duties under TWC, §5.013(15); and TWC, §7.002, which authorizes the commission to enforce provisions of TWC and THSC.

The new sections implement TWC, §37.002 and §26.0301, which require the commission to adopt rules to establish occupational licenses and registrations for wastewater operators and operations companies.

§30.331. Purpose and Applicability.

(a) The purpose of this subchapter is to establish qualifications for issuing and renewing licenses and registrations to:

(1) domestic wastewater treatment facility operators;

(2) wastewater collection system operators; and

(3) companies that operate these facilities on a contract basis.

(b) Persons that operate, assist in the operation, or contract to operate domestic wastewater treatment facilities or supervise wastewater collection activities, other than an operator-in-training, must be licensed or registered and meet the qualifications of this subchapter and Subchapter A of this chapter (relating to Administration of Occupational Licenses and Registrations); and must comply with the requirements in Chapter 317 of this title (relating to Design Criteria for Sewerage Systems), and all other applicable rules under the jurisdiction of this commission.

(c) Operators are responsible for performing adequate process control of wastewater treatment and collection facilities.

(d) All Class D and Class I licenses previously issued to operators who do not possess a high school diploma or equivalent, may still be renewed according to §30.342 of this title (relating to Qualifications for License Renewal).

(e) An individual who has an honorary license shall not operate a domestic wastewater treatment facility or supervise a wastewater collection system.

(f) Certificates of competency or registration issued before January 1, 2002, remain in effect until they expire, or are replaced or revoked by the commission.

(g) The holder of a license or registration is not subject to revocation or suspension of a license or registration if the licensed operator or registered company is unable to properly operate the wastewater treatment or collection facility due to:

(1) the refusal of the permittee to authorize the necessary funds to operate the wastewater treatment or collection facility properly; or

(2) the failure of the wastewater treatment or collection facility to comply with its wastewater disposal permit resulting from faulty design or construction of the facility.

§30.337. Definitions.

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

(1) Chief operator--The licensed operator with overall responsibility for the operation of a wastewater treatment facility.

(2) Designated courses--Courses or their equivalent which are required to obtain a wastewater operator license.

(3) Domestic wastewater--Waste and wastewater from humans or household operations that are discharged to a wastewater collection system or otherwise enters a wastewater facility.

(4) Honorary license--License converted from a perpetual license which has been discontinued by the commission.

(5) Operator-in-charge--Licensed operator who has been charged with the on-site supervision and operation of the wastewater facility in the absence of the chief operator.

(6) Operator-in-training--An individual entering the field of wastewater treatment or collection for the first time who has less than one year of experience and is in training to operate a wastewater treatment facility.

(7) Wastewater collection system--Lines, manholes, pumps, pumping stations, and other components necessary to collect and transport domestic wastewater.

(8) Wastewater collection system operator--Any individual, in active field supervision, who provides frequent on-site inspection and supervision of wastewater collection system operation or maintenance activities.

(9) Wastewater disposal permit--A domestic wastewater disposal permit issued by the commission in accordance with Texas Water Code, Chapter 26.

(10) Wastewater treatment facility--Any facility installed for the purpose of treating, neutralizing, or stabilizing wastewater, the operation of which requires a wastewater disposal permit from the commission.

(11) Wastewater system operations company--Any person or other nongovernmental entity that provides operations services, on a contract basis, to one or more wastewater treatment facilities or collection systems.

(12) Wastewater treatment facility operator--An individual who performs process control tasks at a wastewater treatment facility.

(13) Work experience--The actual performance of job tasks in domestic wastewater, considered essential for the treatment or collection of domestic wastewater.

§30.340. Qualifications for Initial License.

(a) To obtain a license, an individual must have met the requirements of Subchapter A of this chapter (relating to Administration of Occupational Licenses and Registrations), and the following requirements for each class of license.
Figure: 30 TAC §30.340(a)

(b) At least one-half of the total experience required for a wastewater treatment license must be in actual domestic wastewater treatment facility operation or maintenance duties. Related experience, which involves tasks similar to those required for operation of wastewater treatment facilities, will count at a rate of 50% toward meeting the total experience requirement. For laboratory experience to be applicable, the laboratory must be owned and operated by the permittee and the laboratory technician must consult daily with operational personnel.

(c) Wastewater collection system experience must be in actual wastewater collection system operation or maintenance duties. Credit for experience not directly connected with collection system operation

or maintenance shall be approved if the experience involves tasks that are similar to that required for the operation and maintenance of collection systems. Each year of related experience shall count as 1/2 year of experience. Each year of experience in collection system operation and maintenance shall only count as 1/2 year of experience toward a wastewater treatment facility operator license.

(d) Individuals who request to substitute a bachelors or masters degree for experience at the Class A, Class B, or Class III level must have a major in chemistry, biology, engineering, microbiology, bacteriology, or another similar discipline, as approved by the executive director on a case-by-case basis.

(e) For applicants with a high school diploma or equivalent, 32 semester hours of college or an additional 40 hours of training credits may be substituted for one year of the experience requirement. The maximum years allowed for substitution are as follows:

(1) Class A, Class B, and Class III applicants may substitute up to two years of the required work experience; and

(2) Class C and Class II applicants may substitute up to one year of the required work experience.

(f) The hours of training credit required for a license must be in approved courses, which include the following or their equivalents.
Figure: 30 TAC §30.340(f)

(g) An individual who previously held a Class D license may not apply for a new Class D license if the individual currently operates any activated sludge type facilities; or any trickling filter or rotating biological contactor facilities with a permitted daily average flow of 100,000 gallons per day or greater. A trickling filter or rotating biological contactor is a secondary aerobic process that uses microbiological organisms attached to a fixed substrate.

§30.342. Qualifications for License Renewal.

(a) To renew a license, an individual must have:

(1) met the requirements of Subchapter A of this chapter (relating to Administration of Occupational Licenses and Registrations) and completed 20 hours of approved continuing education for all licenses; or

(2) met the requirements of Subchapter A of this chapter and passed the examination for the license.

(b) The basic wastewater operation course may not be used to renew a Class B or A license.

(c) Class D licenses are not renewable for operators of:

(1) any activated sludge type facilities; or

(2) any trickling filter or rotating biological contractor (RBC) facilities with a permitted daily average flow of 100,000 gallons per day or greater. A trickling filter or RBC facility is a facility that uses secondary aerobic biological processes for treatment of sewage.

§30.346. Qualifications for Initial Registration.

To obtain a registration, a person must meet the requirements of Subchapter A of this chapter (relating to Administration of Occupational Licenses and Registrations).

§30.348. Qualifications for Registration Renewal.

To renew a registration a person must meet the requirements of Subchapter A of this chapter (relating to Administration of Occupational Licenses and Registrations).

§30.349. Registration Fees.

The two-year registration fee is based on the number of facilities served:
Figure: 30 TAC §30.349

§30.350. Classification of Wastewater Treatment Facilities, Wastewater Collection Systems, and Licenses Required.

(a) Operators of remote or mobile sludge processing facilities are required to hold a valid Class D or higher license.

(b) Operators of domestic wastewater treatment facilities owned and located on industrial sites which are regulated by industrial-type wastewater disposal permits are required to be licensed. This is required only if the point of discharge is separate from any other industrial outfalls and the domestic wastewater is not mixed with other industrial wastewater before discharge.

(c) An individual first entering the field of wastewater treatment or collection may be employed as an operator-in-training for a period up to one year. An operator-in-training must work in the presence of a licensed operator during this time.

(d) Each holder of a wastewater disposal permit for a wastewater treatment facility shall employ or contract with one or more licensed wastewater treatment facility operators or wastewater system operations companies holding a valid license or registration.

(e) Domestic wastewater treatment facilities shall be classified in accordance with the following criteria.
Figure: 30 TAC §30.350(e)

(f) Category D wastewater treatment facilities shall be reclassified as Category C facilities if any of the following conditions exist:

(1) a Category D facility incorporating anaerobic sludge digestion, except Imhoff tanks with sludge drawn off to drying beds;

(2) a Category D facility whose permit requires nutrient reduction; or

(3) a Category D facility whose permit requires the final effluent to meet a daily average biochemical oxygen demand$_5$ or total suspended solids concentration less than ten milligrams per liter.

(g) A wastewater treatment facility having a combination of treatment processes which are in different categories shall be assigned the higher category.

(h) The executive director may increase the treatment facility classification for facilities which include unusually complex processes or present unusual operation or maintenance conditions.

(i) The chief operator of each wastewater treatment facility must possess a license equal to or higher than that of the category of treatment facility.

(j) Each category of facility must be operated a minimum of five days per week by the licensed chief operator or an operator holding a license of the same class or higher. The licensed chief operator or operator holding a license of the same class or higher must be available by telephone or pager seven days per week.

(k) Where shift operation of the wastewater treatment facility is necessary, each shift which does not have the on-site supervision of the licensed chief operator must be supervised by an operator in charge who is licensed at not less than one level below the category of the facility.

(l) Either the licensed chief operator or licensed operator in charge must be present for scheduled commission inspections.

(m) A licensed wastewater treatment facility operator may perform all duties relating to the operation and maintenance of both wastewater treatment facilities and wastewater collection systems. It is not necessary to hold both types of licenses. A licensed collection system

operator may perform only those duties relating to the operation and maintenance of wastewater collection systems.

(n) Each classified wastewater collection system must have at least one licensed operator who holds a license class equal to or higher than that category of system. Wastewater collection systems shall be classified as follows.
Figure: 30 TAC §30.350(n)

§30.355. Additional Requirements for Wastewater Operations Companies.

(a) Every wastewater system operations company must submit an annual report to the executive director within one year and 30 days after issuance or renewal of the registration. The report shall include for each wastewater treatment facility or wastewater collection system:

(1) name, location, and mailing address;

(2) permittee's name and mailing addresses;

(3) commission permit number, if applicable;

(4) dates of operation during the reporting year;

(5) names of all operators employed by the operations company, including their mailing addresses, license classes, license numbers, and the name of each wastewater treatment facility or wastewater collection system for which the operators work or have worked;

(6) licensed chief operator for each facility; and

(7) any additional information required by the executive director.

(b) The information in subsection (c) of this section must be submitted with any application for a new or renewal registration, along with the appropriate fee.

(c) If a company is bought or sold and a name change occurs, the company must apply for a new registration.

(d) Once a year, political subdivisions that contract to operate wastewater systems must report to the commission the information required by subsection (a) of this section.

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Stephanie Bergeron
Director, Environmental Law Division
Texas Natural Resource Conservation Commission
Earliest possible date of adoption: October 28, 2001
For further information, please call: (512) 239-4712

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SUBCHAPTER K. PUBLIC WATER SYSTEM OPERATORS AND OPERATIONS COMPANIES

30 TAC §§30.381, 30.387, 30.390, 30.392, 30.396, 30.398 - 30.400, 30.402

STATUTORY AUTHORITY

The new sections are proposed under the authority granted to the commission by the Texas Legislature in TWC, Chapter 37. The new sections are also authorized under the general authority granted in TWC, §5.013, which establishes the general jurisdiction of the commission over other areas of responsibility as assigned to the commission under TWC and other laws of the state; TWC, §5.103 and §5.105, which authorize the commission to adopt rules and policies necessary to carry out its responsibilities and duties under TWC, §5.013(15); and TWC, §7.002, which authorizes the commission to enforce provisions of TWC and THSC.

The new sections implement TWC, §37.002 and THSC §341.033 and §341.034, which require the commission to adopt rules to establish occupational licenses and registrations for public water system operators and operations companies.

§30.381. Purpose and Applicability.

(a) The purpose of this subchapter is to establish qualifications for issuing and renewing licenses and registrations to:

(1) public water system operators who perform process control duties in production or distribution of drinking water; and

(2) operations companies that operate public water systems on a contract basis.

(b) A person who performs any of the tasks listed in subsection (a) of this section must meet the qualifications of this subchapter and be licensed or registered according to Subchapter A of this chapter (relating to Administration of Occupational Licenses and Registrations), unless exempt under §30.402 of this title (relating to Exemptions); and must comply with the requirements in Chapter 290 of this title (relating to Public Drinking Water).

(c) Public water system licenses, certificates of competency, and registrations issued before January 1, 2002, remain in effect until they expire, or are replaced, or revoked by the commission.

(d) Renewable Class D licenses, previously issued to individuals who do not possess a high school diploma or equivalent, may be renewed according to §30.392 of this title (relating to Qualifications for License Renewal).

(e) An individual issued a license under this subchapter must perform adequate process control duties as recognized by current best management practices.

(f) An individual who has an honorary license shall not perform process control duties in production or distribution of drinking water for a public water system.

§30.387. Definitions.

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

(1) Chief operator--An individual who has overall responsibility for the operation of a public water system.

(2) Honorary license--License converted from a perpetual license that has been discontinued by the commission.

(3) Operator-in-charge--An individual who has overall responsibility for the operation of a public water system in the absence of the chief operator.

(4) Operator-in-training--An individual entering the field of public water system operation for the first time who has less than one year of experience and is in training to perform process control duties in production or distribution of public drinking water.

(5) Process control duties--Activities that directly affect the potability of public drinking water, including: making decisions regarding the day-to-day operations and maintenance of public water system production and distribution; maintaining system pressures; determining the adequacy of disinfection and disinfection procedures; taking routine microbiological samples; taking chlorine residuals and microbiological samples after repairs or installation of lines or appurtenances; and operating chemical feed systems, filtration, disinfection, or pressure maintenance equipment; or performing other duties approved by the executive director.

(6) Public water system operations company--A person or other nongovernmental entity that provides operations services to one or more public water systems on a contract basis.

(7) Public water system operator--Licensed operator who performs process control duties in production or distribution of drinking water.

§30.390. Qualifications for Initial License.

(a) To obtain a license, an individual must meet the requirements of Subchapter A of this chapter (relating to Administration of Occupational Licenses and Registrations), and the following requirements for each class of license.
Figure: 30 TAC §30.390(a)

(b) An individual who applies for a Class C, B, or A license, and relies on a bachelors or masters degree to meet the educational requirements, must have a bachelors or masters degree with a major in chemistry, biology, engineering, microbiology, bacteriology, or other similar discipline approved by the executive director.

(c) An individual who applies for a Class C or B license must obtain at least one-half of the total work experience requirement in the specific field for the license that is requested.

(1) For Class C and B surface water licenses, the experience must be obtained through operations activities at the production or treatment facilities for surface water or groundwater under the direct influence of surface water.

(2) For Class C and B groundwater licenses, the experience must be obtained through operations activities at the production or treatment facilities for groundwater source or groundwater under the direct influence of surface water.

(3) For Class C and B distribution licenses, at least one-half of the required experience must be obtained as a result of operations activities at treated water storage, pumping, or distribution facilities.

(d) For all classes of licenses, laboratory experience must:

(1) be obtained at a laboratory that is owned and operated by the public water system; and

(2) involve daily consultation with individuals who perform process control duties in production or distribution of drinking water for the water system.

(e) Individuals with only a high school diploma or equivalent may substitute college credits or additional approved training for work experience.

(1) For a Class C license, 32 semester hours of college, or 40 additional hours of approved training may be substituted for one year of work experience, approved by the executive director.

(2) For Class B and A licenses, 64 semester hours of college, or 80 additional hours of approved training may be substituted for two years of work experience, approved by the executive director.

(f) Training credits must be in approved courses that include the following or equivalent.
Figure: 30 TAC §30.390(f)

(g) An individual who previously held a Class D license may not apply for a new Class D license if the individual currently operates facilities:

(1) at groundwater treatment systems of 250 connections or more;

(2) at surface water treatment systems;

(3) at groundwater systems under the influence of surface water;

(4) who are supervisors of distribution systems that have over 250 connections; or

(5) who operate multiple groundwater systems and the cumulative number of connections exceeds 250.

§30.392. Qualifications for License Renewal.

(a) To renew a license, an individual must have:

(1) met the requirements of Subchapter A of this chapter (relating to Administration of Occupational Licenses and Registrations) and completed 20 hours of approved continuing education for all licenses; or

(2) met the requirements of Subchapter A of this chapter and passed the examination for the license.

(b) The basic water training course may not be used to renew a Class B or A license.

(c) Class D licenses are not renewable for licensed operators:

(1) at groundwater treatment systems of 250 connections or more;

(2) at surface water treatment systems;

(3) at groundwater systems under the influence of surface water;

(4) who are supervisors of distribution systems that have over 250 connections; or

(5) who operate multiple groundwater systems and the cumulative number of connections exceeds 250.

§30.396. Qualifications for Initial Registration.

To obtain a registration, a person must meet the requirements of Subchapter A of this chapter (relating to Administration of Occupational Licenses and Registrations).

§30.398. Qualifications for Registration Renewal.

To renew a registration a person must meet the requirements of Subchapter A of this chapter (relating to Administration of Occupational Licenses and Registrations).

§30.399. Registration Fees.

The two-year registration fee is based on the number of public water systems served:
Figure: 30 TAC §30.399

§30.400. Additional Requirements for Public Water System Operations Companies.

(a) A public water system operating company must submit an annual report to the executive director within 30 days of the anniversary of the effective date of the registration. The report shall include:

(1) public water system operating company name, registration number, location, and mailing address;

(2) public water system identification number and name;

(3) dates of operation during the reporting year;

(4) names of all operators employed by the operations company, including their mailing addresses, classes and license numbers, and systems for which all employees work or have worked during the reporting year;

(5) licensed chief operators and supervisors; and

(6) any additional information required by the executive director.

(b) A person that operates a public water system under contract must notify the executive director and amend the information included in the annual report described in subsection (a) of this section within ten days following the month in which the change occurs.

(c) A person that operates a public water system under contract must apply for a new registration if a company is bought or sold and the name of the company changes.

(d) Political subdivisions, including river authorities, that operate public water systems under contract must submit the reports required in subsections (b) and (c) of this section to the executive director.

§30.402. Exemptions.

(a) An individual who performs process control duties in production or distribution of drinking water for a transient noncommunity water system as defined in §290.38(46) of this title (relating to Definitions), is exempt from the licensing requirements of this subchapter if the source water for the water system is purchased treated water or groundwater that is not under the direct influence of surface water.

(b) An operator-in-training is exempt from the licensing requirements of this subchapter.

(c) An individual who holds a groundwater or surface water license may perform duties relating to the operation and maintenance of drinking water production, purchased water, and water distribution systems and is not required to hold a distribution license.

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Stephanie Bergeron
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Texas Natural Resource Conservation Commission
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CHAPTER 39. PUBLIC NOTICE
SUBCHAPTER H. APPLICABILITY AND GENERAL PROVISIONS

30 TAC §39.420

The Texas Natural Resource Conservation Commission (commission) proposes an amendment to §39.420, Transmittal of the Executive Director's Response to Comments and Decision.

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE PROPOSED RULE

The primary purpose of the proposed amendment is to clarify certain procedural requirements associated with the processing of House Bill (HB) 801 permit applications.

In 1999, the 76th Legislature enacted HB 801, which revised the public participation procedures applicable to environmental permits issued under Chapters 26 and 27 of the Texas Water Code (TWC) and Chapters 361 and 382 of the Texas Health and Safety Code (THSC). House Bill 801 provides for early notice of applications, expanded public participation opportunities, and a streamlined contested case hearing process.

The commission is proposing certain changes to Chapter 39 to clarify commission rules regarding the circumstances under which there is an opportunity to file requests for hearing and reconsideration in response to the chief clerk's transmittal of the executive director's response to comments in HB 801 proceedings.

SECTION DISCUSSION

Modifications are proposed to §39.420, Transmittal of the Executive Director's Response to Comments and Decision. First, new subsection (c)(3) is proposed to provide that where no timely hearing requests have been filed in response to a Notice of Receipt of Application and Intent to Obtain Permit for air applications, then the chief clerk's transmittal will not include instructions for requesting a hearing or reconsideration of the executive director's decision. Under HB 801, where no timely hearing request is filed in response to issuance of the first notice, then the air application can be processed as an uncontested matter. Current subsection (c)(3) (proposed to be renumbered as subsection (c)(4)) implicitly leads to this result by providing that when a hearing request is filed and then withdrawn, the transmittal does not include instructions for requesting a hearing or reconsideration. If there is no opportunity to request a hearing when a hearing request is filed but timely withdrawn, then there is no opportunity to request a hearing if a timely hearing request was not filed at all. The rule is now proposed to explicitly provide for the scenario where no timely hearing request is filed in response to Notice of Receipt of Application and Intent to Obtain Permit for air applications. If there are no timely hearing requests, but there are timely comments, the executive director's response to comments is required. However, there is no further opportunity to file a request for hearing or reconsideration. Subsection (c)(3) (now proposed to be renumbered as (c)(4)) is also modified to expressly reflect that only those hearing requests that are timely are covered by this subsection. Subsection (c)(4) is proposed to be renumbered as subsection (c)(5) due to the addition of a new subsection (c)(3).

Section 39.420(d) is proposed to describe the effect of withdrawal of all timely comments before the filing of the executive director's response to comments. This proposed subsection makes clear that if all comments received are withdrawn in writing prior to the filing of the executive director's response to comment, then the transmittal of the executive director's response to comment will not provide an opportunity to request a hearing or reconsideration of the executive director's decision. The statutes do not address the effect that the withdrawal of comments has on subsequent procedural steps in the permitting process. (See TWC, Chapter 5, Subchapter M and THSC, §382.056.) But, under commission rules, the executive director must prepare a response to timely, relevant and material, or significant comment, whether or not withdrawn. Thus, under commission rules, the fact that a comment is withdrawn does not affect the requirement that the executive director prepare and

file a response to comment. However, commission rules also provide under 30 TAC §55.201(c) that a request for contested case hearing may not be based on an issue that was raised solely in public comment withdrawn before the filing of the executive director's response to comment. Therefore, if all timely comments have been withdrawn before the response to comment is filed, then commission rules provide that no hearing request may be granted by the commission. (See 30 TAC §55.211(b)(3)(A) and (c)(2)(A).) If no hearing request may be granted by the commission, then providing for an opportunity for hearing requests to be filed with the transmittal of the executive director's response to comment fails to be a meaningful exercise. As stated in the preamble to the adoption of the 30 TAC Chapter 55 rules implementing HB 801, "{t}he commission believes that only current, live disputed issues of fact should be the basis for a referral to SOAH." (See the October 15, 1999 issue of the *Texas Register* (24 TexReg 9026).) Further, under HB 801, while the time period for filing requests for hearing and requests for reconsideration generally follows the transmittal of the executive director's response to comment (see TWC, §5.555 and THSC, §382.056), there are circumstances where the opportunity to file requests for hearing or reconsideration after the transmittal of the executive director's response to comment does not exist. For example, if no timely hearing requests are received in response to Notice of Receipt of Application and Intent to Obtain Permit for an air application, then further notice is not required and the matter can be processed as an uncontested permit. (See THSC, §382.056(g).) Therefore, in such cases, the failure to file a hearing request in response to first notice not only removes the opportunity for filing hearing requests, but also results in no further solicitation of requests for reconsideration. That is, under HB 801, the opportunity to file requests for reconsideration only exists where there is an opportunity to file hearing requests. Thus, this proposed rule clarifies that instructions for filing a request for hearing or reconsideration would not be provided where all timely comments have been withdrawn in writing prior to the filing of the executive director's response to comment. Under such circumstances, any person seeking commission review of the action would still have the opportunity to file a Motion to Overturn under 30 TAC §50.139.

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 amendment is in effect, there will be no fiscal implications for units of state and local government as a result of administration and enforcement of the proposed amendment. This rulemaking is intended to clarify existing commission rules pertaining to the processing of HB 801 permits.

Specifically, this rulemaking is intended to clarify existing procedural rules regarding the circumstances under which there is an opportunity to file requests for hearing and reconsideration in response to the chief clerk's transmittal of the executive director's response to comments in permitting proceedings subject to HB 801.

The proposed amendment is procedural in nature and does not add additional regulatory requirements for units of state and local government to comply with. The proposed amendment is intended to clarify the effect that withdrawal of comments prior to the filing of the executive director's response to comments has on subsequent procedural steps in the permitting process.

PUBLIC BENEFITS AND COSTS

Mr. Davis also determined that for each year of the first five years the proposed amendment is in effect, the public benefit anticipated from enforcement of and compliance with this rulemaking will be to eliminate any potential confusion regarding the circumstances under which there is an opportunity to file requests for hearing or reconsideration.

This rulemaking is intended to clarify existing procedural rules regarding the circumstances under which there is an opportunity to file requests for hearing and reconsideration in response to the chief clerk's transmittal of the executive director's response to comments in permitting proceedings subject to HB 801.

The proposed amendment is procedural in nature and does not add additional regulatory requirements for individuals and businesses to comply with. The proposed amendment is intended to clarify existing procedural rules regarding the circumstances under which the opportunity for filing requests for hearing or reconsideration exists for permitting matters under HB 801.

SMALL BUSINESS AND MICRO-BUSINESS ASSESSMENT

There will be no adverse fiscal impacts to any small or micro-business as a result of the proposed amendment, which is intended to change existing commission rules relating to certain HB 801 permitting procedures.

Specifically, this rulemaking is intended to clarify existing procedural rules regarding the opportunity to file requests for hearing and reconsideration in response to the chief clerk's transmittal of the executive director's response to comments in air permitting proceedings.

The proposed amendment is procedural in nature and does not add additional regulatory requirements for small and micro-businesses to comply with. The proposed amendment is intended to clarify existing procedural rules relating to the circumstances under which the opportunity to file requests for hearing or reconsideration exist.

LOCAL EMPLOYMENT IMPACT STATEMENT

The commission reviewed this proposed rulemaking and determined that a local employment impact statement is not required because the proposed rule does not adversely affect a local economy in a material way for the first five years that the proposed rule is in effect.

DRAFT REGULATORY IMPACT ANALYSIS DETERMINATION

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

A "major environmental rule" means a rule the specific intent of which is to protect the environment or reduce risks to human health from environmental exposure and that may adversely affect in a material way the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. Because the specific intent of the proposed rulemaking is procedural in nature and clarifies the circumstances under which there is an opportunity for filing requests for hearing or reconsideration, the rulemaking does not meet the definition of a "major environmental rule."

In addition, even if the proposed rule is a major environmental rule, a draft regulatory impact assessment is not required because the rule does not exceed a standard set by federal law, exceed an express requirement of state law, exceed a requirement of a delegation agreement, or propose to adopt a rule solely under the general powers of the agency. This proposal does not exceed a standard set by federal law. This proposal does not exceed an express requirement of state law because it is authorized by the following state statutes: Texas Government Code, §2001.004, which requires state agencies to adopt rules of practice; and TWC, Chapter 5, Subchapter M, as well as the other statutory 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 because the rule is consistent with, and does not exceed federal requirements. This proposal does not adopt a rule solely under the general powers of the agency, but rather under a specific state law (i.e., TWC, Chapter 5, Subchapter M and THSC, §382.056). 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 performed a preliminary analysis for this proposed rule in accordance with Texas Government Code, §2007.043. The following is a summary of that analysis. The specific primary purpose of the proposed rulemaking is to clarify certain existing procedural requirements that apply to permitting actions subject to HB 801. The proposed rule will substantially advance this stated purpose by providing specific provisions on the aforementioned matter. 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 amendments relating to the commission's procedural rules rather than substantive requirements.

CONSISTENCY WITH THE COASTAL MANAGEMENT PROGRAM

The commission reviewed the proposed rulemaking and determined that the proposed section is not subject to the Texas Coastal Management Program (CMP). The proposed rulemaking action concerns only the procedural rules of the commission, is not substantive in nature, does not govern or authorize any actions subject to the CMP, and is not itself 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 HEARING

A public hearing on this proposal will be held in Austin on October 25, 2001 at 10:00 a.m. at the Texas Natural Resource Conservation Commission complex in Building F, Room 2210, located at 12100 Park 35 Circle. The hearing will be structured for the receipt of oral or written comments by interested persons. Individuals may present oral statements when called upon in order of registration. There will be no open discussion during the hearing; however, an agency staff member will be available to discuss the proposal 30 minutes prior to the hearing and will answer questions before and after the hearing.

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

SUBMITTAL OF COMMENTS

Comments may be submitted to Lola Brown, 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 2001-028B-055-AD. Comments must be received by 5:00 p.m., October 29, 2001. For further information, please contact Ray Henry Austin at (512) 239-6814.

STATUTORY AUTHORITY

The amendment is proposed under TWC, Chapter 5, Subchapter M, §§5.551, 5.552, 5.553, 5.554, 5.555, and 5.556; and THSC, §382.056, which establish the commission's authority concerning environmental permitting procedures. Other relevant sections of the TWC under which the commission takes this action include: §5.013, which establishes the general jurisdiction of the commission; §5.102, which establishes the commission's general authority necessary to carry out its jurisdiction, including calling and holding hearings and issuing orders; and §5.103, which requires the commission to adopt rules when amending any agency statement of general applicability that describes the procedures or practice requirements of an agency; and Texas Government Code, §2001.004, which requires state agencies to adopt rules of practice.

The proposed amendment implements TWC, Chapter 5, Subchapter M; THSC, §382.056; and Texas Government Code, §2001.004.

§39.420. Transmittal of the Executive Director's Response to Comments and Decision.

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

(c) For air applications which meet the following conditions, items listed in subsection (a)(3) and (4) of this section are not required to be included in the transmittals:

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

(3) applications for which no timely hearing request is submitted in response to the Notice of Receipt of Application and Intent to Obtain a Permit;

(4) [~~(3)~~] applications for which [~~where~~] a timely hearing request is submitted in response to the Notice of Receipt of Application and Intent to Obtain Permit and the request is withdrawn before the date the preliminary decision is issued; or

(5) [~~(4)~~] the application is for any amendment, modification, or renewal application that would not result in an increase in allowable emissions and would not result in the emission of an air contaminant not previously emitted unless the application involves a facility for which the applicant's compliance history contains violations which are unresolved and which constitute a recurring pattern of egregious conduct which demonstrates a consistent disregard for the regulatory process, including the failure to make a timely and substantial attempt to correct the violations.

(d) For applications for which all timely comments and requests have been withdrawn before the filing of the executive director's response to comments, the chief clerk shall transmit only the items listed in subsection (a)(1) and (2) of this section.

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

Filed with the Office of the Secretary of State, on September 14, 2001.

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Stephanie Bergeron
Director, Environmental Law Division
Texas Natural Resource Conservation Commission
Earliest possible date of adoption: October 28, 2001
For further information, please call: (512) 239-0348

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CHAPTER 55. REQUESTS FOR RECONSIDERATION AND CONTESTED CASE HEARINGS; PUBLIC COMMENT

The Texas Natural Resource Conservation Commission (commission) proposes amendments to §55.156, Public Comment Processing, and §55.209, Processing Requests for Reconsideration and Contested Case Hearing, and new §55.210, Direct Referrals.

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE PROPOSED RULES

The primary purpose of the proposed amendments and new section is to implement portions of Senate Bill (SB) 688 (an act relating to requirements for public notice and hearing on applications for certain permits that may have environmental impact), 77th Legislature, 2001. More specifically, this rulemaking would implement the SB 688 provisions related to direct referrals of certain permit applications to the State Office of Administrative Hearings (SOAH) for contested case hearing.

In 1999, the 76th Legislature enacted House Bill (HB) 801. House Bill 801 revised the public participation procedures applicable to environmental permits issued under Chapters 26 and 27 of the Texas Water Code (TWC) and Chapters 361 and 382 of the Texas Health and Safety Code (THSC). House Bill 801 provides for early notice of applications, expanded public participation opportunities, and a streamlined contested case hearing process. While the provisions of HB 801 allowed an applicant or the executive director to request referral of a permitting matter to SOAH for contested case hearing, the procedural steps to be followed limited the opportunities for this option to be exercised. Essentially, since agreement regarding the list of disputed issues and maximum expected duration of the hearing had to be reached with all timely hearing requesters and all timely hearing requesters could not be identified until 30 days after transmittal of the executive director's decision and response to comments, generally a direct referral to SOAH was only practicable late in the permitting process. The relevant portions of SB 688 now explicitly provide the applicant or the executive director the option of proceeding directly to a contested case hearing immediately after the executive director issues a preliminary decision.

SECTION BY SECTION DISCUSSION

Section 55.156, Public Comment Processing, is proposed to be amended to add a new subsection (e) which provides that the public comment procedures of this section do not apply to a matter referred to SOAH for hearing under the procedures allowed by SB 688. This proposed rule change is consistent with new TWC, §5.557(b), as added by SB 688.

Section 55.209, Processing Requests for Reconsideration and Contested Case Hearing, is proposed to be amended to delete subsection (h) relating to procedures for requesting that a matter be referred directly to SOAH for contested case hearing. This subsection is proposed to be deleted because a new section is being proposed in this rulemaking to apply to direct referrals authorized by the provisions of SB 688.

New §55.210, Direct Referrals, is proposed to provide that either the executive director or the applicant can file a request with the chief clerk that the application be sent directly to SOAH for a hearing on whether the application complies with all relevant statutory and regulatory requirements. As provided by SB 688, it would also provide that the application may be referred after the executive director has issued his preliminary decision on the application and thus, completed his technical review. The commission also proposes to provide that the chief clerk may then refer the matter to SOAH. This section further proposes that the provisions of HB 801 relating to public meetings do not apply to cases referred under this section. Instead, the public meeting provisions governing pre-HB 801 applications would apply.

For further background and discussion, please refer to the preamble discussion in the proposed 30 TAC Chapter 80 rulemaking published concurrently in this issue.

FISCAL NOTE: COSTS TO STATE AND LOCAL GOVERNMENT

John Davis, Technical Specialist with Strategic Planning and Appropriations, determined that for the first five-year period the proposed amendments are in effect, there will be no fiscal implications for units of state and local government as a result of administration and enforcement of the proposed amendments. This rulemaking is intended to implement provisions of SB 688.

The bill requires that immediately after the executive director issues a preliminary decision on a permit application, the commission, at the request of the applicant or the executive director, shall refer the application directly to SOAH for a contested case hearing. This provision would cover air new source review (NSR), underground injection control (UIC), industrial and hazardous waste (IHW), municipal solid waste (MSW), and water quality (WQ) permit actions subject to HB 801 permitting procedures. Prior to enactment of the bill, a permitting matter subject to HB 801 permitting procedures could not be referred to SOAH until all timely hearing requesters were identified.

The proposed amendments are procedural in nature and do not add additional regulatory requirements for units of state and local government to comply with. The proposed amendments are intended to implement the provisions of SB 688 which allow the referral of a permitting matter to SOAH for a contested case hearing at the request of the applicant or executive director earlier in the permitting process than would have been expressly allowed under prior law.

PUBLIC BENEFITS AND COSTS

Mr. Davis also determined that for each year of the first five years the proposed amendments are in effect, the public benefit anticipated from enforcement of and compliance with this rulemaking will potentially result in quicker processing of permit applications requiring contested case hearings.

This rulemaking is intended to implement the provisions of SB 688. The bill requires that immediately after the executive director issues a preliminary decision on a permit application, the commission, at the request of the applicant or the executive director, shall refer the application directly to SOAH for a contested case hearing. This provision would cover air NSR, UIC, IHW, MSW, and WQ permit actions subject to HB 801 permitting procedures. Prior to enactment of this bill, a permitting matter subject to HB 801 procedures could not be referred to SOAH until all timely hearing requesters were identified.

The proposed amendments are procedural in nature and do not add additional regulatory requirements for individuals and businesses to comply with. The proposed amendments are intended to implement the provisions of SB 688 which allow the referral of a permitting matter to SOAH for a contested case hearing at the request of the applicant or executive director earlier than would otherwise have been expressly allowed under prior law.

SMALL BUSINESS AND MICRO-BUSINESS ASSESSMENT

There will be no adverse fiscal impacts to any small or micro-business as a result of the proposed amendments, which are intended to implement provisions of SB 688.

The bill requires that immediately after the executive director issues a preliminary decision on a permit application, the commission, at the request of the applicant or the executive director, shall refer the application directly to SOAH for a contested case hearing. Prior to enactment of the bill, a permitting matter subject to HB 801 procedures could not be referred to SOAH until after all timely hearing requesters were identified.

The proposed amendments are procedural in nature and do not add additional regulatory requirements for small and micro-businesses to comply with. The proposed amendments are intended to implement the provisions of SB 688 which allow the referral of a permitting matter to SOAH for a contested case hearing at the request of the applicant or executive director earlier in the permitting process than would otherwise have been expressly allowed under prior law.

LOCAL EMPLOYMENT IMPACT STATEMENT

The commission reviewed this proposed rulemaking and determined that a local employment impact statement is not required because the proposed rules do not adversely affect a local economy in a material way for the first five years that the proposed rules are in effect.

DRAFT REGULATORY IMPACT ANALYSIS DETERMINATION

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

A "major environmental rule" means a rule the specific intent of which is to protect the environment or reduce risks to human health from environmental exposure and that may adversely affect in a material way the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. Because the specific intent of the proposed rulemaking is procedural in nature and revises procedures for direct referrals of applications subject to HB 801 to SOAH for hearing, the rulemaking does not meet the definition of a "major environmental rule."

In addition, even if the proposed rules are major environmental rules, a draft regulatory impact assessment is not required because the rules do not exceed a standard set by federal law, exceed an express requirement of state law, exceed a requirement of a delegation agreement, or propose to adopt a rule solely under the general powers of the agency. This proposal does not exceed a standard set by federal law. This proposal does not exceed an express requirement of state law because it is authorized by the following state statutes: Texas Government Code, §2001.004, which requires state agencies to adopt rules of practice; and TWC, Chapter 5, Subchapter M, as well as the other statutory authorities cited in the STATUTORY AUTHORITY section of this preamble. In addition, the proposal is in direct response to SB 688, 77th Legislature, and does not exceed the requirements of this bill. This proposal does not exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program because the rules are consistent with, and do not exceed federal requirements. This proposal does not adopt a rule solely under the general powers of the agency, but rather under a specific state law (i.e., SB 688). 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 performed a preliminary analysis for these proposed rules in accordance with Texas Government Code, §2007.043. The following is a summary of that analysis. The specific primary purpose of the proposed rulemaking is to revise commission rules relating to procedures for direct referrals in certain permitting proceedings as provided by SB 688. The proposed rules will substantially advance this stated purpose by providing specific provisions on the aforementioned matter. Promulgation and enforcement of these rules will not affect private real property which is the subject of the rules because the proposed language consists of amendments relating to the commission's procedural rules rather than substantive requirements.

CONSISTENCY WITH THE COASTAL MANAGEMENT PROGRAM

The commission reviewed the proposed rulemaking and determined that the proposed sections are not subject to the Texas Coastal Management Program (CMP). The proposed rulemaking action concerns only the procedural rules of the commission which 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 HEARING

A public hearing on this proposal will be held in Austin on October 25 at 10:00 a.m. at the Texas Natural Resource Conservation Commission complex in Building F, Room 2210, located at 12100 Park 35 Circle. The hearing will be structured for the receipt of oral or written comments by interested persons. Individuals may present oral statements when called upon in order of registration. There will be no open discussion during the hearing; however, an agency staff member will be available to discuss the proposal

30 minutes prior to the hearing and will answer questions before and after the hearing.

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

SUBMITTAL OF COMMENTS

Comments may be submitted to Lola Brown, 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 2001-028B-055-AD. Comments must be received by 5:00 p.m., October 29, 2001. For further information, please contact Ray Henry Austin at (512) 239-6814.

SUBCHAPTER E. PUBLIC COMMENT AND PUBLIC MEETINGS

30 TAC §55.156

STATUTORY AUTHORITY

The amendment is proposed under SB 688, §5, 77th Legislature, 2001 (the Act), which requires the agency to adopt rules to implement TWC, §5.557 and THSC, §382.056, as added and amended by the Act; TWC, §5.557; and THSC, §382.056. Other relevant sections of the TWC under which the commission takes this action include: §5.013, which establishes the general jurisdiction of the commission; §5.102, which establishes the commission's general authority to carry out its jurisdiction; and §5.103, which requires the commission to adopt rules when amending any agency statement of general applicability that describes the procedures or practice requirements of the agency; and Texas Government Code, §2001.004, which requires state agencies to adopt rules of practice.

The proposed amendment implements TWC, §5.557; THSC, §382.056; and Texas Government Code, §2001.004.

§55.156. Public Comment Processing.

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

(e) Subsections (b) - (d) of this section do not apply to a case referred to SOAH under §55.210 of this title (relating to Direct Referrals).

This 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 September 14, 2001.

TRD-200105492
Stephanie Bergeron
Director, Environmental Law Division
Texas Natural Resource Conservation Commission
Earliest possible date of adoption: October 28, 2001
For further information, please call: (512) 239-0348

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SUBCHAPTER F. REQUESTS FOR RECONSIDERATION OR CONTESTED CASE HEARING

30 TAC §55.209, §55.210

STATUTORY AUTHORITY

The amendment and new section are proposed under SB 688, §5, 77th Legislature, 2001 (the Act), which requires the agency to adopt rules to implement TWC, §5.557 and THSC, §382.056, as added and amended by the Act; TWC, §5.557; and THSC, §382.056. Other relevant sections of the TWC under which the commission takes this action include: §5.013, which establishes the general jurisdiction of the commission; §5.102, which establishes the commission's general authority to carry out its jurisdiction; and §5.103, which requires the commission to adopt rules when amending any agency statement of general applicability that describes the procedures or practice requirements of the agency; and Texas Government Code, §2001.004, which requires state agencies to adopt rules of practice.

The proposed amendment and new section implement TWC, §5.557; THSC, §382.056; and Texas Government Code, §2001.004.

§55.209. Processing Requests for Reconsideration and Contested Case Hearing.

(a) - (g) (No change.)

~~[(h) The executive director or the applicant may file a request with the chief clerk that the application be sent directly to SOAH for a hearing on the application. If a request is filed under this subsection, the commission's scheduled consideration of the hearing request will be canceled. An application may only be sent to SOAH under this subsection if the executive director, the applicant, the public interest counsel and all timely hearing requestors agree on a list of issues and a maximum expected duration of the hearing.]~~

§55.210. Direct Referrals

(a) The executive director or the applicant may file a request with the chief clerk that the application be sent directly to SOAH for a hearing on the application.

(b) After receipt of a request filed under this section and after the executive director has issued his preliminary decision on the application, the chief clerk shall refer the application directly to SOAH for a hearing on whether the application complies with all applicable statutory and regulatory requirements.

(c) A case for which a request for direct referral is filed under this section shall not be subject to the public meeting requirements of §55.154 of this title (relating to Public Meetings) but shall instead be subject to the public meeting requirements of §55.25(b)(2) of this title (relating to Public Comment Processing).

This 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 September 14, 2001.

TRD-200105493

Stephanie Bergeron
Director, Environmental Law Division
Texas Natural Resource Conservation Commission
Earliest possible date of adoption: October 28, 2001
For further information, please call: (512) 239-0348

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CHAPTER 80. CONTESTED CASE HEARINGS

The Texas Natural Resource Conservation Commission (commission) proposes amendments to §80.6, Referral to SOAH, and §80.105, Preliminary Hearings, and new §80.126, Public Comment Evidence in Direct Referrals.

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE PROPOSED RULES

The primary purpose of the proposed amendments and new section is to implement portions of Senate Bill (SB) 688 (an act relating to requirements for public notice and hearing on applications for certain permits that may have environmental impact), 77th Legislature, 2001. More specifically, this rulemaking would implement the SB 688 provisions related to direct referrals of certain permit applications to the State Office of Administrative Hearings (SOAH) for contested case hearing.

In 1999, the 76th Legislature enacted House Bill (HB) 801. House Bill 801 revised the public participation procedures applicable to environmental permits issued under Chapters 26 and 27 of the Texas Water Code (TWC) and Chapters 361 and 382 of the Texas Health and Safety Code (THSC). House Bill 801 provides for early notice of applications, expanded public participation opportunities, and a streamlined contested case hearing process. While the provisions of HB 801 allowed an applicant or the executive director to request referral of a permitting matter to SOAH for contested case hearing, the procedural steps to be followed limited the opportunities for this option to be exercised. Essentially, since agreement regarding the list of disputed issues and maximum expected duration of the hearing had to be reached with all timely hearing requesters and all timely hearing requesters could not be identified until 30 days after transmittal of the executive director's decision and response to comments, generally a direct referral to SOAH was only practicable late in the permitting process. The relevant portions of SB 688 now explicitly provide the applicant or the executive director the option of proceeding directly to a contested case hearing immediately after the executive director issues a preliminary decision in matters subject to HB 801.

In addition, the commission is also proposing certain changes to modify commission rules to expressly provide for the judge to take public comment in matters directly referred to SOAH as allowed by SB 688 as well as certain water utilities matters.

SECTION BY SECTION DISCUSSION

Section 80.6, Referral to SOAH, is proposed to be amended to reflect that when an application is referred under proposed new §55.210, the hearing is to address all relevant statutory and regulatory requirements. Thus, consistent with SB 688, contested case hearings on matters that are referred directly to SOAH will address all issues relevant to the application.

Section 80.105, Preliminary Hearings, is proposed to be amended to reflect that preliminary hearings shall be held in all matters referred under proposed new 30 TAC §55.210. Section 80.105 is also proposed to be amended to provide that the judge shall accept public comment not only in enforcement hearings, but also in certain water utilities matters, and applications referred directly to SOAH.

As part of the rulemaking implementing HB 801 provisions in September of 1999, §80.105 was amended to provide that the judge shall, for enforcement hearings only, take public comment. Generally, this was intended to maintain the distinction between informal public comment and the evidentiary hearing in permitting matters. In particular, this also effectuated the framework established by HB 801 whereby the public comment period occurs early in the process, public comments are addressed in the executive director's response to comment, and only limited issues are referred for contested case hearing.

While maintaining these distinctions is of continued importance for matters undergoing the entire HB 801 permitting process, matters directly referred to SOAH under proposed new §55.210 (relating to Direct Referrals) and certain water utilities matters (which are not subject to the provisions of HB 801) may be better suited to different procedures. For these matters, the preliminary hearing may be the first opportunity for affected citizens to express their views regarding an application and provide public comment. While existing rules do not prohibit the taking of public comment by the judge in any matter, they do not currently explicitly address the public comment procedures for such water utilities matters and matters directly referred to SOAH under the provisions of SB 688. Thus, this rule change is proposed to explicitly provide for the taking of public comment at preliminary hearings held in connection with certain water utilities matters and direct referrals under proposed new §55.210.

New §80.126, Public Comment Evidence in Direct Referrals, is proposed to reflect the procedures for commission consideration of public comment and the executive director's responses to public comment in direct referrals.

For further background and discussion, please refer to the preamble discussion in the proposed 30 TAC Chapter 55 rulemaking published concurrently in this issue.

FISCAL NOTE: COSTS TO STATE AND LOCAL GOVERNMENT

John Davis, Technical Specialist with Strategic Planning and Appropriations, determined that for the first five-year period the proposed amendments are in effect, there will be no fiscal implications for units of state and local government as a result of administration and enforcement of the proposed amendments. This rulemaking is primarily intended to implement provisions of SB 688 and to modify existing commission rules relating to public comment at preliminary hearings for certain water utilities matters and matters directly referred to SOAH as allowed by SB 688.

The bill requires that immediately after the executive director issues a preliminary decision on a permit application, the commission, at the request of the applicant or the executive director, shall refer the application directly to SOAH for a contested case hearing. This provision would cover air new source review (NSR), underground injection control (UIC), industrial and hazardous waste (IHW), municipal solid waste (MSW), and water quality (WQ) permit actions subject to HB 801 permitting procedures. Prior to enactment of this bill, a permitting matter could not be referred to SOAH until all hearing requesters were identified. This rulemaking is also intended to modify existing procedural rules regarding the taking of public comment at preliminary hearings for certain water utilities matters and matters directly referred to SOAH as allowed by SB 688.

The proposed amendments are procedural in nature and do not add additional regulatory requirements for units of state and local government to comply with. The proposed amendments are intended to implement the provisions of SB 688 which allow the referral of a permitting matter to SOAH for a contested case hearing at the request of the applicant or executive director earlier in the permitting process than would have been expressly allowed under prior law.

PUBLIC BENEFITS AND COSTS

Mr. Davis also determined that for each year of the first five years the proposed amendments are in effect, the public benefit anticipated from enforcement of and compliance with this rulemaking will potentially result in quicker processing of permit applications requiring contested case hearings.

This rulemaking is intended to implement provisions of SB 688 and to modify existing commission rules regarding the taking of public comment at certain preliminary hearings. The bill requires that immediately after the executive director issues a preliminary decision on a permit application, the commission, at the request of the applicant or the executive director, shall refer the application directly to SOAH for a contested case hearing. This provision would cover air NSR, UIC, IHW, MSW, and WQ permit actions subject to HB 801 permitting procedures. Prior to enactment of this bill, a permitting matter could not be referred to SOAH until all hearing requesters were identified. This rulemaking is also intended to modify existing procedural rules regarding the taking of public comment at preliminary hearings for certain matters.

The proposed amendments are procedural in nature and do not add additional regulatory requirements for individuals and businesses to comply with. The proposed amendments are intended to implement the provisions of SB 688 which allow the referral of a permitting matter to SOAH for a contested case hearing at the request of the applicant or executive director earlier in the permitting process than would have been expressly allowed under prior law.

SMALL BUSINESS AND MICRO-BUSINESS ASSESSMENT

There will be no adverse fiscal impacts to any small or micro-business as a result of the proposed amendments, which are intended to implement provisions of SB 688 and to modify existing commission rules regarding the taking of public comment for certain matters.

The bill requires that immediately after the executive director issues a preliminary decision on a permit application, the commission, at the request of the applicant or the executive director, shall refer the application directly to SOAH for a contested case hearing. Prior to enactment of this bill, a permitting matter could not be referred to SOAH until all hearing requesters were identified. This rulemaking is also intended to modify existing procedural rules regarding the taking of public comment at preliminary hearings for certain matters.

The proposed amendments are procedural in nature and do not add additional regulatory requirements for small and micro-businesses to comply with. The proposed amendments are intended to speed up the process of referring a permitting matter to SOAH for a contested case hearing at the request of the applicant or executive director.

LOCAL EMPLOYMENT IMPACT STATEMENT

The commission reviewed this proposed rulemaking and determined that a local employment impact statement is not required because the proposed rules do not adversely affect a local economy in a material way for the first five years that the proposed rules are in effect.

DRAFT REGULATORY IMPACT ANALYSIS DETERMINATION

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

A "major environmental rule" means a rule the specific intent of which is to protect the environment or reduce risks to human health from environmental exposure and that may adversely affect in a material way the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. Because the specific intent of the proposed rulemaking is procedural in nature and revises procedures for direct referrals of applications to SOAH for hearing and taking public comment at certain preliminary hearings, the rulemaking does not meet the definition of a "major environmental rule."

In addition, even if the proposed rules are major environmental rules, a draft regulatory impact assessment is not required because the rules do not exceed a standard set by federal law, exceed an express requirement of state law, exceed a requirement of a delegation agreement, or propose to adopt a rule solely under the general powers of the agency. This proposal does not exceed a standard set by federal law. This proposal does not exceed an express requirement of state law because it is authorized by the following state statutes: Texas Government Code, §2001.004, which requires state agencies to adopt rules of practice; and TWC, Chapter 5, Subchapter M, as well as the other statutory authorities cited in the STATUTORY AUTHORITY section of this preamble. In addition, the proposal is in direct response to SB 688, 77th Legislature, and does not exceed the requirements of this bill. This proposal does not exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program because the rules are consistent with, and do not exceed federal requirements. This proposal does not adopt a rule solely under the general powers of the agency, but rather under a specific state law (i.e., SB 688). 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 performed a preliminary analysis for these proposed rules in accordance with Texas Government Code, §2007.043. The following is a summary of that analysis. The specific primary purpose of the proposed rulemaking is to revise commission rules relating to procedures for direct referrals in certain permitting proceedings as required by SB 688. In addition, the rules will also modify certain existing procedural requirements relating to taking public comment at certain preliminary hearings. The proposed rules will substantially advance these stated purposes by providing specific provisions on the aforementioned matter. Promulgation and enforcement of these rules will not affect private real property which is the subject of the rules because the proposed language consists

of amendments relating to the commission's procedural rules rather than substantive requirements.

CONSISTENCY WITH THE COASTAL MANAGEMENT PROGRAM

The commission reviewed the proposed rulemaking and determined that the proposed sections are not subject to the Texas Coastal Management Program (CMP). The proposed rulemaking action concerns only the procedural rules of the commission which 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 HEARING

A public hearing on this proposal will be held in Austin on October 25, 2001 at 10:00 a.m. at the Texas Natural Resource Conservation Commission complex in Building F, Room 2210 located at 12100 Park 35 Circle. The hearing will be structured for the receipt of oral or written comments by interested persons. Individuals may present oral statements when called upon in order of registration. There will be no open discussion during the hearing; however, an agency staff member will be available to discuss the proposal 30 minutes prior to the hearing and will answer questions before and after the hearing.

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

SUBMITTAL OF COMMENTS

Comments may be submitted to Lola Brown, 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 2001-028B-055-AD. Comments must be received by 5:00 p.m., October 29, 2001. For further information, please contact Ray Henry Austin at (512) 239-6814.

SUBCHAPTER A. GENERAL RULES

30 TAC §80.6

STATUTORY AUTHORITY

The amendment is proposed under SB 688, §5, 77th Legislature, 2001 (the Act), which requires the agency to adopt rules to implement TWC, §5.557 and THSC, §382.056, as added and amended by the Act; TWC, §5.557; and THSC, §382.056. Other relevant sections of the TWC under which the commission takes this action include: §5.013, which establishes the general jurisdiction of the commission; §5.102, which establishes the commission's general authority to carry out its jurisdiction; §5.103, which requires the commission to adopt rules when amending any agency statement of general applicability that describes the procedures or practice requirements of the agency; §§11.036, 11.041, and 12.013, which establish the commission's authority to determine water rates; and §13.041, which establishes the commission's general authority over water and sewer utilities; and Texas Government Code, §2001.004, which requires state agencies to adopt rules of practice.

The proposed amendment implements TWC, §5.557; THSC, §382.056; and Texas Government Code, §2001.004.

§80.6. Referral to SOAH.

(a) (No change.)

(b) When a case is referred to SOAH, the chief clerk shall:

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

(5) send the commission's list of disputed issues and maximum expected duration of the hearing to SOAH unless the case is referred under §55.210 of this title (relating to Direct Referrals).

(c) (No change.)

(d) When a case is referred to SOAH, only those issues referred by the commission or added by the judge under §80.4(c)(16) of this title (relating to Judges) may be considered in the hearing. The judge shall provide proposed findings of fact and conclusions of law only on those issues. This subsection does not apply to a case referred under §55.210 of this title (relating to Direct Referrals).

This 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 September 14, 2001.

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Stephanie Bergeron
Director, Environmental Law Division
Texas Natural Resource Conservation Commission
Earliest possible date of adoption: October 28, 2001
For further information, please call: (512) 239-0348

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SUBCHAPTER C. HEARING PROCEDURES

30 TAC §80.105, §80.126

STATUTORY AUTHORITY

The amendment and new section are proposed under SB 688, §5, 77th Legislature, 2001 (the Act), which requires the agency to adopt rules to implement TWC, §5.557 and THSC, §382.056, as added and amended by the Act; TWC, §5.557; and THSC, §382.056. Other relevant sections of the TWC under which the commission takes this action include: §5.013, which establishes the general jurisdiction of the commission; §5.102, which establishes the commission's general authority to carry out its jurisdiction; §5.103, which requires the commission to adopt rules when amending any agency statement of general applicability that describes the procedures or practice requirements of the agency; §§11.036, 11.041, and 12.013, which establish the commission's authority to determine water rates; and §13.401, which establishes the commission's general authority over water and sewer utilities; and Texas Government Code, §2001.004, which requires state agencies to adopt rules of practice.

The proposed amendment and new section implement TWC, §5.557; THSC, §382.056; and Texas Government Code, §2001.004.

§80.105. Preliminary Hearings.

(a) After the required notice has been issued, the judge shall convene a preliminary hearing to consider the jurisdiction of the commission over the proceeding. A preliminary hearing is not required in

an enforcement matter, except in those under federally authorized underground injection control (UIC) or Texas Pollutant Discharge Elimination System (TPDES) programs. A preliminary hearing is required for applications referred to SOAH under §55.210 of this title (relating to Direct Referrals).

(b) If jurisdiction is established, the judge shall:

(1) name the parties [~~and, for enforcement hearings only, accept public comment~~];

(2) accept public comment in the following matters:

(A) enforcement hearings;

(B) applications under Texas Water Code (TWC), Chapter 13 and TWC, §§11.036, 11.041, or 12.013; and

(C) applications referred to SOAH under §55.210 of this title.

(3) [~~(2)~~] establish a docket control order designed to complete the proceeding within the maximum expected duration set by the commission. The order should include a discovery and procedural schedule including a mechanism for the timely and expeditious resolution of discovery disputes; and

(4) [~~(3)~~] allow the parties an opportunity for settlement negotiations.

(c) - (d) (No change.)

§80.126. Public Comment Evidence in Direct Referrals.

In permit cases referred under §55.210 of this title (relating to Direct Referrals), all timely public comment on the application and the executive director's responses to timely, relevant and material, or significant public comment shall be admitted into the evidentiary record. The response shall specify the provisions of the draft permit that have been changed in response to public comment and the reasons for the changes. The parties shall be allowed to respond and to present evidence on each issue raised in public comment or the executive director's responses.

This 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 September 14, 2001.

TRD-200105495
Stephanie Bergeron
Director, Environmental Law Division
Texas Natural Resource Conservation Commission
Earliest possible date of adoption: October 28, 2001
For further information, please call: (512) 239-0348

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CHAPTER 285. ON-SITE SEWAGE FACILITIES

The Texas Natural Resource Conservation Commission (commission) proposes new §285.60, Duties and Responsibilities of Site Evaluators and §285.64, Suspension or Revocation of License or Registration. The commission also proposes amendments to §285.1 Purpose and Applicability; §285.2, Definitions; §285.30, Site Evaluation; §285.50, General Requirements; §285.62, Duties and Responsibilities of Designated Representatives; §285.63, Duties and Responsibilities of Registered Apprentices; §285.71, Authorized Agent Enforcement of OSSFs; and §285.91, Tables. The commission also proposes the repeal of §285.51, Exceptions to Licensing Requirements; §285.52, Administration; §285.53, Qualifications; §285.54, Basic Training and Continuing Education; §285.55, Examinations; §285.56, Applications for License; §285.57, Registration of Apprentices; §285.58, Applications for Renewal; §285.59, Conditions for Denial of License, Registration, or Renewal; §285.60, Terms and Fees; §285.64, Denial, Reprimand, Suspension, or Revocation of License or Registration; and §285.65, Hearings.

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE PROPOSED RULES

The proposed amendments to Chapter 285 are to implement new requirements in Chapter 37, Texas Water Code (TWC), which was created by House Bill (HB) 3111 of the 77th Legislature, 2001. Texas Water Code, Chapter 37, requires the commission to consolidate administrative requirements and establish uniform procedures for the occupational licensing and registration programs administered by the commission, and to establish rules for the occupational licensing programs by December 1, 2001. To achieve this, the commission proposes to create new 30 TAC Chapter 30, Occupational Licenses and Registrations, to consolidate the administrative requirements for the ten licensing and registration programs administered in the Compliance Support Division (CSD).

The commission proposes these amendments to Chapter 285, because the licensing requirements for installers and designated representatives, and the registration of apprentices are being moved to the new Chapter 30. Chapter 30 will establish uniform procedures for issuing and renewing licenses, setting terms and fees, enforcement activities, and training approval for all of the licensing programs managed by the CSD. The remaining sections in Chapter 285 specify the minimum standards for the planning and construction of an on-site sewage facility (OSSF), define the systems that are acceptable for use, specify requirements for the proper maintenance and operation of these systems, and specify the requirement and procedures for permitting systems. Senate Bill (SB) 405 of the 77th Legislature, 2001, also provides an exemption for licensing requirements for geoscientists, which is also proposed in these rules. Additionally, some amendments are proposed to Chapter 285 to reference the licensing requirements in Chapter 30 and to correct some minor errors in Chapter 285.

SECTION BY SECTION DISCUSSION

Subchapter A--General Provisions

Section 285.1 and §285.2 are proposed to be amended in Subchapter A to incorporate the provisions of HB 3111, and to provide a reference to licensing requirements that are proposed to be moved from Chapter 285 to Chapter 30.

Section 285.1, Purpose and Applicability, is proposed to be amended to delete the language "licensing of installers and designated representatives, registration of apprentices, and" since these procedures are no longer included in this chapter. Language is proposed to be added to indicate that the licensing of installers, designated representatives, and site evaluators and the registration of apprentices is included in Chapter 30. The licensing procedures are proposed to be moved to Chapter 30.

Proposed amendments to §285.2, Definitions, provide a reference to licensing requirements that are proposed to be moved from Chapter 285 to Chapter 30 of this title and one new definition. Proposed amendments revise two existing definitions, and

delete three definitions that are now defined in Chapter 30 of this title. A new definition is proposed for "site evaluator" to incorporate the language from TWC, Chapter 37. Amendments to the definitions for "apprentice" and "designated representative" are proposed. The commission proposes the definition for "apprentice" be amended to reference the licensing procedures in Chapter 30. The commission proposes the definition for "designated representative" be amended to reference the licensing procedures in Chapter 30 of this title and to incorporate the changes in the definition of "designated representative" that were made in TWC, Chapter 37. The definitions for "certificate of registration," "license," and "revocation" have been proposed for deletion since these words, terms, or phrases are now defined in Chapter 30. The definitions are proposed to be renumbered due to the addition and deletion of terms.

Subchapter D--Planning, Construction, and Installation Standards for OSSFs

Section 285.30, Site Evaluation, is proposed to be amended to add the requirement that a site evaluation must be performed by either a licensed site evaluator or an individual with a current professional engineer license as provided in amended TWC, Chapter 37. Section 285.30(a) is proposed to be amended to indicate that a site evaluation shall be performed on every tract of land where an OSSF will be installed "by either a site evaluator or a professional engineer" and that the report on the site evaluation is to be "prepared by either the site evaluator or the professional engineer." This proposed language is necessary to clarify who is responsible for performing each site evaluation and preparing the report and to meet the new provisions in TWC, Chapter 37. Section 285.30(b) is proposed to be amended to indicate that all aspects of a site evaluation shall be performed "by either a site evaluator or a professional engineer." This proposed language is necessary to clarify who is responsible for performing all aspects of each site evaluation and to meet the provisions of TWC, Chapter 37. Section 285.30(b)(1) is proposed to be amended by adding "site evaluator or the professional engineer" and deleting "individual performing the site evaluation." This proposed language is necessary to clarify who is responsible for taking the borings at each OSSF site for the soil analysis and to meet the provisions of TWC, Chapter 37.

Section 285.30(b)(1)(B) is proposed to be amended to indicate that the gravel analysis portion of a site evaluation shall be performed "by either a site evaluator or a professional engineer." This proposed language is necessary to clarify who is responsible for performing the gravel analysis of each site evaluation and to meet the provisions of TWC, Chapter 37. Section 285.30(b)(1)(C) is proposed to be amended to indicate that either a site evaluator or a professional engineer must determine if there is the determination of a restrictive horizon. This proposed language is necessary to clarify who is responsible for performing this determination of each site evaluation and to meet the provisions of TWC, Chapter 37. Section 285.30(b)(2) is proposed to be amended to indicate that the groundwater evaluation portion of a site evaluation shall be performed "by either a site evaluator or a professional engineer." This proposed language is necessary to clarify who is responsible for performing the groundwater evaluation of each site evaluation and to meet the provisions of TWC, Chapter 37. Section 285.30(b)(2)(A) is proposed to be amended by adding "site evaluator or the professional engineer" and deleting "individual performing the site evaluation." This proposed language is necessary to be consistent with the other sections of the rules. Section 285.30(b)(2)(B) is proposed to be amended by adding "site evaluator or the professional engineer" and deleting "individual." This proposed language is necessary to be consistent with the other sections of the rule.

Subchapter F--Licensing and Registration Requirements for Installers, Apprentices, and Designated Representatives

The title of Subchapter F is proposed to be amended from "Licensing and Registration Requirements for Installers, Apprentices, and Designated Representatives" to "Licensing and Registration Requirements for Installers, Apprentices, Designated Representatives, and Site Evaluators." Section 285.50, General Requirements, is proposed to be amended to provide a reference to licensing requirements that have moved from Chapter 285 to Chapter 30 and to delete paragraphs that are proposed to be moved to Chapter 30. Section 285.50(a) is proposed to be amended to provide a reference that the procedures for issuing licenses and registrations have moved from Chapter 285 to Chapter 30. Existing §285.50(b) is proposed to be amended to change the citation from §285.51 to §30.244 since the licensing requirements have been moved to Chapter 30. Section 285.50(b)(1) and (2) is proposed to be deleted because it was moved to Chapter 30. Section 285.50(e) is proposed to be added to incorporate licensing provisions regarding site evaluator from TWC, Chapter 37. Section 285.50(e) is proposed to be moved to proposed §285.50(f) without change for better organization within the section.

Section 285.50(f) is proposed to be moved to §285.50(g) for better organization within the section. In addition to the items listed, language is proposed to be added that an individual working for a permitting authority shall not work as a site evaluator in the permitting authority's area of jurisdiction. The commission proposes to modify this subsection to remove any possible conflicts of interest for a designated representative. The language in §285.50(h) and (i) is proposed to be moved from existing §285.53(a) and (b) without change for better organization.

Sections 285.51 - 285.60 are proposed to be repealed and the existing language will be moved to the new Chapter 30.

Proposed new §285.60, Duties and Responsibilities of Site Evaluators, includes new requirements for the duties and responsibilities of site evaluators. Proposed §285.60(1) contains new language that requires a site evaluator to possess a current license or possess a current professional engineer license. This proposed paragraph states that it is the duty of a site evaluator to maintain a license and to ensure that the license is obtained or renewed, or that the professional engineer license is current, before any site evaluations are performed. Proposed §285.60(2) contains a new requirement to document the license number on work-related documentation because it is important for the owner of an OSSF to have a record of who performed the site evaluator. This information will allow the executive director to determine who is responsible for compliance with the rules and will enhance the ability of the executive director to enforce the requirements of Texas Health and Safety Code (THSC), Chapter 366 and 30 TAC Chapter 285. Proposed §285.60(3) is a new provision that requires a site evaluator to provide accurate information on any site evaluation or any other documentation submitted to the permitting authorities because it is necessary to specify in these rules that site evaluators are expected to avoid fraudulent activities, and because the permitting authorities must be able to rely on the accuracy of the documentation of site evaluators to determine whether the appropriate OSSF is being proposed for the site. Proposed §285.60(4) is added to require that an individual

with a site evaluator license maintain a current license as an Installer II, designated representative, or a professional sanitarian. This language is necessary to provide the exemption allowed in SB 405, relating to the regulation of professional geoscientists. New §285.60(5) is proposed to be added to include the duties of a site evaluator provided in TWC, Chapter 37. Proposed §285.60(6) is added to require the site evaluator to maintain a current address and phone number with the executive director and submit any change in writing within 30 days of the change. It is imperative for the executive director to have up-to-date information on site evaluators. This is necessary to ensure that the executive director is able to provide updates, track requirements, and send notices of renewal and to allow the executive director to secure compliance under these rules.

Section 285.62, Duties and Responsibilities of Designated Representatives, is proposed to be amended to include language on the prohibition of designated representatives from performing work as a site evaluator within the authorized agent's area of jurisdiction. Section 285.62(19) is proposed to be amended to expand the applicability of this paragraph to site evaluators. This is a general prohibition intended to eliminate potential conflict as a result of a designated representative working outside the position of the designated representative's responsibilities with the authorized agent.

Section 285.63, Duties and Responsibilities of Registered Apprentices, is proposed to be amended to include additional language to better define an apprentice's duties and responsibilities and to improve enforceability. Proposed new §285.63(a)(3) is added to require that an apprentice is to refrain from receiving compensation for an OSSF installation from anyone except the supervising installer. This language is necessary to improve enforceability. Section 285.63(a)(3) is proposed to be renumbered to §285.63(a)(4). Section 285.63(b) is proposed to be amended to add the word "advertise" to the list of activities an apprentice is not to perform. This language is necessary to be consistent with the requirements in Chapter 30.

Section 285.64, Denial, Reprimand, Suspension, or Revocation of License or Registration, is proposed to be repealed because the majority of the language has been moved to Chapter 30.

Proposed new §285.64, Suspension or Revocation of License or Registration, provides the violations for which the executive director may suspend or revoke a license or registration. Proposed new §285.64(a) states the actions for which a license may be suspended. New §285.64(1) identifies the actions for suspension by an installer. Proposed new §285.64(a)(1)(A) states that a license may be suspended for an installer for failing to perform required maintenance on an OSSF for at least eight consecutive months (failing to maintain records is evidence of failure to perform maintenance on the OSSF). Proposed new subparagraph (B) states that a license may be suspended for failing to properly submit three maintenance reports for an individual OSSF in a 12-month period. Proposed new subparagraph (C) states that a license may be suspended for failing to properly submit five or more required OSSF maintenance reports over any two-year period. A license may be suspended for a designated representative for the prohibited actions listed. Proposed new subparagraph (A) states that a license may be suspended for failing to verify, before the initial inspection for a particular OSSF, that the individual is a properly licensed installer. Proposed new subparagraph (B) states that a license may be revoked for failing to investigate nuisance complaints or complaints against installers, within 30 days of receipt of the complaint, according to §285.71.

Proposed new subparagraph (C) states that a license may be revoked for failing to enforce the requirements of the order, ordinance, or resolution of an authorized agent. New §285.64(b) states that in addition to the items listed in §30.33, the executive director may revoke a license or registration for the listed reasons. Proposed new §285.64(b)(1), lists the reasons for revocation for an installer. Licenses may be revoked for constructing, or allowing the construction of, an OSSF that is not in compliance with Chapter 285; or allowing, or beginning, the construction of an OSSF without a permit when a permit is required.

Proposed new §285.64(b)(2) lists the reasons a license may be revoked for a designated representative. These include approving construction of an OSSF that is not in conformance with this chapter, the authorized agent's approved order, ordinance, or resolution, and the notice of approval; practicing as an apprentice or an installer in the authorized agent's area of jurisdiction while employed, appointed, or contracted by that authorized agent; or working for a maintenance company in the authorized agent's area of jurisdiction while employed, appointed, or contracted by that authorized agent.

Proposed new §285.64(b)(3) provides the actions for which a license for a site evaluator may be revoked. The list of actions leading to revocation include failing to maintain a current Installer II, designated representative, or professional sanitarian license. Proposed new §285.64(b)(4) states the actions for which a license for apprentice may be revoked. Actions leading to a revocation include acting as, advertising, or performing duties and responsibilities of, an installer without the direct supervision of, or direct communication with, the supervising installer; or receiving compensation for an OSSF installation from someone other than the supervising installer.

Section 285.65, Hearings, is proposed to be repealed because the majority of the language has been moved to Chapter 30.

Subchapter G--OSSF Enforcement

Section 285.71, Authorized Agent Enforcement of OSSFs, is proposed to be amended to incorporate language regarding site evaluators, or professional engineers performing site evaluations, from new provisions in TWC, Chapter 37.

Section 285.71(a)(1) is proposed to be amended to add "site evaluator" to the list of licensed individuals who can be investigated by the authorized agents if a complaint is received. This language is necessary to provide authorized agents the ability to take appropriate and timely action, including criminal or civil enforcement, on all OSSF-related complaints of the types listed.

Section 285.71(a)(2) is proposed to be amended to add "site evaluator, or a professional engineer who is performing site evaluations" to the list of individuals that can be investigated by the authorized agents if they do not possess a current license. This language is necessary to provide authorized agents the ability to take appropriate and timely action, including criminal or civil enforcement, on all OSSF- related complaints of the types listed.

Subchapter I--Appendices

Two tables in §285.91 are proposed to be amended for consistency with the text of the rules and for clarification.

The table in §285.91(9) is proposed to be amended to indicate that the site evaluation is to performed by either a site evaluator or a professional engineer to be consistent with the proposed revisions to §285.30.

The table in §285.91(10) is proposed to be amended for clarification. The language "Sewage Treatment Tanks or Holding" is proposed to be deleted from the title of a column to clarify that all tanks need to be separated from the features listed in the table. This language is necessary since there are several types of tanks identified in the rules and not all are listed in the table. References to Chapter 290 are proposed to be amended to reflect the correct chapter name.

FISCAL NOTE: COSTS TO STATE AND LOCAL GOVERNMENT

John Davis, Technical Specialist with Strategic Planning and Appropriations, determined that for the first five-year period the proposed rules are in effect, there will be no significant fiscal implications for units of state and local government as a result of administration and enforcement of the proposed rules. The proposed repeal of licensing and registration requirements for OSSF installers, designated representatives, site evaluators, and installer apprentices, could result in cost savings for units of state and local government that pay these license fees. There will be no fiscal implications for units of state and local government that do not pay these license renewal fees.

The proposed rules are intended to implement certain provisions of HB 3111 (an act relating to occupational licenses and registrations issued by the commission), 77th Legislature, 2001.

House Bill 3111 creates a new chapter of TWC, which consolidates the administrative requirements of several commission regulated licensing and registration programs into one new chapter. The bill also consolidates the deposit of licensing fees from different funds or accounts into the Occupational Licensing Account.

The proposed rules would repeal the licensing and registration requirements for OSSF installers, designated representatives, site evaluators, and installer apprentices contained in this chapter. Additionally, this rulemaking will update language contained in this chapter by adding the responsibilities of a site evaluator, the requirement that all site evaluations and reports must be performed by a qualified site evaluator or professional engineer, update references, and make minor administrative corrections.

The repeal of the OSSF licensing and registration requirements would affect approximately 5,836 installers, designated representatives, site evaluators, and installer apprentices and result in the loss of fee revenue to the commission of an estimated $300,000 in licensing and registration fees.

However, in concurrent rulemaking, the licensing and registration requirements for OSSF installers, designated representatives, site evaluators, and installer apprentices are established in a new Chapter 30, Occupational Licenses and Registrations. Those provisions establish new fee rates and renewal cycles for OSSF installers, designated representatives, site evaluators, and installer apprentices. The proposed new fee rate ($70 every two years) only applies to installers, designated representatives, and site evaluators. The fee rate for apprentices will remain at $50 every two years. The license renewal fee rate for site evaluators is a new requirement. The license renewal fee rate for installers is currently $150 every two years, and the fee rate for designated representatives is $100 every two years.

PUBLIC BENEFITS AND COSTS

Mr. Davis also determined that for each year of the first five years the proposed rules are in effect, the public benefit anticipated from enforcement of and compliance with this rulemaking will be the implementation of certain provisions of HB 3111, and increased compliance through the consolidation and standardization of commission occupational licensing programs.

The proposed rules implement certain provisions of HB 3111. The bill creates a new chapter of TWC, which consolidates the administrative requirements of several commission regulated licensing and registration programs into one new chapter.

The proposed rules would repeal the licensing and registration requirements for OSSF installers, designated representatives, site evaluators, and installer apprentices contained in this chapter. Additionally, this rulemaking will update language contained in this chapter by adding the responsibilities of a site evaluator, the requirement that all site evaluations and reports must be performed by a qualified site evaluator or professional engineer, update references, and make minor administrative corrections.

If amendments in concurrent rulemaking are not adopted, the adoption of these amendments would result in cost savings for the affected 5,836 OSSF installers, designated representatives, site evaluators, and installer apprentices, though these cost savings are not considered significant. There will be no fiscal implications for individuals and businesses that do not pay license renewal fees for OSSF installers, designated representatives, site evaluators, and installer apprentices.

However, in concurrent rulemaking, the licensing and registration requirements for OSSF installers, designated representatives, site evaluators, and installer apprentices are established in a new Chapter 30, Occupational Licenses and Registrations. Those provisions establish new fee rates and renewal cycles for OSSF installers, designated representatives, site evaluators, and installer apprentices. The proposed new fee rate ($70 every two years) only applies to installers, designated representatives, and site evaluators. The fee rate for apprentices will remain at $50 every two years. The license renewal fee rate for site evaluators is a new requirement. The license renewal fee rate for installers is currently $150 every two years, and the fee rate for designated representatives is $100 every two years.

SMALL BUSINESS AND MICRO-BUSINESS ASSESSMENT

There will be no adverse fiscal impacts for small or micro-businesses as a result of the proposed rules, which is intended to implement provisions of HB 3111. Adoption of the proposed rules could result in a cost savings, which is not anticipated to be significant, for small or micro-businesses that pay for renewal of OSSF installer, designated representative, and site evaluator licenses. If amendments in concurrent rulemaking are not adopted, the adoption of these amendments would delete the licensing and registration requirement for the affected 5,836 OSSF installers, designated representatives, site evaluators, and installer apprentices, many of which are estimated to be small or micro-businesses. There will be no fiscal implications for small or micro-businesses that do not pay renewal fees for OSSF installers, designated representatives, site evaluators, and installer apprentice licenses.

The proposed rules would also update current language by adding the responsibilities of a site evaluator, the requirement that all site evaluations and reports must be performed by a qualified site evaluator or professional engineer, update references, and make minor administrative corrections.

However, in concurrent rulemaking, the licensing and registration requirements for OSSF installers, designated representatives, site evaluators, and installer apprentices are established

in a new Chapter 30, Occupational Licenses and Registrations. Those provisions establish new fee rates and renewal cycles for OSSF installers, designated representatives, site evaluators, and installer apprentices. The proposed new fee rate ($70 every two years) only applies to installers, designated representatives, and site evaluators. The fee rate for apprentices will remain at $50 every two years. The license renewal fee rate for site evaluators is a new requirement. The license renewal fee rate for installers is currently $150 every two years, and the fee rate for designated representatives is $100 every two years.

LOCAL EMPLOYMENT IMPACT

The commission has reviewed this proposed rulemaking and determined that a local employment impact statement is not required because the proposed rules do not adversely affect a local economy in a material way for the first five years that the proposed rules are in effect.

DRAFT REGULATORY IMPACT ANALYSIS DETERMINATION

The commission reviewed the proposed rules in light of the regulatory analysis requirements of the Texas Government Code, §2001.0225, and determined that the rules are not subject to §2001.0225. Section 2001.0225 only applies to rules that are specifically intended to protect the environment, or reduce risks to human health from environmental exposure. The intent of the rules is to consolidate the requirements for the various occupations, licensed or registered by the commission, into one chapter; not to protect the environment or human health. Protection of human health and the environment may be a by-product of the proposed rules, but it is not the specific intent of the proposed rules. Furthermore, the proposed rules would not adversely affect, in a material way, the economy, a section of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state, because the rules would simply consolidate existing rule language into one chapter. Thus, the proposed rules do not meet the definition of a "major environmental rule" as defined in the Texas Government Code, §2001.0225(g)(3), and thus, does not require a full regulatory impact analysis. The commission invites public comment on the draft regulatory impact analysis determination.

TAKINGS IMPACT ASSESSMENT

The commission has prepared a takings impact assessment for these proposed rules pursuant to Texas Government Code, §2007.43. The following is a summary of that assessment. The specific purpose of the rules is to consolidate the requirements for the various occupations, licensed or registered by the commission, into one chapter. The proposed rules would substantially advance this specific purpose by setting forth detailed procedures for obtaining an occupational licenses or registration including procedures for: the initial application; examinations; and renewal applications. The proposed rules do not constitute a takings because it would not burden private real property.

CONSISTENCY WITH THE COASTAL MANAGEMENT PROGRAM

The commission reviewed the rulemaking and found that the rules are neither identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11(b)(2), relating to Actions and Rules Subject to the Texas Coastal Management Program (CMP), nor would it affect any action or authorization identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11(a)(6). Therefore, the proposed rules are not subject to the CMP.

ANNOUNCEMENT OF HEARING

A public hearing on the proposal will be held October 11, 2001, at 10:00 a.m. in Room 131E, Building C, at the Texas Natural Resource Conservation Commission complex, located at 12100 Park 35 Circle, Austin. The hearing is structured for the receipt of oral or written comments by interested persons. Individuals may present oral statements when called upon in order of registration. Open discussion will not occur during the hearing; however, an agency staff member will be available to discuss the proposal 30 minutes prior to the hearing and answer questions before and after the hearing.

Persons with disabilities who have special communication or other accommodation needs who are planning to attend the meeting should contact the agency at (512) 239-4900. Requests should be made as far in advance as possible.

SUBMITTAL OF COMMENTS

Comments may be submitted to 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 2001-044-325-WT. Comments must be received by 5:00 pm., October 18, 2001. For further information, contact Melissa Estes, Policy and Regulations Division, at (512) 239-3937.

SUBCHAPTER A. GENERAL PROVISIONS

30 TAC §285.1, §285.2

STATUTORY AUTHORITY

The amendments are proposed under the authority granted to the commission by the Texas Legislature in TWC, Chapter 37. Furthermore, TWC, Chapter 37, provides the commission the authority to: establish classes and terms of occupational licenses and registrations; establish procedures for granting, denying, suspending occupational licenses and registrations; establish fees for occupational licenses and registrations; and establish training, continuing education, and examination requirements.

The proposed amendments are also authorized under the general authority granted in TWC, §5.013, which establishes the general jurisdiction of the commission over other areas of responsibility as assigned to the commission under TWC and other laws of the state; TWC, §5.103 and §5.105, which authorize the commission to adopt rules and policies necessary to carry out its responsibilities and duties under TWC, §5.013(15); and TWC, §7.002, which authorizes the commission to enforce provisions of TWC and THSC.

The proposed amendments implement TWC, §37.002 and THSC, §366.071, which require the commission to adopt rules to establish occupational licenses and registrations for OSSF installers, apprentices, and designated representatives.

§285.1. Purpose and Applicability.

(a) Purpose. The purpose of this chapter is to provide a comprehensive regulatory program for the management of on-site sewage facilities (OSSFs), as prescribed by the Texas Health and Safety Code, Chapter 366. This chapter establishes minimum standards for planning materials, construction, installation, alteration, repair, extension, operation, maintenance, permitting, and inspection of OSSFs. This chapter also provides the procedures for [~~licensing of installers and designated representatives, registration of apprentices, and~~] the designation of local governmental entities as authorized agents. The licensing of

installers, designated representatives, and site evaluators and the registration of apprentices is included in Chapter 30 of this title (relating to Occupational Licenses and Registrations). Unauthorized discharge of effluent into or adjacent to the waters in the state is prohibited.

(b) (No change.)

§285.2. Definitions.

The following words and terms in this section are in addition to the definitions in Chapter 3 and Chapter 30 of this title (relating to Definitions and Occupational Licenses and Registrations). The words and terms in this section, when used in this chapter, shall have the following meanings. [:]

(1) (No change.)

(2) Alter--To change an on-site sewage facility (OSSF) [~~OSSF~~] resulting in:

(A) - (E) (No change.)

(3) (No change.)

(4) Apprentice--An individual who has been properly registered with the executive director according to Chapter 30 of this title, and is undertaking a training program under the direct supervision of a licensed installer.

(5) - (7) (No change.)

[~~(8) Certificate of registration--The license held by an individual that allows an individual to perform specific tasks under these rules, and that is issued by the executive director.~~]

(8) [~~(9)~~] Certified professional soil scientist--An individual who has met the certification requirements of the American Society of Agronomy to engage in the practice of soil science.

(9) [~~(10)~~] Cesspool--A non-watertight, covered receptacle intended for the receipt and partial treatment of sewage. This device is constructed such that its sidewalls and bottom are open- jointed to allow the gradual discharge of liquids while retaining the solids for anaerobic decomposition.

(10) [~~(11)~~] Cluster system--A sewage collection, treatment, and disposal system designed to serve two or more sewage-generating units on separate legal tracts where the total combined flow from all units does not exceed 5,000 gallons per day.

(11) [~~(12)~~] Commercial or institutional facility--Any building that is not used as a single-family dwelling or duplex.

(12) [~~(13)~~] Compensation--A payment to construct, alter, repair, extend, maintain, or install an OSSF. Payment may be in the form of cash, check, charge, or other form of monetary exchange or exchange of property or services for service rendered.

(13) [~~(14)~~] Composting toilet--A self-contained treatment and disposal facility constructed to decompose non-waterborne human wastes through bacterial action.

(14) [~~(15)~~] Condensate drain--A pipe that is used for the disposal of water generated by air conditioners, refrigeration equipment, or other equipment.

(15) [~~(16)~~] Construct--To engage in any activity related to the installation, alteration, extension, or repair of an OSSF, including all activities from disturbing the soils through connecting the system to the building or property served by the OSSF. Activities relating to a site evaluation are not considered construction.

(16) [~~(17)~~] Delegate--The executive director's act of assigning authority to implement the OSSF program under this chapter.

(17) [~~(18)~~] Designated representative--An individual who holds a valid license issued by the executive director according to Chapter 30 of this title, and who is designated by the authorized agent to review permit applications, [~~conduct~~] site evaluations, or planning materials, or conduct [~~percolation tests, system designs, and~~] inspections on OSSFs.

(18) [~~(19)~~] Direct communication--The demonstrated ability of an installer and the apprentice to communicate immediately with each other in person, by telephone, or by radio.

(19) [~~(20)~~] Direct supervision--The responsibility of an installer to oversee, direct, and approve all actions of an apprentice relating to the construction of an OSSF.

(20) [~~(21)~~] Discharge--To deposit, conduct, drain, emit, throw, run, allow to seep, or otherwise release or dispose of, or to allow, permit, or suffer any of these acts or omissions.

(21) [~~(22)~~] Edwards Aquifer--That portion of an arcuate belt of porous, waterbearing predominantly carbonate rocks (limestones) known as the Edwards (Balcones Fault Zone) Aquifer trending from west to east to northeast in Kinney, Uvalde, Medina, Bexar, Comal, Hays, Travis, and Williamson Counties; and composed of the Salmon Peak Limestone, McKnight Formation, West Nueces Formation, Devil's River Limestone, Person Formation, Kainer Formation, Edwards Group, and Georgetown Formation, or as amended under Chapter 213 of this title (relating to Edwards Aquifer). The permeable aquifer units generally overlie the less-permeable Glen Rose Formation to the south, overlie the less-permeable Comanche Peak and Walnut formations north of the Colorado River, and underlie the less-permeable Del Rio Clay regionally.

(22) [~~(23)~~] Edwards Aquifer Recharge zone--That area where the stratigraphic units constituting the Edwards Aquifer crop out, including the outcrops of other geologic formations in proximity to the Edwards Aquifer, where caves, sinkholes, faults, fractures, or other permeable features would create a potential for recharge of surface waters into the Edwards Aquifer. The recharge zone is identified as a geographic area delineated on official maps located in the appropriate regional office and groundwater conservation district, or as amended by Chapter 213 of this title.

(23) [~~(24)~~] Extend--To alter an OSSF resulting in an increase in capacity, lengthening, or expansion of the existing treatment or disposal system.

(24) [~~(25)~~] Floodplain (100-year)--Any area susceptible to inundation by flood waters from any source and subject to the statistical 100-year flood (has a 1% chance of flooding each year).

(25) [~~(26)~~] Floodway--The channel of a watercourse and the adjacent land areas (within a portion of the 100-year floodplain) that must be reserved in order to discharge the 100-year flood without cumulatively increasing the water surface elevation more than one foot above the 100-year flood elevation before encroachment into the 100-year floodplain.

(26) [~~(27)~~] Geotextile filter fabric--A non-woven fabric suitable for wastewater applications.

(27) [~~(28)~~] Gravel-less drainfield pipe--An eight-inch or ten-inch diameter geotextile fabric-wrapped piping product without gravel or media.

(28) [~~(29)~~] Grease interceptor--Floatation chambers where grease floats to the water surface and is retained while the clearer water underneath is discharged.

(29) [~~(30)~~] Groundwater--Subsurface water occurring in soils and geologic formations that are fully saturated either year-round or on a seasonal or intermittent basis.

(30) [~~(31)~~] Holding tank--A watertight container equipped with a high-level alarm used to receive and store sewage pending its delivery to an approved treatment process.

(31) [~~(32)~~] Individual--A single living human being.

(32) [~~(33)~~] Install--To put in place or construct any portion of an OSSF.

(33) [~~(34)~~] Installer--An individual who is compensated by another to construct an OSSF.

~~[(35) License--The document issued by the executive director approving an individual to perform duties authorized under this chapter.]~~

(34) [~~(36)~~] Local governmental entity--A municipality, county, river authority, or special district, including groundwater conservation districts, soil and water conservation districts, and public health districts.

(35) [~~(37)~~] Maintenance--Required or routine performance checks, examinations, upkeep, cleaning, or mechanical adjustments to an OSSF, including replacement of pumps, filters, aerator lines, valves, or electrical components. Maintenance does not include alterations.

(36) [~~(38)~~] Maintenance company--A person or business that maintains OSSFs.

(37) [~~(39)~~] Maintenance findings--The results of a required performance check or component examination on a specific OSSF.

(38) [~~(40)~~] Malfunctioning OSSF--An OSSF that is causing a nuisance or is not operating in compliance with this chapter.

(39) [~~(41)~~] Manufactured housing community--Any area developed or used for lease or rental of space for two or more manufactured homes.

(40) [~~(42)~~] Multi-unit residential development--Any area developed or used for a structure or combination of structures designed to lease or rent space to house two or more families.

(41) [~~(43)~~] Notice of approval--Written permission from the permitting authority to operate an OSSF. The notice of approval is the final part of the permit.

(42) [~~(44)~~] Nuisance--

(A) sewage, human excreta, or other organic waste discharged or exposed in a manner that makes it a potential instrument or medium in the transmission of disease to or between persons;

(B) an overflow from a septic tank or similar device, including surface discharge from or groundwater contamination by a component of an OSSF; or

(C) a blatant discharge from an OSSF.

(43) [~~(45)~~] On-site sewage disposal system--One or more systems that:

(A) do not treat or dispose of more than 5,000 gallons of sewage each day; and

(B) are used only for disposal of sewage produced on a site where any part of the system is located.

(44) [~~(46)~~] On-site sewage facility (OSSF)--An on-site sewage disposal system.

(45) [~~(47)~~] On-site waste disposal order--An order, ordinance, or resolution adopted by a local governmental entity and approved by the executive director.

(46) [~~(48)~~] Operate--To use an OSSF.

(47) [~~(49)~~] Owner--A person who owns property served by an OSSF, or a person who owns an OSSF. This includes any person who holds legal possession or ownership of a total or partial interest in the structure or property served by an OSSF.

(48) [~~(50)~~] Owner's agent--An installer, professional sanitarian, or professional engineer who is authorized to submit the permit application and the planning materials to the permitting authority on behalf of the owner.

(49) [~~(51)~~] Permit--An authorization, issued by the permitting authority, to construct or operate an OSSF. The permit consists of the authorization to construct (including the approved planning materials) and the notice of approval.

(50) [~~(52)~~] Permitting authority--The executive director or an authorized agent.

(51) [~~(53)~~] Planning material--Plans, applications, site evaluations, and other supporting materials submitted to the permitting authority for the purpose of obtaining a permit.

(52) [~~(54)~~] Platted--The subdivision of property which has been recorded with a county or municipality in an official plat record.

(53) [~~(55)~~] Pretreatment tank--A tank placed ahead of a treatment unit that functions as an interceptor for materials such as plastics, clothing, hair, and grease that are potentially harmful to treatment unit components.

(54) [~~(56)~~] Professional engineer--An individual licensed by the Texas Board of Professional Engineers to engage in the practice of engineering in the State of Texas.

(55) [~~(57)~~] Professional sanitarian--An individual registered by the Texas Department of Health to carry out educational and inspection duties in the field of sanitation in the State of Texas.

(56) [~~(58)~~] Proprietary system--An OSSF treatment or disposal system that is produced or marketed under exclusive legal right of the manufacturer or designer or for which a patent, trade name, trademark, or copyright is used by a person or company.

(57) [~~(59)~~] Recharge feature--Permeable geologic or man-made feature located on the Edwards Aquifer recharge zone where:

(A) a potential for hydraulic interconnectedness between the surface and the aquifer exists; and

(B) rapid infiltration from the OSSF to the subsurface may occur.

(58) [~~(60)~~] Recreational vehicle park--A single tract of land that has rental spaces for two or more vehicles that are intended for recreational use only and has a combined wastewater flow of less than 5,000 gallons per day.

(59) [~~(61)~~] Regional office--A regional office of the agency.

(60) [~~(62)~~] Repair--To replace any components of an OSSF in situations not included under emergency repairs according to §285.35 of this title (relating to Emergency Repairs), excluding maintenance. The replacement of tanks or drainfields is considered a repair and requires a permit for the entire OSSF system.

[~~(63) Revocation--A formal procedure, initiated by the executive director, in which an apprentice's, installer's, or designated representative's license or registration is rescinded by the commission.~~]

(61) [~~(64)~~] Scum--A mass of organic or inorganic matter which floats on the surface of sewage.

(62) [~~(65)~~] Secondary treatment--The process of reducing pollutants to the levels specified in Chapter 309 of this title (relating to Domestic Wastewater Effluent Limitation and Plant Siting).

(63) [~~(66)~~] Seepage pit--An unlined covered excavation in the ground which operates in essentially the same manner as a cesspool.

(64) [~~(67)~~] Septic tank--A watertight covered receptacle constructed to receive, store, and treat sewage by: separating solids from the liquid; digesting organic matter under anaerobic conditions; storing the digested solids through a period of detention; and allowing the clarified liquid to be disposed of by a method approved under this chapter.

(65) [~~(68)~~] Sewage--Waste that:

(A) is primarily organic and biodegradable or decomposable; and

(B) originates as human, animal, or plant waste from certain activities, including the use of toilet facilities, washing, bathing, and preparing food.

(66) [~~(69)~~] Single family dwelling--A structure that is either built on or brought to a site, for use as a residence for one family. A single family dwelling includes all detached buildings located on the residential property and routinely used only by members of the household of the single family dwelling.

(67) Site evaluator--An individual who holds a valid license issued by the executive director according to Chapter 30 of this title, or holds a current professional engineer license, and conducts preconstruction site evaluations, including visiting a site and performing soil analysis, a site survey, or other activities necessary to determine the suitability of a site for an OSSF.

(68) [~~(70)~~] Sludge--A semi-liquid mass of partially decomposed organic and inorganic matter which settles at or near the bottom of a receptacle containing sewage.

(69) [~~(71)~~] Soil--The upper layer of the surface of the earth that serves as a natural medium for the growth of plants.

(70) [~~(72)~~] Soil absorption system--A subsurface method for the treatment and disposal of sewage which relies on the soil's ability to treat and absorb moisture and allow its dispersal by lateral and vertical movement through and between individual soil particles.

(71) [~~(73)~~] Subdivision--A tract of property divided into two or more parts either by platting or field notes with metes and bounds, and transferred by deed or contract for deed.

(72) [~~(74)~~] Well--A water well, injection well, dewatering well, monitoring well, piezometer well, observation well, or recovery well as defined under the Texas Water Code, Chapters 26, 32 and 33, and 16 TAC Chapter 76 (relating to Water Well Drillers and Water Well Pump Installers).

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

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Stephanie Bergeron
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SUBCHAPTER D. PLANNING, CONSTRUCTION, AND INSTALLATION STANDARDS FOR OSSFS

30 TAC §285.30

STATUTORY AUTHORITY

The amendment is proposed under the authority granted to the commission by the Texas Legislature in TWC, Chapter 37. Furthermore, TWC, Chapter 37, provides the commission the authority to: establish classes and terms of occupational licenses and registrations; establish procedures for granting, denying, suspending occupational licenses and registrations; establish fees for occupational licenses and registrations; and establish training, continuing education, and examination requirements.

The proposed amendment is also authorized under the general authority granted in TWC, §5.013, which establishes the general jurisdiction of the commission over other areas of responsibility as assigned to the commission under TWC and other laws of the state; TWC, §5.103 and §5.105, which authorize the commission to adopt rules and policies necessary to carry out its responsibilities and duties under TWC, §5.013(15); and TWC, §7.002, which authorizes the commission to enforce provisions of TWC and THSC.

The proposed amendment implements TWC, §37.002 and THSC, §366.071, which require the commission to adopt rules to establish occupational licenses and registrations for OSSF installers, apprentices, and designated representatives.

§285.30. Site Evaluation.

(a) General Requirement. To document the soil and site conditions, a complete site evaluation shall be performed by either a site evaluator or a professional engineer on every tract of land where an OSSF will be installed. A report prepared by either the site evaluator or the professional engineer providing the site evaluation criteria in subsection (b) of this section shall be submitted with the planning materials.

(b) Site evaluation criteria. All aspects of the site evaluation shall be performed by either a site evaluator or a professional engineer according to this section. The information obtained during the site evaluation shall be used to determine the type and size of the OSSF.

(1) Soil analysis. The site evaluator or the professional engineer [~~individual performing the site evaluation~~] shall either drill two soil borings or excavate two backhoe pits at opposite ends of the proposed disposal area to determine the characteristics of the soil. In areas of high soil variability, the permitting authority may require additional borings or backhoe pits. The borings or backhoe pits shall either be excavated to a depth of two feet below the proposed excavation of the disposal area, or to a restrictive horizon, whichever is less.

(A) (No change.)

(B) Gravel analysis. Class II or Class III soils containing gravel shall be further evaluated by either a site evaluator or a professional engineer by using a sieve analysis to determine the percentage of gravel by volume and the size of the gravel as indicated in§285.91(5) of this title.

(C) Restrictive horizons analysis. The soils within the borings or backhoe pits shall be analyzed by either a site evaluator or a professional engineer to determine if a restrictive horizon exists. Clay subsoils, rock, and plugged laminar soils are considered restrictive horizons. Restrictive horizons are recognized by an abrupt change in texture from a sandy or loamy surface horizon to:

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

(2) Groundwater evaluation. The soil profile shall be examined by either a site evaluator or a professional engineer to determine if there are indications of groundwater within 24 inches of the bottom of the excavation.

(A) If the designated representative and the site evaluator or the professional engineer [~~individual performing the site evaluation~~] disagree on the presence of groundwater, the designated representative shall verify groundwater information using the Natural Resources Conservation Service (NRCS) soil survey for that county, if it is available.

(B) If the designated representative or the site evaluator or the professional engineer [~~individual~~] disagree with the NRCS soil survey, or if an NRCS soil survey does not exist for that county, the owner has the option to retain a certified professional soil scientist to evaluate the presence of groundwater and present that information to the designated representative for a final decision.

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

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

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SUBCHAPTER F. LICENSING AND REGISTRATION REQUIREMENTS FOR INSTALLERS, APPRENTICES, DESIGNATED REPRESENTATIVES, AND SITE EVALUATORS

30 TAC §§285.50, 285.60, 285.62 - 285.64

STATUTORY AUTHORITY

The new and amended sections are proposed under the authority granted to the commission by the Texas Legislature in TWC, Chapter 37. Furthermore, TWC, Chapter 37, provides the commission the authority to: establish classes and terms of occupational licenses and registrations; establish procedures for granting, denying, suspending occupational licenses and registrations; establish fees for occupational licenses and registrations; and establish training, continuing education, and examination requirements.

The proposed new and amended sections are also authorized under the general authority granted in TWC, §5.013, which establishes the general jurisdiction of the commission over other areas of responsibility as assigned to the commission under TWC and other laws of the state; TWC, §5.103 and §5.105, which authorize the commission to adopt rules and policies necessary to carry out its responsibilities and duties under the TWC, §5.013(15); and TWC, §7.002, which authorizes the commission to enforce provisions of TWC and THSC.

The proposed new and amended sections implement TWC, §37.002 and THSC, §366.071, which require the commission to adopt rules to establish occupational licenses and registrations for OSSF installers, apprentices, and designated representatives.

§285.50. General Requirements.

(a) The procedures for issuing licenses and registrations for on-site sewage facilities (OSSF) installers, designated representatives, apprentices, and site evaluators are in Chapter 30 of this title (relating to Occupational Licenses and Registrations) [~~purpose of this subchapter is to provide a uniform procedure for issuing licenses to installers and designated representatives, and issuing registrations to apprentices~~].

(b) Any individual who constructs any part of an OSSF shall hold a current installer license appropriate for the type of system being installed, except as noted in §30.244 [~~§285.51~~] of this title (relating to Exemptions [~~to Licensing Requirements~~]). This does not include the individuals under the direct supervision of the licensed installer or registered apprentice.

[~~(1) Individuals may not advertise or represent themselves to the public as installers unless they possess a current installer license. Entities may not advertise or represent to the public that they can perform installer services unless they employ a currently licensed individual.~~]

[~~(2) The executive director may waive qualifications, training, or examination for an installer with a current authorization from another state if that state has requirements equivalent to those in this subchapter.~~]

(c) - (d) (No change.)

(e) Effective September 1, 2002, any individual, other than a professional engineer, who performs the duties of a site evaluator under §285.60 of this title (relating to Duties and Responsibilities of Site Evaluators) shall possess a current site evaluator license. An individual possessing a current professional engineer license is not required to possess a site evaluator license.

(f) [~~(e)~~] When required by the permitting authority, the installer or the installer's apprentice must be present at the job site during the inspection or re-inspection of the OSSF.

(g) [~~(f)~~] Any individual who acts in any capacity for a permitting authority shall not, within that permitting authority's area of jurisdiction:

(1) work as an apprentice to an OSSF installer;

(2) work as an OSSF installer;

(3) work for an OSSF maintenance company; [~~or~~]

(4) work as a site evaluator; or

(5) [~~(4)~~] perform any other OSSF-related activities which fall under the permitting authority's regulatory jurisdiction, except those activities directly related to the individual's duties as an employee of, appointee to, or contractor for the permitting authority.

(h) An Installer I is authorized to construct OSSFs as described in §285.91(9) of this title (relating to Tables).

(i) An Installer II is authorized to construct all types of OSSFs as described in §285.91(9) of this title.

§285.60. Duties and Responsibilities of Site Evaluators.
A site evaluator shall:

(1) possess a current license from the executive director or possess a current professional engineer license;

(2) record their license number on all site evaluations, and all other correspondence prepared as a site evaluator under this chapter;

(3) provide true and accurate information on any site evaluation or any other documentation;

(4) maintain a current Installer II, designated representative, or professional sanitarian license, in addition to the site evaluator;

(5) conduct preconstruction site evaluations, including visiting the site and performing soil analysis, a site survey, or other activities necessary to determine if a site is suitable for an on-site sewage facility (OSSF); and

(6) maintain a current address and phone number with the executive director and submit any change in address or phone number in writing within 30 days after the date of the change.

§285.62. Duties and Responsibilities of Designated Representatives.
A designated representative shall:

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

(9) verify, before the initial inspection, that the installer possesses a current license and has the correct classification for constructing the permitted or planned on-site sewage facility (OSSF) [~~OSSF~~];

(10) - (18) (No change.)

(19) while employed by, appointed to, or contracted by the authorized agent, refrain from performing any of the following activities within the authorized agent's area of jurisdiction:

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

(C) working for an OSSF maintenance company; [~~or~~]

(D) working as a site evaluator; or

(E) [~~(D)~~] performing any other OSSF-related activities which fall under the authorized agent's regulatory jurisdiction, except those activities directly related to the individual's duties as a designated representative for the authorized agent;

(20) - (21) (No change.)

§285.63. Duties and Responsibilities of Registered Apprentices.
(a) An apprentice shall:

(1) (No change.)

(2) perform services associated with on-site sewage facility (OSSF) [~~OSSF~~] construction under the direct supervision and direction of the installer on-site or be in direct communication with the installer; [~~and~~]

(3) refrain from receiving compensation for an OSSF installation from anyone except the supervising installer; and

(4) [~~(3)~~] maintain a current address and phone number with the executive director and submit any change in address or phone number in writing within 30 days after the date of the change.

(b) An apprentice shall not act as, advertise, or offer to perform services as, an installer. An apprentice may not perform any services associated with OSSF construction except under the direct supervision of an installer holding a current license or according to the supervising installer's expressed directions.

§285.64. Suspension or Revocation of License or Registration.

(a) Suspension. In addition to the items listed in §30.33 of this title (relating to License or Registration Denial, Warning, Suspension, or Revocation), the executive director may suspend a license for the following reasons:

(1) for an installer:

(A) failing to perform required maintenance on an on-site sewage facility (OSSF) for at least eight consecutive months (failing to maintain records is evidence of failure to perform maintenance on the OSSF);

(B) failing to properly submit three maintenance reports for an individual OSSF in a 12-month period; or

(C) failing to properly submit five or more required OSSF maintenance reports over any two-year period;

(2) for a designated representative:

(A) failing to verify, before the initial inspection for a particular OSSF, that the individual is a properly licensed installer;

(B) failing to investigate nuisance complaints or complaints against installers, within 30 days of receipt of the complaint, according to §285.71 of this title (relating to Authorized Agent Enforcement of OSSFs); or

(C) failing to enforce the requirements of the order, ordinance, or resolution of an authorized agent;

(b) Revocation. In addition to the items listed in §30.33 of this title, the executive director may revoke a license or registration for the following reasons:

(1) for an installer:

(A) constructing, or allowing the construction of, an OSSF that is not in compliance with Chapter 285 of this title;

(B) allowing, or beginning, the construction of an OSSF without a permit when a permit is required;

(2) for a designated representative:

(A) approving construction of an OSSF that is not in conformance with this chapter, the authorized agent's approved order, ordinance, or resolution, and the notice of approval;

(B) practicing as an apprentice or an installer in the authorized agent's area of jurisdiction while employed, appointed, or contracted by that authorized agent; or

(C) working for a maintenance company in the authorized agent's area of jurisdiction while employed, appointed, or contracted by that authorized agent;

(3) for a site evaluator: failing to maintain a current Installer II, designated representative, or professional sanitarian license; or

(4) for an apprentice:

(A) acting as, advertising, or performing duties and responsibilities of, an installer without the direct supervision of, or direct communication with, the supervising installer; or

(B) receiving compensation for an OSSF installation from someone other than the supervising installer.

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

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SUBCHAPTER F. LICENSING AND REGISTRATION REQUIREMENTS FOR INSTALLERS, APPRENTICES AND DESIGNATED REPRESENTATIVES

30 TAC §§285.51 - 285.60, 285.64, 285.65

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

STATUTORY AUTHORITY

The repeals are proposed under the authority granted to the commission by the Texas Legislature in the TWC, Chapter 37. Furthermore, TWC, Chapter 37, provides the commission the authority to: establish classes and terms of occupational licenses and registrations; establish procedures for granting, denying, suspending occupational licenses and registrations; establish fees for occupational licenses and registrations; and establish training, continuing education, and examination requirements.

The proposed repeals are also authorized under the general authority granted in TWC, §5.013, which establishes the general jurisdiction of the commission over other areas of responsibility as assigned to the commission under TWC and other laws of the state; TWC, §5.103 and §5.105, which authorize the commission to adopt rules and policies necessary to carry out its responsibilities and duties under TWC, §5.013(15); and TWC, §7.002, which authorizes the commission to enforce provisions of TWC and THSC.

The proposed repeals implement TWC, §37.002 and THSC, §366.071, which require the commission to adopt rules to establish occupational licenses and registrations for OSSF installers, apprentices, and designated representatives.

§285.51. Exemptions to Licensing Requirements.

§285.52. Administration.

§285.53. Qualifications.

§285.54. Basic Training and Continuing Education.

§285.55. Examinations.

§285.56. Applications for License.

§285.57. Registration of Apprentices.

§285.58. Applications for Renewal.

§285.59. Conditions for Denial of License, Registration, or Renewal.

§285.60. Terms and Fees.

§285.64. Denial, Reprimand, Suspension, or Revocation of License or Registration.

§285.65. Hearings.

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

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SUBCHAPTER G. OSSF ENFORCEMENT

30 TAC §285.71

STATUTORY AUTHORITY

The amendment is proposed under the authority granted to the commission by the Texas Legislature in TWC, Chapter 37. Furthermore, TWC, Chapter 37, provides the commission the authority to: establish classes and terms of occupational licenses and registrations; establish procedures for granting, denying, suspending occupational licenses and registrations; establish fees for occupational licenses and registrations; and establish training, continuing education, and examination requirements.

The proposed amendment is also authorized under the general authority granted in TWC, §5.013, which establishes the general jurisdiction of the commission over other areas of responsibility as assigned to the commission under TWC and other laws of the state; TWC, §5.103 and §5.105, which authorize the commission to adopt rules and policies necessary to carry out its responsibilities and duties under TWC, §5.013(15); and TWC, §7.002, which authorizes the commission to enforce provisions of TWC and THSC.

The proposed amendment implements TWC, §37.002 and THSC, §366.071, which require the commission to adopt rules to establish occupational licenses and registrations for OSSF installers, apprentices, and designated representatives.

§285.71. Authorized Agent Enforcement of OSSFs.

(a) Complaints. The authorized agent shall investigate a complaint regarding an on-site sewage facility (OSSF) [~~OSSF~~] within 30 days after receipt of the complaint, notify the complainant of the findings, and take appropriate and timely action on all documented violations. Appropriate action may include criminal or civil enforcement action as necessary under the authority of their order, ordinance, or resolution, the Texas Water Code, Chapters 7 and 26, or the Texas Health

and Safety Code, Chapters 341 and 366. This may include complaints against:

(1) registered apprentices and licensed installers, site evaluators, and designated representatives;

(2) individuals performing the duties as an apprentice, installer, [~~or~~] designated representative, site evaluator, or a professional engineer who is performing site evaluations without a current registration or license;

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

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

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

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SUBCHAPTER I. APPENDICES

30 TAC §285.91

STATUTORY AUTHORITY

The amendment is proposed under the authority granted to the commission by the Texas Legislature in TWC, Chapter 37. Furthermore, TWC, Chapter 37, provides the commission the authority to: establish classes and terms of occupational licenses and registrations; establish procedures for granting, denying, suspending occupational licenses and registrations; establish fees for occupational licenses and registrations; and establish training, continuing education, and examination requirements.

The proposed amendment is also authorized under the general authority granted in TWC, §5.013, which establishes the general jurisdiction of the commission over other areas of responsibility as assigned to the commission under TWC and other laws of the state; TWC, §5.103 and §5.105, which authorize the commission to adopt rules and policies necessary to carry out its responsibilities and duties under TWC, §5.013(15); and TWC, §7.002, which authorizes the commission to enforce provisions of TWC and THSC.

The proposed amendment implements TWC, §37.002 and THSC, §366.071, which require the commission to adopt rules to establish occupational licenses and registrations for OSSF installers, apprentices, and designated representatives.

§285.91. Tables.

The following tables are necessary for the proper location, planning, construction, and installation of an OSSF.

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

(9) Table IX. OSSF System Designation.
Figure: 30 TAC §285.91(9)

(10) Table X. Minimum Required Separation Distances for On-Site Sewage Facilities.
Figure: 30 TAC §285.91(10)

(11) - (13) (No change.)

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

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For further information, please call: (512) 239-4712

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CHAPTER 290. PUBLIC DRINKING WATER SUBCHAPTER A. CERTIFICATION OF PERSON TO INSTALL, EXCHANGE, SERVICE, OR REPAIR RESIDENTIAL WATER TREATMENT FACILITIES

30 TAC §§290.20 - 290.26

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

The Texas Natural Resource Conservation Commission (commission) proposes the repeal of §290.20, General Provisions; §290.21, Definitions; §290.22, Types of Certificates; §290.23, Qualification Requirements; §290.24, Applying for Certificates; §290.25, Revocation of Certificates; and §290.26, Fees.

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE PROPOSED RULES

Rules administering the water treatment certification program were originally promulgated when this program was administered by the Texas Department of Health (TDH). The certification program was transferred to the commission in 1992 and the commission adopted the existing rules which had been promulgated by TDH. Those rules were promulgated by the commission as Subchapter A of Chapter 290. Chapter 290, Public Drinking Water, Subchapter A, Certification of Person to Install, Exchange, Service, or Repair Residential Water Treatment Facilities, is proposed for repeal and readoption as Chapter 30, Subchapter H, Water Treatment Specialists. The proposed repeals are part of a concurrent rulemaking which consolidates several of the occupational licensing programs under the authority of the commission into one chapter, new 30 TAC Chapter 30, Occupational Licenses and Registrations, to incorporate new provisions of Texas Water Code (TWC), Chapter 37, implemented by House Bill (HB) 3111 and HB 2912 of the 77th Legislature, 2001.

SECTION BY SECTION DISCUSSION

To implement HB 3111, the commission is consolidating ten licensing and registration programs into new Chapter 30. As part

of that consolidation, Chapter 290, Subchapter A, is proposed for repeal and readoption as Chapter 30, Subchapter H, Water Treatment Specialists. Changes to the rules are discussed in the preamble of the rulemaking for Chapter 30, and published in this issue of the *Texas Register*.

The commission concurrently proposes the review of Chapter 290, Subchapter A, in this issue of the *Texas Register*.

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 repeals are in effect, no significant fiscal implications are anticipated for the agency or other units of state government or local government.

The proposed repeals implement certain provisions in HB 3111 (relating to occupational licenses and registrations issued by the commission), 77th Legislature, 2001, and provisions in HB 2912 (relating to the continuation and functions of the commission; providing penalties), 77th Legislature, 2001.

House Bill 3111 creates a new chapter of the TWC, which consolidates the administrative requirements for several commission-regulated licensing and registration programs into one new chapter. The bill also consolidates the deposit of licensing fees from different funds or accounts into the occupational licensing account. House Bill 2912 also requires the commission to adopt rules for the certification of water treatment specialists. Costs to the commission to implement HB 2912 provisions for the certification of water treatment specialists are not significant, as the provisions provide clarification for certification requirements and establish that the commission is responsible for administering the program.

The proposed repeals would delete provisions relating to the certification of water treatment specialists. This subchapter provides qualification requirements, fees, certification levels, and general licensing requirements for persons who install, exchange, service, or repair residential water treatment systems. Because this rulemaking also incorporates the quadrennial review of Chapter 290, Subchapter A, there are other proposed changes to the current rules which were originally promulgated when the water treatment certification program was administered by TDH.

The repeals would affect approximately 525 certified residential water treatment specialists and result in the loss of fee revenue to the commission of an estimated $8,500 in certification and renewal fees. Currently, there are three classes of certification: Class 1 is valid for two years for a cost of $20; Class 2 is valid for three years and costs $30; Class 3 is valid for five years and costs $50. Individuals seeking certification as residential water treatment specialists pay these fees or companies that employ these individuals may pay these fees. There are no known state or local governments who currently employ certified residential water treatment specialists.

In concurrent rulemaking, the qualification requirements, fees, certification levels, and other provisions relating to the qualifications for issuing and renewing licenses to an individual who installs and repairs water treatment equipment are established in a new Chapter 30, Subchapter H. Those provisions establish new fee rates and renewal cycles for the certification of water treatment specialists, including certification for commercial, industrial, and residential water treatment specialists. The proposed new fee rates are higher than current fee rates. Fee rates will increase by $50 over a two-year period per license.

PUBLIC BENEFITS AND COSTS

Mr. Horvath also determined that for each year of the first five years the proposed repeals are in effect, the public benefit anticipated from enforcement of and compliance with the proposed repeals will be the implementation of certain provisions in HB 3111 and increased compliance through the consolidation and standardization of the commission occupational licensing programs.

Adoption of the proposed repeals would delete the qualification and certification requirements for water treatment specialists. If amendments in concurrent rulemaking are not adopted, the adoption of these repeals would result in cost savings for those individuals certified as water treatment specialists, though these cost savings are not considered significant.

The proposed repeals implement certain provisions in HB 3111 and provisions in HB 2912.

House Bill 3111 creates a new chapter of the TWC, which consolidates the administrative requirements for several the commission regulated licensing and registration programs into one new chapter. The bill also consolidates the deposit of licensing fees from different funds or accounts into the occupational licensing account. House Bill 2912 also requires the commission to adopt rules for the certification of water treatment specialists. Costs to the commission to implement HB 2912 provisions for the certification of water treatment specialists are not significant, as the provisions provide clarification for certification requirements and establish that the commission is responsible for administering the program.

The proposed repeals would delete Chapter 290, Subchapter A provisions relating to the certification of water treatment specialists. This subchapter provides qualification requirements, fees, certification levels, and general licensing requirements for persons who install, exchange, service, or repair residential water treatment systems. Because this rulemaking also incorporates the quadrennial review of Chapter 290, Subchapter A, there are other proposed changes to the current rules which were originally promulgated when the water treatment certification program was administered by TDH.

The repeals would affect approximately 525 certified residential water treatment specialists and result in the loss of fee revenue to the commission of an estimated $8,500 in certification and renewal fees. Currently, there are three classes of certification; Class 1 is valid for two years for a cost of $20; Class 2 is valid for three years and costs $30; Class 3 is valid for five years and costs $50. Individuals seeking certification as residential water treatment specialists pay these fees or companies that employ these individuals may pay these fees.

In concurrent rulemaking, the qualification requirements, fees, certification levels, and other provisions relating to the qualifications for issuing and renewing licenses to an individual who installs and repairs water treatment equipment are established in a new Chapter 30, Subchapter H. Those provisions establish new fee rates and renewal cycles for the certification of water treatment specialists. The proposed new fee rates are higher than current fee rates. Fee rates will increase by $50 over a two- year period per license.

SMALL BUSINESS AND MICRO-BUSINESS ASSESSMENT

Adverse fiscal implications are not anticipated for those small or micro-businesses who employ certified water treatment specialists as a result of implementation of the proposed repeals. The proposed repeals would delete certification and fee requirements for water treatment specialists, and small or micro- businesses that employ these individuals would realize cost savings if they currently pay for their employee's license fees.

In concurrent rulemaking, the qualification requirements, fees, certification levels, and other provisions relating to the qualifications for issuing and renewing licenses to an individual who installs and repairs water treatment equipment are established in a new Chapter 30, Subchapter H. Those provisions establish new fee rates and renewal cycles for the certification of water treatment specialists. The proposed new fee rates are higher than current fee rates and would include certification for commercial, residential and industrial water treatment specialists. Fee rates will increase by $50 over a two-year period per license. For any small or micro-businesses that pays licensing fees for these employees, there will be costs to these businesses, though these costs are not considered significant.

The repeals would affect approximately 525 certified residential water treatment specialists and result in the loss of fee revenue to the commission of an estimated $8,500 in certification and renewal fees. Currently, there are three classes of certification; Class 1 is valid for two years for a cost of $20; Class 2 is valid for three years and costs $30; Class 3 is valid for five years and costs $50. Individuals seeking certification as residential water treatment specialists pay these fees or companies that employ these individuals may pay these fees.

LOCAL EMPLOYMENT IMPACT STATEMENT

The commission has reviewed this proposed rulemaking and determined that a local employment impact statement is not required because the proposed repeals do not adversely affect a local economy in a material way for the first five years that the proposed repeals are in effect.

DRAFT REGULATORY IMPACT ANALYSIS DETERMINATION

The commission reviewed the proposed repeals in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and determined that the repeals are not subject to §2001.0225. Section 2001.0225 only applies to rules that are specifically intended to protect the environment, or reduce risks to human health from environmental exposure. The intent of the rulemaking is to consolidate the requirements for the various occupations, licensed or registered by the commission, into one chapter; not to protect the environment or human health. Protection of human health and the environment may be a by-product of the proposed repeals, but it is not the specific intent of the proposed repeals. Furthermore, the proposed repeals would not adversely affect, in a material way, the economy, a section of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state, because the repeals would consolidate existing rule language into one chapter. Thus, the proposed repeals do not meet the definition of a "major environmental rule" as defined in Texas Government Code, §2001.0225(g)(3), and thus, do not require a full regulatory impact analysis. The commission invites public comment on the draft regulatory impact analysis determination.

TAKINGS IMPACT ASSESSMENT

The commission prepared a takings impact assessment for these repeals under Texas Government Code, §2007.43. The following is a summary of that assessment. The specific purpose of the repeals is to consolidate the requirements for the various occupations, licensed or registered by the TNRCC, into one chapter. The proposed repeals would substantially advance this specific purpose by setting forth detailed procedures for obtaining an occupational licenses or registration including procedures for: the initial application; examinations; and renewal applications. The proposed repeals do not constitute a takings because they would not burden private real property.

CONSISTENCY WITH THE COASTAL MANAGEMENT PROGRAM

The commission reviewed the rulemaking and found that the proposed repeals are 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 would they affect any action or authorization identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11(a)(6). Therefore, the proposed repeals are not subject to the CMP.

ANNOUNCEMENT OF HEARING

A public hearing on the proposal will be held October 11, 2001, at 10:00 a.m. in Room 131E, Building C, at the Texas Natural Resource Conservation Commission complex, located at 12100 Park 35 Circle, Austin. The hearing is structured for the receipt of oral or written comments by interested persons. Individuals may present oral statements when called upon in order of registration. Open discussion will not occur during the hearing; however, an agency staff member will be available to discuss the proposal 30 minutes prior to the hearing and answer questions before and after the hearing.

Persons with disabilities who have special communication or other accommodation needs who are planning to attend the meeting should contact the agency at (512) 239-4900. Requests should be made as far in advance as possible.

SUBMITTAL OF COMMENTS

Comments may be submitted to 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 2001-044-325-WT. Comments must be received by 5:00 pm., October 18, 2001. For further information, contact Melissa Estes, Policy and Regulations Division, at (512) 239-3937.

STATUTORY AUTHORITY

The repeals are proposed under the authority granted to the commission by the Texas Legislature in TWC, Chapter 37. Texas Water Code, Chapter 37, provides the commission the authority to: establish classes and terms of occupational licenses and registrations; establish procedures for granting, denying, and suspending occupational licenses and registrations; establish fees for occupational licenses and registrations; and establish training, continuing education, and examination requirements. The repeals are also authorized under the general authority granted in TWC, §5.013, which establishes the general jurisdiction of the commission over other areas of responsibility as assigned to the commission under the TWC and other laws of the state; TWC, §5.103 and §5.105, which authorize the commission to adopt rules and policies necessary to carry out its responsibilities and

duties under TWC, §5.013(15); and TWC, §7.002, which authorizes the commission to enforce provisions of TWC and Texas Health and Safety Code (THSC).

The proposed repeals are implemented under TWC, §37.002, which requires the commission to adopt rules to establish occupational licenses and registrations for water treatment specialists (THSC, §341.033 and §341.034).

§290.20. General Provisions.

§290.21. Definitions.

§290.22. Types of Certificates.

§290.23. Qualification Requirements.

§290.24. Applying for Certificates.

§290.25. Revocation of Certificates.

§290.26. Fees.

This 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 September 14, 2001.

TRD-200105539
Stephanie Bergeron
Director, Environmental Law Division
Texas Natural Resource Conservation Commission
Earliest possible date of adoption: October 28, 2001
For further information, please call: (512) 239-4712

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CHAPTER 321. CONTROL OF CERTAIN ACTIVITIES BY RULE

SUBCHAPTER B. CONCENTRATED ANIMAL FEEDING OPERATIONS

30 TAC §§321.32 - 321.35, 321.39, 321.48, 321.49

The Texas Natural Resource Conservation Commission (TNRCC or commission) proposes amendments to §321.32, Definitions; §321.33, Applicability; §321.34, Procedures for Making Application for an Individual Permit; §321.35, Procedures for Making Application for Registration; §321.39, Pollution Prevention Plans; and new §321.48, Regulation of Certain Dairy Concentrated Animal Feeding Operations (CAFOs); and §321.49, Dairy Waste Application Field Soil Sampling and Testing.

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE PROPOSED RULES

The primary purpose of the proposed amendments and new sections is to implement the following legislation from the 77th Legislature, 2001: House Bill (HB) 2912, an act relating to the continuation and functions of the Texas Natural Resource Conservation Commission; providing penalties, Article 12, Regulation of Certain Animal Feeding Operations; Senate Bill (SB) 2, an act relating to the development and management of the water resources of the state, including the ratification of the creation of certain groundwater conservation districts; providing penalties, Article 8, Concentrated Animal Feeding Operations; and SB 1339, an act relating to requiring owners or operators of poultry facilities to implement and maintain certified water quality management plans.

House Bill 2912, Article 12, added Texas Water Code (TWC), Chapter 26, Subchapter L, relating to Protection of Certain Watersheds, which regulates certain CAFO wastes and sets forth waste application field soil sampling and testing requirements. Senate Bill 2, Article 8, amended TWC, §26.0286, relating to Procedures Applicable to Permits for Certain Concentrated Animal Feeding Operations, which establishes the requirement that the TNRCC process an application for authorization to construct or operate any CAFO located in the protection zone of a sole-source surface drinking water supply as an application for an individual permit. Senate Bill 1339, §3, basically exempts certain poultry operations from the commission's CAFO rules.

SECTION BY SECTION DISCUSSION

Section 321.32 is proposed to be amended to define, in a manner consistent with HB 2912 and SB 2, the definitions of "historical waste application field" under paragraph (16); "major sole-source impairment zone" under paragraph (21); "new CAFO" under paragraph (23); "protection zone" under paragraph (33); and "sole-source surface drinking water supply" under paragraph (38).

Section 321.33 is proposed to be amended to add (TWC) after "Texas Water Code" in subsection (b) , and to add the phrase "including all poultry operations as described in TWC, §26.302" in subsection (d) in order to implement the requirements in this regard under SB 1339. Thus, the proposal implements the aforementioned statute to conditionally exclude certain poultry operations from the CAFO requirements of this subchapter. Section 321.33 is also proposed to be amended to add new subsections relating to applicability of certain requirements under Chapter 321. Under proposed §321.33(q), the applicability statement states that §321.48, Regulation of Certain Dairy Concentrated Animal Feeding Operations (CAFOs) and §321.49, Dairy Waste Application Field Soil Sampling and Testing, apply to a feeding operation confining cattle that have been or may be used for dairy purposes, or otherwise associated with a dairy, including cows, calves, and bulls, in a major sole-source impairment zone, as defined in §321.32. Under proposed §321.33(r), CAFOs located or proposed to be located within the protection zone of a sole-source surface drinking water supply must obtain authorization to construct or operate through the individual permit process and the individual permit application must be filed by the owner or operator for any new permit or for any major amendment or renewal of an existing permit. Under proposed §321.33(s), the commission is required to process an application for a CAFO located or proposed to be located within the protection zone of a sole-source surface drinking water supply as an individual permit under TWC, §26.028, relating to Action on Application, subject to the procedures provided by TWC, Chapter 5, Subchapter M, relating to Environmental Permitting Procedures. The individual permit requirement is triggered if, on the date the executive director (ED) determines that the application is administratively complete, any part of any pen, lot, pond, or other type of control or retention facility or structure of the CAFO is located in the protection zone of a sole-source surface drinking water supply.

Section 321.34(a) is proposed to be amended to remove the reference to the paragraphs of §321.35(c)(1) - (13) by deleting "(1) - (13)." This proposed change will make future changes to this

subsection unnecessary when more paragraphs are added to §321.35(c), because the reference to §321.35(c) includes all the paragraphs in the subsection.

Section 321.35 is proposed to be amended in subsection (c) to add an exception to the sentence which states that a facility which is not required under federal law to obtain National Pollutant Discharge Elimination System (NPDES) authorization may apply for a state-only registration, which authorizes the discharge or disposal of waste or wastewater into or adjacent to water in the state only in the event of a 25-year, 24-hour rainfall event, or may transfer from an individual permit to such a registration in accordance with §321.33(l) of this title. Because the CAFOs regulated under §321.48 must obtain an individual permit, the phrase "Except as provided in §321.33(r) of this title (relating to Applicability) and §321.48 of this title (relating to Regulation of Certain Dairy Concentrated Animal Feeding Operations," is added at the beginning of the aforementioned sentence. Section 321.35(c) is also proposed to be amended to add paragraphs (14) and (15), which require certain applications for CAFOs to include documentation showing whether or not they are located in a major sole-source impairment zone or a protection zone of a sole-source surface drinking water supply.

Section 321.39(f)(28)(G) is proposed to be amended to add the phrase "an employee of the" prior to "NRCS"; add the phrase "a nutrient management specialist certified by NRCS"; change "Texas Agricultural Extension Service" to "Texas Cooperative Extension"; and insert the phrase "after approval by the executive director based on a determination by the executive director that another person or entity identified in this subparagraph cannot develop the plan in a timely manner" at the end of the first sentence.

Proposed new §321.48 addresses the regulation of new dairy CAFOs and dairy CAFOs increasing the number of animals confined under an existing operation that are feeding operations confining cattle that have been or may be used for dairy purposes, or otherwise associated with a dairy, including cows, calves, and bulls, in a major sole source impairment zone. Subsection (b) would require an owner or operator of such a CAFO to submit a permit application and obtain a new or amended individual permit prior to constructing or operating the new CAFO or increasing the number of confined animals. Subsection (c) is a proposed caveat stating that nothing in this section limits the commission's authority to include in an individual or general permit under this subchapter provisions necessary to protect a water resource in this state. Subsection (d) spells out proposed permit requirements, stating that any permit to which this section applies must, at a minimum, provide for management and beneficial use of waste in accordance with Subchapter B. The permit must also require that 100% of the collectible manure produced by the additional animals in confinement at an expanded operation or all of the animals in confinement at a new operation must be: beneficially used outside of the watershed; delivered to a composting facility approved by the ED; put to another beneficial use approved by the ED; or applied in certain ways. If applied, the manure application must meet any of three sets of requirements or options. The first option is that if it is applied to a waste application field that is not a historical waste application field owned or controlled by the owner of the CAFO, then it must be applied in accordance with the pollution prevention plan requirements of §321.39, relating to Pollution Prevention Plans, and in accordance with §321.40, relating to Best Management Practices. The other options are that if it is applied to a historical waste application field that is owned or operated by the owner or operator of the CAFO: Option 2.) if the soil has 200 parts per million (ppm) or less extractable phosphorus in the soil, then it must be applied in accordance with the aforementioned pollution prevention plan and best management practice requirements; and Option 3.) if the soil has more than 200 ppm extractable phosphorus, it must be applied in accordance with a detailed nutrient utilization plan approved by the ED which, at a minimum, meets the requirements of §321.39(f)(28)(G). Under proposed subsection (e) the detailed nutrient utilization plan required under subsection (d) must be developed by: an employee of the United States Department of Agriculture's Natural Resources Conservation Service (NRCS); a nutrient management specialist certified by the United States Department of Agriculture's NRCS; the State Soil and Water Conservation Board; the Texas Cooperative Extension; an agronomist or soil scientist on the full-time staff of an accredited university located in this state; or a professional agronomist or soil scientist certified by the American Society of Agronomy, after approval by the ED based on a determination by the ED that another person or entity listed as the first five options cannot develop the plan in a timely manner.

Proposed new §321.49 relates to dairy waste application field soil sampling and testing. This proposed section would apply to CAFOs that are feeding operations confining cattle that have been or may be used for dairy purposes, or otherwise associated with a dairy, including cows, calves, and bulls, in a major sole source impairment zone, as defined in §321.32. Under proposed subsection (b), for new CAFOs or CAFOs increasing the number of animals, the waste application field soil sampling and testing requirements must be implemented concurrent with the next required annual soil sampling date established in the pollution prevention plan. Under proposed subsection (c), for existing CAFOs not increasing the number of animals, these requirements must be implemented no later than September 1, 2003. Proposed §321.49(d) requires the CAFO operator to contract with a person described in proposed §321.48(e) who is approved by the ED to collect one or more representative composite soil samples from each waste application field, and the CAFO operator must sample under this section in accordance with the pollution prevention plan requirements of §321.39 not less often than once every 12 months, in accordance with the procedures in §321.39(f)(28)(A) - (D). Under proposed subsection (e), each sample collected under subsection (b) (2) must be tested in accordance with the applicable requirements of §321.39(f)(28)(A) - (F) and be tested for any other nutrient designated by the ED. Under proposed subsection (f), the analysis results from the testing performed under subsection (e) must be submitted to the ED and a copy must be submitted to the local TNRCC Regional Office and the operator of the CAFO within 60 days of the sampling. Under proposed subsection (g), if the samples tested under subsection (c) show a phosphorus level in the soil of more than 500 ppm, the operator must file with the ED a new or amended nutrient utilization plan with a phosphorus reduction component that is certified as acceptable by a person described in §321.48(e). Under proposed subsection (h), if the samples tested under subsection (e) show a phosphorus level in the soil of more than 200 ppm but not more than 500 ppm, the operator must file with the ED a new or amended nutrient utilization plan with a phosphorus reduction component that is certified as acceptable by a person described in §321.48(e), or show that the level is supported by a nutrient utilization plan certified as acceptable by a person described under §321.48(e). Finally, under proposed subsection (i), if the owner or operator of a waste application field is required by subsection (g) or (h) to have a nutrient utilization plan with a phosphorus reduction component, and if the results of tests performed on

composite soil samples collected 12 months or more after the plan is filed do not show a reduction in phosphorus concentration, then the owner or operator is subject to enforcement action at the discretion of the ED. The proposal also requires the ED, in determining whether to take an enforcement action, to consider any explanation presented by the owner or operator regarding the reasons for the lack of phosphorus reduction, including but not limited to an act of God, meteorologic conditions, diseases, vermin, crop conditions, or variability of soil testing results.

FISCAL NOTE: COSTS TO STATE AND LOCAL GOVERNMENT

Jeffrey Horvath, Strategic Planning and Appropriations, has determined that for the first five years the proposed amendments are in effect, there will be no significant fiscal implications for the agency or other units of state and local government as a result of administration or enforcement of the proposed amendments.

The proposed amendments implement certain provisions in HB 2912, SB 2, and SB 1339, 77th Legislature, 2001. The proposed amendments would implement SB 2 provisions which would require individual permits for CAFOs within the protection zone of a sole-source surface drinking water supply. These proposed amendments will affect all CAFOs within the watershed of a sole-source surface drinking water supply that is within two miles of a sole-source drinking water supply reservoir or within two miles of that part of a perennial stream that is a tributary of a sole-source drinking water supply; and within three linear miles upstream of a sole-source drinking water supply reservoir or within two miles of a sole-source surface drinking water supply river, extending three linear miles upstream from the sole-source water supply intake point. These proposed amendments will affect all CAFOs in the state which are near sole-source surface drinking water supplies.

The proposed amendments would also provide new requirements for the regulation of certain dairy CAFOs in watersheds that are classified as major sole-source impairment zones as required by HB 2912. These proposed amendments will affect the dairy CAFOs in the Bosque River watershed. The proposed amendments would require individual permits for the construction or operation of a new dairy CAFO, or an increase in the number of animals confined under an existing operation, in major sole- source impairment zones. A major sole-source impairment zone means a watershed that contains a reservoir: 1.) that is used by a municipality as a sole source of drinking water supply for a population, inside and outside of its municipal boundaries, of more than 140,000; and 2.) at least half of the water flowing into which is from a source that is on the list of impaired state waters adopted by the commission: A.) at least in part because of concerns regarding pathogens and phosphorus; and B.) for which the commission, at some time, has prepared and submitted a total maximum daily load standard.

Finally, the proposed amendments would implement SB 1339 exemptions for certain poultry operations that operate under Texas State Soil and Water Conservation Board (TSSWCB) certified water quality management plans from CAFO permitting requirements.

Owners or operators of new or expanding dairy CAFOs in the Bosque River watershed would be required to obtain a new or amended individual permit to meet HB 2912 requirements. The proposed permit requirements would include provisions for waste management, soil testing, and nutrient utilization plans. Facilities would be required to provide soil sampling results showing levels of phosphorus. If the phosphorus levels meet certain thresholds, a nutrient utilization plan must be developed and implemented.

In order to meet the HB 2912 requirements for individual permits, some dairy CAFOs in the Bosque River watershed may be subject to contested case hearings. Out of the approximately 64 CAFOs in the Bosque River watershed, it is estimated that a total of 50 CAFOs will require individual permits due to new or expanding operations. In order to meet the SB 2 requirements for individual permits, CAFOs determined to be within protection zones of sole-source drinking water supplies may be subject to contested case hearings. Out of the estimated 600 permitted or registered CAFOs in the state, it is estimated that approximately 70 additional CAFOs will require individual permits. Costs for those seeking permit applications may include consultant and/or engineering fees, permit fees, and potential costs associated with facility design and construction. Even though site-specific requirements in an individual permit could result in additional costs to the facility owner or operator, no significant costs are anticipated to obtain an individual permit unless a request for a contested case hearing is granted. If a contested case hearing is granted, estimated costs to the applicant may reach $50,000 for attorney and other fees. The amount of these fees would vary depending on the complexity of the issues involved and the length of the hearing.

The processing of additional individual permits and the potential increased involvement in public hearings may represent additional workload for agency staff, though significant fiscal implications are not anticipated for the agency or other units of state or local government to implement these provisions.

The proposed individual permit requirements for the Bosque River watershed would also include provisions for waste disposal and management, soil testing, and nutrient utilization plans. Estimated costs to meet the proposed manure handling provisions are not considered significant due to the joint program conducted with TNRCC and the TSSWCB in the Bosque River watershed which reimburses manure haulers to transport manure to a composting facility. This grant program is funded with 60% federal funds and 40% matching state funds. It is assumed funding will continue to be available for the next two years and possibly for the next five years. However, if funding is not available, costs to approximately 70 owners and operators could be significant. Costs to transport manure would vary widely and depend upon the number of animals, the distance from a compost facility, and many other factors. The TSSWCB has reimbursed approximately $1.2 million this year for costs to transport manure. In addition, the legislature appropriated $565,863 each year of the 2002 - 2003 biennium to the TSSWCB to be used for payments to transport manure. The Texas Department of Transportation (TxDOT) has expended approximately $600,000 in federal grant funds and $400,000 in state funds for costs associated with using dairy compost for roadside revegetation and erosion control projects using a pass-through grant from TNRCC.

Facilities that choose to use land applications to beneficially use the manure on land that has had manure applications since 1995, or otherwise have high levels of phosphorus in soil samples, would be required to develop and implement nutrient utilization plans. Soil testing costs are not considered significant. The proposed amendments would require the use of a certified nutrient management specialist to develop the nutrient utilization plans. Estimated costs to employ a certified

nutrient specialist may be in the range of $5,000 - $10,000 per year per facility.

The proposed amendments would implement SB 1339 exemptions for certain poultry operations that operate under TSSWCB certified water quality management plans from CAFO permitting requirements. No fiscal implications are anticipated to the agency or other units of state or local government to implement these provisions.

PUBLIC BENEFITS AND COSTS

Mr. Horvath also determined that for each year of the first five years the proposed amendments are in effect, the public benefit anticipated from the enforcement and compliance with these proposed amendments will be the increased protection of public drinking water supplies.

There may be significant fiscal implications for businesses or individuals seeking to obtain individual permits for CAFOs under the proposed amendments if there are contested case hearings.

The proposed amendments implement certain provisions in HB 2912, SB 2, and SB 1339, 77th Legislature, 2001. The proposed amendments would implement SB 2 provisions which would require individual permits for CAFOs within the protection zone of a sole-source surface drinking water supply. These proposed amendments will affect all CAFOs within the watershed of a sole-source surface drinking water supply that is within two miles of a sole-source drinking water supply reservoir or within two miles of that part of a perennial stream that is a tributary of a sole-source drinking water supply; and within three linear miles upstream of a sole-source drinking water supply reservoir or within two miles of a sole-source surface drinking water supply river, extending three linear miles upstream from the sole-source water supply intake point. These proposed amendments will affect all CAFOs in the state which are near sole-source surface drinking water supplies.

The proposed amendments would provide new requirements for the regulation of certain dairy CAFOs in major sole-source impairment zones as required by HB 2912. These proposed amendments will affect the dairy CAFOs in the Bosque River watershed. The proposed amendments would require individual permits for the construction or operation of a new dairy CAFO, or an increase in the number of dairy animals confined under an existing operation, in major sole-source impairment zones. A major sole-source impairment zone means a watershed that contains a reservoir: 1.) that is used by a municipality as a sole-source of drinking water supply for a population, inside and outside of its municipal boundaries, of more than 140,000; and 2.) at least half of the water flowing into which is from a source that is on the list of impaired state waters adopted by the commission: A.) at least in part because of concerns regarding pathogens and phosphorus; and B.) for which the commission, at some time, has prepared and submitted a total maximum daily load standard.

Finally, the proposed amendments would implement SB 1339 exemptions for certain poultry operations that operate under TSSWCB certified water quality management plans from CAFO permitting the requirements. No fiscal implications are anticipated to individuals or businesses to implement the SB 1339 provisions.

Owners or operators of new or expanding dairy CAFOs in the Bosque River watershed would be required to obtain a new or amended individual permit as required by HB 2912. The proposed permit requirements would include provisions for waste management, soil testing, and nutrient utilization plans. Facilities would be required to provide soil sampling results showing levels of phosphorus. If the phosphorus levels meet certain thresholds, a nutrient utilization plan must be developed and implemented.

In order to meet the HB 2912 requirements for individual permits, dairy CAFOs in the Bosque River watershed may be subject to contested case hearings. Out of the approximately 64 CAFOs in the Bosque River watershed, it is estimated that a total of 50 CAFOs will require individual permits due to new or expanding operations. In order to meet the SB 2 requirements for individual permits, CAFOs determined to be within protection zones of sole-source drinking water supplies may be subject to contested case hearings. Out of the estimated 600 permitted or registered CAFOs in the state, it is estimated that approximately 70 additional CAFOs will require individual permits. Costs for those seeking permit applications may include consultant and/or engineering fees, permit fees, and potential costs associated with facility design and construction. Even though site-specific requirements in an individual permit could result in additional costs to the facility owner or operator, no significant costs are anticipated to obtain an individual permit unless a request for a contested case hearing is granted. If a contested case hearing is granted, estimated costs to the applicant may reach $50,000 for attorney and other fees. The amount of these fees would vary depending on the complexity of the issues involved and the length of the hearing.

The proposed permit requirements for the Bosque River watershed would also include provisions for waste management, soil testing, and nutrient utilization plans. Estimated costs to meet the proposed manure handling provisions are not considered significant due to the joint program conducted with TNRCC and the TSSWCB in the Bosque River watershed which reimburses manure haulers to transport manure to a composting facility. This grant program is funded with 60% federal funds and 40% matching state funds. It is assumed funding will continue to be available for the next two years and possibly for the next five years. However, if funding is not available, costs to approximately 70 owners and operators could be significant. Costs to transport manure would vary widely and depend upon the number of animals, the distance from a compost facility, and many other factors. The TSSWCB has reimbursed approximately $1.2 million this year for costs to transport manure. In addition, the legislature appropriated $565,863 each year of the 2002 - 2003 biennium to the TSSWCB to be used for payments to transport manure. The TxDOT has expended approximately $600,000 in federal grant funds and $400,000 in state funds for costs associated with using dairy compost for roadside revegetation and erosion control projects using a pass- through grant from TNRCC.

Facilities that choose to beneficially land apply the manure on land that has had manure applications since 1995, or otherwise have high levels of phosphorus in soil samples, would be required to develop and implement nutrient utilization plans. Soil testing costs are not considered significant. The proposed amendments would require the use of a certified nutrient management specialist to develop the nutrient utilization plans. Estimated costs to employ a certified nutrient management specialist may be in the range of $5,000 - $10,000 per year per facility.

SMALL BUSINESS AND MICRO-BUSINESS ASSESSMENT

There are adverse fiscal implications to small or micro-businesses required to obtain individual permits for certain CAFOs in the Bosque River watershed or within protection zones of sole-source drinking water supplies which may be significant as a result of the proposed rulemaking.

The proposed amendments implement certain provisions in HB 2912, SB 2, and SB 1339, 77th Legislature, 2001. The proposed amendments would implement SB 2 provisions which would require individual permits for CAFOs within the protection zone of a sole-source surface drinking water supply. These proposed amendments will affect all CAFOs within the watershed of a sole-source surface drinking water supply that is within two miles of a sole-source drinking water supply reservoir or within two miles of that part of a perennial stream that is a tributary of a sole-source drinking water supply; and within three linear miles upstream of a sole-source drinking water supply reservoir or within two miles of a sole-source surface drinking water supply river, extending three linear miles upstream from the sole-source water supply intake point. These proposed amendments will affect all CAFOs in the state which are near sole-source surface drinking water supplies.

The proposed amendments would provide new requirements for the regulation of certain dairy CAFOs in watersheds that are classified as major sole-source impairment zones as required by HB 2912. These proposed amendments will affect the dairy CAFOs in the Bosque River watershed. The proposed amendments would require individual permits for the construction or operation of a new dairy CAFO, or an increase in the number of dairy animals confined under an existing operation, in major sole-source impairment zones. A major sole-source impairment zone means a watershed that contains a reservoir: 1.) that is used by a municipality as a sole-source of drinking water supply for a population, inside and outside of its municipal boundaries, of more than 140,000; and 2.) at least half of the water flowing into which is from a source that is on the list of impaired state waters adopted by the commission: A.) at least in part because of concerns regarding pathogens and phosphorus; and B.) for which the commission, at some time, has prepared and submitted a total maximum daily load standard.

Owners or operators of new or expanding dairy CAFOs in the Bosque River watershed would be required to obtain a new or amended individual permit as required by HB 2912. The proposed permit requirements would include provisions for waste management, soil testing, and nutrient utilization plans. Facilities would be required to provide soil sampling results showing levels of phosphorus. If the phosphorus levels meet certain thresholds then a nutrient utilization plan must be developed and implemented.

In order to meet the requirements for individual permits in HB 2912, dairy CAFOs in the Bosque River watershed may be subject to contested case hearings. Out of the approximately 64 CAFOs in the Bosque River watershed, it is estimated that a total of 50 CAFOs will require individual permits due to new or expanding operations. It is not known how many of these facilities are small or micro- businesses, but it could be assumed that many of these facilities would meet the definition of a small or micro-business as they may have 100 employees or less and less than $1 million in annual gross receipts. In order to meet the requirements for individual permits in SB 2, CAFOs determined to be within protection zones of sole-source drinking water supplies is anticipated to affect an additional total of approximately 70 of the estimated 600 permitted or registered CAFOs in the state. Those determined to be within protection zones will be required to obtain individual permits. It is not known how many of these facilities are small or micro-businesses. These facilities would include feedlots, dairies, hog farms, or other livestock operations that meet the definition of a CAFO.

Costs for those seeking permit applications may include consultant and/or engineering fees, permit fees, and potential costs associated with facility design and construction. Even though site-specific requirements in an individual permit could result in additional costs to the facility owner or operator, no significant costs are anticipated to obtain an individual permit unless a request for a contested case hearing is granted. If a contested case hearing is granted, estimated costs to the applicant may reach $50,000 for attorney and other fees. The amount of these fees would vary depending on the complexity of the issues involved and the length of the hearing.

The proposed permit requirements for the Bosque River watershed would also include provisions for waste disposal and management, soil testing, and nutrient utilization plans. Estimated costs to meet the proposed manure handling provisions are not considered significant due to the joint program conducted with TNRCC and the TSSWCB in the Bosque River watershed which reimburses manure haulers to transport manure to a composting facility. This grant program is funded with 60% federal funds and 40% matching state funds. It is assumed funding will continue to be available for the next two years and possibly for the next five years. However, if funding is not available, costs to approximately 70 owners and operators could be significant. Costs to transport manure would vary widely and depend upon the number of animals, the distance from a compost facility, and many other factors. The TSSWCB has reimbursed approximately $1.2 million this year for costs to transport manure. In addition, the legislature appropriated $565,863 each year of the 2002 - 2003 biennium to the TSSWCB to be used for payments to transport manure. The TxDOT has expended approximately $600,000 in federal grant funds and $400,000 in state funds for costs associated with using dairy compost for roadside revegetation and erosion control projects using a pass through grant from TNRCC.

Facilities that choose to use land applications to beneficially use the manure on land that has had manure applications since 1995, or otherwise have high levels of phosphorus in soil samples, would be required to develop and use nutrient utilization plans. Soil testing costs are not considered significant. The proposed amendments would require the use of a certified nutrient management specialist to develop the nutrient utilization plans. Estimated costs to employ a certified nutrient specialist may be in the range of $5,000 - $10,000 per year per facility.

The following is an analysis of the potential cost per employee for small or micro-businesses affected by the proposed amendments. A small business is defined as having 100 or fewer employees. A small business that is required to have a contested case hearing would incur costs of $50,000 or $500 per employee. Small businesses that must develop nutrient utilization plans would incur yearly costs of $5,000 - $10,000 or $50 - $100 per employee. A micro-business is defined as having 20 or fewer employees. Micro-businesses that have contested case hearings would incur costs of $50,000 or $2,500 per employee. Micro-businesses that must develop nutrient utilization plans would incur yearly costs of $5,000 - $10,000 or $250 - $500 per employee.

LOCAL EMPLOYMENT IMPACT STATEMENT

The commission has reviewed this proposed rulemaking and determined that a local employment impact statement is not required because the proposed rules does not adversely affect a local economy in a material way for the first five years that the proposed rules are in effect.

DRAFT REGULATORY IMPACT ANALYSIS DETERMINATION

The commission reviewed the proposed rulemaking in light of the regulatory analysis requirements of the Texas Government Code, §2001.0225, and determined that the rulemaking is not subject to §2001.0225 because it does not meet the definition of a "major environmental rule" as defined in the statute. The proposal does not meet the definition of "major environmental rule" for several reasons. First, these proposed rules are primarily procedural in nature, dealing largely with application requirements for CAFOs, and requiring certain CAFOs to obtain individual permits. It should be noted that the commission's rules currently allow the ED to require a CAFO to apply for an individual permit if the operation is located near surface water resources. Therefore, the requirement to apply for an individual permit is not a new requirement, and thus the proposed rules do not adversely affect in a material way the economy, a sector of the economy, productivity, competition, or jobs of the state or a sector of the state. Finally, because the proposed rules deal primarily with application requirements, they are procedural in nature and would not adversely affect the environment, or the public health and safety of the state or a sector of the state. One aspect of the proposed rules which is not an application requirement is the soil sampling and testing portion, which does not represent a significant burden so as to adversely affect in a material way the economy, a sector of the economy, productivity, competition, or jobs of the state or a sector of the state.

In addition, these proposed rules do not exceed a standard set by federal law, exceed an express requirement of state law, exceed a requirement of a delegation agreement, or propose to adopt a rule solely under the general powers of the agency. This proposal does not exceed a standard set by federal law because there are no such corresponding federal standards. This proposal does not exceed an express requirement of state law because it is specifically required by TWC, Chapter 26, Subchapter L, §26.0286; and by SB 1339. 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 because the September 14, 1998 "Memorandum of Understanding between the United States Environmental Protection Agency and the TNRCC" authorizing the commission to implement the NPDES permitting program in Texas, requires CAFOs, as defined in the federal Clean Water Act, to obtain Texas Pollutant Discharge Elimination System authorization but does not specify whether the authorization must be through an individual permit, registration under a permit-by-rule, or through a general permit. This proposal does not adopt a rule solely under the general powers of the agency, but rather under specific state law (i.e., TWC, §26.0286, which requires the commission to use certain procedures for processing applications for certain CAFOs).

TAKINGS IMPACT ASSESSMENT

The commission prepared a takings impact assessment for these proposed rules in accordance with Texas Government Code, §2007.043. The following is a summary of that assessment. The purposes of the proposed rules are to implement the requirements of TWC, Chapter 26, Subchapter L, which regulates certain CAFO wastes and sets forth waste application field soil sampling and testing requirements; TWC, §26.0286, which establishes the requirement for an individual permit for any CAFO located in the protection zone of a sole-source surface drinking water supply; and SB 1339, which basically exempts poultry operations from the commission's CAFO rules. The proposed rules would substantially advance this stated purpose by requiring certain CAFOs in a major sole-source impairment zone to obtain an individual permit, to manage and beneficially use waste in a specified manner, and to sample and test the soil on their waste application fields; by defining protection zone and sole-source surface drinking water supply and by requiring an individual permit for any CAFO located in the protection zone of a sole-source surface drinking water supply; and by exempting poultry operations from the commission's CAFO rules.

Promulgation and enforcement of these proposed rules will not affect private real property which is the subject of the rules primarily because these proposed rules are primarily procedural in nature. For example, a CAFO facility located within the protection zone would still be able to operate, but only after obtaining an individual permit rather than another form of authorization such as a registration. These proposed rules are not anticipated to affect private real property because they do not prohibit or restrict a CAFO from operating within a protection zone. They simply require the facility to follow different procedures for obtaining authorization to construct or operate. Furthermore, CAFOs located near surface water resources are already required to prevent the likelihood of inadvertent discharges and to ensure that permitted discharges do not degrade water quality. One aspect of the proposed rules which is not procedural in nature is the soil sampling and testing portion, which does not represent a significant burden. Therefore, these proposed rules will not constitute a takings under Texas Government Code, Chapter 2007.

CONSISTENCY WITH THE COASTAL MANAGEMENT PROGRAM

The commission reviewed this proposed rulemaking for consistency with the Texas Coastal Management Program (CMP) goals and policies in accordance with regulations of the Coastal Coordination Council and determined that the rulemaking is consistent with the applicable CMP goals and policies. The following is a summary of that determination. CMP goals applicable to the proposed rules include the protection, restoration and enhancement of the diversity, quality, quantity, functions and values of coastal natural resource areas (CNRA) to ensure sound management of all coastal resources by allowing for compatible economic development and multiple human uses of the coastal zone. CMP policies applicable to the proposed rules include the following: 1.) discharges shall comply with water-quality-based effluent limits; 2.) discharges that increase pollutant loadings to coastal waters shall not impair designated uses of coastal waters and shall not significantly degrade coastal water quality unless necessary for important economic or social development; and 3.) to the greatest extent practicable, new wastewater outfalls shall be located where they will not adversely affect critical areas. Promulgation and enforcement of these proposed rules will not violate (exceed) any standards identified in the applicable CMP goals and policies because any new proposed CAFO located within one mile of a CNRA will be required to pursue an individual permit which will allow the commission to consider the effects of such a facility on the CNRA; establish effluent limits, if necessary, on any discharges from the proposed facility to maintain applicable water quality standards; and allow opportunity for notice, public comment, and public hearing.

ANNOUNCEMENT OF HEARINGS

Public hearings on this proposal will be held in Austin on October 23, 2001 at 2:00 p.m., Texas Natural Resource Conservation Commission complex, Building F, Room 2210, 12100 Park 35 Circle; and in Waco on October 25, 2001, at 7:00 p.m., McLennan Community College, 1400 College Drive, HPE Building, Room 101 (McLennan Drive). The hearings 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 hearings; however, an agency staff member will be available to discuss the proposal 30 minutes prior to the hearings and will answer questions before and after the hearings.

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

SUBMITTAL OF COMMENTS

Comments may be submitted to Lola Brown, Office of Environmental Policy, Analysis, and Assessment, MC 205, P.O. Box 13087, Austin, Texas 78711-3087 or faxed to (512) 239-4808. All comments should reference Rule Log Number 2001-041-321-WT. Comments must be received by 5:00 p.m., October 29, 2001. For further information or questions concerning this proposal, please contact Ray Henry Austin, Policy and Regulations Division, (512) 239-6814.

STATUTORY AUTHORITY

The amendments and new sections are proposed under TWC, §26.0286, which requires that the TNRCC process an application for authorization to construct or operate a CAFO located in the protection zone of a sole-source surface drinking water supply as an application for an individual permit; TWC, Chapter 26, Subchapter L, which requires that the TNRCC authorize the construction or operation of a new or expanded dairy CAFO located within a major sole-source impairment zone through an individual permit which must contain specific requirements for the management and beneficial use of animal waste, and sets forth waste application field soil sampling and testing requirements that apply to all dairy CAFOs within a major sole source impairment zone; and Section 3 of SB 1339, 77th Legislature, 2001, which states that a poultry operation may not be designated as a point source of pollution unless the poultry operation meets the requirements for designation as a point source under TWC, Chapter 26 or 30 TAC §§321.31 - 321.37. The amendments and new sections are also proposed under TWC, §5.102, which establishes the commission's general authority necessary to carry out its jurisdiction; §5.103, which establishes the commission's general authority to adopt rules; §5.105, which establishes the commission's authority to set policy by rule; §5.013, which establishes the commission's authority over various statutory programs; §26.011, which establishes the commission's authority over water quality in the state; and §26.028, which establishes the commission's authority to approve certain applications for wastewater discharge; and Texas Government Code, §2001.006, which authorizes state agencies to adopt rules or take other administrative action that the agency deems necessary to implement legislation.

The proposed amendments and new sections implement TWC, §26.0286 and Chapter 26, Subchapter L; and Section 3 of SB 1339, 77th Legislature, 2001.

§321.32. Definitions.

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

(1) - (15) (No change.)

(16) Historical waste application field - An area of land located in a major sole-source impairment zone, as defined in this section, that at any time since January 1, 1995, has been owned or controlled by an operator of a concentrated animal feeding operation (CAFO) on which agricultural waste from a CAFO has been applied.

(17) [~~(16)~~] Hydrologic connection - The interflow and exchange between control facilities or surface impoundments and waters in the state through an underground corridor or connection.

(18) [~~(17)~~] Lagoon - An earthen structure for the biological treatment for liquid organic wastes. Lagoons can be aerobic, anaerobic, or facultative depending on their design and can be used in series to produce a higher quality effluent.

(19) [~~(18)~~] Land application - The removal of wastewater and waste solids from a control facility and distribution to, or incorporation into the soil mantle primarily for beneficial reuse purposes.

(20) [~~(19)~~] Liner - Any barrier in the form of a layer, membrane or blanket, naturally existing, constructed or installed to prevent a significant hydrologic connection between liquids contained in retention structures and waters in the state.

(21) Major sole-source impairment zone - A watershed that contains a reservoir:

(A) that is used by a municipality as a sole source of drinking water supply for a population, inside and outside of its municipal boundaries, of more than 140,000; and

(B) at least half of the water flowing into which is from a source that, on September 1, 2001, is on the list of impaired state waters adopted by the commission as required by 33 United States Code, §1313(d), as amended:

(i) at least in part because of concerns regarding pathogens and phosphorus; and

(ii) for which the commission, at some time, has prepared and submitted a total maximum daily load standard.

(22) [~~(20)~~] Natural Resources Conservation Service (NRCS) [~~("NRCS")~~] - An agency of the United States Department of Agriculture which includes the agency formerly known as the Soil Conservation Service (SCS) [~~("SCS")~~].

(23) [~~(21)~~] New CAFO - A CAFO which was not authorized under a rule, order, or permit of the commission in effect on August 19, 1998. For the purposes of §321.48 of this title (relating to Regulation of Certain Dairy Concentrated Animal Feeding Operations (CAFOs), new CAFO means a proposed CAFO, any part of which is located on property not previously authorized by the state to be operated as a CAFO.

(24) [~~(22)~~] No discharge - The absence of flow of waste, process generated wastewater, contaminated rainfall runoff or other wastewater from the premises of the animal feeding operation, except for overflows which result from chronic or catastrophic rainfall events.

(25) [~~(23)~~] Nuisance - Any discharge of air contaminant(s)[~~,~~] including, but not limited to, odors[~~,~~] of sufficient concentration and duration that are or may tend to be injurious to or which adversely affects human health or welfare, animal life,

vegetation, or property, or which interferes with the normal use and enjoyment of animal life, vegetation, or property.

(26) [~~(24)~~] Open lot - Pens or similar confinement areas with dirt, concrete, or other paved or hard surfaces wherein animals or poultry are substantially or entirely exposed to the outside environment except for small portions of the total confinement area affording protection by windbreaks or small shed-type shade areas. For the purposes of this subchapter, the term open lot is synonymous with the terms dirt lot, or dry lot, for livestock or poultry, as these terms are commonly used in the agricultural industry.

(27) [~~(25)~~] Operator - The owner or one who is responsible for the management of a CAFO [~~concentrated animal feeding operation~~] or an animal feeding operation subject to the provisions of this subchapter.

(28) [~~(26)~~] Permanent odor sources - Those odor sources which may emit odors 24 hours per day. For the purposes of this subchapter, permanent odor sources include, but are not limited to, pens, confinement buildings, lagoons, retention facilities, manure stockpile areas, and solid separators. For the purposes of this subchapter, permanent odor sources shall not include any feed handling facilities, land application equipment, or land application areas.

(29) [~~(27)~~] Permittee - Any person issued or covered by an individual permit or order, permit-by-rule, or granted authorization under the requirements of this subchapter.

(30) [~~(28)~~] Pesticide - A substance or mixture of substances intended to prevent, destroy, repel, or mitigate any pest, or any substance or mixture of substances intended for use as a plant regulator, defoliant, or desiccant.

(31) [~~(29)~~] Process wastewater - Any process generated wastewater directly or indirectly used in the operation of a CAFO (such as spillage or overflow from animal or poultry watering systems which comes in contact with waste [~~)~~]; washing, cleaning, or flushing pens, barns, manure pits; [~~,~~] direct contact swimming, washing, or spray cooling of animals; and dust control), and precipitation which comes into contact with any manure or litter, bedding, or any other raw material or intermediate or final material or product used in or resulting from the production of animals or poultry or direct products (e.g., milk, meat, or eggs).

(32) [~~(30)~~] Process generated wastewater - Any water directly or indirectly used in the operation of a CAFO (such as spillage or overflow from animal or poultry watering systems which comes in contact with waste; washing, cleaning, or flushing pens, barns, manure pits; [~~,~~] direct contact swimming, washing, or spray cooling of animals; and dust control) which is produced as wastewater.

(33) Protection zone - The area within the watershed of a sole-source surface drinking water supply that is:

(A) within two miles of the normal pool elevation, as shown on a United States Geological Survey (USGS) 7 1/2-minute quadrangle topographic map, of a sole-source drinking water supply reservoir;

(B) within two miles of that part of a perennial stream that is:

(i) a tributary of a sole-source drinking water supply; and

(ii) within three linear miles upstream of the normal pool elevation, as shown on a USGS 7 1/2-minute quadrangle topographic map, of a sole-source drinking water supply reservoir; or

(C) within two miles of a sole-source surface drinking water supply river, extending three linear miles upstream from the sole-source water supply intake point.

(34) [~~(31)~~] Qualified groundwater scientist - A scientist or engineer who has received a baccalaureate or post-graduate degree in natural sciences or engineering and has sufficient training and experience in groundwater hydrology and related fields as may be demonstrated by state registration, professional certification, or completion of accredited university programs that enable that individual to make sound professional judgements regarding groundwater monitoring, contamination fate and transport, and corrective action.

(35) [~~(32)~~] Recharge feature - Those natural or artificial features either on or beneath the ground surface at the site under evaluation which, due to their existence, provide or create a significant pathway between the ground surface and the underlying groundwater within an aquifer. Examples include, but are not limited to: a permeable and porous soil material that directly overlies a weakly cemented or fractured limestone, sandstone, or similar type aquifer; fractured or karstified limestone or similar type formation that crops out on the surface, especially near a water course; or wells.

(36) [~~(33)~~] Retention facility or retention structure - All collection ditches, conduits, and swales for the collection of runoff and wastewater, and all basins, ponds, pits, tanks, and lagoons used to store wastes, wastewaters, and manures.

(37) [~~(34)~~] 25-Year, 24-Hour rainfall event/25-Year event - The maximum rainfall event with a probable recurrence interval of once in 25 [~~-~~]years, with a duration of 24 hours, as defined by the National Weather Service in Technical Paper Number 40, "Rainfall Frequency Atlas of the United States," May 1961, and subsequent amendments, or equivalent regional or state rainfall information developed therefrom.

(38) Sole-source surface drinking water supply - A body of surface water that is identified as a public water supply in §307.10, Appendix A of Chapter 307 of this title (relating to Texas Surface Water Quality Standards) and is the sole source of supply of a public water supply system, exclusive of emergency water connections.

(39) [~~(35)~~] Waste - Manure (feces and urine), litter, bedding, or feedwaste from animal feeding operations.

(40) [~~(36)~~] Wastewater - Water containing waste or contaminated by waste contact, including process-generated and contaminated rainfall runoff.

(41) [~~(37)~~] Waters in the state - Groundwater, percolating or otherwise, lakes, bays, ponds, impounding reservoirs, springs, rivers, streams, creeks, estuaries, marshes, inlets, canals, the Gulf of Mexico inside the territorial limits of the state, and all other bodies of surface water, natural or artificial, inland or coastal, fresh or salt, navigable or nonnavigable, and including the beds and banks of all watercourses and bodies of surface water, that are wholly or partially inside or bordering the state or inside the jurisdiction of the state.

(42) [~~(38)~~] Well - Any artificial excavation into and/or below the surface of the earth whether in use, unused, abandoned, capped, or plugged that may be further described as one or more of the following:

(A) excavation [~~Excavation~~] designed to explore for, produce, capture, recharge, or recover water, any mineral, compound, gas, or oil from beneath the land surface;

(B) excavation [~~Excavation~~] designed for the purpose of monitoring any of the physical or chemical properties of water, minerals, geology, or geothermal properties that exist or may exist below the land surface;

(C) excavation [~~Excavation~~] designed to inject or place any liquid, solid, gas, vapor, or any combination of liquid, solid, gas, or vapor into any soil or geologic formation below the land surface; or

(D) excavation [~~Excavation~~] designed to lower a water or liquid surface below the land surface either temporarily or permanently for any reason.

§321.33. Applicability.

(a) (No change.)

(b) The executive director may designate any animal feeding operation as a CAFO and require it to comply with any of the requirements of this subchapter, including those to apply for, receive, and comply with an individual permit under §321.34 of this title [~~(relating to Procedures for Making Application for an Individual Permit)~~], in order to achieve the policy and purposes enumerated in the Texas Water Code (TWC), [~~§~~]§5.120 and §26.003; the Texas Health and Safety Code, Chapters 341, 361, and 382; and §321.31 of this title (relating to Waste and Wastewater Discharge and Air Emission Limitations). Cases for which an individual permit may be required include, but are not limited to, situations where:

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

(c) (No change.)

(d) Any facility, including all poultry operations as described in TWC, §26.302, which qualifies for, obtains, and is operating under a certified water quality management plan from the Texas State Soil and Water Conservation Board is not a CAFO for purposes of this subchapter and is not covered by the provisions of this subchapter, unless referred to the commission in accordance with the Texas Agriculture Code, §201.026.

(e) - (p) (No change.)

(q) Section 321.48 of this title (relating to Regulation of Certain Dairy Concentrated Animal Feeding Operations (CAFOs) and §321.49 of this title (relating to Dairy Waste Application Field Soil Sampling and Testing) apply to a feeding operation confining cattle that have been or may be used for dairy purposes, or otherwise associated with a dairy, including cows, calves, and bulls, in a major sole-source impairment zone, as defined in §321.32 of this title.

(r) Subject to the requirements of subsection (s) of this section, the following requirements apply to any CAFO with any part of any pen, lot, pond, or other type of control or retention facility or structure of the CAFO located or proposed to be within the protection zone of a sole-source surface drinking water supply, as defined in §321.32 of this title:

(1) for a proposed CAFO, the owner or operator shall obtain authorization to construct and operate the CAFO through the individual permit process prior to construction or operation;

(2) for an existing registered or permitted CAFO:

(A) the owner or operator shall obtain an individual permit or an amended individual permit prior to making any changes which would require a major amendment;

(B) the owner or operator shall file an individual permit application for any renewal in accordance with the applicable requirements under §321.34 of this title; and

(C) if the CAFO is permitted, the permit authorization cannot be transferred to a registration.

(s) The commission shall process an application for authorization to construct or operate a CAFO as an individual permit under TWC, §26.028, relating to Action on Application, subject to the procedures provided by TWC, Chapter 5, Subchapter M, relating to Environmental Permitting Procedures, if, on the date the executive director determines that the application is administratively complete, any part of any pen, lot, pond, or other type of control or retention facility or structure of the CAFO is located or proposed to be located within the protection zone of a sole-source surface drinking water supply, as defined in §321.32 of this title.

§321.34. Procedures for Making Application for an Individual Permit.

(a) A CAFO that was not authorized under a rule, order, or permit issued or adopted by the commission and in effect at the time of the adoption of these amended rules as published in the July 23, 1999 issue of the *Texas Register* (24 TexReg 5721) [~~(1999)~~] shall apply for an individual permit in accordance with the provisions of this section or shall apply for registration in accordance with the provisions of §321.35 of this title (relating to Procedures for Making Application for Registration). Application for an individual permit shall be made on forms provided by the executive director. The applicant shall provide such additional information in support of the application as may be necessary for an adequate technical review of the application. A facility which is not required under federal law to obtain National Pollutant Discharge Elimination System authorization may apply for a state-only individual permit, for a term of five years, which authorizes the discharge or disposal of waste or wastewater into or adjacent to water in the state only in the event of a 25-year, 24- hour rainfall event. At a minimum, the application shall demonstrate compliance with the technical requirements set forth in §§321.38 - 321.42 of this title (relating to Proper CAFO Operation and Maintenance; [~~,~~] Pollution Prevention Plans; [~~,~~] Best Management Practices; [~~,~~] Other Requirements; [~~,~~] and Monitoring and Reporting Requirements) and shall demonstrate compliance with the requirements specified in §321.35(c) [~~§321.35(c)(1)-(13)~~] of this title [~~(relating to Procedures for Making Application for Registration)~~]. Applicants shall comply with §§305.41, 305.43, 305.44, 305.46, and 305.47 of this title (relating to Applicability; [~~,~~] Who Applies; [~~,~~] Signatories to Applications; [~~,~~] Designation of Material as Confidential; [~~,~~] and Retention of Application Data). Each applicant shall pay an application fee as required by §305.53 of this title (relating to Application Fees). An annual waste treatment inspection fee is also required of each permittee as required by §305.503 and §305.504 of this title (relating to Fee Assessments and Fee Payments). An annual Clean Rivers Program fee is also required as required under §220.21(d) of this title (relating to Water Quality Assessment Fees). Except as provided in subsections (b) - (e) of this section, each permittee shall comply with §§305.61 and 305.63 - 305.68 of this title (relating to Applicability; [~~,~~] Renewal; [~~,~~] Transfer of Permits; [~~,~~] Permit Denial; [~~,~~] Suspension and Revocation; Revocation and Suspension Upon Request or Consent; and Action and Notice on Petition for Revocation or Suspension). Notice, public comment, and hearing on applications shall be conducted in accordance with commission rules governing individual permits issued under Chapter 26 of the Texas Water Code. Each permittee shall comply with §305.125 of this title (relating to Standard Permit Conditions). Individual permits granted under this subchapter shall be effective for a term not to exceed five years. To qualify for the air quality standard permit, the applicant must meet the requirements in §321.46 of this title (relating to Air Standard Permit Authorization).

(b) - (i) (No change.)

§321.35. Procedures for Making Application for Registration.

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

(c) Application for registration under this section shall be made on forms prescribed by the executive director. Except as provided in §321.33(r) of this title (relating to Applicability) and §321.48

of this title (relating to Regulation of Certain Dairy Concentrated Animal Feeding Operations (CAFOs)), a [~~A~~] facility which is not required under federal law to obtain National Pollutant Discharge Elimination System authorization may apply for a state-only registration, which authorizes the discharge or disposal of waste or wastewater into or adjacent to water in the state only in the event of a 25-year, 24-hour rainfall event, or may transfer from an individual permit to such a registration in accordance with §321.33(l) of this title. The applicant shall submit an original completed application with attachments and one copy of the application with attachments to the executive director at the headquarters in Austin, Texas, and one additional copy of the application with attachments to the appropriate commission [~~Texas Natural Resource Conservation Commission~~] regional office. The completed application shall be submitted to the executive director signed and notarized and with the following information:

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

(14) For an application for a feeding operation confining cattle that have been or may be used for dairy purposes, or otherwise associated with a dairy, including cows, calves, and bulls, documentation showing whether or not the facility is located in a major sole-source impairment zone, as defined in §321.32 of this title (relating to Definitions), if the application is for authorization to:

(A) construct or operate a new dairy CAFO, as defined in §321.32 of this title; or

(B) increase the number of dairy animals confined under an existing operation.

(15) For applications for CAFOs located in the watershed of a sole-source surface drinking water supply," as defined in §321.32 of this title, documentation showing whether or not any part of any pen, lot, pond, or other type of control or retention facility or structure of the CAFO is located or proposed to be located within the protection zone of a sole-source surface drinking water supply, as defined in §321.32 of this title.

(d) - (h) (No change.)

§321.39. Pollution Prevention Plans.

(a) - (e) (No change.)

(f) The plan shall include, at a minimum, the following items.

(1) - (27) (No change.)

(28) Prior to commencing wastewater irrigation or waste application on land owned or operated by the operator, and annually thereafter, the operator shall collect and analyze representative soil samples of the wastewater and waste application sites according to the following procedures.

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

(G) When results of the annual soil analysis for extractable phosphorus in subparagraph (F) of this paragraph indicate [~~indicates~~] a level greater than 200 ppm of extractable phosphorus (reported as P) in Zone 1 for a particular waste or wastewater land application field or if ordered by the commission to do so in order to protect the quality of waters in the state, then the operator shall not apply any waste or wastewater to the affected area unless the waste or wastewater application is implemented in accordance with a detailed nutrient utilization plan developed by an employee of the NRCS, a nutrient management specialist certified by the NRCS, the Texas State Soil and Water Conservation Board, Texas Cooperative Extension, an agronomist or soil scientist on full-time staff at an accredited university located in the State of Texas, or a professional agronomist or soil scientist certified by the American Society of Agronomy (ASA), after approval by the executive director based on a determination by the executive director that another person or entity identified in this subparagraph cannot develop the plan in a timely manner. The executive director will issue technical guidance to assist in the development of complete and effective nutrient utilization plans. No land application under an approved nutrient utilization plan shall cause or contribute to a violation of water quality standards or create a nuisance. Land application under the terms of the Nutrient Utilization Plan may commence 30 days after the plan is filed with the executive director, unless prior to that time the executive director has returned the plan for failure to comply with all the requirements of this subsection. The nutrient utilization plan shall, at a minimum, evaluate and address the following factors to assure that the beneficial use of manure is conducted in a manner that prevents phosphorus impacts to water quality:

(i) - (vii) (No change.)

(29) - (31) (No change.)

§321.48. Regulation of Certain Dairy Concentrated Animal Feeding Operations (CAFOs).

(a) This section applies to new dairy CAFOs and to dairy CAFOs increasing the number of animals confined under an existing operation that are feeding operations confining cattle that have been or may be used for dairy purposes, or otherwise associated with a dairy, including cows, calves, and bulls, in a major sole-source impairment zone, as defined in §321.32 of this title (relating to Definitions).

(b) The owner or operator shall submit a permit application and obtain a new or amended individual permit prior to:

(1) constructing or operating a new dairy CAFO, as defined in §321.32 of this title; or

(2) increasing the number of dairy animals confined under an existing operation.

(c) Nothing in this section limits the commission's authority to include in an individual or general permit under this subchapter provisions necessary to protect a water resource in this state.

(d) Any permit to which this section applies must, at a minimum:

(1) provide for management and beneficial use of waste in accordance with this subchapter; and

(2) require that 100% of the collectible manure produced by the additional animals in confinement at an expanded operation or all of the animals in confinement at a new operation must be:

(A) beneficially used outside of the watershed;

(B) delivered to a composting facility approved by the executive director;

(C) put to another beneficial use approved by the executive director; or

(D) applied in any of the following ways:

(i) in accordance with the pollution prevention plan requirements of §321.39 of this title (relating to Pollution Prevention Plans) and §321.40 of this title (relating to Best Management Practices) to a waste application field owned or controlled by the owner of the CAFO, if the field is not a historical waste application field, as defined in §321.32 of this title;

(ii) in accordance with the pollution prevention plan requirements of §321.39 and §321.40 of this title, to a historical waste application field that is owned or operated by the owner or operator

of the CAFO, if results of representative composite soil sampling conducted at the waste application field and submitted to the executive director show that the waste application field contains 200 or fewer parts per million (ppm) of extractable phosphorus (reported as P) in the Zone 1 (0 - 6 inch) depth; or

(iii) in accordance with a detailed nutrient utilization plan approved by the executive director which, at a minimum, meets the requirements of §321.39(f)(28)(G) of this title, to a historical waste application field that is owned or operated by the owner or operator of the CAFO, if results of representative composite soil sampling conducted at the waste application field and submitted to the executive director show that the waste application field contains greater then 200 ppm of extractable phosphorus (reported as P) in the Zone 1 (0 - 6 inch) depth.

(e) The detailed nutrient utilization plan required under subsection (d)(2)(D)(iii) of this section must be developed by:

(1) an employee of the United States Department of Agriculture's Natural Resources Conservation Service (NRCS);

(2) a nutrient management specialist certified by the United States Department of Agriculture's NRCS;

(3) the State Soil and Water Conservation Board;

(4) the Texas Cooperative Extension;

(5) an agronomist or soil scientist on the full-time staff of an accredited university located in this state; or

(6) a professional agronomist or soil scientist certified by the American Society of Agronomy, after approval by the executive director based on a determination by the executive director that another person or entity listed in paragraphs (1) - (5) of this subsection cannot develop the plan in a timely manner.

§321.49. Dairy Waste Application Field Soil Sampling and Testing.

(a) This section applies to dairy CAFOs that are feeding operations confining cattle that have been or may be used for dairy purposes, or otherwise associated with a dairy, including cows, calves, and bulls, in a major sole-source impairment zone, as defined in §321.32 of this title (relating to Definitions).

(b) For new dairy CAFOs or dairy CAFOs increasing the number of animals, the requirements of this section must be implemented concurrent with the next required annual soil sampling date established in the pollution prevention plan.

(c) For existing dairy CAFOs not increasing the number of animals, the requirements of this section must be implemented not later than September 1, 2003.

(d) The CAFO operator shall:

(1) contract with a person described in §321.48(e) of this title (relating to Regulation of Certain Dairy Concentrated Animal Feeding Operations (CAFOs)) and approved by the executive director to collect one or more representative composite soil samples from each waste application field; and

(2) sample under this section in accordance with the pollution prevention plan requirements of §321.39 of this title (relating to Pollution Prevention Plans) and not less often than once every 12 months, in accordance with the procedures in §321.39(f)(28)(A) - (D) of this title.

(e) Each sample collected under subsection (d)(2) of this section shall be tested in accordance with the applicable requirements of §321.39(f)(28)(A) - (F) of this title and shall be tested for any other nutrient designated by the executive director.

(f) The analysis results from the testing performed under subsection (e) of this section must be submitted to the executive director and a copy must be submitted to the appropriate commission regional office and the operator of the CAFO within 60 days of the sampling.

(g) If the samples tested under subsection (e) of this section show a phosphorus level in the soil of more than 500 parts per million (ppm) in Zone 1 (0 - 6 inch) depth, the operator shall file with the executive director a new or amended nutrient utilization plan with a phosphorus reduction component that is certified as acceptable by a person described in §321.48(e) of this title.

(h) If the samples tested under subsection (e) of this section show a phosphorus level in the soil of more than 200 ppm but not more than 500 ppm in Zone 1 (0 - 6 inch) depth, the operator shall:

(1) file with the executive director a new or amended nutrient utilization plan with a phosphorus reduction component that is certified as acceptable by a person described in §321.48(e) of this title; or

(2) show that the level is supported by a nutrient utilization plan certified as acceptable by a person described under §321.48(e) of this title.

(i) If the owner or operator of a waste application field is required by subsection (g) or (h) of this section to have a nutrient utilization plan with a phosphorus reduction component, and if the results of tests performed on composite soil samples collected 12 months or more after the plan is filed do not show a reduction in phosphorus concentration in Zone 1 (0 - 6 inch) depth, then the owner or operator is subject to enforcement action at the discretion of the executive director. The executive director, in determining whether to take an enforcement action, shall consider any explanation presented by the owner or operator regarding the reasons for the lack of phosphorus reduction, including, but not limited to, an act of God, meteorologic conditions, diseases, vermin, crop conditions, or variability of soil testing results.

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

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Stephanie Bergeron
Director, Environmental Law Division
Texas Natural Resource Conservation Commission
Earliest possible date of adoption: October 28, 2001
For further information, please call: (512) 239-0348

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CHAPTER 325. CERTIFICATES OF COMPETENCY

The Texas Natural Resource Conservation Commission (commission) proposes the repeal of §§325.1, 325.2, 325.4, 325.6 - 325.8, 325.10, 325.12, 325.14, 325.22, 325.24, 325.26, 325.28, 325.30, 325.101, 325.102, 325.104 - 325.106, 325.108, 325.110, 325.112, 325.114, 325.116, 325.118, 325.120, 325.122, 325.124, 325.126, 325.128, 325.301, 325.302, 325.304, 325.306, 325.308, 325.310, 325.312, 325.314, 325.316, 325.318, 325.320, 325.322, 325.401, 325.402, 325.404, 325.406, 325.408, 325.410, 325.412, 325.414,

325.416, 325.418, 325.420, 325.422, 325.424, 325.426, 325.428, 325.430, 325.432, and 325.434.

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE PROPOSED RULES

The proposed repeals are part of the commission's implementation of House Bill (HB) 3111 and HB 2912 of the 77th Legislature, 2001, as well as Sunset Commission recommendations to consolidate commission programs for occupational licenses and registrations. House Bill 3111 created new Texas Water Code (TWC), Chapter 37, to consolidate the administrative requirements for ten licensing and registration programs administered by the commission. House Bill 3111 requires the commission to implement this consolidation by December 1, 2001. As part of this consolidation, the commission is repealing Chapter 325 and proposing new Chapter 30, Occupational Licenses and Registrations. This new chapter will contain all the licensing and registration requirements for the ten occupational programs administered by the Compliance Support Division, and is proposed concurrently in this issue of the *Texas Register*.

SECTION BY SECTION DISCUSSION

Chapter 325, Certificates of Competency, is proposed for repeal and will be moved into new Chapter 30. Changes to the rules are discussed in the preamble of the rulemaking for Chapter 30, and published in this issue of the *Texas Register*.

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 repeals are in effect, no significant fiscal implications are anticipated to units of state government and local government. The proposed repeals of the certification requirements and procedures for public water system operators and public water system operations companies, wastewater operators and wastewater operation companies, and public waterworks personnel could result in cost savings for units of state and local government that pay these wastewater and water operator licensing fees. There will be no fiscal implications for units of state and local government that do not pay these wastewater or water operator license renewal fees.

The proposed repeals implement certain provisions in HB 3111, 77th Legislature, 2001. The bill creates a new chapter of TWC, which consolidates the administrative requirements for several commission regulated licensing and registration programs into one new chapter. The bill also consolidates the deposit of licensing fees from different funds or accounts into the occupational licensing account.

The proposed repeals would delete the certification requirements and procedures for public water system operators and public water system operations companies, wastewater operators and wastewater operation companies, and public waterworks personnel contained in this chapter.

Based upon the current year number of certifications and revenue, adoption of the proposed repeals would affect approximately 150 water and wastewater companies, 9,820 wastewater operators, and 13,500 water operators, and resulting in the loss of fee revenue to the commission of an estimated $441,852 each year in certification and renewal fees.

However, in concurrent rulemaking, the qualification requirements, fees, certification levels, and other provisions relating to the qualifications for issuing and renewing certifications to public water and wastewater companies and personnel are established in a new chapter. Those provisions establish new license and registration fee rates, renewal cycles and qualifications for wastewater operators, wastewater operations companies, public water systems operators, and public water system operations companies. There are no proposed changes to the fee rates for water and wastewater companies, however, wastewater and water operators will see a fee increase of $30 over a two-year period from current fee rates.

PUBLIC BENEFITS AND COSTS

Mr. Horvath also determined that for each year of the first five years the proposed repeals are in effect, the public benefit anticipated from enforcement of and compliance with the proposed repeals will be the implementation of certain provisions in HB 3111 and increased compliance through the consolidation and standardization of the commission occupational licensing programs.

The proposed repeals implement certain provisions in HB 3111. The bill creates a new chapter of TWC, which consolidates the administrative requirements for several commission regulated licensing and registration programs into one new chapter. The bill also consolidates the deposit of licensing fees from different funds or accounts into the occupational licensing account.

The proposed repeals would delete the certification requirements and procedures for public water system operators and public water system operations companies, wastewater operators and wastewater operation companies, and public waterworks personnel contained in this chapter.

If amendments in concurrent rulemaking are not adopted, the adoption of these repeals would result in cost savings for the affected 150 water and wastewater companies, 9,820 wastewater operators, and 13,500 water operators, though these cost savings are not considered significant. There will be no fiscal implications for individuals and businesses that do not pay wastewater and water operator license renewal fees.

However, in concurrent rulemaking, the qualification requirements, fees, certification levels, and other provisions relating to the qualifications for issuing and renewing certifications to public water and wastewater companies and personnel are established in a new chapter. Those provisions establish new license and registration fee rates, renewal cycles and qualifications for wastewater operators, wastewater operations companies, public water systems operators, and public water system operations companies. There are no proposed changes to the fee rates for water and wastewater companies, however, wastewater and water operators will see a fee increase of $30 over a two-year period from current fee rates.

SMALL BUSINESS AND MICRO-BUSINESS ASSESSMENT

There will be no adverse fiscal impacts for small or micro-business as a result of the proposed repeals, which is intended to implement provisions of HB 3111. Adoption of the proposed repeals could result in a cost savings, which is not anticipated to be significant, for small or micro-businesses that pay for renewal of wastewater and water operator licenses. If amendments in concurrent rulemaking are not adopted, the adoption of these repeals would delete the licensing requirements for the affected 150 water and wastewater companies, 9,820 wastewater operators, and 13,500 water operators, many of which are employed

by or are small and micro-businesses. There will be no fiscal implications for small and micro- businesses that do not pay wastewater or water operator license renewal fees.

However, in concurrent rulemaking, the qualification requirements, fees, certification levels, and other provisions relating to the qualifications for issuing and renewing certifications to public water and wastewater companies and personnel are established in a new chapter. Those provisions establish new license and registration fee rates, renewal cycles and qualifications for wastewater operators, wastewater operations companies, public water systems operators, and public water system operations companies. There are no proposed changes to the fee rates for water and wastewater companies, however, wastewater and water operators will see a fee increase of $30 over a two-year period from current fee rates.

LOCAL EMPLOYMENT IMPACT STATEMENT

The commission has reviewed this proposed rulemaking and determined that a local employment impact statement is not required because the proposed repeals do not adversely affect a local economy in a material way for the first five years that the proposed repeals are in effect.

DRAFT REGULATORY IMPACT ANALYSIS DETERMINATION

The commission reviewed the proposed repeals in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and determined that the repeals are not subject to 2001.0225. Section 2001.0225 only applies to rules that are specifically intended to protect the environment, or reduce risks to human health from environmental exposure. The intent of the repeals is to consolidate the requirements for the various occupations, licensed or registered by the commission, into one chapter; not to protect the environment or human health. Protection of human health and the environment may be a by-product of the proposed repeals, but it is not the specific intent of the proposed repeals. Furthermore, the proposed repeals would not adversely affect, in a material way, the economy, a section of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state, because the repeals would simply consolidate existing rule language into one chapter. Thus, the proposed repeals do not meet the definition of a "major environmental rule" as defined in Texas Government Code, §2001.0225(g)(3), and thus, do not require a full regulatory impact analysis. The commission invites public comment on the draft regulatory impact analysis determination.

TAKINGS IMPACT ASSESSMENT

The commission has prepared a takings impact assessment for these repeals under Texas Government Code, §2007.43. The following is a summary of that assessment. The specific purpose of the repeals is to consolidate the requirements for the various occupations, licensed or registered by the commission, into one chapter. The proposed repeals would substantially advance this specific purpose by setting forth detailed procedures for obtaining an occupational license or registration including procedures for: the initial application; examinations; and renewal applications. The proposed repeals do not constitute a takings because they would not burden private real property.

CONSISTENCY WITH THE COASTAL MANAGEMENT PROGRAM

The commission reviewed the rulemaking and found that the proposed repeals are 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 would they affect any action or authorization identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11(a)(6). Therefore, the proposed repeals are not subject to the CMP.

ANNOUNCEMENT OF HEARING

A public hearing on the proposal will be held October 11, 2001, at 10:00 a.m. in Room 131E, Building C, at the Texas Natural Resource Conservation Commission complex, located at 12100 Park 35 Circle, Austin. The hearing is structured for the receipt of oral or written comments by interested persons. Individuals may present oral statements when called upon in order of registration. Open discussion will not occur during the hearing; however, an agency staff member will be available to discuss the proposal 30 minutes prior to the hearing and answer questions before and after the hearing.

Persons with disabilities who have special communication or other accommodation needs who are planning to attend the meeting should contact the agency at (512) 239-4900. Requests should be made as far in advance as possible.

SUBMITTAL OF COMMENTS

Comments may be submitted to 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 2001-044-325-WT. Comments must be received by 5:00 pm., October 18, 2001. For further information, contact Melissa Estes, Policy and Regulations Division, at (512) 239-3937.

SUBCHAPTER A. CERTIFICATION OF PUBLIC WATER SYSTEM OPERATORS AND PUBLIC WATER SYSTEM OPERATIONS COMPANIES

30 TAC §§325.1, 352.2, 325.4, 325.6 - 325.8, 325.10, 325.12, 325.14, 325.22, 325.24, 325.26, 325.28, 325.30

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

STATUTORY AUTHORITY

The repeals are proposed under the authority granted to the commission in TWC, §37.002, which requires the commission to adopt rules to establish occupational licenses and registrations for Wastewater Operators and Operations Companies (TWC, §26.0301), and Public Water System Operators and Operations Companies (Texas Health and Safety Code (THSC0, §341.033 and §341.034).

The proposed repeals are implemented under the general authority granted in TWC, §5.013, which establishes the general jurisdiction of the commission over other areas of responsibility as assigned to the commission under TWC and other laws of the state; TWC, §5.103 and §5.105, which authorize the commission to adopt rules and policies necessary to carry out its responsibilities and duties under TWC, §5.013(15); and TWC, §7.002, which authorizes the commission to enforce provisions of TWC and THSC.

§325.1. Date of Compliance.
§325.2. Applicability and General Provisions.
§325.4. Definitions.
§325.6. Administration.
§325.7. Processing Applications.
§325.8. Classification of Public Water Systems and Certificates Required.
§325.10. Qualifications for Public Water System Operators.
§325.12. Applications and Examinations.
§325.14. Certificates of Competency, Terms, and Fees.
§325.22. Certificate of Competency Affected by the Texas Education Code, Chapter 57.
§325.24. Certificate of Competency Affected by the Texas Family Code, Chapter 232.
§325.26. Training Approvals.
§325.28. Certification of Public Water System Operations Companies.
§325.30. Enforcement.

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

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Stephanie Bergeron
Director, Environmental Law Division
Texas Natural Resource Conservation Commission
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For further information, please call: (512) 239-4712

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SUBCHAPTER B. CERTIFICATION OF WASTEWATER OPERATORS AND WASTEWATER OPERATIONS COMPANIES

30 TAC §§325.101, 325.102, 325.104 - 325.106, 325.108, 325.110, 325.112, 325.114, 325.116, 325.118, 325.120, 325.122, 325.124, 325.126, 325.128

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

STATUTORY AUTHORITY

The repeals are proposed under the authority granted to the commission in TWC, §37.002, which requires the commission to adopt rules to establish occupational licenses and registrations for wastewater operators and operations companies (TWC, §26.0301).

The proposed repeals are implemented under the general authority granted in TWC, §5.013, which establishes the general jurisdiction of the commission over other areas of responsibility as assigned to the commission under TWC and other laws of the state; TWC, §5.103 and §5.105, which authorize the commission to adopt rules and policies necessary to carry out its responsibilities and duties under TWC, §5.013(15); and TWC, §7.002, which authorizes the commission to enforce provisions of TWC and THSC.

§325.101. Applicability and General Provisions.
§325.102. Definitions.
§325.104. Administration.
§325.105. Processing Applications.
§325.106. Classification of Wastewater Treatment Facilities, Wastewater Collection Systems, and Certificates Required.
§325.108. Qualifications for Wastewater Treatment Facility and Collection System Operators.
§325.110. Applications and Examinations.
§325.112. Certificates of Competency, Terms, and Fees.
§325.114. Reciprocity.
§325.116. Renewal of Certificates of Competency.
§325.118. Perpetual Certificates.
§325.120. Certificate of Competency Affected by the Texas Education Code, Chapter 57.
§325.122. Certificate of Competency Affected by the Texas Family Code, Chapter 232.
§325.124. Training Approvals.
§325.126. Certification of Wastewater System Operations Companies.
§325.128. Enforcement.

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

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SUBCHAPTER D. CERTIFICATION OF WATERWORKS PERSONNEL

30 TAC §§325.301, 325.302, 325.304, 325.306, 325.308, 325.310, 325.312, 325.314, 325.316, 325.318, 325.320, 325.322

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

STATUTORY AUTHORITY

The repeals are proposed under the authority granted to the commission in TWC, §37.002, which requires the commission to adopt rules to establish occupational licenses and registrations for public water system operators and operations companies (THSC, §341.033 and §341.034).

The proposed repeals are implemented under the general authority granted in TWC, §5.013, which establishes the general jurisdiction of the commission over other areas of responsibility as assigned to the commission under TWC and other laws of the state; TWC, §5.103 and §5.105, which authorize the commission to adopt rules and policies necessary to carry out its responsibilities and duties under TWC, §5.013(15); and TWC, §7.002,

which authorizes the commission to enforce provisions of TWC and THSC.

§325.301. Applicability.
§325.302. General.
§325.304. Definitions.
§325.306. Administration.
§325.308. Processing Applications.
§325.310. Qualifications.
§325.312. Applications.
§325.314. Examinations.
§325.316. Certificates.
§325.318. Training Approval.
§325.320. Reciprocity.
§325.322. Fees.

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

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SUBCHAPTER E. CERTIFICATES OF COMPETENCY

30 TAC §§325.401, 325.402, 325.404, 325.406, 325.408, 325.410, 325.412, 325.414, 325.416, 325.418, 325.420, 325.422, 325.424, 325.426, 325.428, 325.430, 325.432, 325.434

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

STATUTORY AUTHORITY

The repeals are proposed under the authority granted to the commission in TWC, §37.002, which requires the commission to adopt rules to establish occupational licenses and registrations for wastewater operators and operations companies (TWC, §26.0301), and public water system operators and operations companies (THSC, §341.033 and §341.034).

The proposed repeals are implemented under the general authority granted in TWC, §5.013, which establishes the general jurisdiction of the commission over other areas of responsibility as assigned to the commission under TWC and other laws of the state; TWC, §5.103 and §5.105, which authorize the commission to adopt rules and policies necessary to carry out its responsibilities and duties under TWC, §5.013(15); and TWC, §7.002, which authorizes the commission to enforce provisions of TWC and THSC.

§325.401. Applicability.
§325.402. Definitions.
§325.404. Processing Applications.
§325.406. Certificates for Wastewater Treatment Plant Operators.
§325.408. Certificates for Collection System Operators.
§325.410. (Effective Beginning September 1, 1991) - Classification of Wastewater Treatment Facilities.
§325.412. Applications and Fees.
§325.414. Renewal of Operator Certificates.
§325.416. Certificates for Wastewater Treatment Facility Operations Companies.
§325.418. Terms of Certificates for Wastewater Treatment Facility Operations Companies.
§325.420. Reports, Applications, and Renewals for Wastewater Treatment Facility Operations Companies.
§325.422. Public Hearing on Applications for Renewal of Certificates for Wastewater Treatment Facility Operations Companies.
§325.424. Sanctions.
§325.426. Notice of Hearings.
§325.428. Enforcement Hearings.
§325.430. Reciprocity.
§325.432. Perpetual Certificates of Competency.
§325.434. Nonrenewal of Certificate of Competency Due to Loan Default.

This 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 September 14, 2001.

TRD-200105538
Stephanie Bergeron
Director, Environmental Law Division
Texas Natural Resource Conservation Commission
Earliest possible date of adoption: October 28, 2001
For further information, please call: (512) 239-4712

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CHAPTER 330. MUNICIPAL SOLID WASTE

The Texas Natural Resource Conservation Commission (commission) proposes amendments to §330.2, Definitions and §330.52, Technical Requirements of Part I of the Application. The commission also proposes the repeal of §330.381, Purpose and Applicability; §330.382, Definitions; §330.383, Administration; §330.384, Application for Letter of Competency; §330.385, Qualification; §330.386, Renewal; §330.387, Revocation; §330.388, Recommendations for Solid Waste Facility Owners/Operators; and §330.389, Fees.

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE PROPOSED RULES

This rulemaking project implements House Bill (HB) 3111, which requires the agency to consolidate rules for the occupational licensing programs by December 1, 2001. The proposed rules will consolidate all administrative functions which affect various licensing programs administered by the commission into one chapter, newly created 30 TAC Chapter 30, Occupational Licenses and Registrations. The new rules will require that a licensed solid waste facility supervisor be employed at all solid waste facilities. These rules will apply to all individuals regardless of whether they have a prior site operating record. Current municipal solid waste facility supervisors who are not licensed at the time these rules are adopted, must obtain a municipal solid waste facility supervisor license or become a supervisor in training by January 2004. The current program rules will remain in

effect to address the technical portions of the programs such as design criteria, construction, and planning while excluding the elements included in the administration of occupational licensing. New Chapter 30 is concurrently proposed in this issue of the *Texas Register*.

SECTION BY SECTION DISCUSSION

Section 330.2(69) is amended to clarify the definition of "license" to incorporate the definition for occupational licenses as described in Chapter 30.

Section 330.52(b)(9)(C) is proposed to be amended to delete the requirement for evidence of competency, and to add the licensing requirements for a solid waste facility supervisor.

Section 330.52(b)(9)(E) is proposed to be amended to replace "letter of competency" with "license" to reflect correct terminology. The wording is changed to improve readability and to provide consistency with subparagraphs (A) - (D).

Subchapter M is repealed and is readopted in Chapter 30 as part of the consolidation of the administration licenses and registrations.

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 rulemaking is in effect, no significant fiscal implications are anticipated for the agency or other units of state government or local government.

The proposed rulemaking implements certain provisions in HB 3111 (relating to occupational licenses and registrations issued by the commission), 77th Legislature, 2001, and provisions in HB 2912 (relating to the continuation and functions of the commission; providing penalties), 77th Legislature, 2001.

House Bill 3111 creates a new chapter of the TWC, which consolidates the administrative requirements for several commission regulated licensing and registration programs into one new chapter. The bill also consolidates the deposit of licensing fees from different funds or accounts into the occupational licensing account.

The proposed rulemaking would repeal Chapter 330, Subchapter M provisions relating to the municipal solid waste technician training and certification program. This subchapter provides requirements for the issuing and renewal of licenses to individuals who supervise or manage municipal solid waste facilities, or the collection or transportation of municipal solid waste.

Adoption of the proposed rulemaking would affect approximately 1,000 municipal solid waste license holders and result in the loss of fee revenue to the commission of an estimated $7,455 each year in license and renewal fees. Currently, there are four classes of certification: Class A is valid for four years for a cost of $40; Class B is valid for four years and costs $30; Class C is valid for four years and costs $20; and Class D is valid for four years and costs $20.

In concurrent rulemaking, the qualification requirements, fees, certification levels, and other provisions relating to the qualifications for issuing and renewing licenses to an individual who supervises or manages municipal solid waste facilities, or in the collection or transportation of municipal solid waste, are established in a new Chapter 30, Subchapter F. Those provisions establish new fee rates and renewal cycles for municipal solid waste licenses. The proposed fee rates are higher than current fee rates. Municipal Solid Waste A licenses will increase by $50 over a two-year period, B licenses will increase by $55 over a two-year period, and C and D licenses will increase by $60 over a two-year period. It is not known how many units of state or local government pay these fees or how much in fees they may pay. However, the cost is not anticipated to be significant for any one unit of state or local government.

PUBLIC BENEFITS AND COSTS

Mr. Horvath also determined that for each year of the first five years the proposed rulemaking is in effect, the public benefit anticipated from enforcement of and compliance with the proposed rulemaking will be the implementation of certain provisions in HB 3111 and increased compliance through the consolidation and standardization of the commission occupational licensing programs.

Adoption of the proposed rulemaking would repeal the qualification and licensing requirements for municipal solid waste licenses. If amendments in concurrent rulemaking are not adopted, the adoption of this rulemaking would result in cost savings for those individuals or companies that pay for municipal solid waste licenses, though these cost savings are not considered significant.

The proposed rulemaking implements HB 3111 and provisions in HB 2912.

House Bill 3111 creates a new chapter of the TWC, which consolidates the administrative requirements for several commission-regulated licensing and registration programs into one new chapter. The bill also consolidates the deposit of licensing fees from different funds or accounts into the occupational licensing account.

The proposed rulemaking would repeal Chapter 330, Subchapter M provisions. This subchapter provides requirements for the issuing and renewing of licenses to individuals who supervise or manage municipal solid waste facilities, or the collection or transportation of municipal solid waste.

Adoption of the proposed rulemaking would affect approximately 1,000 municipal solid waste license holders and result in the loss of fee revenue to the commission of an estimated $7,455 each year in license and renewal fees. Currently, there are four classes of certification: Class A is valid for four years for a cost of $40; Class B is valid for four years and costs $30; Class C is valid for four years and costs $20; and Class D is valid for four years and costs $20. Individuals seeking certification to supervise, manage, or operate municipal solid waste facilities or who are involved in the collection or transportation of municipal solid waste, pay these fees or companies that employ these individuals may pay these fees. It is not known how many businesses or individuals pay these fees.

In concurrent rulemaking, the qualification requirements, fees, certification levels, and other provisions relating to the qualifications for issuing and renewing licenses to an individual who supervises or manages municipal solid waste facilities, or the collection or transportation of municipal solid waste, are established in a new Chapter 30, Subchapter F. Those provisions establish new fee rates and renewal cycles for municipal solid waste licenses. The proposed fee rates are higher than current fee rates. Municipal Solid Waste A licenses will increase by $50 over a two-year period, B licenses will increase by $55 over a two-year period, and C and D licenses will increase by $60 over

a two-year period. Businesses or individuals that pay these fees will have increased costs though these costs are not considered significant.

SMALL BUSINESS AND MICRO-BUSINESS ASSESSMENT

No adverse fiscal implications are anticipated for those small or micro-businesses who may employ individuals or otherwise possess municipal solid waste licenses, as a result of implementation of the proposed rulemaking. For those small or micro-businesses not affected by this rulemaking, there will be no fiscal implications. The proposed rulemaking would repeal certification and fee requirements for individuals who supervise or manage municipal solid waste facilities, or the collection or transportation of municipal solid waste, and small or micro-businesses that employ these individuals or have these licenses would realize cost savings if they currently pay these license fees.

The proposed rulemaking would repeal Chapter 330, Subchapter M provisions. This subchapter provides requirements for the issuing and renewing of licenses to individuals who supervise or manage municipal solid waste facilities, or the collection or transportation of municipal solid waste.

Adoption of the proposed rulemaking would affect approximately 1,000 municipal solid waste license holders and result in the loss of fee revenue to the commission of an estimated $7,455 each year in license and renewal fees. Currently, there are four classes of certification: Class A is valid for four years for a cost of $40; Class B is valid for four years and costs $30; Class C is valid for four years and costs $20; and Class D is valid for four years and costs $20.

In concurrent rulemaking, the qualification requirements, fees, certification levels, and other provisions relating to the qualifications for issuing and renewing licenses to an individual who supervises or operates municipal solid waste facilities, or the collection or transportation of municipal solid waste, are established in a new Chapter 30, Subchapter F. Those provisions establish new fee rates and renewal cycles for municipal solid waste licenses. The proposed fee rates are higher than current fee rates. Municipal Solid Waste A licenses will increase by $50 over a two-year period, B licenses will increase by $55 over a two-year period, and C and D licenses will increase by $60 over a two-year period. Small or micro-businesses that pay these license fees will have higher costs, though these costs are not considered significant.

LOCAL EMPLOYMENT IMPACT STATEMENT

The commission has reviewed this proposed rulemaking and determined that a local employment impact statement is not required because the proposed rulemaking does not adversely affect a local economy in a material way for the first five years that the proposed rulemaking is in effect.

DRAFT REGULATORY IMPACT ANALYSIS DETERMINATION

The commission reviewed the proposed rulemaking in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and determined that the rulemaking is not subject to §2001.0225. Section 2001.0225 only applies to rules that are specifically intended to protect the environment, or reduce risks to human health from environmental exposure. The intent of the rulemaking is to consolidate the requirements for the various occupations, licensed or registered by the commission, into one chapter; not to protect the environment or human health. Protection of human health and the environment may be a by-product of the proposed rulemaking, but it is not the specific intent of the proposed rules. Furthermore, the proposed rulemaking would not adversely affect, in a material way, the economy, a section of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state, because the rules would simply consolidate existing rule language into one chapter. Thus, the proposed rulemaking does not meet the definition of a "major environmental rule" as defined in Texas Government Code, §2001.0225(g)(3), and thus, does not require a full regulatory impact analysis. The commission invites public comment on the draft regulatory impact analysis determination.

TAKINGS IMPACT ASSESSMENT

The commission has prepared a takings impact assessment for these rules under Texas Government Code, §2007.43. The following is a summary of that assessment. The specific purpose of the rules is to consolidate the requirements for the various occupations, licensed or registered by the commission, into one chapter. The proposed rules would substantially advance this specific purpose by setting forth detailed procedures for obtaining an occupational license or registration including procedures for: the initial application; examinations; and renewal applications. The proposed rules do not constitute a takings because they would not burden private real property.

CONSISTENCY WITH THE COASTAL MANAGEMENT PROGRAM

The commission reviewed the rulemaking and found that the proposed rules are 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 would they affect any action or authorization identified in §505.11(a)(6). Therefore, the proposed rules are not subject to the CMP.

ANNOUNCEMENT OF HEARING

A public hearing on the proposal will be held October 11, 2001, at 10:00 a.m. in Room 131E, Building C, at the Texas Natural Resource Conservation Commission complex, located at 12100 Park 35 Circle, Austin. The hearing is structured for the receipt of oral or written comments by interested persons. Individuals may present oral statements when called upon in order of registration. Open discussion will not occur during the hearing; however, an agency staff member will be available to discuss the proposal 30 minutes prior to the hearing and answer questions before and after the hearing.

Persons with disabilities who have special communication or other accommodation needs who are planning to attend the meeting should contact the agency at (512) 239-4900. Requests should be made as far in advance as possible.

SUBMITTAL OF COMMENTS

Comments may be submitted to 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 2001-044-325-WT. Comments must be received by 5:00 pm., October 18, 2001. For further information, contact Melissa Estes, Policy and Regulations Division, at (512) 239-3937.

SUBCHAPTER A. GENERAL INFORMATION

30 TAC §330.2

STATUTORY AUTHORITY

The amendment is proposed under the authority granted to the commission by the Texas Legislature in TWC, Chapter 37. The amendment will be implemented under the authority of TWC, §37.002, which requires the commission to adopt rules to establish occupational licenses and registrations for solid waste facility supervisors (Texas Health and Safety Code (THSC), §361.027).

The amendment is also authorized under the general authority granted in TWC, §5.013, which establishes the general jurisdiction of the commission over other areas of responsibility as assigned to the commission under TWC and other laws of the state; TWC, §5.103 and §5.105, which authorize the commission to adopt rules and policies necessary to carry out its responsibilities and duties under TWC, §5.013(15); and TWC, §7.002, which authorizes the commission to enforce provisions of TWC and THSC.

The proposed amendment implements TWC, Chapter 37, which provides the commission the authority to: establish classes and terms of occupational licenses and registrations; establish procedures for granting, denying, and suspending occupational licenses and registrations; establish fees for occupational licenses and registrations; and establish training, continuing education, and examination requirements.

§330.2. Definitions.

Unless otherwise noted, all terms contained in this section are defined by their plain meaning. This section contains definitions for terms that appear throughout this chapter. Additional definitions may appear in the specific section to which they apply. As used in this chapter, words in the masculine gender also include the feminine and neuter genders, words in the feminine gender also include the masculine and neuter genders; words in the singular include the plural and words in the plural include the singular. The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise.

(1) - (68) (No change.)

(69) License -

(A) A document issued by an approved county authorizing and governing the operation and maintenance of a municipal solid waste facility used to process, treat, store, or dispose of municipal solid waste, other than hazardous waste, in an area not in the territorial limits or extraterritorial jurisdiction of a municipality.

(B) An occupational license as defined in Chapter 30 of this title (relating to Occupational Licenses and Registrations).

(70) - (174) (No Change.)

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

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TRD-200105532
Stephanie Bergeron
Director, Environmental Law Division
Texas Natural Resource Conservation Commission
Earliest possible date of adoption: October 28, 2001
For further information, please call: (512) 239-4712

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SUBCHAPTER E. PERMIT PROCEDURES

30 TAC §330.52

STATUTORY AUTHORITY

The amendment is proposed under the authority granted to the commission by the Texas Legislature in TWC, Chapter 37. The amendment will be implemented under the authority of TWC, §37.002, which requires the commission to adopt rules to establish occupational licenses and registrations for solid waste facility supervisors (THSC, §361.027).

The amendment is also authorized under the general authority granted in TWC, §5.013, which establishes the general jurisdiction of the commission over other areas of responsibility as assigned to the commission under TWC and other laws of the state; TWC, §5.103 and §5.105, which authorize the commission to adopt rules and policies necessary to carry out its responsibilities and duties under TWC, §5.013(15); and TWC, §7.002, which authorizes the commission to enforce provisions of TWC and THSC.

The proposed amendment implements TWC, Chapter 37, which provides the commission the authority to: establish classes and terms of occupational licenses and registrations; establish procedures for granting, denying, and suspending occupational licenses and registrations; establish fees for occupational licenses and registrations; and establish training, continuing education, and examination requirements.

§330.52. Technical Requirements of Part I of the Application.

(a) (No change.)

(b) Additional requirements of Part I.

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

(9) Evidence of competency.

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

(C) [~~If the applicant does not have a prior site operating record, he must possess a commission letter of competency for the type of facility involved, evidence of completion of an approved course, evidence of equivalent qualification, or evidence that the proposed site supervisor has such qualification.~~] The executive director shall require that a licensed solid waste facility supervisor, as defined in Chapter 30 of this title (relating to Occupational Licenses and Registrations), [~~an appropriately qualified site supervisor~~] be employed before commencing site operation.

(D) (No change.)

(E) Evidence of competency to operate the site shall also include landfilling and earthmoving experience, other pertinent experience, or licenses as described in Chapter 30 of this title (relating to Occupational Licenses and Registrations) [~~commission letters of competency~~] possessed by key personnel and the number and size of each type of equipment to be dedicated to site operation.

(10) - (11) (No change.)

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

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Stephanie Bergeron
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Texas Natural Resource Conservation Commission
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For further information, please call: (512) 239-4712

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SUBCHAPTER M. SOLID WASTE TECHNICIAN TRAINING AND CERTIFICATION PROGRAM

30 TAC §§330.381 - 330.389

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

STATUTORY AUTHORITY

The repeals are proposed under the authority granted to the commission by the Texas Legislature in TWC, Chapter 37. The repeals will be implemented under the authority of TWC, §37.002, which requires the commission to adopt rules to establish occupational licenses and registrations for solid waste facility supervisors (THSC, §361.027).

The repeals are also authorized under the general authority granted in TWC, §5.013, which establishes the general jurisdiction of the commission over other areas of responsibility as assigned to the commission under TWC and other laws of the state; TWC, §5.103 and §5.105, which authorize the commission to adopt rules and policies necessary to carry out its responsibilities and duties under TWC, §5.013(15); and TWC, §7.002, which authorizes the commission to enforce provisions of TWC and THSC.

The proposed repeals implement TWC, Chapter 37, which provides the commission the authority to: establish classes and terms of occupational licenses and registrations; establish procedures for granting, denying, and suspending occupational licenses and registrations; establish fees for occupational licenses and registrations; and establish training, continuing education, and examination requirements.

§330.381. Purpose and Applicability.

§330.382. Definitions.

§330.383. Administration.

§330.384. Application for Letter of Competency.

§330.385. Qualification.

§330.386. Renewal.

§330.387. Revocation.

§330.388. Recommendations for Solid Waste Facility Owners/Operators.

§330.389. Fees.

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

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Stephanie Bergeron
Director, Environmental Law Division
Texas Natural Resource Conservation Commission
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CHAPTER 334. UNDERGROUND AND ABOVEGROUND STORAGE TANKS

The Texas Natural Resource Conservation Commission (commission) proposes new §§334.401, 334.451, 334.454, and 334.455. The commission also proposes amendments to §334.407 and §334.424. The commission also proposes the repeal of §§334.401 - 334.406, 334.408 - 334.412, 334.414 - 334.423, 334.425 - 334.428, 334.451 - 334.463, and 334.465 - 334.467.

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE PROPOSED RULES

The commission proposes changes to Chapter 334 to implement new provisions in Chapter 37, Texas Water Code (TWC), which were created by House Bill (HB) 3111 of the 77th Legislature, 2001. Texas Water Code, Chapter 37, requires the commission to consolidate administrative requirements and establish uniform procedures for the occupational licensing and registration programs administered by the commission. House Bill 3111 requires the commission to establish rules for the occupational licensing programs by December 1, 2001. The commission proposes to create new 30 TAC Chapter 30, Occupational Licenses and Registrations, to consolidate the administrative requirements for the ten licensing and registration programs administered in the Compliance Support Division (CSD). Chapter 30 will establish uniform procedures for issuing and renewing licenses, setting terms and fees, enforcement activities, and training approval for all of the licensing programs managed by the CSD.

The proposed rules will remove the requirements and procedures for issuing and renewing licenses and registrations, setting terms and fees, enforcement activities, and training approval for licenses and registrations from Chapter 334 because these requirements and procedures will be specified in the new Chapter 30. Additional sections in Chapter 334 are amended to accommodate transferring the licensing requirements to Chapter 30, to amend references to the licensing requirements, and to specify additional requirements for the license and registration holders.

SECTION BY SECTION DISCUSSION

Subchapter I--Underground Storage Tank Contractor Registration and Installer Licensing

The commission proposes amendments to change the title of Subchapter I from "Underground Storage Tank Contractor Registration and Installer Licensing" to "Underground Storage Tank On-Site Supervisor Licensing and Contractor Registration," to eliminate the reference to installer which is the same as an on-site supervisor, and to make the title consistent with the text. These changes are required to implement HB 3111 and provisions of TWC, Chapter 37.

Sections 334.401 - 334.406, 334.408 - 334.412, 334.414 - 334.423, and 334.425 - 334.428 are proposed to be repealed

because the licensing and registration requirements for contractor registration and installer licensing are being transferred to new Chapter 30.

Proposed new §334.401, License and Registration Required, would clarify who would be required to hold a license or registration issued by the commission and to identify the requirement to comply with Chapter 30. Proposed new §334.401(a) is added to clarify who is required to hold a license for supervising the installation, repair, or removal of an underground storage tank (UST) in accordance with Chapter 30. This added language will also clarify that an on-site supervisor must be on the job site during all times of the critical juncture. Proposed new §334.401(b) is added to clarify who is required to hold a registration as a UST contractor.

Section 334.407, Other Requirements for Certificate of Registration, is proposed to amend the title of this section to "Other Requirements for an Underground Storage Tank Contractor" to clarify the requirements for compliance by UST contractors. Subsection (a) is proposed to be deleted because the requirement is now identified in Chapter 30. Subsection (b) is proposed to renumber subsection (b) to subsection (a) and to add "insurance and net worth" and delete "financial" to explain what financial requirements are needed throughout the period the contractor holds a registration. This subsection is also proposed to add §30.315 as a cross-reference and to change "agency" to "executive director" to be consistent with commission definitions. Also, this section is proposed to be amended to delete "certificate of" because the term has been deleted from Subchapter A. Subsection (c) is proposed to renumber subsection (c) to subsection (b) and to change a reference from Chapter 313 to Chapter 213 relating to the Edwards Aquifer, because of a typographical error in the previous rule. Subsection (d) is proposed to renumber subsection (d) to subsection (c). New subsection (d), which was previously §334.414(d), was transferred with new language to improve readability and to clarify the requirement. New subsection (e), which was previously §334.401(c), was transferred with new language to improve readability and to clarify the requirements of this section.

Section 334.424, Other Requirements for a License A and License B, is proposed to amend the title of this section to "Other Requirements for an On-Site Supervisor" to clarify the requirements for compliance by on-site supervisors. Subsection (a) is proposed to be deleted because the requirement is now identified in Chapter 30. Subsections (b) - (d) are proposed to be renumbered and to delete "installer or" because an installer or an on-site supervisor is the same person and the term is not needed.

Subchapter J--Registration of Corrective Action Specialists and Project Managers for Product Storage Tank Remediation Projects

Proposed new §334.451, Applicability of Subchapter J, was transferred from §334.454 which is proposed to be repealed. Portions of the new language were transferred with changes. The proposed new language refers applicants to Chapter 30 to incorporate the new provisions from TWC, Chapter 37.

Sections 334.425 - 334.428, 334.451 - 334.463, and 334.465 - 334.467 are proposed to be repealed because the licensing and registration requirements for corrective action specialists and project managers are being transferred to new Chapter 30.

Section 334.454, Exception for Emergency Abatement Actions, is proposed to be repealed. Portions of the new language are proposed in new §334.454 with the following changes. "Licensed" was added when referring to corrective action project manager to incorporate the new requirements from TWC, Chapter 37. The phrase "this subchapter" was deleted to correct a cross-reference.

Proposed new §334.455, Notice to Owner or Operator, was transferred from §334.455 which is proposed to be repealed. Portions of the new language were transferred with changes. The phrase "this subchapter" was deleted in three places to correct a cross-reference. Section 334.455(c)(5) is proposed to add "licensing requirements for" to incorporate the new requirements from TWC, Chapter 37.

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 rules are in effect, no significant fiscal implications are anticipated for other units of state government and local government.

The proposed rules implement certain provisions in HB 3111, 77th Legislature, 2001, and provisions in HB 2912 77th Legislature, 2001.

House Bill 3111 creates a new chapter of TWC, which consolidates the administrative requirements for all commission regulated licensing and registration programs into one new chapter. The bill also consolidates the deposit of licensing fees from different funds or accounts into the occupational licensing account.

The proposed rules would repeal provisions in Chapter 334 relating to the requirements and procedures for issuing and renewing licenses and registrations; setting terms and fees; enforcement activities; and training approval for licenses and registrations for petroleum storage tank (PST) corrective action specialists, project managers, UST tank contractors and UST installers. The proposed rules also accommodate the proposed transfer in concurrent rulemaking of license requirements by amending references to licensing requirements, and specifying additional requirements for license and registration holders.

Based upon the current year number of licenses, registrations, and revenue, adoption of the proposed rules would affect approximately 1,837 current UST and PST licenses and registrations and result in the loss of fee revenue to the commission of an estimated $262,755 each year in license and renewal fees. Currently, there are four classes of certification; UST contractor registration is valid for one year for an initial of cost of $150 with a renewal cost of $75; an UST license A and license B for installers and on-site supervisors is valid for one year for an initial fee of $200 and renewal fee of $175; a registration for a corrective action specialist is valid for two years for a initial cost of $400 and a renewal fee of $350; and a corrective action project manager is valid for two years for an initial fee of $250 with a renewal fee of $150.

In concurrent rulemaking, the qualification requirements, fees, certification levels, and other provisions relating to the qualifications for issuing and renewing licenses or registrations to PST corrective action specialists, project managers, UST contractors and UST installers are established in a new chapter. Those provisions establish new fee rates and renewal cycles for PST corrective action specialists, project managers, UST contractors and UST installers. The proposed fee rates are lower or the same as current fee rates. There will be no change in the fee rates for UST companies, and leaking petroleum storage tank

(LPST) companies will pay $250 less in fees for an initial two-year registration and $200 less in fees for the renewal fee of a two-year registration. Leaking petroleum storage tank licenses will decrease by $180 for an initial two-year license and decrease $80 for the renewal of a two-year license. Underground storage tank licenses will decrease by $330 for an initial two-year license and decrease by $280 for the renewal of a two-year license. Most businesses and individuals seeking to obtain these licenses will see cost savings, though these savings are not considered significant.

PUBLIC BENEFITS AND COSTS

Mr. Horvath also determined that for each year of the first five years the proposed rules are in effect, the public benefit anticipated from enforcement of and compliance with the proposed rules will be the implementation of certain provisions in HB 3111 and increased compliance through the consolidation and standardization of commission occupational licensing programs.

The proposed rules implement certain provisions in HB 3111, and provisions in HB 2912.

House Bill 3111 creates a new chapter of TWC, which consolidates the administrative requirements for all commission-regulated licensing and registration programs into one new chapter. The bill also consolidates the deposit of licensing fees from different funds or accounts into the occupational licensing account.

The proposed rules would repeal provisions in Chapter 334 relating to the requirements and procedures for issuing and renewing licenses and registrations; setting terms and fees; enforcement activities; and training approval for licenses and registrations for PST corrective action specialists, project managers, UST contractors and UST installers. The proposed rules also accommodate the proposed transfer in concurrent rulemaking of license requirements by amending references to licensing requirements, and specifying additional requirements for license and registration holders.

Based upon the current year number of licenses, registrations and revenue, adoption of the proposed rules would affect approximately 1,837 current UST and PST licenses and registrations and result in the loss of fee revenue to the commission of an estimated $262,755 each year in license and renewal fees. Currently, there are four classes of certification; UST contractor registration is valid for one year for an initial of cost of $150 with a renewal cost of $75; an UST license A and license B for installers and on-site supervisors is valid for one year for an initial fee of $200 and renewal fee of $175; a registration for a corrective action specialist is valid for two years for a initial cost of $400 and a renewal fee of $350; and a corrective action project manager is valid for two years for an initial fee of $250 with a renewal fee of $150.

In concurrent rulemaking, the qualification requirements, fees, certification levels, and other provisions relating to the qualifications for issuing and renewing licenses or registrations to PST corrective action specialists, project managers, UST contractors and UST installers are established in a new Chapter 30, Subchapters E and I. Those provisions establish new fee rates and renewal cycles for PST corrective action specialists, project managers, UST contractors and UST installers. The proposed fee rates are lower or the same as current fee rates. There will be no change in the fee rates for UST companies, and LPST companies will pay $250 less in fees for an initial two-year registration and $200 less in fees for the renewal fee of a two-year registration. Leaking petroleum storage tank licenses will decrease by $180 for an initial two-year license and decrease $80 for the renewal of a two-year license. Underground storage tank licenses will decrease by $330 for an initial two-year license and decrease by $280 for the renewal of a two-year license. Most businesses and individuals seeking to obtain these licenses will see cost savings, though these savings are not considered significant.

SMALL BUSINESS AND MICRO-BUSINESS ASSESSMENT

No adverse fiscal implications are anticipated for those small or micro-businesses who may employ individuals or otherwise possess PST licenses, as a result of implementation of the proposed rules. For those small or micro-businesses not affected by this rulemaking, there will be no fiscal implications. The proposed rules would repeal certification and fee requirements procedures for issuing and renewing licenses and registrations, setting terms and fees, enforcement activities, and training approval for licenses and registrations for PST corrective action specialists, project managers, UST contractors and UST installers. Small or micro-businesses that employ these individuals or have these licenses would realize cost savings if they currently pay these license fees.

The proposed rules implement certain provisions in HB 3111, and provisions in HB 2912.

House Bill 3111 creates a new chapter of TWC, which consolidates the administrative requirements for all commission regulated licensing and registration programs into one new chapter. The bill also consolidates the deposit of licensing fees from different funds or accounts into the occupational licensing account.

The proposed rules would repeal provisions in Chapter 334 relating to the requirements and procedures for issuing and renewing licenses and registrations; setting terms and fees; enforcement activities; and training approval for licenses and registrations for PST corrective action specialists, project managers, UST contractors and UST installers. The proposed rules also accommodate the proposed transfer in concurrent rulemaking of license requirements by amending references to licensing requirements, and specifying additional requirements for license and registration holders.

Based upon the current year number of licenses, registrations, and revenue, adoption of the proposed rules would affect approximately 1,837 current UST and PST licenses and registrations and result in the loss of fee revenue to the commission of an estimated $262,755 each year in license and renewal fees. Currently, there are four classes of certification; UST contractor registration is valid for one year for an initial of cost of $150 with a renewal cost of $75; an UST license A and license B for installers and on-site supervisors is valid for one year for an initial fee of $200 and renewal fee of $175; a registration for a corrective action specialist is valid for two years for a initial cost of $400 and a renewal fee of $350; and a corrective action project manager is valid for two years for an initial fee of $250 with a renewal fee of $150. It is not known how many small or micro-businesses possess one of these licenses but if they do, they would realize cost savings as a result of the adoption of these rules.

In concurrent rulemaking, the qualification requirements, fees, certification levels, and other provisions relating to the qualifications for issuing and renewing licenses or registrations to PST corrective action specialists, project managers, UST contractors and UST installers are established in a new chapter. Those provisions establish new fee rates and renewal cycles for PST corrective action specialists, project managers, UST contractors and UST installers. The proposed fee rates are lower or the

same as current fee rates. There will be no change in the fee rates for UST companies, and LPST companies will pay $250 less in fees for an initial two-year registration and $200 less in fees for the renewal fee of a two-year registration. Leaking petroleum storage tank licenses will decrease by $180 for an initial two year license and decrease $80 for the renewal of a two-year license. Underground storage tank licenses will decrease by $330 for an initial two-year license and decrease by $280 for the renewal of a two-year license. Most businesses and individuals seeking to obtain these licenses will see cost savings, though these savings are not considered significant.

LOCAL EMPLOYMENT IMPACT STATEMENT

The commission has review this proposed rulemaking and determined that a local employment impact statement is not required because the proposed rules do not adversely affect a local economy in a material way for the first five years that the proposed rules are in effect.

DRAFT REGULATORY IMPACT ANALYSIS DETERMINATION

The commission reviewed the proposed rules in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and determined that the rules are not subject to §2001.0225. Section 2001.0225 only applies to rules that are specifically intended to protect the environment, or reduce risks to human health from environmental exposure. The intent of the rules is to consolidate the requirements for the various occupations licensed or registered by the commission into one chapter; not to protect the environment or human health. Protection of human health and the environment may be a by-product of the proposed rules, but it is not the specific intent of the proposed rules. Furthermore, the proposed rules would not adversely affect, in a material way, the economy, a section of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state, because the rules would primarily consolidate existing rule language into one chapter. Thus, the proposed rules do not meet the definition of a "major environmental rule" as defined in Texas Government Code, §2001.0225(g)(3), and thus, do not require a full regulatory impact analysis. The commission invites public comment on the draft regulatory impact analysis determination.

TAKINGS IMPACT ASSESSMENT

The commission has prepared a takings impact assessment for these rules in accordance with Texas Government Code, §2007.43. The following is a summary of that assessment. The specific purpose of the rules is to consolidate the requirements for the various occupations, licensed or registered by the commission into one chapter. The proposed rules would substantially advance this specific purpose by setting forth detailed procedures for obtaining an occupational license or registration including procedures for the initial application, examinations, and renewal applications. The proposed rules do not constitute a takings because they would not burden private real property.

CONSISTENCY WITH THE COASTAL MANAGEMENT PROGRAM

The commission reviewed the rulemaking and found that the rules are neither identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11(b)(2), relating to Actions and Rules Subject to the Texas Coastal Management Program (CMP), nor would it affect any action or authorization identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11(a)(6). Therefore, the proposed rules are not subject to the CMP.

ANNOUNCEMENT OF HEARING

A public hearing on the proposal will be held October 11, 2001, at 10:00 a.m. in Room 131E, Building C, at the Texas Natural Resource Conservation Commission complex, located at 12100 Park 35 Circle, Austin. The hearing is structured for the receipt of oral or written comments by interested persons. Individuals may present oral statements when called upon in order of registration. Open discussion will not occur during the hearing; however, an agency staff member will be available to discuss the proposal 30 minutes prior to the hearing and answer questions before and after the hearing.

Persons with disabilities who have special communication or other accommodation needs who are planning to attend the hearing should contact the agency at (512) 239-4900. Requests should be made as far in advance as possible.

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 2001-044-325-WT. Comments must be received by 5:00 pm., October 18, 2001. For further information, contact Melissa Estes, Policy and Regulations Division, at (512) 239-3937.

SUBCHAPTER I. UNDERGROUND STORAGE TANK CONTRACTOR REGISTRATION AND INSTALLER LICENSING

30 TAC §§334.401 - 334.406, 334.408 - 334.412, 334.414 - 334.423, 334.425 - 334.428

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

STATUTORY AUTHORITY

The repeals are proposed under the authority granted to the commission by the Texas Legislature in TWC, Chapter 37. The repeals will be implemented under the authority of TWC, §37.002, which requires the commission to adopt rules to establish occupational licenses and registrations for LPST corrective action project managers and specialists, (TWC, §26.3573); and UST contractors and on-site supervisors, (TWC, §26.452).

Furthermore, TWC, Chapter 37 provides the commission the authority to establish classes and terms of occupational licenses and registrations; establish procedures for granting, denying, suspending occupational licenses and registrations; establish fees for occupational licenses and registrations; and establish training, continuing education, and examination requirements.

The repeals are also authorized under the general authority granted in TWC, §5.013, which establishes the general jurisdiction of the commission over other areas of responsibility as assigned to the commission under TWC and other laws of the state; TWC, §5.103 and §5.105, which authorize the commission to adopt rules and policies necessary to carry out its responsibilities and duties under TWC, §5.013(15); and

TWC, §7.002, which authorizes the commission to enforce provisions of TWC and Texas Health and Safety Code.

The repeals are implemented under TWC Chapter 37, which gives the commission the authority to: establish classes and terms of occupational licenses and registrations; establish procedures for granting, denying, suspending occupational licenses and registrations; establish fees for occupational licenses and registrations; and establish training, continuing education, and examination requirements.

§334.401. Certificate of Registration for UST Contractor.
§334.402. Application for Certificate of Registration.
§334.403. Issuance of Certificate of Registration.
§334.404. Renewal of Certificate of Registration.
§334.405. Grounds for Denial of Certificate of Registration.
§334.406. Fee Assessments for Certificate of Registration.
§334.408. Exception to Registration Requirements.
§334.409. Revocation, Suspension, or Reinstatement of Certificate of Registration and License.
§334.410. Notice of Hearings.
§334.411. Procedures for Revocation, Suspension, or Reinstatement of a Certificate of Registration and License.
§334.412. Definitions.
§334.414. License for Installers and On-site Supervisors.
§334.415. License A and License B.
§334.416. Requirements for Issuance of License A and License B.
§334.417. Application for License A and License B.
§334.418. Notification of Examination.
§334.419. License A and License B Examination.
§334.420. Issuance of License A or License B.
§334.421. Renewal of License.
§334.422. Grounds for Denial of License A or License B.
§334.423. Fee Assessments for License A and License B.
§334.425. Exceptions to License A and License B Requirements.
§334.426. Revocation, Suspension, or Reinstatement of a License A and License B.
§334.427. Notice of Hearings.
§334.428. Procedures for Revocation, Suspension, or Reinstatement of a License A and License B.

This 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 September 14, 2001.

TRD-200105514
Stephanie Bergeron
Director, Environmental Law Division
Texas Natural Resource Conservation Commission
Earliest possible date of adoption: October 28, 2001
For further information, please call: (512) 239-4712

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SUBCHAPTER I. UNDERGROUND STORAGE TANK ON-SITE SUPERVISOR LICENSING AND CONTRACTOR REGISTRATION

30 TAC §§334.401, 334.407, 334.424

STATUTORY AUTHORITY

The amendments and new section are proposed under the authority granted to the commission by the Texas Legislature in Texas Water Code (TWC), Chapter 37. The amendments and new section will be implemented under the authority of TWC, §37.002, which requires the commission to adopt rules to establish occupational licenses and registrations for LPST corrective action project managers and specialists, (TWC, §26.3573); and UST contractors and on-site supervisors, (TWC, §26.452).

The amendments and new section are also authorized under the general authority granted in TWC, §5.013, which establishes the general jurisdiction of the commission over other areas of responsibility as assigned to the commission under TWC and other laws of the state; TWC, §5.103 and §5.105, which authorize the commission to adopt rules and policies necessary to carry out its responsibilities and duties under TWC, §5.013(15); and TWC, §7.002, which authorizes the commission to enforce provisions of TWC and Texas Health and Safety Code.

The amendments and new section are implemented under TWC Chapter 37, which gives the commission the authority to: establish classes and terms of occupational licenses and registrations; establish procedures for granting, denying, suspending occupational licenses and registrations; establish fees for occupational licenses and registrations; and establish training, continuing education, and examination requirements.

§334.401. License and Registration Required.

(a) An individual supervising the installation, repair, or removal of an underground storage tank (UST), as defined in §334.2 of this title (relating to Definitions), must hold an on-site supervisor license issued by the commission in accordance with Chapter 30 of this title (relating to Occupational Licenses and Registrations). An on-site supervisor must be present at the site at all times during the critical junctures of the installation, repair, or removal, as defined in §30.307 of this title (relating to Definitions).

(b) Any person or business entity that offers to undertake, represents itself as being able to undertake, or does undertake the installation, repair, or removal of a UST, as defined in §334.2 of this title, must hold a UST contractor registration issued by the commission in accordance with Chapter 30 of this title.

§334.407. Other Requirements for an Underground Storage Tank Contractor [~~Certificate of Registration~~].

[~~(a) All registered contractors shall notify the agency in writing within 30 days of any change which occurs during the validated registration year. Such changes shall include, but are not limited to:~~]

[~~(1) change of business name, address, or telephone number;~~]

[~~(2) change of physical address;~~]

[~~(3) change in status of insurance;~~]

[~~(4) change of authorized representative as prescribed by §334.402(2)(B) of this subchapter (relating to Application for Certificate of Registration);~~]

[~~(5) permanent cessation of underground storage tank (UST) business or UST activities;~~]

[~~(6) a filing for reorganization or protection under federal bankruptcy laws;~~]

[~~(7) change of branch office, address, or telephone number.~~]

(a) [~~(b)~~] A registered underground storage tank (UST) [~~UST~~] contractor is required to maintain insurance and net worth [~~financial~~]

requirements, as required by §30.315 [§334.402] of this title (relating to Qualifications for an Initial Registration), throughout the period that the contractor holds a valid [certificate of] registration from the executive director [agency].

(b) [(c)] A [An] UST contractor subject to the provisions of this subchapter employed or otherwise engaged by a [an] UST owner or operator (or by any other person representing to be the UST owner or operator) to conduct the installation, repair, or removal of a [an] UST shall comply with all applicable technical standards of Subchapter C of this chapter (relating to Technical Standards) and Chapter 213 [313] of this title (relating to Edwards Aquifer).

(c) [(d)] Compliance with the provisions of this subchapter by a registered contractor shall not relieve such contractor from the responsibility of compliance with all applicable regulations legally promulgated by the EPA [United States Environmental Protection Agency], United States Occupational Safety and Health Administration, United States Department of Transportation, Texas Department of Health, Texas Department [State Board] of Insurance (including state fire marshal), Railroad Commission of Texas, Texas Department of Agriculture, State Comptroller, Texas Department of Public Safety, Texas Natural Resource Conservation Commission, and other federal, state, and local governmental agencies or entities having appropriate jurisdiction.

(d) A UST contractor must have an on-site supervisor who is licensed by the agency under this subchapter at the site at all times during the critical junctures of the installation, repair, or removal, as defined in §30.307 of this title (relating to Definitions).

(e) A UST contractor must prominently display the UST contractor registration number on all bids, proposals, offers, and installation drawings.

§334.424. Other Requirements for an On-Site Supervisor [~~a License A and License B~~].

[(a) All License A and License B installers and on-site supervisors shall notify the agency in writing within 30 days of any change to the application including, but not limited to:]

[(1) change of employer;]

[(2) change of employer's mailing and physical address or telephone number; and]

[(3) change of personal mailing and physical address or telephone number.]

(a) [(b)] A licensed [installer or] on-site supervisor subject to the provisions of this subchapter that is engaged in the installation, repair, or removal of underground storage tanks (USTs) shall be required to comply with all applicable technical standards of Subchapter C of this chapter (relating to Technical Standards) and Chapter 213 of this title (relating to Edwards Aquifer).

(b) [(c)] Compliance with the provisions of this subchapter by a licensed [installer or] on-site supervisor shall not relieve such licensee from the responsibility of compliance with all applicable regulations legally promulgated by the EPA [United States Environmental Protection Agency], United States Occupational Safety and Health Administration, United States Department of Transportation, Texas Department of Health, Texas Department [State Board] of Insurance (including state fire marshal), Railroad Commission of Texas, Texas Department of Agriculture, State Comptroller, Texas Department of Public Safety, Texas Natural Resource Conservation Commission, and other federal, state, and local governmental agencies or entities having appropriate jurisdiction.

(c) [(d)] A licensed [installer or] on-site supervisor who offers to undertake, represents to undertake, or does undertake the installation, repair, or removal of a [an] UST shall either be registered as a [an] UST contractor in accordance with [pursuant to] this subchapter, or be employed by a registered UST contractor.

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

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Stephanie Bergeron
Director, Environmental Law Division
Texas Natural Resource Conservation Commission
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SUBCHAPTER J. REGISTRATION OF CORRECTIVE ACTION SPECIALISTS AND PROJECT MANAGERS FOR PRODUCT STORAGE TANK REMEDIATION PROJECTS

30 TAC §§334.451 - 334.463, 334.465 - 334.467

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

STATUTORY AUTHORITY

The repeals are proposed under the authority granted to the commission by the Texas Legislature in Texas Water Code (TWC), Chapter 37. The repeals will be implemented under the authority of TWC, §37.002, which requires the commission to adopt rules to establish occupational licenses and registrations for LPST corrective action project managers and specialists, (TWC, §26.3573); and UST contractors and on-site supervisors, (TWC, §26.452).

The repeals are also authorized under the general authority granted in TWC, §5.013, which establishes the general jurisdiction of the commission over other areas of responsibility as assigned to the commission under TWC and other laws of the state; TWC, §5.103 and §5.105, which authorize the commission to adopt rules and policies necessary to carry out its responsibilities and duties under TWC, §5.013(15); and TWC, §7.002, which authorizes the commission to enforce provisions of TWC and Texas Health and Safety Code.

The repeals are implemented under TWC Chapter 37, which gives the commission the authority to: establish classes and terms of occupational licenses and registrations; establish procedures for granting, denying, suspending occupational licenses and registrations; establish fees for occupational licenses and registrations; and establish training, continuing education, and examination requirements.

§334.451. Applicability of Subchapter J.
§334.452. Exemptions from Subchapter J.
§334.453. General Requirements and Prohibitions.

§334.454. Exception for Emergency Abatement Actions.

§334.455. Notice to Owner or Operator.

§334.456. Application for Certificate of Registration for Corrective Action Specialist.

§334.457. Application for Certificate of Registration for Corrective Action Project Manager.

§334.458. Review and Issuance of Certificates of Registration.

§334.459. Continuing Education Requirements for Corrective Action Project Managers.

§334.460. Renewal of Certificate of Registration for Corrective Action Specialist and Corrective Action Project Manager.

§334.461. Denial of Certificate of Registration.

§334.462. Other Requirements.

§334.463. Grounds for Revocation or Suspension of Certificate of Registration.

§334.465. Procedures for Revocation or Suspension of a Certificate of Registration.

§334.466. Reinstatement of a Certificate of Registration.

§334.467. Fee Assessments for Certificates of Registration

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

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Stephanie Bergeron

Director, Environmental Law Division

Texas Natural Resource Conservation Commission

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For further information, please call: (512) 239-4712

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30 TAC §§334.451, 334.454, 334.455

STATUTORY AUTHORITY

The new sections are proposed under the authority granted to the commission by the Texas Legislature in Texas Water Code (TWC), Chapter 37. The new sections will be implemented under the authority of TWC, §37.002, which requires the commission to adopt rules to establish occupational licenses and registrations for LPST corrective action project managers and specialists, (TWC, §26.3573); and UST contractors and on-site supervisors, (TWC, §26.452).

The new sections are also authorized under the general authority granted in TWC, §5.013, which establishes the general jurisdiction of the commission over other areas of responsibility as assigned to the commission under TWC and other laws of the state; TWC, §5.103 and §5.105, which authorize the commission to adopt rules and policies necessary to carry out its responsibilities and duties under TWC, §5.013(15); and TWC, §7.002, which authorizes the commission to enforce provisions of TWC and Texas Health and Safety Code.

The new sections are implemented under TWC, Chapter 37, which gives the commission the authority to: establish classes and terms of occupational licenses and registrations; establish procedures for granting, denying, suspending occupational licenses and registrations; establish fees for occupational licenses and registrations; and establish training, continuing education, and examination requirements.

§334.451. Applicability of Subchapter J.

(a) All corrective action services covered by this chapter must be performed by or be coordinated by a person or entity registered as a corrective action specialist; and

(b) All corrective action services covered by this chapter must be supervised by a licensed corrective action project manager according to Subchapter E of Chapter 30 of this title (relating to Registration of Corrective Action Specialist and Project Managers for Product Storage Tank Remediation Projects).

§334.454. Exception for Emergency Abatement Actions.

(a) An owner or operator or other person may undertake such corrective action as may be necessary to abate any immediate threat to human health and safety or the environment caused by a release or threatened release without a registered corrective action specialist or a licensed corrective action project manager; and a person who is not registered under §30.190 of this title (relating to Qualifications for Initial Registration), or §30.180 of this title (relating to Qualifications for Initial License) may provide or perform such services provided that the action is in compliance with this section.

(b) For this section to apply, the owner or operator or other person must:

(1) demonstrate that the actions taken were necessary to protect against imminent danger to human health and safety by mitigating fire, explosion, and vapor hazards, by removing free product from structures, basements, sumps, etc., or performing other actions as deemed necessary by the executive director;

(2) notify the executive director of the emergency occurrence within 24 hours of commencing emergency abatement action;

(3) notify the local fire marshal (or state fire marshal if no local authority is available) within 24 hours of commencing emergency abatement action; and

(4) obtain the services of a registered corrective action specialist within ten days of commencing emergency action.

§334.455. Notice to Owner or Operator.

(a) A notice of corrective action must be provided by the corrective action specialist, in accordance with this section for any corrective action services which are commenced on or after October 1, 1994.

(b) The notice requirements of this section apply regardless of whether or not the person offering the services is working directly for an owner or operator. The notice of corrective action must be given to the owner or operator prior to the time when the offer to perform corrective action services is accepted.

(c) The notice must contain the following:

(1) whether the person or entity is registered in accordance with Chapter 30 of this title (relating to Occupational Licenses and Registrations);

(2) the person or entity's registration number;

(3) proof of commercial liability insurance required in §30.190 of this title (relating to Qualifications for Initial Registration); and

(4) the disclaimer required in subsection (f) of this section; and

(5) a statement signed by the owner or operator and by a representative of the corrective action specialist which indicates both parties are aware of the registration requirements for corrective action specialists and licensing requirements for corrective action project managers set forth in Chapter 30 of this title, and that reimbursement

will be in accordance with the provisions of Subchapter H of this chapter (relating to Reimbursement Program) and in accordance with the published agency reimbursable cost guidelines.

(d) The notice of corrective action must be on a form provided by the executive director. The person contracting with the owner or operator shall provide the owner or operator with a copy of the signed notice of corrective action.

(e) Within 15 days of the date on which the offer to perform corrective action services is accepted, the corrective action specialist shall submit to the executive director a copy of such written notice signed by the authorized representative of the corrective action specialist and by the owner or operator or their duly authorized agent.

(f) Any bid, proposal, or offer that indicates a company or person is a corrective action specialist must reproduce in its entirety the following disclaimer. The disclaimer must be a part of any notice required by this section.

(1) The registration of a corrective action specialist with the agency does not constitute endorsement, licensing, or promotion of any corrective action specialist. Registration does not imply that the agency guarantees the quality of the work performed or that the cost of the work may be reimbursed.

(2) Reimbursement for approved work is subject to the eligibility requirements set forth in Subchapter H of this chapter and the agency's reimbursable cost guidelines. Charges exceeding the amount determined as reimbursable for that particular work item shall not be reimbursed by the agency.

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

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Stephanie Bergeron
Director, Environmental Law Division
Texas Natural Resource Conservation Commission
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For further information, please call: (512) 239-4712

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CHAPTER 344. LANDSCAPE IRRIGATION

The Texas Natural Resource Conservation Commission (commission) proposes amendments to §§344.1, 344.10, 344.49, 344.58 - 344.60, 344.72, 344.73, 344.75, 344.77, 344.96. The commission also proposes new §344.4.

The commission also proposes the repeal of §§344.2, 344.20, 344.23, 344.26 - 344.30, 344.34, 344.37 - 344.43, 344.46, 344.50, 344.51, 344.55 - 344.57, and 344.80 - 344.85.

BACKGROUND AND SUMMARY OF FACTUAL BASIS FOR THE PROPOSED RULES

The commission proposes these revisions to Chapter 344 because the licensing requirements for licensed irrigators and licensed installers will be consolidated into one chapter, newly created 30 TAC Chapter 30, Occupational Licenses and Registrations. Newly created Chapter 30 is concurrently proposed in this issue of the *Texas Register*. Chapter 30 will establish uniform procedures for issuing and renewing licenses, setting terms and fees, enforcement activities, and training approval for all of the licensing programs managed by the commission staff in the Compliance Support Division (CSD). The existing rules in Chapter 344 specify the minimum standards for designing and installing a landscape irrigation system, including the permitting of these installations.

The proposed revisions to Chapter 344 are to accommodate the requirement in Texas Water Code (TWC), Chapter 37, which was created by House Bill (HB) 3111 approved by the 77th Legislature, 2001. Texas Water Code, Chapter 37, requires the commission to consolidate administrative requirements and establish uniform procedures for the occupational licensing and registration programs administered by the commission. House Bill 3111 requires the commission to establish rules for the occupational licensing programs by December 2001. To achieve this, the commission proposes to create Chapter 30 to consolidate the administrative requirements for the ten licensing and registration programs administered in the CSD.

The proposed rulemaking will transfer the requirements and procedures for issuing and renewing licenses, setting terms and fees, enforcement activities, and training approval for the landscape irrigation licenses because these requirements and procedures will be specified in Chapter 30. Chapter 344 is proposed to be amended to accommodate the affect of moving the licensing portion. Additionally, Chapter 344 will be amended to reference the licensing requirements according to Chapter 30 and to correct some minor errors in Chapter 344.

SECTION BY SECTION DISCUSSION

The existing title of Chapter 344 will be changed from "Landscape Irrigators" to "Landscape Irrigation," to clearly define the content of this chapter.

Subchapter A--General Provisions

Section 344.1, Definitions, is proposed to be revised. The definitions for "Commission," "Complainant," and "Executive Director" are deleted because they are defined in Chapter 3 of this title (relating to Definitions). The proposed new language for the definition of "Council" deletes "Texas Irrigators" and replaces it with "Irrigator" to comply with Chapter 30. The definition of "Installer" proposes new language to be added at the end of the existing definition, "who is licensed according to Chapter 30." Proposed new language for the definition of "Irrigation System" adds the sentence at the end of the definition which reads, "The term does not include a system used on or by an agricultural operation as defined by Texas Agricultural Code, §251.002." This will make this definition agree with the change in the statute. The proposed new language for the definition of "Irrigator" deletes Subparagraphs (A) and (B) and transfers the language to concurrently proposed new §30.129, Exemptions. This will comply with the change in their location by the change which occurred in the statute. In addition, proposed new language will then add at the end of the remaining definition for irrigator..."who is licensed according to Chapter 30." The definitions of "Licensed Irrigator" and "Licensed Installer" have been deleted. The license stipulation of the definition is now given under "irrigator" and "installer" in the proposed new title. The definition "Person" is deleted because it is defined in Chapter 3. The definition of "Respondent" is deleted and will not used in the proposed new Chapter 30.

Section 344.2, Exemptions, is proposed to be repealed and transferred to proposed new Chapter 30.

New §344.4, License Required, is proposed to establish who must be licensed when performing the functions of an irrigator and installer. This addition is necessary to clarify who can perform the functions of the profession of landscape irrigation, and to reference Chapter 30.

Subchapter B--General Provisions Affecting the Irrigators Advisory Council

The titles of Subchapter B and §344.10, Irrigators Advisory Council, is proposed to change the word "Irrigators" to "Irrigator," to mirror the language in TWC, Chapter 34.

The revision to §344.10(a) proposes to delete "Texas Irrigators" and replace it with "Irrigator," to comply with the statute. Section §344.10(i) proposes to delete the existing language and replace it with "The council shall hold meetings at the call of the commission or chairman." Revisions to §344.10(k) propose to delete language in the rule which state "by a majority vote at the first meeting each fiscal year" and change it to "by a majority vote." The proposed revision will comply with the statute and establish that a majority vote will determine the outcome of the election of a chairman.

Subchapter C--Registration/Licensure of Irrigators and Installers

Sections 344.20, 344.23, 344.26 - 344.30, 344.34, 344.37 - 344.43, 344,46, 344.50, 344.51, 344.55 - 344.57 are proposed to be repealed. These provisions are concurrently proposed in Chapter 30, Subchapters A and D.

Section 344.58(a) and (b) revise the phrase "certificate of registration" to "license" in the title of the section, as well as the text of the rule. This revision is to comply and mirror the language in Chapter 30. Section 344.58(c) proposes to delete the phrase "the certificate of registration" and replace it with "their license." This is to comply with the statute.

Section 344.59(a) proposes to delete the words "and before issuance of the certificate of registration." This is to expedite the issuance of the license.

Section 344.60 proposes to replace in the second to last sentence, the word "certificate" with "license" so as to comply with the statute.

Subchapter D--Standards for Water Supply Connections

The proposed new title for this subchapter is "Standards for Landscape Irrigation." This more clearly defines the content of this subchapter.

Section 344.72, Water Conservation, is amended by adding "All" to replace "It is the policy of the commission" and add the word "shall" to more clearly define the intent of this rule.

Section 344.73 proposes to revise the existing title of "Absence of Local Regulation--Backflow Prevention Devices" to "Approved Backflow Prevention Methods." The new title more clearly defines the content of this section. The opening paragraph of §344.73 is proposed to be deleted and replaced with "All irrigation systems connected to a public or private potable water supply must be properly connected through one of the following backflow prevention methods:" This revision is necessary to establish that all irrigation systems must be properly connected for the protection of the water supplies. Section §344.73(1) proposes to revise the beginning portion of the last sentence by adding "Where atmospheric vacuum breakers are used in an irrigation system...." This revision is for clarity and readability. New §344.73(5) introduces the following language for air gap, "An air gap, when used must be installed and maintained in accordance with the standards established in the American Waterworks Association M14 Manual on Cross Connection Control." This addition is necessary to bring the rules into current standards of cross connection control.

The proposal to revise §344.75 title from "Required Backflow Prevention Devices" to "Specific Conditions and Backflow Prevention Devices" more clearly defines the contents of this section. Section 344.75(b) is proposed to be amended to consider systems as "high health hazard" when systems add any chemical substance as opposed to injection devices for introducing toxic substances. This is required to provide protection from chemical substances and to avoid confusion over what is an injection device and what is included in toxic substances. The section requires that systems may only be connected to a potable water supply through the use of only a reduced pressure principle backflow prevention assembly which make this requirement consistent with the requirements of 30 TAC Chapter 290.

Section 344.77, proposed new title "Minimum Standards for Design and Installation of Irrigation Systems" replaces "Minimum Standards for Irrigators/Installers." The revision clearly describes the content of this section. Section §344.77(g) deletes the language "The installer" and replaces it with "An individual who installs an irrigation system." This is necessary to clarify that this provision does not only apply to licensed installers.

Subchapter E--Complaint Process

Sections 344.80 - 344.85 are proposed for repeal because the complaint process is administered under 30 TAC Chapter 70 and 30 TAC Chapter 80. The sections are redundant in nature and are no longer needed.

Subchapter F--Standards of Conduct for Licensed Irrigators and Installers

Within the title of Subchapter F, the word "Licensed" is removed leaving the title to read, "Standards of Conduct for Irrigators and Installers." Section 344.96 proposes to add the following language at the end of implied "a," "..., and honor the warranty," to specify the requirement to fulfil warranty obligations.

FISCAL NOTE: COSTS TO STATE AND LOCAL GOVERNMENT

John Davis, Technical Specialist with Strategic Planning and Appropriations, has determined that for the first five-year period the proposed rulemaking is in effect, there will be no significant fiscal implications for units of state and local government as a result of administering and enforcing the proposal. The proposed repeal of landscape irrigation requirements and procedures for issuing and renewing licenses, and setting terms and fees could result in cost savings for units of state and local government that pay these licensing fees. There will be no fiscal implications for units of state and local government that do not pay these landscape irrigation license renewal fees.

The proposed rulemaking is intended to implement provisions of HB 3111 (an act relating to occupational licenses and registrations issued by the commission).

House Bill 3111 creates a new chapter of the TWC, which consolidates the administrative requirements of all commission-regulated licensing and registration programs into one new chapter. The bill also consolidates the deposit of licensing fees from different funds or accounts into the occupational licensing account.

The proposed rulemaking would repeal the landscape irrigation requirements and procedures for issuing and renewing licenses, setting terms and fees, enforcement activities, and training approval contained in this chapter. Additionally, this rulemaking will update references, and make minor administrative corrections to rule language contained in this chapter.

The proposed repeal of the landscape irrigation requirements and procedures for issuing and renewing licenses, setting terms and fees, enforcement activities, and training approval would affect approximately 5,800 landscape irrigators and installers licensed by the commission and result in the loss of fee revenue to the commission of an estimated $400,000 in licensing and registration fees.

In concurrent rulemaking, the landscape irrigation requirements and procedures for issuing and renewing licenses, setting terms and fees, enforcement activities, and training approval, are established in a new Chapter 30. The proposed new fee rate ($70 every two years) is lower for both landscape irrigators and installers compared to current fees. The fee rate for landscape irrigators is currently $85 every year, while the fee rate for installers is $50 every year.

PUBLIC BENEFITS AND COSTS

Mr. Davis also determined that for each year of the first five years the proposed rulemaking is in effect, the public benefit anticipated from enforcement of and compliance with this rulemaking will be the implementation of certain provisions of HB 3111, and increased compliance through the consolidation and standardization of commission occupational licensing programs.

The proposed rulemaking implements certain provisions of HB 3111. House Bill 3111 creates a new chapter of the TWC, which consolidates the administrative requirements of all commission-regulated licensing and registration programs into one new chapter. The bill also consolidates the deposit of licensing fees from different funds or accounts into the occupational licensing account.

The proposed rulemaking would repeal the landscape irrigation requirements and procedures for issuing and renewing licenses, setting terms and fees, enforcement activities, and training approval contained in this chapter. Additionally, this rulemaking will update references, and make minor administrative corrections to rule language contained in this chapter.

If proposed amendments in concurrent rulemaking are not adopted, the adoption of this proposed rulemaking would result in cost savings for the affected 5,800 landscape irrigators and installers, though these cost savings are not considered significant. There will be no fiscal implications for individuals and businesses that do not pay license renewal fees landscape irrigators and installers.

However, in concurrent rulemaking, the landscape irrigation requirements and procedures for issuing and renewing licenses, setting terms and fees, enforcement activities, and training approval are established in a new Chapter 30. The proposed new fee rate ($70 every two years) is lower for both landscape irrigators and installers compared to current fees. The fee rate for landscape irrigators is currently $85 every year, while the fee rate for installers is $50 every year.

SMALL BUSINESS AND MICRO-BUSINESS ASSESSMENT

There will be no adverse fiscal impacts for small or micro-businesses as a result of the proposed rulemaking, which is intended to implement provisions of HB 3111. Adoption of the proposed rulemaking could result in a cost savings, which is not anticipated to be significant, for small or micro- businesses that pay for employee renewal of landscape irrigator and installer licenses. If proposed amendments in concurrent rulemaking are not adopted, the adoption of this proposed rulemaking would repeal the licensing requirements for the 5,800 affected landscape irrigators and installers, many of which are employed by small and micro-businesses. There will be no fiscal implications for small and micro-businesses that do not pay for landscape irrigators and installers license renewal fees. The proposed rulemaking would also update references, and make minor administrative corrections to rule language contained in this chapter.

However, in concurrent rulemaking, the landscape irrigation requirements and procedures for issuing and renewing licenses, setting terms and fees, enforcement activities, and training approval are established in a new Chapter 30. The proposed new fee rate ($70 every two years) is lower for both landscape irrigators and installers compared to current fees. The fee rate for landscape irrigators is currently $85 every year, while the fee rate for installers is $50 every year.

LOCAL EMPLOYMENT IMPACT STATEMENT

The commission has reviewed this proposed rulemaking and determined that a local employment impact statement is not required because the proposed rulemaking does not adversely affect a local economy in a material way for the first five years that the proposed rulemaking is in effect.

DRAFT REGULATORY IMPACT ANALYSIS DETERMINATION

The commission reviewed the proposed rulemaking in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and determined that the rule is not subject to §2001.0225. Section 2001.0225 only applies to rules that are specifically intended to protect the environment, or reduce risks to human health from environmental exposure. The intent of the proposed rulemaking is to consolidate the requirements for the various occupations licensed or registered by the commission into one chapter; not to protect the environment or human health. Protection of human health and the environment may be a by-product of the proposed rulemaking, but it is not the specific intent of the proposal. Furthermore, the proposed rulemaking would not adversely affect, in a material way, the economy, a section of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state, because the proposed rulemaking would simply consolidate existing rule language into one chapter. Thus, the proposed rulemaking does not meet the definition of a "major environmental rule" as defined in Texas Government Code, §2001.0225(g)(3), and thus, does not require a full regulatory impact analysis. The commission invites public comment on the draft regulatory impact analysis determination.

TAKINGS IMPACT ASSESSMENT

The commission has prepared a takings impact assessment for this rulemaking in accordance with Texas Government Code, §2007.43. The following is a summary of that assessment. The specific purpose of the proposal is to consolidate the requirements for the various occupations, licensed or registered by the commission into one chapter. The proposed rulemaking would

substantially advance this specific purpose by setting forth detailed procedures for obtaining an occupational license or registration including procedures for: the initial application; examinations; and renewal applications. The proposed rulemaking does not constitute a takings because it would not burden private real property.

CONSISTENCY WITH THE COASTAL MANAGEMENT PROGRAM

The commission reviewed the proposed rulemaking and found that the rulemaking is neither identified in the 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 would it affect any action or authorization identified in §505.11(a)(6). Therefore, the proposed rulemaking is not subject to the CMP.

ANNOUNCEMENT OF HEARING

A public hearing on the proposal will be held October 11, 2001, at 10:00 a.m. in Room 131E, Building C, at the Texas Natural Resource Conservation Commission complex, located at 12100 Park 35 Circle, Austin. The hearing is structured for the receipt of oral or written comments by interested persons. Individuals may present oral statements when called upon in order of registration. Open discussion will not occur during the hearing; however, an agency staff member will be available to discuss the proposal 30 minutes prior to the hearing and answer questions before and after the hearing.

Persons with disabilities who have special communication or other accommodation needs who are planning to attend the meeting should contact the agency at (512) 239-4900. Requests should be made as far in advance as possible.

SUBMITTAL OF COMMENTS

Comments may be submitted to 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 2001-044-325-WT. Comments must be received by 5:00 pm., October 18, 2001. For further information, contact Melissa Estes, Policy and Regulations Division, at (512) 239-3937.

SUBCHAPTER A. GENERAL PROVISIONS

30 TAC §344.1, §344.4

STATUTORY AUTHORITY

The amendment and new section are proposed under the authority granted to the commission by the Texas Legislature in TWC, Chapter 37.

The amendment and new section are also proposed under the general authority granted in TWC, §5.013, which establishes the general jurisdiction of the commission over other areas of responsibility as assigned to the commission under TWC and other laws of the state; §5.103 and §5.105, which authorize the commission to adopt rules and policies necessary to carry out its responsibilities and duties under TWC, §5.013(15); and TWC, §7.002, which authorizes the commission to enforce provisions of TWC and THSC.

The amendment and new section are implemented under the authority of TWC, §37.002, which requires the commission to adopt rules to establish occupational licenses and registrations for landscape irrigators and installers. Texas Water Code, Chapter 37, provides the commission the authority to: establish classes and terms of occupational licenses and registrations; establish procedures for granting, denying, suspending occupational licenses and registrations; establish fees for occupational licenses and registrations, and establish training, continuing education, and examination requirements.

§344.1. Definitions.

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

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

[~~(3) Commission--The Texas Natural Resource Conservation Commission.~~]

[~~(4) Complainant--Anyone who has filed with the executive director a complaint which states matters within the commission's jurisdiction.~~]

(3) [~~(5)~~] Council--The Irrigator [~~Texas Irrigators~~] Advisory Council.

[~~(6) Executive director--The executive director or any authorized individual designated to act for the executive director.~~]

(4) [~~(7)~~] Hydraulics--The mathematical computation of determining pressure losses and pressure requirements of an irrigation system.

(5) [~~(8)~~] Installer--A person who actually connects an irrigation system to a private or public raw or potable water supply system or any water supply, who is licensed according to Chapter 30 of this title (relating to Occupational Licenses and Registrations).

(6) [~~(9)~~] Irrigation system--An assembly of component parts permanently installed with and for the controlled distribution and conservation of water for the purpose of irrigating any type of landscape vegetation in any location or for the purpose of dust reduction or erosion control. This includes parts used in the application and installation of drip irrigation systems. The term does not include a system used on or by an agricultural operation as defined by Texas Agricultural Code, §251.002.

(7) [~~(10)~~] Irrigator A person who sells, designs, consults, installs, maintains, alters, repairs, or services an irrigation system including the connection of such system in and to a private or public, raw or potable water supply system or any water supply, and who is licensed according to Chapter 30. [~~The term does not include:~~]

[~~(A) a person who assists in the installation, maintenance, alteration, repair, or service of an irrigation system under the direct supervision of a licensed irrigator;~~]

[~~(B) an owner of a business that regularly employs a licensed irrigator who directly supervises the business's sale, design, consultation, installation, maintenance, alteration, repair, and service of irrigation systems. For the purposes of these rules, "regularly employs" means steadily, uniformly or habitually working in an employer-employee relationship with a view of earning a livelihood, as opposed to working casually or occasionally.~~]

(8) [~~(11)~~] Landscape Irrigation--The science of applying water to promote and/or sustain growth of plant material or turf.

[~~(12) Licensed Installer--An installer who has prequalified and is licensed under this chapter.~~]

[~~(13) Licensed Irrigator--An irrigator who has prequalified and is licensed under this chapter.~~]

(9) [~~(14)~~] Non-toxic Substance--Any substance, solid, liquid, or gaseous, which may make the water aesthetically unacceptable

but, if ingested, will not cause illness or death and is not considered a health hazard.

~~[(15) Person--A natural person.]~~

(10) [~~(16)~~] Precipitation Zones

(A) Precipitation Zone #1 is defined as the region of Texas requiring the landscape irrigation system to distribute a minimum of .25 inches of water per hour for every hour that the landscape irrigation system is in operation.

(B) Precipitation Zone #2 is defined as the region of Texas requiring the landscape irrigation system to distribute a minimum of .275 inches of water per hour for every hour that the landscape irrigation system is in operation.

(C) Precipitation Zone #3 is defined as the region of Texas requiring the landscape irrigation system to distribute a minimum of .30 inches of water per hour for every hour that the landscape irrigation system is in operation.

(D) Precipitation Zone #4 is defined as the region of Texas requiring the landscape irrigation system to distribute a minimum of .325 inches of water per hour for every hour that the landscape irrigation system is in operation. The precipitation zones defined in paragraphs (A) - (D) of this section are represented as Zones No. 1 - 4 on the following map:

Figure: 30 TAC §344.1(10)(D)

[~~Figure: 30 TAC §344.1(16)(D)~~]

~~[(17) Respondent--Anyone against whom a complaint, which states matters within the commission's jurisdiction, has been filed with the executive director.]~~

(11) [~~(18)~~] Toxic Substance--Any substance, solid, liquid, or gaseous, which when introduced into the water supply system creates, or may create, a danger to the health and well-being of the consumer.

(12) [~~(19)~~] Water Conservation--The design and installation of an irrigation system which prevents the waste of water, promotes the most efficient use of water and applies the least amount of water required to maintain healthy individual plant material or turf.

§344.4. License Required.

(a) An individual who sells, designs, consults, installs, maintains, alters, repairs, or services and irrigation system, including the connection of such system to any water supply, or represents that they can perform any or all of these functions, must hold an irrigator license issued according to Chapter 30 of this title (relating to Occupational Licenses and Registrations.) An irrigator must comply with the rules contained in this chapter when performing any or all of the above described functions.

(b) An individual who performs the functions of an installer by connecting an irrigation system to any water supply, or represents that they can perform this function, must hold an installer licensed issued according to Chapter 30 of this title. An installer must work under the direct supervision of a licensed irrigator and comply with the applicable provisions of this chapter when performing this function.

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

Filed with the Office of the Secretary of State, on September 14, 2001.

TRD-200105524

Stephanie Bergeron

Director, Environmental Law Division

Texas Natural Resource Conservation Commission

Earliest possible date of adoption: October 28, 2001

For further information, please call: (512) 239-4712

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30 TAC §344.2

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

STATUTORY AUTHORITY

The repeal is proposed under the authority granted to the commission by the Texas Legislature in TWC, Chapter 37.

The repeal is also proposed under the general authority granted in TWC, §5.013, which establishes the general jurisdiction of the commission over other areas of responsibility as assigned to the commission under TWC and other laws of the state; §5.103 and §5.105, which authorize the commission to adopt rules and policies necessary to carry out its responsibilities and duties under TWC, §5.013(15); and TWC, §7.002, which authorizes the commission to enforce provisions of TWC and THSC.

The repeal is implemented under the authority of TWC, §37.002, which requires the commission to adopt rules to establish occupational licenses and registrations for landscape irrigators and installers. Texas Water Code, Chapter 37, provides the commission the authority to: establish classes and terms of occupational licenses and registrations; establish procedures for granting, denying, suspending occupational licenses and registrations; establish fees for occupational licenses and registrations; and establish training, continuing education, and examination requirements.

§344.2. Exemptions.

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

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Stephanie Bergeron

Director, Environmental Law Division

Texas Natural Resource Conservation Commission

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For further information, please call: (512) 239-4712

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SUBCHAPTER B. GENERAL PROVISIONS AFFECTING THE IRRIGATOR ADVISORY COUNCIL

30 TAC §344.10

STATUTORY AUTHORITY

The amendment is proposed under the authority granted to the commission by the Texas Legislature in TWC, Chapter 37.

The amendment is also proposed under the general authority granted in TWC, §5.013, which establishes the general jurisdiction of the commission over other areas of responsibility as assigned to the commission under TWC and other laws of the state; §5.103 and §5.105, which authorize the commission to adopt rules and policies necessary to carry out its responsibilities and duties under TWC, §5.013(15); and TWC, §7.002, which authorizes the commission to enforce provisions of TWC and THSC.

The amendment is implemented under the authority of TWC, §37.002, which requires the commission to adopt rules to establish occupational licenses and registrations for landscape irrigators and installers. Texas Water Code, Chapter 37, provides the commission the authority to: establish classes and terms of occupational licenses and registrations; establish procedures for granting, denying, suspending occupational licenses and registrations; establish fees for occupational licenses and registrations; and establish training, continuing education, and examination requirements.

§344.10. Irrigator [~~Irrigators~~] Advisory Council.

(a) The Irrigator [~~Texas Irrigators~~] Advisory Council is composed of nine members appointed by the commission. Appointments to the council will be made without regard to the race, creed, sex, religion, or national origin of the appointees. The purpose of the council is to give the commission the benefit of the members' collective business, environmental, and technical expertise and experience with respect to matters relating to the licensing of landscape irrigators, and installers. The council has no executive or administrative powers or duties with respect to the operation of the commission, and all such powers and duties rest solely with the commission.

(b) - (h) (No change.)

(i) The council shall hold meetings at the call of the commission or chairman. [~~Meetings must be conducted in compliance with Chapter 551, Texas Government Code.~~]

(j) (No change.)

(k) The council will elect a chairman by a majority vote [~~at the first meeting each fiscal year~~].

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

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Stephanie Bergeron
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Texas Natural Resource Conservation Commission
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SUBCHAPTER C. REGISTRATION/LICENSURE OF IRRIGATORS AND INSTALLERS

30 TAC §§344.20, 344.23, 344.26 - 344.30, 344.34, 344.37 - 344.43, 344.46, 344.50, 344.51, 344.55 - 344.57

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

STATUTORY AUTHORITY

The repeals are proposed under the authority granted to the commission by the Texas Legislature in TWC, Chapter 37.

The repeals are also proposed under the general authority granted in TWC, §5.013, which establishes the general jurisdiction of the commission over other areas of responsibility as assigned to the commission under TWC and other laws of the state; §5.103 and §5.105, which authorize the commission to adopt rules and policies necessary to carry out its responsibilities and duties under TWC, §5.013(15); and TWC, §7.002, which authorizes the commission to enforce provisions of TWC and THSC.

The repeals are implemented under the authority of TWC, §37.002, which requires the commission to adopt rules to establish occupational licenses and registrations for landscape irrigators and installers. Texas Water Code, Chapter 37, provides the commission the authority to: establish classes and terms of occupational licenses and registrations; establish procedures for granting, denying, suspending occupational licenses and registrations; establish fees for occupational licenses and registrations; and establish training, continuing education, and examination requirements.

§344.20. Eligibility for Certificates of Registration.
§344.23. Applications for Certificates of Registration.
§344.26. Application and Examination Fees; Form of Payment.
§344.27. Application Processing.
§344.28. Determination of Application for Registration Under Reciprocity.
§344.29. Incomplete Application Returned.
§344.30. Rejection of Application.
§344.34. Eligibility for Written Examinations.
§344.37. Notification of Examination Date, Time, and Place.
§344.38. Appearance for Examination; Failure to Appear.
§344.39. Examination Conditions.
§344.40. Grading; Minimum Passing Score.
§344.41. Notification of Examination Results and Performance.
§344.42. Reexamination; Fee.
§344.43. Issuance of Certificate.
§344.46. Description of Certificate.
§344.50. Replacement of Certificate.
§344.51. Expiration of Certificate.
§344.55. Notice of Certificate Expiration; Change of Address.
§344.56. Renewal of Certificate; Same Registration Number.
§344.57. Failure To Renew Certificate of Registration; Notice; Penalty.

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

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Stephanie Bergeron
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Texas Natural Resource Conservation Commission
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SUBCHAPTER C. REQUIREMENTS FOR LICENSED IRRIGATORS AND LICENSED INSTALLERS

30 TAC §§344.49, 344.58 - 344.60

STATUTORY AUTHORITY

The amendments are proposed under the authority granted to the commission by the Texas Legislature in TWC, Chapter 37.

The amendments are also proposed under the general authority granted in TWC, §5.013, which establishes the general jurisdiction of the commission over other areas of responsibility as assigned to the commission under TWC and other laws of the state; §5.103 and §5.105, which authorize the commission to adopt rules and policies necessary to carry out its responsibilities and duties under TWC, §5.013(15); and TWC, §7.002, which authorizes the commission to enforce provisions of TWC and THSC.

The amendments are implemented under the authority of TWC, §37.002, which requires the commission to adopt rules to establish occupational licenses and registrations for landscape irrigators and installers. Texas Water Code, Chapter 37, provides the commission the authority to: establish classes and terms of occupational licenses and registrations; establish procedures for granting, denying, suspending occupational licenses and registrations; establish fees for occupational licenses and registrations; and establish training, continuing education, and examination requirements.

§344.49. Display of License [~~Certificate~~].

Every person holding a license [~~certificate of registration~~] must display it at the person's place of business or employment and be prepared to substantiate the annual renewal for the current year.

§344.58. Unauthorized Use of License [~~Certificate~~].

(a) Only a licensed irrigator or licensed installer may use or attempt to use the license [~~certificate of registration.~~]

(b) Anyone who uses or attempts to use the license [~~certificate of registration~~] of someone else who is a licensed irrigator or licensed installer violates Texas Water Code, Chapter 34, and this chapter.

(c) Any licensed irrigator or licensed installer who authorizes or allows anyone else to use their license [~~the certificate of registration~~] to act as a licensed irrigator or licensed installer violates this chapter.

§344.59. Seal Required.

(a) Each licensed irrigator, upon registration [~~and before issuance of the certificate of registration~~], must obtain a seal or a rubber stamp, as described in §344.60 of this title (relating to Seal and Rubber Stamp Facsimile Design), of the design authorized by the commission. The seal must be placed on all professional documents, including maps, plans, designs, drawings, and specifications, issued by a licensed irrigator for use in this state.

(b) (No change.)

§344.60. Seal and Rubber Stamp Facsimile Design.

The required seal and rubber stamp impressions must be circular and not less than 1 1/2 inches in diameter. The words "State of Texas" must be at the top between the two knurled circles and the words "Licensed Irrigator" must be in a like position at the bottom. The licensed irrigator's name must be placed horizontally in the circular field accompanied by his license [~~certificate~~] number. Letters and figures must be as bold as possible to insure legibility and durability.

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

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Stephanie Bergeron
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Texas Natural Resource Conservation Commission
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SUBCHAPTER D. STANDARDS FOR LANDSCAPE IRRIGATION

30 TAC §§344.72, 344.73, 344.75, 344.77

STATUTORY AUTHORITY

The amendments are proposed under the authority granted to the commission by the Texas Legislature in TWC, Chapter 37.

The amendments are also proposed under the general authority granted in TWC, §5.013, which establishes the general jurisdiction of the commission over other areas of responsibility as assigned to the commission under TWC and other laws of the state; §5.103 and §5.105, which authorize the commission to adopt rules and policies necessary to carry out its responsibilities and duties under TWC, §5.013(15); and TWC, §7.002, which authorizes the commission to enforce provisions of TWC and THSC.

The amendments are implemented under the authority of TWC, §37.002, which requires the commission to adopt rules to establish occupational licenses and registrations for landscape irrigators and installers. Texas Water Code, Chapter 37, provides the commission the authority to: establish classes and terms of occupational licenses and registrations; establish procedures for granting, denying, suspending occupational licenses and registrations; establish fees for occupational licenses and registrations, and establish training, continuing education, and examination requirements.

§344.72. Water Conservation.

All [~~It is the policy of the commission that~~] irrigation systems shall be designed, installed, maintained, repaired, and serviced in a manner that will promote water conservation as defined in §344.1 of this title (relating to Definitions).

§344.73. Backflow Prevention Methods [~~Absence of Local Regulation - Backflow Prevention Devices~~].

All irrigation systems connected to a public or private potable water supply must be properly connected through one of the following backflow prevention methods [~~Where a licensed irrigator's or a licensed installer's connection of an irrigation system to a public or a private potable water supply is not subject to any inspection requirement, ordinance, or regulation of any city, town, county, special purpose district, other political subdivision of the state, or public water supplier, the licensed irrigator or licensed installer making such connection must install one of the following devices~~]:

(1) Atmospheric vacuum breakers. Atmospheric vacuum breakers are designed to prevent only back-siphon age. Therefore, atmospheric vacuum breakers must not be used in any irrigation systems where back-pressure may occur. There cannot be any shutoff valves

downstream from an atmospheric vacuum breaker. Where atmospheric vacuum breakers may be used, they must be installed at least six inches above any downstream piping and the highest downstream opening. Where local topography effectively prohibits such installation, the executive director shall be consulted for alternative acceptable installation criteria. Such alternative criteria must provide equivalent protection to the potable water supply. In addition, continuous pressure on the supply side of an atmospheric vacuum breaker is prohibited. Where atmospheric vacuum breakers are used in an irrigation system, a [~~A~~] separate atmospheric vacuum breaker must be installed on the discharge side of each water control valve, between the valve and all of the sprinkler heads which the valve controls.

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

(5) Air Gap. An air gap, when used must be installed and maintained in accordance with the standards established in the American Waterworks Association M14 Manual on Cross Connection Control.

§344.75. Specific Conditions and Backflow Prevention Devices [~~Required Backflow Prevention Devices~~].

(a) (No change.)

(b) An irrigation system which adds any chemical [~~with any kind of injection device associated with it has a potential for introducing toxic substances into the water supply and~~] is[~~, therefore,~~] considered to be a "high health hazard" [~~installation~~]. Such an irrigation system must not be connected to any potable water supply except through [~~an industry-approved "high health hazard" backflow prevention device, such as an appropriate pressure-type vacuum breaker backflow precentor or~~] a reduced pressure principle backflow prevention assembly. The backflow prevention assembly must be tested upon installation and, at least, annually, thereafter, in accordance with §290.44(h)(4) of this title (relating to Water Distribution).

§344.77. Minimum Standards for Design and Installation of Irrigation Systems [~~Minimum Standards for Irrigators and Installers~~].

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

(g) Water Conservation Devices. An individual who installs an irrigation system [~~The installer~~] should discuss with the purchaser of an irrigation system, including drip irrigation, water conservation devices and irrigation scheduling as a component of the design and installation of the irrigation system. All such components of an irrigation system shall be installed following the manufacturer's recommended practices for specific types of equipment.

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

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Stephanie Bergeron
Director, Environmental Law Division
Texas Natural Resource Conservation Commission
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For further information, please call: (512) 239-4712

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SUBCHAPTER E. COMPLAINT PROCESS

30 TAC §§344.80 - 344.85

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

STATUTORY AUTHORITY

The repeals are proposed under the authority granted to the commission by the Texas Legislature in TWC, Chapter 37.

The repeals are also proposed under the general authority granted in TWC, §5.013, which establishes the general jurisdiction of the commission over other areas of responsibility as assigned to the commission under TWC and other laws of the state; §5.103 and §5.105, which authorize the commission to adopt rules and policies necessary to carry out its responsibilities and duties under TWC, §5.013(15); and TWC, §7.002, which authorizes the commission to enforce provisions of TWC and THSC.

The repeals are implemented under the authority of TWC, §37.002, which requires the commission to adopt rules to establish occupational licenses and registrations for landscape irrigators and installers. Texas Water Code, Chapter 37, provides the commission the authority to: establish classes and terms of occupational licenses and registrations; establish procedures for granting, denying, suspending occupational licenses and registrations; establish fees for occupational licenses and registrations; and establish training, continuing education, and examination requirements.

§344.80. Complaint.

§344.81. Executive Director's Receipt of Complaint.

§344.82. Investigation of Complaint.

§344.83. Informal Resolution of Complaint.

§344.84. Enforcement.

§344.85. Surrender of Certificate and Identification Card; Seal.

This 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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For further information, please call: (512) 239-4712

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SUBCHAPTER F. STANDARDS OF CONDUCT FOR LICENSED IRRIGATORS AND INSTALLERS

30 TAC §344.96

STATUTORY AUTHORITY

The amendment is proposed under the authority granted to the commission by the Texas Legislature in TWC, Chapter 37.

The amendment is also proposed under the general authority granted in TWC, §5.013, which establishes the general jurisdiction of the commission over other areas of responsibility as assigned to the commission under TWC and other laws of the state; §5.103 and §5.105, which authorize the commission to adopt rules and policies necessary to carry out its responsibilities and duties under TWC, §5.013(15); and TWC, §7.002, which authorizes the commission to enforce provisions of TWC and THSC.

The amendment is implemented under the authority of TWC, §37.002, which requires the commission to adopt rules to establish occupational licenses and registrations for landscape irrigators and installers. Texas Water Code, Chapter 37, provides the commission the authority to: establish classes and terms of occupational licenses and registrations; establish procedures for granting, denying, suspending occupational licenses and registrations; establish fees for occupational licenses and registrations; and establish training, continuing education, and examination requirements.

§344.96. Warranties.

On all installations of new irrigation systems (i.e., excluding remodeling and renovation) a licensed irrigator must present the customer a written statement of guarantees for materials and labor furnished in the installation of the irrigation system and shall honor the warranty.

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

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Texas Natural Resource Conservation Commission
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TITLE 37. PUBLIC SAFETY AND CORRECTIONS

PART 11. TEXAS JUVENILE PROBATION COMMISSION

CHAPTER 346. CASE MANAGEMENT STANDARDS

SUBCHAPTER A. CASE PLANNING AND SUPERVISION

37 TAC §§346.1 - 346.5

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

The Texas Juvenile Probation Commission proposes the repeal of chapter 346 rules relating to case management standards. The repeal is in an effort not to overlap with new standards in chapter 341 effective 09/01/2001 which provided structural and substantive changes from the current standards and incorporated case management standards.

Erika Sipiora, Staff Attorney, has determined that for the first five year period the repeal is in effect, there will be no fiscal implications for state or local government or small businesses as a result of enforcement or implementation.

Ms. Sipiora has also determined that for each year of the first five years the repeal is in effect, the public benefit expected as a result of the repeal will provide TJPC with a more accurate account in evaluating the effectiveness and services provided within the juvenile probation system. There will be no impact on small business or individuals as a result of the amendments.

Public comments on the repeal may be submitted to Kristy M. Carr at the Texas Juvenile Probation Commission, P.O. Box 13547, Austin, Texas 78711-3547.

These standards are proposed under §141.042 of the Texas Human Resource Code, which provides the Texas Juvenile Probation Commission with the authority to adopt reasonable rules which provide minimum standards for juvenile boards.

No other code or article is affected by these new standards.

§346.1. Definitions.

§346.2. Assessment.

§346.3. Case Planning and Review.

§346.4. Supervision.

§346.5. Exit Plan.

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

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Lisa A. Capers
Deputy Executive Director and General Counsel
Texas Juvenile Probation Commission
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For further information, please call: (512) 424-6710

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CHAPTER 352. DATA COLLECTION AND REPORTING

SUBCHAPTER A. CASEWORKER SYSTEMS

37 TAC §§352.101 - 352.106

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

The Texas Juvenile Probation Commission proposes the repeal of chapter 352 rules relating to data collection and reporting standards. The repeal is in an effort not to overlap with new standards in chapter 341 effective 09/01/2001 which provided structural and substantive changes from the current standards and incorporated data collection and reporting standards.

Erika Sipiora, Staff Attorney, has determined that for the first five year period the repeal is in effect, there will be no fiscal implications for state or local government or small businesses as a result of enforcement or implementation.

Ms. Sipiora has also determined that for each year of the first five years the repeal is in effect, the public benefit expected as a result of the repeal will provide TJPC with a more accurate account in evaluating the effectiveness and services provided within the juvenile probation system. There will be no impact on small business or individuals as a result of the amendments.

Public comments on the repeal may be submitted to Kristy M. Carr at the Texas Juvenile Probation Commission, P.O. Box 13547, Austin, Texas 78711-3547.

These standards are proposed under §141.042 of the Texas Human Resource Code, which provides the Texas Juvenile Probation Commission with the authority to adopt reasonable rules which provide minimum standards for juvenile boards.

No other code or article is affected by these new standards.

§352.101. Definitions.

§352.102. Data Coordinator.

§352.103. TJPC Monthly Folder Extract.

§352.104. Other Reports.

§352.105. Accuracy of Data.

§352.106. Security of Data.

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

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SUBCHAPTER B. NON-CASEWORKER SYSTEMS

37 TAC §§352.201 - 352.206

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

The Texas Juvenile Probation Commission proposes the repeal of chapter 352 rules relating to data collection and reporting standards. The repeal is in an effort not to overlap with new standards in chapter 341 effective 09/01/2001 which provided structural and substantive changes from the current standards and incorporated data collection and reporting standards.

Erika Sipiora, Staff Attorney, has determined that for the first five year period the repeal is in effect, there will be no fiscal implications for state or local government or small businesses as a result of enforcement or implementation.

Ms. Sipiora has also determined that for each year of the first five years the repeal is in effect, the public benefit expected as a result of the repeal will provide TJPC with a more accurate account in evaluating the effectiveness and services provided within the juvenile probation system. There will be no impact on small business or individuals as a result of the amendments.

Public comments on the repeal may be submitted to Kristy M. Carr at the Texas Juvenile Probation Commission, P.O. Box 13547, Austin, Texas 78711-3547.

These standards are proposed under §141.042 of the Texas Human Resource Code, which provides the Texas Juvenile Probation Commission with the authority to adopt reasonable rules which provide minimum standards for juvenile boards.

No other code or article is affected by these new standards.

§352.201. Definitions.

§352.202. Data Coordinator.

§352.203. TJPC Monthly Folder Extract.

§352.204. Other Reports.

§352.205. Accuracy of Data.

§352.206. Security of Data.

This 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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PART 13. TEXAS COMMISSION ON FIRE PROTECTION

CHAPTER 439. EXAMINATIONS FOR CERTIFICATION

SUBCHAPTER A. EXAMINATIONS FOR ON-SITE DELIVERY TRAINING

37 TAC §§439.1, 439.3, 439.5, 439.7, 439.17

The Texas Commission on Fire Protection (TCFP) proposes amendments to Chapter 439, concerning examinations for certification, including new Subchapter A, Examinations for On-Site Delivery Training. An amendment to §439.1 establishes a standard two-year period before the expiration date of an examination. Amendments to §439.3 define "designee," allow for an approved "designee" to serve as a staff examiner and provides field examiners with the option of evaluating 50 individual state- administered performance skills examinations in place of completing an examiner orientation course every three years as a method of qualifying for certificate renewal. Amendments to §439.5 remove the references to "written" grade reports and the 30-day deadline for grade reports to be mailed to examinees.

Amendments to §439.7 restrict applicants from re-testing in the same discipline prior to 30 days before the expiration date of the previous examination. New §439.17 establishes a standard for determining the number of test questions for the written portion of the state examination for each curriculum.

Jake Soteriou, Fire Service Standards and Certification Division Director, has determined that for each year of the first five-year period that the proposed amendments will be in effect, the fiscal implications for state government would be a reduction in travel costs. This will be a result of less travel by state employees to administer agency test throughout the state. The test will be conducted at regional sites administered by local personnel. Local governments may have an increase cost of $10 to $15 dollars per examination to defray testing centers cost.

Mr. Soteriou has determined that for the first five-year period that the amendments are in effect, individuals may have an increase cost of $10 to $15 per examination to defray testing centers' costs. However, the cost associated with certification will decrease for those individuals who qualify for certificate renewal by means other than participating in the examiner orientation course on a triennial basis. There is no anticipated cost to small businesses. Local testing centers would benefit from local personnel using the facility thereby generating additional revenue. The anticipated public benefits will be the ability to take certification examinations at a local site on a regularly scheduled basis, a clearer understanding of requirements applicable to certification and a decreased likelihood of applicants re-testing with the same questions from their first examination.

Comments on the proposed amendments may be submitted to Jake Soteriou, Fire Service Standards and Certification Division Director, Texas Commission on Fire Protection, P.O. Box 2286, Austin, TX 78768-2286 or submitted by e-mail to info@tcfp.state.tx.us.

The amendments are proposed under Texas Government Code, §419.008, which provides the TCFP with authority to propose rules for the administration of its powers and duties; Texas Government Code, §419.026, which provides the TCFP with the authority to give examinations to fire protection personnel for basic certification; and Texas Government Code, §419.032, which provides the TCFP with the authority to establish standards for basic certification tests for fire protection personnel and qualifications relating to basic certification tests.

Texas Government Code, §419.032 and §419.022 are affected by the proposed amendments.

§439.1. Requirements - General.

(a) In order to be certified by the commission as fire protection personnel, an individual must complete an approved curriculum as required for that discipline and pass a commission examination pertaining to that discipline.

(b) The commission examination shall consist of at least a written test.

(c) The commission examination may also include a performance test. If a performance test is included in the examination then the written test and the performance test together constitute a complete examination.

(d) Commission examinations that receive a passing grade shall expire two years from the date of the examination.

§439.3. Definitions.

The following words and terms used in this chapter have the following definitions unless the context clearly indicates otherwise.

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

(8) Field examiner -- An individual that has successfully completed the commission administered field examiner orientation and has received a certificate of completion from the commission. An approved field examiner must sign an agreement to comply with the commission's testing procedures. The field examiner must as a minimum, possess a Fire Instructor Certification. The field examiner must be approved by the commission to instruct all subject areas identified in the curriculum that they will be evaluating. The field examiner must work under the supervision of a staff examiner to administer commission examinations, except when evaluating performance skills during an approved basic certification school. The field examiner must receive an examiner orientation course every three years administered by a certified instructor authorized by the commission or evaluate at least 50 individual state-administered performance skill examinations every three years. Prior to renewal, the field examiner must obtain, sign and return to the commission a new Letter of Intent.

(9) Staff examiner -- A member of the commission staff or an approved designee who has been assigned by the commission the responsibility to administer a commission examination. A designee is an entity or individual approved by the executive director to administer commission certification examinations and/or performance skills in accordance with Chapter 439. A staff examiner who conducts or supervises performance skill evaluations must meet the same requirements as field examiners.

§439.5. Procedures.

(a) - (l) (No change.)

(m) The staff examiner or field examiner must:

(1) monitor the examination while in progress;

(2) control entrance to and exit from the test site;

(3) permit no one in the room while the written test is in progress except examiners, examinees, and commission staff;

(4) assign or re-assign seating; and

(5) bar admission to or dismiss any examinee who fails to comply with any of the provisions of subsections (a) and (b) of this section.

(n) - (p) (No change.)

(q) The commission will provide one individual [~~written~~] grade report to each examinee [~~, within thirty (30) days after the completion of the examination. This report may be mailed to an address specified by the examinee~~]. If the [~~written~~] grade report should prove to be undeliverable, it shall be the responsibility of the examinee to contact the commission office to make arrangements for an additional grade report.

(r) - (t) (No change.)

§439.7. Eligibility.

(a) An examination may not be taken by one who currently holds an active certificate from the commission in the discipline to which the examination pertains, unless required by the commission in a disciplinary matter.

(b) An individual who passes an examination and is not certified in that discipline, will not be allowed to test again until 30 days before the expiration date of the previous examination unless required by the commission in a disciplinary matter. [~~In order to qualify for a commission examination, the examinee must:~~]

(c) In order to qualify for a commission examination, the examinee must:

(1) meet or exceed the minimum requirements set by the commission as a prerequisite for the specified examination;

(2) provide the staff examiner with a copy of a Certificate of Completion for the course required for the specific examination sought or an endorsement of eligibility issued by the commission;

(3) bring to the test site and display upon request some form of identification which contains the name and a photograph of the examinee;

(4) report on time, to the proper location; and

(5) comply with all the written and verbal instructions of the examiner.

(d) [~~(c)~~] No person shall be permitted to:

(1) violate any of the fraud provisions of this section;

(2) disrupt the examination;

(3) bring into the examination site any books, notes, or other written materials related to the content of the examination;

(4) refer to, use, or possess any such written material at the examination site;

(5) give or receive answers or communicate in any manner with another examinee during the examination;

(6) communicate at any time or in any way, the contents of an examination to another person for the purpose of assisting or preparing a person to take the examination;

(7) steal, copy, or in any way part of the examination;

(8) engage in any deceptive or fraudulent act either during an examination or to gain admission to it; or

(9) solicit, encourage, direct, assist, or aid another person to violate any provision of this section.

§439.17. Number of Test Questions.

The number of questions on the written portion of the state examination will be based upon the number of required hours in the particular curriculum being tested. The standard is outlined below:
Figure: 37 TAC §439.17

This 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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Gary L. Warren Sr.
Executive Director
Texas Commission on Fire Protection
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SUBCHAPTER B. EXAMINATIONS FOR DISTANCE TRAINING

37 TAC §§439.201, 439.203, 439.205

The Texas Commission on Fire Protection (TCFP) proposes amendments to Chapter 439, concerning examinations for certification, including new Subchapter B, Examinations for Distance Training. New §439.201 establishes general examination requirements. New §439.203 establishes the procedure for applying to take examinations. New §439.205 explains performance skills evaluations.

Jake Soteriou, Fire Service Standards and Certification Division Director, has determined that for each year of the first five-year period that the new rules will be in effect, the fiscal implications for state and local governments will be minimal. These changes delineate the process for distance learning trainers to provide students the course completion form.

Mr. Soteriou has determined that for the first five-year period that the rules are in effect, the fiscal implications for individuals will be minimal as the changes delineate the process for students to apply for the state exam. Small businesses will not be effected. The anticipated public benefit will be additional opportunities for fire fighters to receive quality- advanced training on their own schedule at home or at the fire station and apply for the appropriate state exams.

Comments on the proposed amendments may be submitted to Jake Soteriou, Fire Service Standards and Certification Division Director, Texas Commission on Fire Protection, P.O. Box 2286, Austin, TX 78768-2286 or submitted by e-mail to info@tcfp.state.tx.us.

The amendments are proposed under Texas Government Code, §419.008, which provides the TCFP with authority to propose rules for the administration of its powers and duties, and Texas Government Code, §419.032, which provides the commission with authority to establish standards for basic certification tests for fire protection personnel.

Texas Government Code, §419.032 is affected by the proposed amendments.

§439.201. Requirements - General.

(a) The examination requirements for those completing distance training shall be the same as those in Subchapter A of this chapter, except as noted in this subchapter.

(b) The administration of examinations for certification, including performance skill evaluations, shall be conducted in compliance with the commission and International Fire Service Accreditation Congress (IFSAC) regulations. It is incumbent upon commission staff, testing committee members, course coordinators and/or training officers and field examiners to maintain the integrity of any state examination (or portion thereof) for which they are responsible.

§439.203. Procedures.

(a) Once distance training is completed, each individual receiving a certificate of completion must contact the commission to obtain the appropriate test application packet.

(b) To apply for a state administered commission examination, an individual who completes distance training must complete the Application for Testing form and return it to the commission with the individual's certificate of completion. The commission, upon receipt of the Application for Testing form and supporting documentation, will confirm the time and place for the examination.

(c) Certificate of Completion form--This form, which will be sent to the provider of distance training with the Notice of Course Approval, must be completed by the provider of distance training and issued to each student when the student has successfully completed the applicable curriculum.

§439.205. Performance Skill Evaluation.

(a) State performance skill evaluation. If a performance skill test is part of a commission examination, the examinee must complete a state performance skill evaluation as indicated in the particular standard related to the curriculum being tested or examined.

(b) Evaluation procedures. If the performance skill portion of a state exam is to be evaluated by an approved field examiner who will not observe the completion of the skill while in the immediate physical presence of the examinee, a letter of assurance from the candidate's training officer or fire chief is required stating that the fire department assures the integrity of the evaluation procedure. If the candidate is not a member of a fire department, then a certified fire instructor, fire chief, or training officer may provide a letter of assurance that meets the requirements of this subsection. The provider of distance training is required to keep a record of this assurance and provide it to the commission upon request.

This 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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Gary L. Warren Sr.
Executive Director
Texas Commission on Fire Protection
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CHAPTER 453. MINIMUM STANDARDS FOR HAZARDOUS MATERIALS TECHNICIAN

37 TAC §453.3, §453.7

The Texas Commission on Fire Protection (TCFP) proposes amendments to §453.3, Minimum Standards for Hazardous Materials Technician Certification, and §453.7, International Fire Service Accreditation Congress (IFSAC) Certification. The amendments correct a typographical error and punctuation.

Jake Soteriou, Fire Service Standards and Certification Division Director, has determined that for each year of the first five-year period that the proposed amendments are in effect, there will be no fiscal impact on state or local governments.

Mr. Soteriou has determined that for the first five-year period that the amendments are in effect, there will be no associated costs for individuals or small businesses. The anticipated public benefit is the improved readability of the TCFP's rules.

Comments on the proposed amendments may be submitted to Jake Soteriou, Fire Service Standards and Certification Division Director, Texas Commission on Fire Protection, P.O. Box 2286, Austin, TX 78768-2286 or submitted by e-mail to info@tcfp.state.tx.us.

The amendments are proposed under Texas Government Code, §419.008, which provides the TCFP with authority to propose rules for the administration of its powers and duties, and Texas Government Code, §419.022, which provides the TCFP with authority to establish minimum training standards for fire protection personnel positions.

Texas Government Code, §419.022, is affected by the proposed amendments.

§453.3. Minimum Standards for Hazardous Materials Technician Certification.

(a) Training programs that are intended to satisfy the requirements of this must meet the curriculum, competencies, and hour requirements of this section. All applicants for certification must meet the examination requirements of this section.

(b) In order to be certified as a Hazardous Materials Technician an individual must:

(1) hold certification as Structural Fire Protection Personnel, Aircraft Rescue Fire Fighting Personnel, or Marine Fire Protection Personnel and;

(2) complete a commission approved hazardous materials technician program and successfully pass the commission examination as specified in Chapter 439 of this title (relating to Examinations for Certification). An approved hazardous materials technician program must consist of one of the following:

(A) completion of a commission approved Hazardous Materials Technician Curriculum of at least 80 hours as specified in Chapter 6 of the Commission's document titled "Commission Certification Curriculum Manual," as approved by the Commission in accordance with Chapter 443 of this title (relating to Certification Curriculum Manual).

(B) completion of an out-of-state training program that has been submitted to the commission for evaluation and found to be equivalent to or exceed the commission approved Hazardous Materials Technician Curriculum.

(C) completion of a military training program that has been submitted to the commission for evaluation and found to be equivalent to or exceed the commission approved Hazardous Materials Technician Curriculum.

(c) Out-of-state or military training programs which are submitted to the commission for the purpose of determining equivalency will be considered equivalent if all competencies set forth in Chapter 6 (pertaining to Hazardous Materials Technician) of the "Commission Certification Curriculum Manual" are met.

(d) The commission approved hazardous materials technician curriculum must be conducted by a training facility that has been certified by the commission as provided in Chapter 427 of this title (relating to Certified Training Facilities).

(e) An individual from another jurisdiction who possesses valid documentation of accreditation from the International Fire Service Accreditation Congress as First Responder Awareness Level, First Responder Operations Level, and Hazardous Materials Technician shall be eligible to take the commission written examination for hazardous materials technician.

(f) No individual will be permitted to take the commission examination for hazardous materials technician unless the individual documents completion of the first responder awareness and operations level training as required by Chapter 1, Basic Fire Suppression, of the "Commission Certification Curriculum Manual."

§453.7. International Fire Service Accreditation Congress (IFSAC) Certification.

(a) Individuals holding current commission Hazardous Materials Technician Certification may be granted International Fire Service Accreditation Congress (IFSAC) Certification as a Hazardous Materials Technician by making application to the commission for the IFSAC seal and paying applicable fees.

(b) Individuals completing a commission approved hazardous materials technician program, [;] documenting IFSAC accreditation for First Responder Awareness and First Responder Operations, [;] and passing the applicable state examination may be granted IFSAC Certification as a Hazardous Materials Technician by making application to the commission for the IFSAC seal and paying applicable fees.

This 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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Gary L. Warren Sr.
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TITLE 40. SOCIAL SERVICES AND ASSISTANCE

PART 1. TEXAS DEPARTMENT OF HUMAN SERVICES

CHAPTER 48. COMMUNITY CARE FOR AGED AND DISABLED

SUBCHAPTER N. SUPPORT DOCUMENTS

40 TAC §48.9806

The Texas Department of Human Services (DHS) proposes an amendment to §48.9806, concerning reimbursement methodology for congregate and home-delivered meals: 1997 and subsequent cost reports, in its Community Care for the Aged and Disabled chapter. The purpose of the amendment is to revise the title of the Home- Delivered Meals program to remove congregate meals, which are no longer included in the program.

James R. Hine, Commissioner, has determined that for the first five-year period the sections are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the sections.

Commissioner Hine 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 delete a portion of the program that is no longer included. There will be no adverse economic effect on small or micro businesses, because the proposal is a technical change to the rule.

Questions about the content of this proposal may be directed to Carolyn Pratt (512) 438-4057 in DHS's Rate Analysis Department. Written comments on the proposal may be submitted to Supervisor, Rules and Handbooks Unit-199, Texas Department of Human Services E-205, P.O. Box 149030, Austin, Texas 78714-9030, within 30 days of publication in the *Texas Register*.

Under §2007.003 of the Texas Government Code, 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 amendments are proposed under the Government Code, Title 2, Chapter 22, which authorizes the department to administer public and medical assistance programs.

The amendment implements the Human Resources Code, §§22.001-22.030.

§48.9806. Reimbursement Methodology for [~~Congregate and~~] Home-Delivered Meals[: ~~1997 and Subsequent Cost Reports~~].

(a) Reimbursement ceiling determination. When the Texas Department of Human Services (DHS) does not require a cost report, DHS may adjust the rate ceiling as appropriate, based on cost data collected through the budget worksheets or other appropriate cost data related to the program [~~staff project the reimbursement ceiling from the current reimbursement period to the next ensuing reimbursement period. DHS staff determine reasonable and appropriate economic adjusters as described in §20.108 of this title (relating to Determination of Inflation Indices) to project the recommended reimbursement ceiling for the next reimbursement period~~]. Whenever the term "DHS" occurs, it means the Texas Department of Human Services or its designee.

(b) Reimbursement ceiling determination based on a cost-reporting process. If DHS deems it appropriate to require cost reporting, cost reports [~~pertaining to providers' fiscal years ending in calendar year 1997 and subsequent years~~] will be governed by the information in this subsection. DHS applies the general principles of cost determination as specified in §20.101 of this title (relating to Introduction). The cost-reporting process is as follows:

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

(c)-(e) (No change.)

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

Filed with the Office of the Secretary of State, on September 14, 2001.

TRD-200105482
Paul Leche
General Counsel, Legal Services
Texas Department of Human Services
Earliest possible date of adoption: October 28, 2001
For further information, please call: (512) 438-3734

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CHAPTER 52. EMERGENCY RESPONSE SERVICES

SUBCHAPTER E. CLAIMS

40 TAC §52.504

The Texas Department of Human Services (DHS) proposes an amendment to §52.504, concerning reimbursement methodology for emergency response services (ERS): 1997 and subsequent cost reports, in its Emergency Response Services chapter. The purpose of the amendment is to allow DHS to require contracted providers to submit cost reports when this data is needed to adjust the payment rate ceiling. The proposal also allows the department to adjust the payment rate ceiling using cost-based information from sources other than cost reports. In addition the definition of DHS has been expanded to include its designee. These changes provide DHS with the flexibility to require cost reports only when they are needed, to use alternate cost information to adjust the rate ceiling, and to use entities outside of DHS to assist in the rate ceiling determination process. This proposal also deletes the outdated reference to the 1997 cost report.

James R. Hine, Commissioner, has determined that for the first five-year period the sections are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the sections.

Commissioner Hine has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be to require contracted providers to submit cost reports only when these reports are required to adjust the payment rate ceiling. The proposal also allows DHS to adjust the payment rate ceiling using cost-based information from sources other than cost reports. There will be no adverse economic effect on small or micro businesses, because the amendment is a technical change to the rule.

Questions about the content of this proposal may be directed to Carolyn Pratt (512) 438-4057 in DHS's Rate Analysis Department. Written comments on the proposal may be submitted to Supervisor, Rules and Handbooks Unit-199, Texas Department of Human Services E-199, P.O. Box 149030, Austin, Texas 78714-9030, within 30 days of publication in the *Texas Register*.

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

The amendment is proposed under the Government Code, Title 2, Chapter 22, which authorizes the department to administer public and medical assistance programs.

The amendment implements the Human Resources Code, §§22.001-22.030.

§52.504. Reimbursement Methodology for Emergency Response Services (ERS)[: ~~1997 and Subsequent Cost Reports~~].

(a) General requirements. [~~For the completion and submittal of cost reports pertaining to providers' fiscal years ending in calendar year 1997 and subsequent years, providers~~] Providers must apply the information in this section. The Texas Department of Human Services (DHS) or its designee applies the general principles of cost determination as specified in §20.101 of this title (relating to Introduction). Whenever the term "DHS" occurs, it means the Texas Department of Human Services or its designee.

(b) General reporting guidelines. Providers must follow the cost-reporting guidelines as specified in §20.105 of this title (relating to General Reporting and Documentation Requirements, Methods, and Procedures).

(c) Reimbursement ceiling determination. When DHS does not require a cost report, DHS may adjust the rate ceiling as appropriate based upon cost data collected in the form of special surveys or reports submitted by all contracted providers, or other appropriate cost data related to the Emergency Response Services program.

(d) [~~(c)~~] Reimbursement ceiling determination based on a cost- reporting process. If DHS deems it appropriate to require cost reporting, cost reports will be governed by the information in this subsection.

(1) Reimbursement ceiling. The reimbursement ceiling is determined for a per-month unit of service. The ceiling applies to all provider agencies uniformly, regardless of geographic location or other factors.

(2) Excused from submission of cost reports. All contracted providers must submit a cost report unless the number of days between the date the first DHS client received services and the provider's fiscal year end is 30 days or fewer. The provider may be excused from submitting a cost report if circumstances beyond the control of the provider make cost report completion impossible, such as the loss of records due to natural disasters or removal of records from the provider's custody by any governmental entity. Requests to be excused from submitting a cost report must be received by DHS [~~DHS's Rate Analysis Department~~] before the due date of the cost report.

(3) Exclusion of cost reports.

(A) Providers are responsible for reporting only allowable costs on the cost report, except where cost report instructions indicate that other costs are to be reported in specific lines or sections. Only allowable cost information is used to determine recommended reimbursement. DHS excludes from reimbursement determination any unallowable expenses included in the cost report and makes the appropriate adjustments to expenses and other information reported by providers. The purpose is to ensure that the data base reflects costs and other information which are necessary for the provision of services and are consistent with federal and state regulations.

(B) Individual cost reports may not be included in the data base used for reimbursement determination if:

(i) there is a reasonable doubt as to the accuracy or allowability of a significant part of the information reported; or

(ii) an auditor determines that reported costs are not verifiable.

(C) When material pertinent to proposed reimbursements is made available to the public, the material will include the number of cost reports eliminated from reimbursement determination for the reason stated in subparagraph (B)(i) of this paragraph.

(4) Recommended reimbursement ceiling. DHS determines a recommended reimbursement ceiling in the following manner. The reimbursement ceiling is determined by the analysis of financial and statistical data submitted by provider agencies on cost reports and, as deemed appropriate, a market survey analysis of emergency response equipment suppliers.

(A) DHS allocates payroll taxes and employee benefits to each salary line item on the cost report on a pro rata basis based on the portion of that salary line item to the amount of total salary expense. The employee benefits for administrative staff are allocated directly to the corresponding salaries for those positions. The allocated payroll taxes are Federal Insurance Contributions Act (FICA) or social security, Workers' Compensation Insurance (WCI), the Federal Unemployment Tax Act, and Texas Unemployment Compensation Act.

(B) Allowable expenses, excluding depreciation and mortgage interest, are projected from the provider agency's reporting period to the next ensuing reimbursement period. DHS determines reasonable and appropriate economic inflators or adjusters as described in §20.108 of this title (relating to Determination of Inflation Indices) to calculate a prospective expense. DHS also adjusts reimbursement if new legislation, regulations, or economic factors affect costs as specified in §20.109 of this title (relating to Adjusting Reimbursement When New Legislation, Regulations, or Economic Factors Affect Costs).

(C) Allowable reported expenses are combined into three cost areas: responder, program operations, and facility. To determine the projected cost per unit of service, a contracted provider's projected expenses in each cost area are divided by its total units of service for the reporting period.

(D) The contracted providers' projected costs per unit of service are ranked from low to high in each cost area, with corresponding units of service.

(E) The 80th percentile cost, weighted by units of service, is determined for each cost area. The recommended reimbursement ceiling is the sum of the 80th percentile costs of the three cost areas.

(F) The reimbursement determination authority for this reimbursement ceiling is specified in §20.101 of this title (relating to Introduction).

(e) [~~(d)~~] Contract-specific unit reimbursement. The actual reimbursement for each contract is negotiated between DHS staff and the provider agency. The contract- specific reimbursement DHS pays the provider agency is the full cost for emergency response services. The provider agency must not bill the client for any additional charges. In no instance may the negotiated unit reimbursement exceed the per-month reimbursement ceiling.

(f) [~~(e)~~] Reviews and field audits of cost reports. DHS staff perform either desk reviews or field audits on all contracted providers. The frequency and nature of the field audits are determined by DHS staff to ensure the fiscal integrity of the program. Desk reviews and field audits will be conducted in accordance with §20.106 of this title (relating to Basic Objectives and Criteria for Audit and Desk Review of Cost Reports), and providers will be notified of the results of a desk review or a field audit in accordance with §20.107 of this title (relating to Notification of Exclusions and Adjustments). Providers may request an informal and, if necessary, an administrative hearing to dispute an action taken by DHS under §20.110 of this title (relating to Informal Reviews and Formal Appeals).

(g) [~~(f)~~] Factors affecting allowable costs. In determining whether a cost is allowable or unallowable, providers must follow the guidelines specified in §20.102 of this title (relating to General Principles of Allowable and Unallowable Costs). Providers must follow the guidelines for allowable and unallowable costs as specified in §20.103 of this title (relating to Specifications for Allowable and Unallowable Costs) and follow the guidelines for unallowable costs specific to the ERS program as specified in subsection (h) [~~(g)~~] of this section.

(h) [~~(g)~~] Unallowable cost. The unallowable cost specific to the ERS program is the expense of base station equipment at the response center.

(i) [~~(h)~~] Reporting revenue. Revenue must be reported on the cost report according to §20.104 of this title (relating to Revenue).

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

Filed with the Office of the Secretary of State, on September 14, 2001.

TRD-200105483
Paul Leche
General Counsel, Legal Services
Texas Department of Human Services
Earliest possible date of adoption: October 28, 2001
For further information, please call: (512) 438-3734

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WITHDRAWN RULES

An agency may withdraw a proposed action or the remaining effectiveness of an emergency action by filing a notice of withdrawal with the ***Texas Register***. The notice is effective immediately upon filling or 20 days after filing as specified by the agency withdrawing the action. If a proposal is not adopted or withdrawn within six months of the date of publication in the ***Texas Register***, it will automatically be withdrawn by the office of the Texas Register and a notice of the withdrawal will appear in the ***Texas Register.***

TITLE 19. EDUCATION

PART 2. TEXAS EDUCATION AGENCY

CHAPTER 101. ASSESSMENT

SUBCHAPTER AA. COMMISSIONER'S RULES CONCERNING THE PARTICIPATION OF LIMITED ENGLISH PROFICIENT STUDENTS IN STATE ASSESSMENTS

19 TAC §§101.1001, 101.1003, 101.1005, 101.1007, 101.1009, 101.1011

The Texas Education Agency (TEA) withdraws the emergency adoption of new §§101.1001, 101.1003, 101.1005, 101.1007, 101.1009, and 101.1011, concerning the participation of limited English proficient (LEP) students in state assessments, that were adopted on an emergency basis effective April 12, 2001, and published in the April 27, 2001, issue of the *Texas Register* (26 TexReg 3077). The emergency adoption of 19 TAC Chapter 101, Subchapter AA, was effective for 120 days ending August 10, 2001, with the anticipation that the permanent rules would be finalized and adopted by the end of that period. Work was still underway in August to finalize the permanent rules; therefore, TEA filed a renewal of effectiveness of this emergency adoption extending the timeframe of the emergency rules by 60 days to October 9, 2001. The renewal of effectiveness was published in the August 24, 2001, issue of the *Texas Register* (26 TexReg 6191).

On September 10, 2001, TEA filed the new sections for permanent adoption for publication in the September 21, 2001, issue of the *Texas Register*. New §101.1001 and §101.1005 were adopted without changes and new §§101.1003, 101.1007, 101.1009, and 101.1011 were adopted with changes to the proposed text as published in the April 27, 2001, issue of the *Texas Register* (26 TexReg 3107). Subsequently, TEA is withdrawing the emergency adoption effective September 30, 2001, which is the effective date for all the permanently adopted new sections.

Filed with the Office of the Secretary of State on September 17, 2001.

TRD-200105547

Criss Cloudt
Associate Commissioner for Accountability Reporting and Research
Texas Education Agency
Effective date: September 30 , 2001
For further information, please call: (512) 463-9701

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TITLE 25. HEALTH SERVICES

PART 2. TEXAS DEPARTMENT OF MENTAL HEALTH AND MENTAL RETARDATION

CHAPTER 403. OTHER AGENCIES AND THE PUBLIC

SUBCHAPTER B. CHARGES FOR COMMUNITY-BASED SERVICES

25 TAC §§403.41 - 403.53

Pursuant to Texas Government Code, §2001.027 and 1 TAC §91.65(c)(2), the proposed repealed sections, submitted by the Texas Department of Mental Health and Mental Retardation has been automatically withdrawn. The new section as proposed appeared in the March 16, 2001 issue of the *Texas Register* (26 TexReg 2115).

Filed with the Office of the Secretary of State on September 19, 2001.

TRD-200105599

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CHAPTER 412. LOCAL AUTHORITY RESPONSIBILITIES

SUBCHAPTER C. CHARGES FOR COMMUNITY SERVICES

25 TAC §§412.101 - 412.114

Pursuant to Texas Government Code, §2001.027 and 1 TAC §91.65(c)(2), the proposed new sections, submitted by the Texas Department of Mental Health and Mental Retardation has been automatically withdrawn. The new section as proposed

appeared in the March 16, 2001 issue of the *Texas Register* (26 TexReg 2115).

Filed with the Office of the Secretary of State on September 19, 2001.

TRD-200105600

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ADOPTED RULES

An agency may take final action on a section 30 days after a proposal has been published in the ***Texas Register***. The section becomes effective 20 daysafter the agency files the correct document with the ***Texas Register***, unless a later date is specified or unless a federalstatute or regula tion requires implementation of the action on shorter notice.

If an agency adopts the section without any changes to the proposed text, only the preamble of the notice and statement of legal authority will be published. If an agency adopts the section with changes to the proposed text, the proposal will be republished with the changes.

TITLE 1. ADMINISTRATION

PART 15. TEXAS HEALTH AND HUMAN SERVICES COMMISSION

CHAPTER 355. MEDICAID REIMBURSEMENT RATES

SUBCHAPTER F. GENERAL REIMBURSEMENT METHODOLOGY FOR ALL MEDICAL ASSISTANCE PROGRAMS

1 TAC §355.781

The Texas Health and Human Services Commission (HHSC) adopts amendments to §355.781, concerning rehabilitative services reimbursement methodology, with changes to the text as proposed in the May 18, 2001, issue of the *Texas Register* (26 TexReg 3582).

Background and Summary of Factual Basis for the Rules

Section 531.021, Government Code, entitled "Administration of Medicaid Program," provides, among other things, that HHSC adopt rules and standards to govern the determination of fees, charges, and rates for medical assistance payments under Chapter 32, Human Resources Code, in consultation with the agencies that operate the Medicaid program. The amendments describe how an interim, uniform, statewide rate with a cost related year-end settle-up for each rehabilitative service type category in Texas will be established. The amendments also provide that the interim rate will be determined prospectively and at least annually.

Explanation

The costs for rehabilitative services have varied significantly across providers and across services. This variation is caused by providers adjusting their delivery methods and costs in order to address local conditions. This variation in costs has resulted in rate variances from year to year that cause disruption and an inability on the part of the industry to reasonably predict revenue. In order to maintain the flexibility in service delivery rules and bring more stability to costs and rates, the proposed amendments will ensure that individual providers will be reimbursed for the reasonable costs they incur delivering services to meet their local needs.

The amendments specify in subsection (a) that providers are reimbursed a uniform, statewide, interim rate with a cost-related year-end settle-up. The interim rate is determined prospectively and at least annually. An interim rate is set for each service type. New subsection (b) defines "interim rate," "service type," and "unit of service." Provisions concerning to reimbursement during the initial subsequent reimbursement periods as being no longer necessary because HHSC has collected sufficient reliable cost data to establish interim rates for each service type. Amendments to new subsection (d) reflect current HHSC terminology and describe the interim rate methodology and allowable and unallowable costs in paragraph (3). In addition, new paragraph (d)(4) describes the year-end settle-up process.

Upon adoption, the term "settlement" is changed to "settle-up" throughout the section to more accurately describe the reimbursement determination process and to reduce confusion with terminology utilized in legal proceedings. Paragraph (a)(2) is revised to indicate that settle-up categories will be used in the settle-up process instead of the proposed settle-up for each service type. The labels of the service types in paragraph (b)(2) are revised to more closely agree with the labels utilized in the referenced §419.453 and the labels utilized in the National Heritage Insurance Company's *Texas Medicaid Provider Procedures Manual*. New paragraph (b)(4) defines "settle-up categories." These categories group similar rehabilitative services together for use in the amended settle-up process. Subsection (d) is revised to reference the settle-up categories added in paragraph (b)(4), thus allowing providers more flexibility in managing the provision of rehabilitative services. In addition, language is added in paragraph (d)(4) specifying that TDMHMR will utilize certified mail to notify providers of amounts due and payment due dates.

A public hearing was held on Monday, June 11, 2001, in Austin. No testimony was presented. Written comments were submitted by: The Texas Council of Community Mental Health and Mental Retardation Centers, Austin.

The commenter requested that the reimbursement methodology allow for the greatest amount of flexibility for the system while maximizing legitimate federal reimbursement. HHSC reviewed multiple methodologies for settle-up and selected the above mentioned settle-up categories. HHSC believes that the methodology as amended from the proposed will not increase the complexity beyond that reasonably necessary while providing the rehabilitative services providers with sufficient flexibility to manage service provision.

Statutory Authority

The amendments are adopted under §531.021(b), Government Code, which requires HHSC to adopt reasonable rules and standards to govern the determination of fees, charges, and rates for medical assistance payments under Chapter 32, Human Resources Code, in consultation with the agencies that operate the Medicaid program; and §531.033, Government Code, which provides the commissioner of health and human services with authority to adopt rules necessary to carry out the duties of HHSC under Chapter 531, Government Code.

§355.781. Rehabilitative Services Reimbursement Methodology.

(a) General information.

(1) The Texas Health and Human Services Commission (HHSC) will reimburse qualified rehabilitative services providers for rehabilitative services provided to Medicaid-eligible persons with mental illness.

(2) HHSC determines reimbursement according to §§355.701- 355.709 of this subchapter, relating to General Reimbursement Methodology for all Texas Department of Mental Health and Mental Retardation Medical Assistance Programs. Rehabilitative services providers are reimbursed a uniform, statewide, interim rate with a cost-related year-end settle-up. The interim rate is determined prospectively and at least annually. An interim rate is set for each service type by settle-up category.

(b) Definitions.

(1) Interim rate--Rate paid to a rehabilitative services provider prior to settle-up conducted in accordance with subsection (d)(4) of this section.

(2) Service type--Types of Medicaid reimbursable rehabilitative services as specified in §419.453 of this title (relating to Definitions); §419.456 of this title (relating to Community Support Services); §419.457 of this title (relating to Day Programs for Acute Needs); §419.458 of this title (relating to Day Programs for Skills Training); §419.459 of this title (relating to Day Programs for Skills Maintenance); and §419.460 of this title (relating to Rehabilitative Treatment Plan Oversight):

(A) Day programs for acute needs--adult;

(B) Day programs for skills training--adult;

(C) Day programs for skills maintenance--adult;

(D) Day programs for acute needs--child;

(E) Day programs for skills training --child;

(F) Community support services by professional--individual;

(G) Community support services by paraprofessional--individual;

(H) Community support services by professional--group;

(I) Community support services by paraprofessional--group; and

(J) Rehabilitative treatment plan oversight.

(3) Unit of service--The amount of time an individual, eligible for Medicaid rehabilitative services or non-Medicaid rehabilitative services (or parent or guardian of the person of an eligible minor), is engaged in face-to-face contact with a person described in §419.455(d) of this title (relating to Rehabilitative Services: General Requirements) plus any time spent by such person traveling to and from the off-site location of the eligible individual to provide the contact. The units of service are as follows:

(A) Individual and group community support services--up to 1/2 hour;

(B) Day programs--up to 1 hour; and

(C) Rehabilitative treatment plan oversight--one contact.

(4) Settle-up categories--The settle-up process utilizes the following groupings of service types:

(A) Category 1:

(i) Day programs for acute needs--adult;

(ii) Day programs for acute needs--child; and

(iii) Day programs for skills maintenance--adult.

(B) Category 2:

(i) Day programs for skills training--adult;

(ii) Day programs for skills training--child;

(iii) Community support services by professional--group; and

(iv) Community support services by paraprofessional--group;

(C) Category 3:

(i) Community support services by professional--individual; and

(ii) Community support services by paraprofessional--individual.

(D) Category 4: Rehabilitative treatment plan oversight.

(c) Reporting of Costs.

(1) Cost reporting. Rehabilitative services providers must submit information quarterly, unless otherwise specified, on a cost report formatted according to HHSC's specifications. Rehabilitative services providers must complete the cost report according to the rules and specifications set forth in this section.

(2) Reporting period and due date. Rehabilitative services providers must prepare the cost report to reflect rehabilitative services provided during the designated cost report reporting period. The cost reports must be submitted to HHSC no later than 45 days following the end of the designated reporting period unless otherwise specified by HHSC.

(3) Extension of the due date. HHSC may grant extensions of due dates for good cause. A good cause is one that the rehabilitative services provider could not reasonably be expected to control. Rehabilitative services providers must submit requests for extensions in writing to HHSC before the cost report due date. HHSC will respond to requests within 10 workdays of receipt.

(4) Failure to file an acceptable cost report. If a rehabilitative services provider fails to file a cost report according to all applicable rules and instructions, HHSC will notify TDMHMR to place the rehabilitative services provider on hold until the rehabilitative services provider submits an acceptable cost report.

(5) Allocation method. If allocations of cost are necessary, rehabilitative services providers must use and be able to document reasonable methods of allocation. HHSC adjusts allocated costs if HHSC

considers the allocation method to be unreasonable. The rehabilitative services provider must retain work papers supporting allocations for a period of three years or until all audit exceptions are resolved (whichever is longer).

(6) Cost report certification. Rehabilitative services providers must certify the accuracy of cost reports submitted to HHSC in the format specified by HHSC. Rehabilitative services providers may be liable for civil and/or criminal penalties if they misrepresent or falsify information.

(7) Cost data supplements. HHSC may require additional financial and statistical information other than the information contained on the cost report.

(8) Review of cost reports. HHSC reviews each cost report to ensure that financial and statistical information submitted conforms to all applicable rules and instructions. The review of the cost report includes a desk audit. HHSC reviews all cost reports according to the criteria specified in §355.703 of this title (relating to Basic Objectives and Criteria for Review of Cost Reports). If a rehabilitative services provider fails to complete the cost report according to instructions or rules, HHSC returns the cost report to the rehabilitative services provider for proper completion. HHSC may require information other than that contained in the cost report to substantiate reported information.

(9) On-site audits. HHSC may perform on-site audits on all rehabilitative services providers that participate in the Medicaid program for rehabilitative services. HHSC determines the frequency and nature of such audits but ensures that they are not less than that required by federal regulations related to the administration of the program.

(10) Notification of exclusions and adjustments. HHSC notifies rehabilitative services providers of exclusions and adjustments to reported expenses made during desk reviews and on-site audits of cost reports.

(11) Access to records. Each rehabilitative services provider must allow access to all records necessary to verify cost report information submitted to HHSC. Such records include those pertaining to related-party transactions and other business activities engaged in by the rehabilitative services provider. If a rehabilitative services provider does not allow inspection of pertinent records within 14 days following written notice HHSC will notify TDMHMR to place the rehabilitative services provider on vendor hold until access to the records is allowed. If the rehabilitative services provider continues to deny access to records, TDMHMR may terminate the rehabilitative services provider agreement with the rehabilitative services provider.

(12) Record keeping requirements. Rehabilitative services providers must maintain service delivery records and eligibility determination for a period of five years or until any audit exceptions are resolved (whichever is later). Rehabilitative services providers must ensure that records are accurate and sufficiently detailed to support the financial and statistical information contained in cost reports.

(13) Failure to maintain adequate records. If a rehabilitative services provider fails to maintain adequate records to support the financial and statistical information reported in cost reports, HHSC allows 30 days for the rehabilitative services provider to bring record keeping into compliance. If a rehabilitative services provider fails to correct deficiencies within 30 days from the date of notification of the deficiency, HHSC will notify TDMHMR to terminate the rehabilitative services provider agreement with the rehabilitative services provider.

(d) Reimbursement determination. HHSC determines reimbursement in the following manner:

(1) Inclusion of certain reported expenses. Rehabilitative services providers must ensure that all requested costs are included in the cost report.

(2) Data collection. HHSC collects several different kinds of data. These include the number of units of service that individuals receive and cost data, including direct costs, programmatic indirect costs, and general and administrative overhead costs. These costs include salaries, benefits, and other costs. Other costs include nonsalary related costs such as building and equipment maintenance, repair, depreciation, amortization, and insurance expenses; employee travel and training expenses; utilities; and material and supply expenses.

(3) Interim rate methodology. HHSC projects and adjusts reported costs from the historical reporting period to determine the interim rate for the prospective reimbursement period. Cost projections adjust the allowed historical costs based on significant changes in cost-related conditions anticipated to occur between the historical cost period and the prospective reimbursement period. Changes in cost-related conditions include, but are not limited to, inflation or deflation in wage or price, changes in program utilization and occupancy, modification of federal or state regulations and statutes, and implementation of federal or state court orders and settlement agreements. Costs are adjusted for the prospective reimbursement period by a general cost inflation index as specified in §355.704 of this tile (relating to Determination of Inflation Indices).

(A) Reimbursement determination. For each settle-up category, each rehabilitative services provider's projected cost per unit of service is calculated. The mean rehabilitative services provider cost per unit of service is calculated, and the statistical outliers (those rehabilitative services providers whose unit costs exceed plus or minus (+/-) two standard deviations of the mean rehabilitative services provider cost) are removed. After removal of the statistical outliers, the mean cost per unit of service is calculated. This mean cost per unit of service becomes the recommended reimbursement per unit of service.

(B) Reimbursement setting authority. HHSC establishes the reimbursement rate. HHSC sets reimbursements that, in its opinion, are within budgetary constraints, adequate to reimburse the cost of operations for an economic and efficient rehabilitative services provider, and justifiable given current economic conditions.

(C) Reviews of cost report disallowances. A rehabilitative services provider may request notification of the exclusions and adjustments to reported expenses made during either desk reviews or on-site audits, according to §355.705 of this title (relating to Notification). Rehabilitative services providers may request an informal review and, if necessary, an administrative hearing to dispute the action taken by HHSC under §355.707 of this title (relating to Reviews and Administrative Hearings).

(D) Allowable and unallowable costs. Cost reports may only include costs that meet the requirements as specified in §355.708 of this title (relating to Allowable and Unallowable Costs).

(4) Settle-up process. At the end of each reimbursement period, HHSC will compare the amount reimbursed at the interim rate for each settle-up category and the rehabilitative services provider's costs for each category, as submitted on its cost report in accordance with subsection (c) of this section.

(A) If a rehabilitative service provider's costs are less than 95% of the amount reimbursed at the interim rate, HHSC will demand that payment be made to TDMHMR by the rehabilitative services provider of the difference between its allowable costs and 95%

of the amount reimbursed at the interim rate for each settle-up category. TDMHMR will notify the rehabilitative services provider of the amount due by certified mail.

(i) A rehabilitative services provider may request an administrative hearing in accordance with 25 TAC Chapter 409, Subchapter B (relating to Adverse Actions) to contest the demand for payment.

(ii) If the rehabilitative services provider does not request an administrative hearing to contest the demand for payment, the provider must pay TDMHMR the amount due within 30 days after the demand for payment was received by the provider, as indicated by the certified mail receipt. If TDMHMR has not received payment of the amount due within this time period, TDMHMR may impose a vendor hold on or recoup Medicaid payments due to the rehabilitative services provider.

(B) If a rehabilitative services provider's costs exceed the amount reimbursed at the interim rate, TDMHMR will reimburse the rehabilitative services provider the difference between its allowable costs and the reimbursement at the interim rate up to 125% of the interim rate for each settle-up category. TDMHMR will notify the rehabilitative services provider of the amount owed to the provider via certified mail. TDMHMR will make payment within 30 days of the date the notice was received, as indicated by the certified mail receipt.

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 September 14, 2001.

TRD-200105481
Marina S. Henderson
Executive Deputy Commissioner
Texas Health and Human Services Commission
Effective date: October 4, 2001
Proposal publication date: May 18, 2001
For further information, please call: (512) 424-6576

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TITLE 13. CULTURAL RESOURCES

PART 2. TEXAS HISTORICAL COMMISSION

CHAPTER 11. ADMINISTRATIVE DEPARTMENT

13 TAC §11.11

The Texas Historical Commission (THC) adopts new §11.11, relating to Restrictions on Assignment of Vehicles, with no changes made to the proposed text as published in the August 17, 2001, issue of the *Texas Register* (26 TexReg 6081).

The THC adopts this new section containing rules that govern the assignment and use of the agency's vehicles. The new §11.11 relating to Property Accountability with the new section is in response to House Bill 3125, 76th Legislature, 1999 that required the General Services Commission and the Council on Competitive Government to develop a plan for improving the administration and operation of the state's vehicles. The bill further requires each state agency to adopt rules, consistent with the plan, relating to the assignment and use of the agency's vehicles. Section 11.11 is necessary to comply with House Bill 3125.

No written comments were received regarding this rule.

The new section is adopted under Cultural Resources Code, §442.005 that provides the Texas Historical Commission with the authority to establish rules for the conduct of the work of the Texas Historical Commission. The new § 11.11 relating to Property Accountability with the new section is adopted under Government Code, §2171.1045, which requires the THC to adopt rules relating to the assignment and use of THC vehicles.

No statutes, articles or codes are affected by the new chapter, subchapters or sections.

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 September 17, 2001.

TRD-200105559
F. Lawerence Oaks
Executive Director
Texas Historical Commission
Effective date: October 7, 2001
Proposal publication date: August 17, 2001
For further information, please call: (512) 463-6100

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13 TAC §11.12

The Texas Historical Commission (THC) adopts new §11.12 (concerning Memorandum of Understanding with the Texas Department of Economic Development, the Texas Department of Transportation, the Texas Parks and Wildlife Department, the Texas Commission on the Arts and the Texas Historical Commission) with no changes made to the proposed text as published in the August 17, 2001, issue of the *Texas Register* (26 TexReg 6081).

Government Code, §481.028, requires the Texas Department of Economic Development to develop a memorandum of understanding with the Texas Department of Transportation (TxDOT), and the Texas Parks and Wildlife Department to cooperate in marketing and promoting Texas as a travel destination and provide services to travelers, and requires each agency to adopt the MOU by rule. This section adopts by reference the provision of the MOU adopted by the Texas Department of Economic Development and published in the December 29, 2000, issue of the *Texas Register* (25 TexReg 12878). The Texas Department of Economic Development adopted the rule in the March 9, 2001, issue of the *Texas Register* (26 TexReg 2017).

No written comments were received regarding this rule.

The new section is adopted under the Government Code, §442.005, which provided the Texas Historical Commission with the authority to establish rules for the conduct of the work of the Texas Historical Commission.

No other statute, code, or article is affected by adoption of this rule.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on September 17, 2001.

TRD-200105560
F. Lawerence Oaks
Executive Director
Texas Historical Commission
Effective date: October 7, 2001
Proposal publication date: August 17, 2001
For further information, please call: (512) 463-6100

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CHAPTER 12. TEXAS HISTORIC COURTHOUSE PRESERVATION PROGRAM

13 TAC §12.9

The Texas Historical Commission adopts amendments to §12.9 (concerning future rounds of the courthouse program, to review the status of on-going projects and to decide on important issues of program administration for the coming biennium), with no changes made to the proposed text as published in the August 17, 2001, issue of the *Texas Register*(26 TexReg 6082). This change will provide the broadest flexibility in allocating grants funds.

No written comments were received regarding this amendment.

The amendment is adopted under the Natural Resources Code, Title 9, Chapter 191 (revised by Senate Bill 231, 68th Legislature, 1983, and by House Bill 2056, 70th Legislature, 1987), § 191.02, which provides the Texas Antiquities Committee with authority to promulgate rules and require contract or permit conditions to reasonably effect the purposes of Chapter 191.

No statutes, articles or codes are affected by the adopted chapter, subchapters or sections.

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 September 17, 2001.

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F. Lawerence Oaks
Executive Director
Texas Historical Commission
Effective date: October 7, 2001
Proposal publication date: August 17, 2001
For further information, please call: (512) 463-6100

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CHAPTER 17. STATE ARCHITECTURAL PROGRAMS

13 TAC §17.1, §17.3

The Texas Historical Commission adopts the repeal and replacement of §17.1 and §17.3, Title 13, Part 2 of the Texas Administrative Code, without changes to the proposal as published in the June 22, 2001, issue of the *Texas Register* (26 TexReg 4580) and will not be republished.

These changes concerned the Preservation Trust Fund Grants and the Texas Preservation Trust Fund.

No comments were received regarding adoption of the repeal and replacement of these sections.

The repeals are adopted under §442.005(q), Title 13 Part 2 of the Texas Government Code, which provides the Texas Historical Commission with the authority to promulgate rules to reasonably effect the purposes of this chapter.

No other statues, articles, or codes are affected by these replacements.

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

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 September 11, 2001.

TRD-200105400
F. Lawrence Oaks
Executive Director
Texas Historical Commission
Effective date: October 1, 2001
Proposal publication date: June 22, 2001
For further information, please call: (512) 463-5711

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13 TAC §17.1, §17.3

The Texas Historical Commission adopts new §17.1 and §17.3 Title 13, Part 2 of the Texas Administrative Code, without changes to the proposed text as published in the August 10, 2001, issue of the *Texas Register* (26 TexReg 5915) and will not be republished.

These changes concerned the Preservation Trust Fund Grants and the Texas Preservation Trust Fund.

No comments were received regarding adoption of the repeal and replacement of these sections.

The new sections are adopted under §442.005(q), Title 13 Part 2 of the Texas Government Code, which provides the Texas Historical Commission with the authority to promulgate rules to reasonably effect the purposes of this chapter.

No other statues, articles, or codes are affected by these replacements.

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 September 11, 2001.

TRD-200105399

F. Lawrence Oaks
Executive Director
Texas Historical Commission
Effective date: October 1, 2001
Proposal publication date: August 10, 2001
For further information, please call: (512) 463-5711

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TITLE 16. ECONOMIC REGULATION

PART 2. PUBLIC UTILITY COMMISSION OF TEXAS

CHAPTER 26. SUBSTANTIVE RULES APPLICABLE TO TELECOMMUNICATIONS SERVICE PROVIDERS

SUBCHAPTER P. TEXAS UNIVERSAL SERVICE FUND

16 TAC §§26.403, 26.417, 26.420

The Public Utility Commission of Texas (commission) adopts amendments to §26.403, relating to Texas High Cost Universal Service Plan (THCUSP), and §26.417, relating to Designation as Eligible Telecommunications Providers to Receive Texas Universal Service Funds (TUSF), with changes to the proposed text as published in the March 30, 2001, *Texas Register* (26 TexReg 2468). The commission adopts amendments to §26.420, relating to Administration of Texas Universal Service Fund (TUSF), with no changes as proposed on March 30, 2001 (26 TexReg 2468). The amendments are necessary to implement the Public Utility Regulatory Act, Texas Utilities Code Annotated §56.021 and §56.023 (PURA), regarding the commission's authority in the establishment and administration of the universal service fund. The proposed amendments are composed of several minor changes and clarifications. The major substantive revision proposed for §26.403(e)(3)(C) has not been adopted in the current proceeding. The amendments are adopted under Project Number 22472.

The adopted rules include amendments to the existing rules resulting from the implementation of the TUSF and Senate Bill 560 (SB 560) enacted by the 76th Texas Legislature.

The commission received written comments on the proposed amendments from the following parties: AT&T Communications of Texas (AT&T); Southwestern Bell Telephone Company (SWBT); Verizon Southwest (Verizon); United Telephone Company of Texas, Central Telephone Company of Texas, and Sprint Communications Company (collectively, Sprint); the State of Texas (State); Verizon Wireless; and Cingular Wireless (Cingular). Reply comments were received from AT&T, SWBT, Verizon, and the State.

A public hearing on the amendments was held at the commission offices on May 23, 2001. Representatives from the following entities attended the hearing and provided comments on the amendments: AT&T, SWBT, Verizon, Sprint, and MCI WorldCom (MCI). A representative from John Staurulakis attended the hearing, but did not comment. To the extent the oral comments differ from the submitted written comments, such comments are summarized herein.

Minor changes to rule language

§26.403, relating to Texas High Cost Universal Service Plan (THCUSP)

Section 26.403 sets forth the requirements for financial assistance to eligible telecommunications providers (ETPs) serving high cost rural areas of the state other than the study areas of small and rural incumbent local exchange companies (ILECs). The commission adopts minor corrections and revisions related to the timing of the commission's subsequent determinations regarding the THCUSP. As discussed under the heading "proposed major change to rule language," the commission declines to adopt proposed §26.403(b)(6), "Zone 2" definition, and §26.403(e)(3)(C), adjustment for service provided solely or partially through the purchase of unbundled network elements (UNEs).

Section 26.403(d)(1) sets forth the initial determination of the definition of basic local telecommunications service. Subsection 26.403(d)(1)(F) includes "dual party" relay service in the definition. The proposed amendment to §26.403(d)(1)(F) replaces "dual party" as the appropriate title for relay service with "telecommunications."

No parties commented on this subsection.

The commission adopts this amendment to §26.403(d)(1)(F) with no changes.

Section 26.403(d)(2)(A) provides for the timing of subsequent determination of the definitions of services to be supported by THCUSP. Section 26.403(e)(2)(A) sets forth requirements for the timing of the review of the THCUSP base support. In §26.403(d)(2)(A)(i) and §26.403(e)(2)(A)(i), the proposed amendments revise the beginning date for the three-year review from February 10, 1998 to March 1, 2000. These proposed amendments comply with Order Number 1, in Project Number 22472, in which the commission granted a good-cause waiver to change the beginning date for the three-year review to March 1, 2000, the date on which the TUSF was implemented.

AT&T commented that September 1, 1999 should be the beginning date for the three- year review because that is the date the TUSF became fully operational. AT&T contended that high-cost support became available to large incumbent local exchange companies (ILECs), and the TUSF surcharge increased to 3.579% on September 1, 1999. AT&T asserted that the benchmark revenue levels are currently predicated on significantly outdated information. AT&T maintained that intrastate toll and access rates have declined substantially and that the federal Coalition for Affordable Local and Long Distance Services (CALLS) report has modified interstate access charges, interstate toll rates, and subscriber line charges since the 1997 period on which the benchmarks are based. Subsequently, AT&T maintained that the rule should be modified to require that the review and any subsequent adjustments and rule modifications be implemented by March 1, 2003. AT&T stated that its proposed modification would provide for an updated benchmark with concomitant financial elements based on current cost data.

The commission agrees with AT&T that commencing a review of the definition of services, the forward-looking cost methodology, the benchmark levels, and/or the base support amounts three years from September 1, 1999 would be more appropriate and revises the language accordingly. The commission notes that this date changes the existing order on this issue. Moreover, the commission finds that technological and competitive

changes within the basic local telecommunications service market may necessitate an earlier review. The commission declines, however, to adopt AT&T's suggestion that the rule be modified to require that the review and any subsequent adjustments and rule modifications be implemented by March 1, 2003. The commission finds that a review three years from the beginning date (*i.e.* September 1, 1999) should commence on September 1, 2002.

§26.417, Designation as Eligible Telecommunications Providers to Receive Texas Universal Service Funds (TUSF)

Section 26.417 sets forth the requirements to designate telecommunications providers as ETPs to receive funds from the TUSF. The proposed amendments include internal references and reflect minor changes resulting from the Final Order in Docket Number 18515, *Compliance Proceeding for Implementation of the Texas High Cost Universal Service Plan*, issued on January 14, 2000, and the implementation of PURA §56.021 and §56.023, as amended by SB 560.

Section 26.417(b)(1) sets forth the requirements for establishing THCUSP service areas. The proposed amendment revises the THCUSP service area from "census block groups" (CBGs) to "wire centers" (WCs). In the Final Order in Docket Number 18515, the commission determined that the WC area was appropriate because ILECs maintain internal records at the wire center level. Additionally, the Hatfield Associates, Inc. (HAI) model calculates the UNE costs on a wire center basis, thus providing administrative ease for the TUSF administrator and the commission. Therefore, the proposed amendment revises the rule to conform to the Final Order.

Verizon and AT&T commented that they agreed that wire centers, instead of census block groups, should be the basis for developing the forward-looking cost on which TUSF support amounts are based.

The commission adopts the proposed amendment with no changes in order to conform to the requirements set forth in the Final Order issued on January 14, 2000, in Docket Number 18515.

Section 26.417(c) sets forth criteria for designation of ETPs. In §26.417(c)(1)(B), the proposed amendment corrects the reference to "subsection (c)" to "subsection (b)." In the proposed amendment to §26.417(c)(2), local exchange company ("LEC") is replaced with "telecommunications provider" to comply with the implementation of PURA §56.021 and §56.023, as amended by SB 560 in 1999. Proposed amendments to §26.417(c)(1), (c)(2), and (f)(1)(B)(i)(I) reference the definition of "telecommunications provider" in PURA §51.002(10) rather than §26.5 of the commission's substantive rules.

No parties commented on the proposed amendments to §26.417(c) and §26.417(f)(1)(B)(i)(I).

The commission adopts the amendments with no changes.

§26.420, Administration of Texas Universal Service Fund (TUSF)

Section 26.420 sets forth the requirements for the administration of the TUSF. Section 26.420(b) sets forth programs included in the TUSF. The proposed amendment adds §26.410, relating to Universal Service Fund Reimbursement for Certain IntraLATA Service, as §26.420(b)(5). This program is required by PURA §56.028, as amended by SB 560 in 1999.

No parties commented on this subsection.

The commission, therefore, adopts the proposed amendments with no changes.

Section 26.420(e) relates to the transition from existing USF programs to the TUSF. Subsection (e), as proposed, is eliminated due to the commission's full transition from existing USF programs to the TUSF on March 1, 2000, and each subsequent subsection renumbered.

No parties commented on this subsection.

The commission, therefore, adopts the proposed amendment to delete §26.420(e) with no changes and each subsequent subsection is renumbered.

Section 26.420(e), as renumbered, relates to the determination of the amount needed to fund the TUSF. The proposed amendment to subsection (e) adds the reimbursement for certain intraLATA services, pursuant to §26.410 of this title, to §26.420(e)(1)(A)(v). This proposed amendment is required by PURA §56.028, as amended by SB 560 in 1999.

No parties commented on this subsection.

The commission, therefore, adopts the proposed amendments with no changes.

Section 26.420(e)(1)(B), as re-numbered, addresses the amount of costs associated with the implementation and administration of the TUSF. The amendment to §26.420(e)(1)(B) deletes the Lifeline and Link Up programs as costs of administration and implementation of the TUSF. PURA §56.021(5) does not allow the Texas Department of Human Services (TDHS) to recover costs associated with the administration of Lifeline and Link Up programs. PURA §56.021(5) allows TDHS to be reimbursed for costs incurred in implementing Chapters 56 and 57. Because these programs are authorized by PURA §55.015, Lifeline and Link Up, as required by SB 560 in 1999, are not included in Chapter 56 and 57.

No parties commented on this subsection.

The commission, in compliance with SB 560, adopts the proposed amendments with no changes. However, the commission finds that this subsection will warrant further modification in a separate rulemaking to comply with House Bill 2156 (HB 2156), enacted by the 77th Texas Legislature.

Section 26.420(f)(3), as renumbered, addresses assessment for TUSF. In §26.420(f)(3)(B), the proposed amendment clarifies the reference to paragraph (g)(2). The proposed amendment in §26.420(f)(4) revises the reporting requirement from "every month" to "as required," because the commission and the TUSF administrator may require telecommunications providers to report receipts at varying intervals.

No parties commented on these subsections.

The commission, therefore, adopts the proposed amendments to §26.420(f) with no changes.

The amendment to §26.420(f)(5)(A)(i), as renumbered, relating to the recovery of assessment, replaces the use of item label "TX USF Charge X.XX%" as the surcharge listed on the retail customer's bill with "Texas Universal Service" to comply with the commission's ruling in Project Number 19655, *Implementation of P.U.C. SUBST. R. §23.150(f) and (g)*.

No parties commented on §26.420(f)(5)(A)(i).

However, AT&T suggested that §26.420(f)(5)(A)(ii) should clarify whether it is expressly permissible to recover the full assessment from its retail customers even if the assessment rate on end users must slightly exceed the adopted assessment percentage. AT&T stated that confusion exists because under one interpretation of this rule a carrier's surcharge rate must be equal to the assessment rate. AT&T claimed that a more reasonable interpretation of this subsection would be to interpret "one month's worth of assessments" as referring to the total amount collected during a month and not a particular assessment rate in effect for that month.

The commission adopts the amendment to §26.420(f)(5)(A)(i) with no changes because the revision simply modifies the item label notation on the customer's bill. The commission did not propose any changes to §26.420(f)(5)(A)(ii). Therefore, the change proposed by AT&T is beyond the scope of the proceeding.

The proposed amendment to §26.420(g)(1)(D), as renumbered, relating to the agencies eligible for disbursement from the TUSF, limits agencies to the reimbursement of costs directly and reasonably associated with the implementation of provisions of PURA Chapters 56 and 57. The amendment revises the section to conform to PURA §56.021(5).

No parties commented on this subsection.

The commission, therefore, adopts the proposed amendment with no changes.

Section 26.420(g)(3), as renumbered, addresses disbursements of TUSF funds. Section 26.420(g)(3)(A) revises the TUSF disbursement deadline from 30 to 45 days. AT&T commented that the proposed language in §26.420(g)(3) which delayed receipt of TUSF support by an additional 15 days for eligible carriers was problematic. AT&T contended that it is not entirely clear to AT&T whether the National Exchange Carrier Association (NECA) modifies the funding to each carrier every month based on the number of eligible lines served. However, AT&T asserted that NECA should be granted the authority, if it does not already have it, to modify funding levels for each eligible carrier on a monthly basis based on the specific number of lines qualifying for high-cost support. AT&T commented that such authority would give NECA the ability to ensure that carriers who are owed TUSF support would receive such funding promptly to offset the high cost of providing service in rural areas.

The commission adopts the proposed amendment with no changes and notes that the additional 15 days is necessary for the administration of the TUSF by the NECA. The concerns raised by AT&T are not properly addressed in this proceeding. If AT&T has concerns regarding whether NECA is properly disbursing TUSF funds, AT&T should request that the commission investigate such allegations.

The proposed amendment adds §26.420(g)(3)(B) in accordance with the implementation of PURA §56.026(c), as required by SB 560.

No parties commented on this subsection.

The commission adopts the proposed amendment contained in this subsection with no changes.

Proposed major change to rule language

Section 26.403(b)(6) includes a definition of "Zone 2" to complement the commission's proposed modification of the UNE sharing mechanism contained in §26.403(e)(3)(C)(i) and (ii).

In written comments, AT&T argued that each carrier drawing TUSF support did not have a "Zone 2" designation. Verizon agreed with AT&T that the Zone 2 definition is a SWBT-specific designation and is not appropriate for a rule of general application. Additionally, Sprint maintained that it did not have a Zone 2 rate or a statewide average loop rate. Sprint stated that the commission has set its usage sensitive local loops (USLL) rates and, therefore, the amendments should replace the Zone 2 rate with the minimum monthly recurring charge for the ETP's USLL.

The commission declines to adopt the Zone 2 definition contained in §26.403(b)(6) because the proposed amendments related to the UNE sharing mechanism contained in §26.403(e)(3)(C)(i) and (ii) are not being adopted.

Section 26.403(e)(3)(C)(i) and (ii) set forth requirements for adjustment to the monthly THCUSP support amount for service provided solely or partially through UNEs (UNE sharing). The amendments as published sought to create a UNE sharing mechanism that would make the provisioning of services via UNEs more attractive in rural areas. After considering the parties' comments, the commission declines to adopt the proposed changes and, in order to fully develop all the issues relating to UNE sharing, plans to review this issue in a subsequent rulemaking proceeding.

The commission received specific comment on the proposed amendments, comments on the cost-benefit analysis presented in the published preamble, and specific comments as requested in the published preamble on alternative methods for UNE sharing. Even though the commission declines to adopt the proposed amendments in §26.403(e)(3)(C)(i) and (ii), the commission discusses these specific comments below.

The parties provided the following comments on the proposed amendments.

AT&T stated that it is entirely appropriate to amend the TUSF rules to make the provisioning of local service by competitors via UNEs more attractive in rural areas. However, AT&T contended that the proposed language too narrowly focused on just UNE loops and did not address the broader issue of competitive local exchange carriers (CLECs) paying more for UNEs in low cost exchanges. As discussed below, AT&T submitted a proposal to address this issue. AT&T maintained that the modified rule should encompass funding for all relevant UNEs, or at least the same five UNEs utilized by the commission in its original funding computations, specifically, loop, port, end office usage, signaling and transport. Moreover, AT&T stated that differences in computation for UNE prices and TUSF funding create difficulties that should be addressed in the modified rule.

SWBT argued that the proposed language was unnecessary, inequitable, and not competitively neutral. SWBT claimed that the proposed language would violate PURA §56.026(c)(2), which establishes an equitable allocation formula for the TUSF disbursement. SWBT asserted that the proposed language would confer an economic advantage to CLECs to the detriment of ILECs. SWBT maintained that such a competitively non-neutral outcome would conflict with the purpose of the TUSF, as enunciated in §26.401(a), Texas Universal Service Fund (TUSF).

Verizon argued that the proposed language was both in violation of the statute and contrary to prior USF rulemakings and that it would not ensure or create efficient incentives for network facilities investment. Verizon contended that the support should be allocated between the UNE purchaser and the underlying provider to reconcile inconsistencies in cost estimates and

ensure proper compensation for network facilities investment. Verizon noted that USF support is at a wire center level while UNE rates are averaged in only three zones across all wire centers. Verizon stated that the proposed language would mistakenly calculate the portion of support based on a statewide average loop rate that an ETP does not incur. Verizon claimed that the statewide average loop rate bears no relationship to the cost of universal service. Moreover, Verizon maintained that the ETP would absorb all the available support while ignoring the reduction in revenue incurred by the underlying provider in converting to a wholesale provider. Additionally, Verizon contended that the proposed language would generally provide a CLEC with an incentive to become an ETP only in a very limited number of its highest cost Zone 2 and Zone 3 wire centers.

Sprint argued in its written comments that the proposed language was ambiguous in its reference to "UNEs" because it did not address switching, transport or UNE Platform (UNE- P) rates. Sprint contended that the unaddressed UNEs could be treated in the same manner as the UNE loop rates in determining a statewide average, and the resulting division of the TUSF support would be based on whether the average is greater than or less than the price of the exchange-specific UNE.

The State agreed that the proposed language would provide greater support to providers of UNEs in rural areas.

As noted above, the commission declines to adopt the proposed amendment regarding UNE sharing.

SWBT argued that the cost-benefit analysis in the preamble was incorrect and misleading and, therefore, failed to substantially comply with Texas Government Code §2001.024(a)(5)(B). SWBT disagreed with the preamble statement of no anticipated economic cost to persons required to comply with the sections, as proposed. SWBT stated that, if the proposed amendments regarding the UNE sharing mechanism contained in §26.403(e)(3)(C) were adopted, it would incur a significant monetary loss of approximately $5.4 million annually in TUSF disbursements.

In response, AT&T stated that SWBT's interpretation of the cost-benefit analysis requirement was unreasonable. AT&T argued that the law does not require an agency to assign a monetary amount in every case to satisfy the requirements of §2001.024(a)(5)(B) of the Government Code. Likewise, in oral comments, MCI argued that the legal requirement is for a cost-benefit analysis and not a revenue-benefit analysis. Both AT&T and MCI asserted that even if SWBT's revenues are affected by the rule amendments, it does not then follow that the commission's cost-benefit statement was faulty.

The commission finds that the cost-benefit statement in the preamble complies with Texas Government Code §2001.024(a)(5)(B). The commission believes that SWBT's argument is erroneously based on the assumption that the commission's cost-benefit analysis should consider loss of revenue. The commission notes that SWBT's argument was triggered by proposed amendments to §26.403(e)(3)(C) regarding the UNE sharing mechanism and that those proposed amendments are not being adopted.

The commission also sought specific comments on alternative methods for the implementation of the UNE sharing mechanism in §26.403(e)(3)(C)(i) and (ii). Comments were to include actual examples of how the alternative method would affect wire centers in the state.

Based on its analysis of SWBT's public HAI-based data, AT&T commented that rural areas are drawing substantially more TUSF support than less rural areas. In its initial proposal, AT&T asserted that a CLEC providing residential service solely through the use of UNEs anywhere in SWBT's Zone 1 should be entitled to TUSF support in the amount of the average support per line per month received by the ILEC in that zone. AT&T contended that the ILEC receives 100% of the average cost of all UNEs from the CLEC and, when a CLEC serves a customer in a TUSF eligible exchange, the ILEC should receive no TUSF. AT&T asserted that the ILEC would be kept whole by virtue of the fact that the CLEC is paying more for UNEs than it should in other exchanges within the Zone because UNE rates are set to recover the average cost across the whole Zone. AT&T further observed that a CLEC may serve its customers partially through the use of UNEs. In cases where a CLEC serves its customers partially through the use of UNEs, AT&T argued that the CLEC should draw a percentage of the average TUSF support by Zone or rate group based on the UNEs purchased.

SWBT commented that AT&T's initial proposal would be more inequitable than the commission's proposed language. SWBT asserted that AT&T's initial proposal had no cost basis, was not competitively neutral, and would provide a financial windfall to CLECs. SWBT noted that the ILEC would not receive TUSF support in eligible wire centers even when UNE payments do not offset its costs of providing the underlying facilities. SWBT maintained that the proposal would give a CLEC $9.13 per line in TUSF support even when the CLEC would recover its costs without any support. SWBT estimated that the proposal would eliminate about $26 million of its TUSF support and provide at least $14 million extra to CLECs. Additionally, SWBT argued that it is *not* inequitable that UNE- purchasing CLECs are eligible for TUSF support in only 16 of its 246 TUSF-eligible wire centers because in the remaining 230 wire centers CLECs receive sufficient revenue from their end-user customers to more than recover their actual costs of providing service. SWBT asserted that it is not receiving enough money from UNE rates to be "kept whole" in high- cost wire centers and claimed to be losing an average of $13 for each TUSF-eligible residential line a CLEC serves via UNEs in Zone 1.

Verizon argued that AT&T's initial proposal was self-serving and contrary to the stated purpose of the TUSF. Verizon contended that AT&T failed to identify the 230 exchanges in which it is inequitably drawing support and the extent of ETP UNE activity in SWBT's territory. Verizon contended that AT&T's support analysis is based on a faulty assumption that CLECs purchasing UNEs in high cost and low cost areas of a zone are paying on average 100% of the cost of every UNE in the zone. Verizon asserted that the UNE price paid by CLECs does not offset its cost even in the least-cost wire center within Zone 3. Verizon argued that ETPs should be eligible for support only when their costs exceed the costs of the underlying carrier.

In its reply comments and at the hearing, AT&T argued for the adoption of a revised proposal that would recognize the excess payments made by CLECs in lower cost exchanges on an exchange-by-exchange basis. AT&T commented that CLECs are paying more than they should in many exchanges and are ineligible to draw TUSF support when they serve in high cost exchanges. Thus, AT&T argued it is SWBT, and possibly other ILECs, that are receiving a windfall under the current TUSF funding formula. AT&T contended that the identified excess payments should be used to determine the maximum amount of support the CLEC would be eligible to receive in TUSF-eligible

exchanges. The actual support would be equal to the lesser of either those excess payments or what the ILEC would have received in TUSF support had it served the customer won by the UNE-purchasing CLEC. AT&T claimed that the revised proposal would allow CLECs electing to serve statewide to draw support for lines served in TUSF-eligible areas, thus increasing competition. AT&T stated that its revised proposal could also be applied in instances where CLECs provide service to customers partially through UNEs.

SWBT commented that AT&T's revised proposal was a repackaging of MCI's proposal rejected by the commission in Docket Number 18515, the generic USF proceeding. SWBT claimed that the revised proposal would motivate CLECs to provide service primarily in low-cost rural areas and is inconsistent with the commission's stated goal of making it more attractive for CLECs to serve rural customers. SWBT criticized AT&T's claim that it is paying 100% of the entire HAI-calculated costs in Texas, presuming that it serves the same proportion of lines across the state as SWBT. SWBT contended that the critical presumption could not fairly be made because CLECs are free to pick and choose their service areas, unlike ILECs. Moreover, SWBT maintained that the statewide calculations presented by AT&T revealed an average monthly shortfall of $.39 per residential line in UNE-P rates compared to the corresponding HAI-calculated costs SWBT incurred. Additionally, SWBT stated that its comparison of UNE rates and HAI-calculated costs for lines actually served by UNE-purchasing CLECs reveals a net CLEC underpayment of approximately $31 million annually. SWBT stated that CLECs serving in rural areas only would not benefit from the revised proposal's excess credits. Furthermore, SWBT claimed that AT&T's proposal attempts to deaverage UNE rates in only TUSF-ineligible wire centers is inconsistent with the Final Order issued in Docket Number 18515.

Verizon argued that AT&T's revised proposal was not competitively neutral. Verizon maintained that the proposal would not benefit carriers operating in only rural areas because trade-off credits accrue in only non-supported, urban areas. Verizon contended that a company-specific revenue benchmark should be developed if the USF formula is changed.

As noted earlier, the commission plans to review these issues in a separate rulemaking. Therefore, the commission declines to adopt any modification to the UNE sharing mechanism in the current proceeding.

Preamble Question

In addition to general comments on the proposed amendments, the commission sought specific comments on whether a new rulemaking should be opened to expand the quality-of- service rules (§26.52, Emergency Operations, §26.53, Inspections and Tests, and §26.54, Service Objectives and Performance Benchmarks) to include wireless technologies.

In written comments, Cingular and Verizon Wireless argued that the commission should not open a new rulemaking to expand the quality-of-service rules to apply to wireless providers. Cingular contended that no provision of PURA or federal law could serve as the basis for applying quality-of-service rules to wireless providers. Verizon Wireless argued that there would be no legitimate policy grounds for expanding the rules to include all wireless carriers unless competitive evidence suggests that such rules are needed. Cingular and Verizon Wireless asserted that intense competition among wireless providers and the competitive market structure would provide sufficient quality-of-service incentives for wireless providers.

The State claimed that a new rulemaking to create quality-of-service rules for wireless technologies should be established. The State contended that wireless providers that are eligible for USF support should meet service standards that are similar to those currently established for wireline carriers.

At the public hearing, a clarification was made to establish that a proposed new rulemaking would make the quality-of-service rules applicable to only those wireless providers achieving ETP status. The parties did not make oral comments or submit reply comments on this issue.

The commission finds that evolving technology may result in an increasing number of wireless carriers providing basic local service throughout Texas. Therefore, the applicability of appropriate quality-of-service rules to ETP-designated wireless carriers may warrant further analysis in a separate rulemaking proceeding.

These amendments are adopted 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, including rules of practice and procedure. Additional statutory authority is derived from PURA §56.021, which requires the commission to adopt and enforce rules requiring local exchange companies to establish a universal service fund, and §56.023, which requires the commission to adopt rules for the administration of the universal service fund.

Cross Reference to Statutes: Public Utility Regulatory Act §§14.002, 56.021- 56.028.

§26.403. Texas High Cost Universal Service Plan (THCUSP).

(a) Purpose. This section establishes guidelines for financial assistance to eligible telecommunications providers (ETPs) that serve the high cost rural areas of the state, other than study areas of small and rural incumbent local exchange companies (ILECs), so that basic local telecommunications service may be provided at reasonable rates in a competitively neutral manner.

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

(1) Benchmark--The per-line amount above which THCUSP support will be provided.

(2) Business line--The telecommunications facilities providing the communications channel that serves a single-line business customer's service address. For the purpose of this definition, a single-line business line is one to which multi- line hunting, trunking, or other special capabilities do not apply.

(3) Eligible line--A residential line and a single-line business line over which an ETP provides the service supported by the THCUSP through its own facilities, purchase of unbundled network elements (UNEs), or a combination of its own facilities and purchase of UNEs.

(4) Eligible telecommunications provider (ETP)--A telecommunications provider designated by the commission pursuant to §26.417 of this title (relating to Designation as Eligible Telecommunications Providers to Receive Texas Universal Service Funds (TUSF)).

(5) Residential line--The telecommunications facilities providing the communications channel that serves a residential customer's service address. For the purpose of this definition, a residential line is one to which multi-line hunting, trunking, or other special capabilities do not apply.

(c) Application. This section applies to telecommunications providers that have been designated ETPs by the commission pursuant to §26.417 of this title.

(d) Service to be supported by the THCUSP. The THCUSP shall support basic local telecommunications services provided by an ETP in high cost rural areas of the state and is limited to those services carried on all flat rate residential lines and the first five flat rate single-line business lines at a business customer's location. Local measured residential service, if chosen by the customer and offered by the ETP, shall also be supported.

(1) Initial determination of the definition of basic local telecommunications service. Basic local telecommunications service shall consist of the following:

(A) flat rate, single party residential and business local exchange telephone service, including primary directory listings;

(B) tone dialing service;

(C) access to operator services;

(D) access to directory assistance services;

(E) access to 911 service where provided by a local authority;

(F) telecommunications relay service;

(G) the ability to report service problems seven days a week;

(H) availability of an annual local directory;

(I) access to toll services; and

(J) lifeline and tel-assistance services.

(2) Subsequent determinations.

(A) Timing of subsequent determinations.

(i) The definition of the services to be supported by the THCUSP shall be reviewed by the commission every three years from September 1, 1999.

(ii) The commission may initiate a review of the definition of the services to be supported on its own motion at any time.

(B) Criteria to be considered in subsequent determinations. In evaluating whether services should be added to or deleted from the list of supported services, the commission may consider the following criteria:

(i) the service is essential for participation in society;

(ii) a substantial majority, 75% of residential customers, subscribe to the service;

(iii) the benefits of adding the service outweigh the costs; and

(iv) the availability of the service, or subscription levels, would not increase without universal service support.

(e) Criteria for determining amount of support under THCUSP. The TUSF administrator shall disburse monthly support payments to ETPs qualified to receive support pursuant to this section. The amount of support available to each ETP shall be calculated using the base support amount available as provided under paragraph (1) of this subsection and as adjusted by the requirements of paragraph (3) of this subsection.

(1) Determining base support amount available to ETPs. The monthly per-line support amount available to each ETP shall be determined by comparing the forward-looking economic cost, computed pursuant to subparagraph (A) of this paragraph, to the applicable benchmark as determined pursuant to subparagraph (B) of this paragraph. The monthly base support amount is the sum of the monthly per-line support amounts for each eligible line served by the ETP, as required by subparagraph (C) of this paragraph.

(A) Calculating the forward-looking economic cost of service. The monthly cost per-line of providing the basic local telecommunications services and other services included in the benchmark shall be calculated using a forward-looking economic cost methodology.

(B) Determination of the benchmark. The commission shall establish two benchmarks for the state, one for residential service and one for single-line business service. The benchmarks for both residential and single-line businesses will be calculated using the statewide average revenue per line as described in clause (i) and (ii) of this subparagraph for all ETPs participating in the THCUSP.

(i) Residential revenues per line are the sum of the residential revenues generated by basic and discretionary local services, as well as a reasonable portion of toll and access services, for the year ending December 31, 1997, divided by the average number of residential lines served for the same period, divided by 12.

(ii) Business revenues per line are the sum of the business revenues generated by basic and discretionary local services for single- line business lines, as well as a reasonable portion of toll and access services for the year ending December 31, 1997, divided by the average number of single-line business lines served for the same period, divided by 12.

(C) Support under the THCUSP is portable with the consumer. An ETP shall receive support for residential and the first five single-line business lines at the business customer's location that it is serving over eligible lines in such ETP's THCUSP service area.

(2) Proceedings to determine THCUSP base support.

(A) Timing of determinations.

(i) The commission shall review the forward-looking cost methodology, the benchmark levels, and/or the base support amounts every three years from September 1, 1999.

(ii) The commission may initiate a review of the forward-looking cost methodology, the benchmark levels, and/or the base support amounts on its own motion at any time.

(B) Criteria to be considered in determinations. In considering the need to make appropriate adjustments to the forward-looking cost methodology, the benchmark levels, and/or the base support amount, the commission may consider current retail rates and revenues for basic local service, growth patterns, and income levels in low-density areas.

(3) Calculating amount of THCUSP support payments to individual ETPs. After the monthly base support amount is determined, the TUSF administrator shall make the following adjustments each month in order to determine the actual support payment that each ETP may receive each month.

(A) Access revenues adjustment. If an ETP is an ILEC that has not reduced its rates pursuant to §26.417 of this title, the base support amount that such ETP is eligible to receive shall be decreased by such ETP's carrier common line (CCL), residual interconnection charge (RIC), and toll revenues for the month.

(B) Adjustment for federal USF support. The base support amount an ETP is eligible to receive shall be decreased by the amount of federal universal service high cost support received by the ETP.

(C) Adjustment for service provided solely or partially through the purchase of unbundled network elements (UNEs). If an ETP provides supported services over an eligible line solely or partially through the purchase of UNEs, the THCUSP support for such eligible line may be allocated between the ETP providing service to the end user and the ETP providing the UNEs according to the methods outlined below.

(i) Solely through UNEs.

(I) USF cost > (UNE rate + retail cost additive (R)) >revenue benchmark (RB). USF support should be explicitly shared between the ETP serving the end user and the ILEC selling the UNEs in the instance in which the area-specific USF cost/line exceeds the sum of (combined UNE rate/line + R), and the latter exceeds the RB. Specifically, the ILEC would receive the difference between USF cost and (UNE rate + R), while the ETP would receive the difference between (UNE rate + R) and RB. Splitting the USF support payment in this way allows both the ILEC and the ETP to recover, on average, the costs of serving the subscriber at rates consistent with the benchmark. Moreover, this solution is competitively neutral in an additional respect: the ILEC, as the carrier of last resort (COLR), is indifferent between directly serving the average end user and indirectly doing so through the sale of UNEs to a competing ETP. Also, facilities- based competition is encouraged only if it is economic, i.e., reflective of real cost advantages in serving the customer; or

(II) USF cost > RB > (UNE rate + R). The ILEC would receive the difference between USF cost and RB. In this case, where USF cost > RB > (UNE rate + R), giving (USF cost - RB) to the ILEC is necessary to diminish the undue incentive for the ETP to provide service through UNE resale, and to lessen the harm done to the ILEC in such a situation. Allowing the ILEC to recover (USF cost-RB) would minimize financial harm to the ILEC; or

(III) (UNE rate + R)> USF cost > RB. The ETP would receive the difference between USF cost and RB. Where (UNE rate + R)> USF cost > RB, giving (USF cost - RB) to the ETP is necessary to diminish the undue incentive for the ETP not to serve the end user by means of UNE resale. Allowing the ETP to recover (USF cost - RB) would minimize financial harm to the ETP.

(ii) Partially through UNEs. For the partial-provision scenario, THCUSP support shall be shared between the ETP and the ILEC based on the percentage of total per-line cost that is self- provisioned by the ETP. Cost-category percentages for each wire center shall be derived by adding a retail cost additive and the HAI model costs for five UNEs (loop, line port, end- office usage, signaling, and transport). The ETP's retail cost additive shall be derived by multiplying the ILEC-specific wholesale discount percentage by the appropriate (residential or business) revenue benchmark.

(f) Reporting requirements. An ETP eligible to receive support pursuant to this section shall report the following information to the commission or the TUSF administrator.

(1) Monthly reporting requirements. An ETP shall report the following to the TUSF administrator on a monthly basis:

(A) information regarding the access lines on the ETP's network including:

(i) the total number of access lines on the ETP's network,

(ii) the total number of access lines sold as UNEs,

(iii) the total number of access lines sold for total service resale,

(iv) the total number of access lines serving end use customers, and

(v) the total number of eligible lines for which the ETP seeks TUSF support;

(B) the rate that the ETP is charging for residential and single-line business customers for the services described in subsection (d) of this section; and

(C) a calculation of the base support computed in accordance with the requirements of subsection (e)(1) of this section showing the effects of the adjustments required by subsection (e)(3) of this section.

(2) Annual reporting requirements. An ETP shall report annually to the TUSF administrator that it is qualified to participate in the THCUSP.

(3) Other reporting requirements. An ETP shall report any other information that is required by the commission or the TUSF administrator, including any information necessary to assess contributions to and disbursements from the TUSF.

(g) Review of THCUSP after implementation of federal universal service support. The commission shall initiate a project to review the THCUSP within 90 days of the Federal Communications Commission's adoption of an order implementing new or amended federal universal service support rules for rural, insular, and high cost areas.

§26.417. Designation as Eligible Telecommunications Providers to Receive Texas Universal Service Funds (TUSF).

(a) Purpose. This section provides the requirements for the commission to designate telecommunications providers as eligible telecommunications providers (ETPs) to receive funds from the Texas Universal Service Fund (TUSF) under §26.403 of this title (relating to the Texas High Cost Universal Service Plan (THCUSP)) and §26.404 of this title (relating to the Small and Rural Incumbent Local Exchange Company (ILEC) Universal Service Plan). Only telecommunications providers designated by the commission as ETPs shall qualify to receive universal service support under these programs.

(b) Requirements for establishing ETP service areas.

(1) THCUSP service area. THCUSP service area shall be based upon wire centers (WCs) or other geographic area as determined appropriate by the commission. A telecommunications provider may be designated an ETP for any or all WCs that are wholly or partially contained within its certificated service area. An ETP must serve an entire WC, or other geographic area as determined appropriate by the commission, unless its certificated service area does not encompass the entire WC, or other geographic area as determined appropriate by the commission.

(2) Small and Rural ILEC Universal Service Plan service area. A Small and Rural ILEC Universal Service Plan service area for an ETP serving in a small or rural ILEC's territory shall include the entire study area of such small or rural ILEC.

(c) Criteria for designation of ETPs.

(1) Telecommunications providers. A telecommunications provider, as defined in the Public Utility Regulatory Act (PURA) §51.002(10), shall be eligible to receive TUSF support pursuant to §26.403 or §26.404 of this title in each service area for which it seeks ETP designation if it meets the following requirements:

(A) the telecommunications provider has been designated an eligible telecommunications carrier, pursuant to §26.418 of this title (relating to the Designation of Common Carriers as Eligible Telecommunications Carriers to Receive Federal Universal Service Funds), and provides the federally designated services to customers in order to receive federal universal service support;

(B) the telecommunications provider defines its ETP service area pursuant to subsection (b) of this section and assumes the obligation to offer any customer in its ETP service area basic local telecommunications services, as defined in §26.403 of this title, at a rate not to exceed 150% of the ILEC's tariffed rate;

(C) the telecommunications provider offers basic local telecommunications services using either its own facilities, purchased unbundled network elements (UNEs), or a combination of its own facilities, purchased UNEs, and resale of another carrier's services;

(D) the telecommunications provider renders continuous and adequate service within the area or areas, for which the commission has designated it an ETP, in compliance with the quality of service standards defined in §26.52 of this title (relating to Emergency Operations), §26.53 of this title (relating to Inspections and Tests), and §26.54 of this title (relating to Service Objectives and Performance Benchmarks);

(E) the telecommunications provider offers services in compliance with §26.412 of this title (relating to Lifeline Service and Link Up Service Programs) and §26.413 of this title (relating to Tel-Assistance Service); and

(F) the telecommunications provider advertises the availability of, and charges for, supported services using media of general distribution.

(2) ILECs. If the telecommunications provider is an ILEC, as defined in PURA §51.002(10), it shall be eligible to receive TUSF support pursuant to §26.403 of this title in each service area for which it seeks ETP designation if it meets the requirements of paragraph (1) of this subsection and the following requirements:

(A) If the ILEC is regulated pursuant to the Public Utility Regulatory Act (PURA) Chapter 58 or 59 it shall either:

(i) reduce rates for services determined appropriate by the commission to an amount equal to its THCUSP support amount; or

(ii) provide a statement that it agrees to a reduction of its THCUSP support amount equal to its CCL, RIC and intraLATA toll revenues.

(B) If the ILEC is not regulated pursuant to PURA Chapter 58 or 59 it shall reduce its rates for services determined appropriate by the commission by an amount equal to its THCUSP support amount.

(C) Any reductions in switched access service rates for ILECs with more than 125,000 access lines in service in this state on December 31, 1998, that are made in accordance with this section shall be proportional, based on equivalent minutes of use, to reductions in intraLATA toll rates, and those reductions shall be offset by equal disbursements from the universal service fund under PURA §56.021(1).

(d) Designation of more than one ETP.

(1) In areas not served by small or rural ILECs, as defined in §26.404(b) of this title, the commission may designate, upon application, more than one ETP in an ETP service area so long as each additional provider meets the requirements of subsection (c) of this section.

(2) In areas served by small or rural ILECs as defined in §26.404(b) of this title, the commission may designate additional ETPs if the commission finds that the designation is in the public interest.

(e) Proceedings to designate telecommunications providers as ETPs.

(1) At any time, a telecommunications provider may seek commission approval to be designated an ETP for a requested service area.

(2) In order to receive support under §26.403 or §26.404 of this title for exchanges purchased from an unaffiliated provider, the acquiring ETP shall file an application, within 30 days after the date of the purchase, to amend its ETP service area to include those geographic areas in the purchased exchanges that are eligible for support.

(3) If an ETP receiving support under §26.403 or §26.404 of this title sells an exchange to an unaffiliated provider, it shall file an application, within 30 days after the date of the sale, to amend its ETP designation to exclude, from its designated service area, those exchanges for which it was receiving support.

(f) Requirements for application for ETP designation and commission processing of application.

(1) Requirements for notice and contents of application for ETP designation.

(A) Notice of application. Notice shall be published in the *Texas Register*. The presiding officer may require additional notice. Unless otherwise required by the presiding officer or by law, the notice shall include at a minimum a description of the service area for which the applicant seeks designation, the proposed effective date of the designation, and the following language: "Persons who wish to comment on this application should notify the Public Utility Commission by (specified date, ten days before the proposed effective date). Requests for further information should be mailed to the Public Utility Commission of Texas, P.O. Box 13326, Austin, Texas 78711- 3326, or you may call the Public Utility Commission's Office of Customer Protection 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 (800) 735-2989 to reach the commission's toll free number (888) 782- 8477."

(B) Contents of application. A telecommunications provider seeking to be designated as an ETP for a high cost service area in this state shall file with the commission an application complying with the requirements of this section. In addition to copies required by other commission rules, one copy of the application shall be delivered to the commission staff and one copy shall be delivered to the Office of Public Utility Counsel.

(i) Telecommunications providers. The application shall:

(I) show that the applicant is a telecommunications provider as defined in PURA §51.002(10) ;

(II) show that the applicant has been designated by the commission as a telecommunications provider eligible for federal universal service support and show that the applicant offers federally supported services to customers pursuant to the terms of 47 United States Code §214(e) (relating to Provision of Universal Service) in order to receive federal universal service support;

(III) specify the THCUSP or small and rural ILEC service area in which the applicant proposes to be an ETP, show that the applicant offers each of the designated services, as defined in §26.403 of this title, throughout the THCUSP or small and rural ILEC service area for which it seeks an ETP designation, and show that the applicant assumes the obligation to offer the services, as defined in §26.403 of this title, to any customer in the THCUSP or small and rural ILEC service area for which it seeks ETP designation;

(IV) show that the applicant does not offer the designated services, as defined in §26.403 of this title, solely through total service resale;

(V) show that the applicant renders continuous and adequate service within the area or areas, for which it seeks designation as an ETP, in compliance with the quality of service standards defined in §§26.52, 26.53, and 26.54 of this title;

(VI) show that the applicant offers Lifeline, Link Up, and Tel- Assistance services in compliance with §26.412 and §26.413 of this title;

(VII) show that the applicant advertises the availability of and charges for designated services, as defined in §26.403 of this title, using media of general distribution;

(VIII) a statement detailing the method and content of the notice the applicant has provided or intends to provide to the public regarding the application and a brief statement explaining why the notice proposal is reasonable and that the notice proposal complies with applicable law;

(IX) provide a copy of the text of the notice;

(X) state the proposed effective date of the designation; and

(XI) provide any other information which the applicant wants considered in connection with the commission's review of its application.

(ii) ILECs. If the applicant is an ILEC, in addition to the requirements of clause (i) of this subparagraph, the application shall show compliance with the requirements of subsection (c)(2) of this section.

(2) Commission processing of application.

(A) Administrative review. An application considered under this section may be reviewed administratively unless the telecommunications provider requests the application be docketed or the presiding officer, for good cause, determines at any point during the review that the application should be docketed.

(i) The effective date of the ETP designation shall be no earlier than 30 days after the filing date of the application or 30 days after notice is completed, whichever is later.

(ii) The application shall be examined for sufficiency. If the presiding officer concludes that material deficiencies exist in the application, the applicant shall be notified within ten working days of the filing date of the specific deficiency in its application. The earliest possible effective date of the application shall be no less than 30 days after the filing of a sufficient application with substantially complete information as required by the presiding officer. Thereafter, any deadlines shall be determined from the 30th day after the filing of the sufficient application and information or from the effective date if the presiding officer extends that date.

(iii) While the application is being administratively reviewed, the commission staff and the staff of the Office of Public Utility Counsel may submit requests for information to the applicant. Three copies of all answers to such requests for information shall be provided to the commission staff and the Office of Public Utility Counsel within ten days after receipt of the request by the applicant.

(iv) No later than 20 days after the filing date of the application or the completion of notice, whichever is later, interested persons may provide written comments or recommendations concerning the application to the commission staff. The commission staff shall and the Office of Public Utility Counsel may file with the presiding officer written comments or recommendations regarding the application.

(v) No later than 35 days after the proposed effective date of the application, the presiding officer shall issue an order approving, denying, or docketing the application.

(B) Approval or denial of application. The application shall be approved by the presiding officer if it meets the following requirements.

(i) The provision of service constitutes basic local telecommunications service as defined in §26.403 of this title.

(ii) Notice was provided as required by this section.

(iii) The applicant has met the requirements contained in subsection (c) of this section.

(iv) The ETP designation is consistent with the public interest in a technologically advanced telecommunications system and consistent with the preservation of universal service.

(C) Docketing. If, based on the administrative review, the presiding officer determines that one or more of the requirements have not been met, the presiding officer shall docket the application. The requirements of subsection (c) of this section may not be waived.

(D) Review of the application after docketing. If the application is docketed, the effective date of the application shall be automatically suspended to a date 120 days after the applicant has filed all of its direct testimony and exhibits, or 155 days after the proposed effective date, whichever is later. Three copies of all answers to requests for information shall be filed with the commission within ten days after receipt of the request. Affected persons may move to intervene in the docket, and a hearing on the merits shall be scheduled. A hearing on the merits shall be limited to issues of eligibility. The application shall be processed in accordance with the commission's rules applicable to docketed cases.

(g) Relinquishment of ETP designation. A telecommunications provider may seek to relinquish its ETP designation.

(1) Area served by more than one ETP. The commission shall permit a telecommunications provider to relinquish its ETP designation in any area served by more than one ETP upon:

(A) written notification not less than 90 days prior to the proposed effective date of the relinquishment;

(B) determination by the commission that the remaining ETP or ETPs can provide basic local service to the relinquishing telecommunications provider's customers; and

(C) determination by the commission that sufficient notice of relinquishment has been provided to permit the purchase or construction of adequate facilities by any remaining ETP or ETPs.

(2) Area where the relinquishing telecommunications provider is the sole ETP. In areas where the relinquishing telecommunications provider is the only ETP, the commission may permit it to relinquish its ETP designation upon:

(A) written notification that the telecommunications provider seeks to relinquish its ETP designation; and

(B) commission designation of a new ETP for the service area or areas through the auction procedure provided in subsection (h) of this section.

(3) Relinquishment for non-compliance. The TUSF administrator shall notify the commission when the TUSF administrator is aware that an ETP is not in compliance with the requirements of subsection (c) of this section.

(A) The commission shall revoke the ETP designation of any telecommunications provider determined not to be in compliance with subsection (c) of this section.

(B) The commission may revoke a portion of the ETP designation of any telecommunications provider determined not to be in compliance with the quality of service standards defined in §26.52 of this title (relating to Emergency Operations), §26.53 of this title (relating to Inspections and Tests), and §26.54 of this title (relating to Service Objectives and Performance Benchmarks) in that portion of its ETP service area.

(h) Auction procedure for replacing the sole ETP in an area. In areas where a telecommunications provider is the sole ETP and seeks to relinquish its ETP designation, the commission shall initiate an auction procedure to designate another ETP. The auction procedure will use a competitive, sealed bid, single-round process to select a telecommunications provider meeting the requirements of subsection (f)(1) of this section that will provide basic local telecommunications service at the lowest cost.

(1) Announcement of auction. Within 30 days of receiving a request from the last ETP in a service area to relinquish its designation, the commission shall provide notice in the *Texas Register* of the auction. The announcement shall at minimum detail the geographic location of the service area, the total number of access lines served, the forward-looking economic cost computed pursuant to §26.403 of this title, of providing basic local telecommunications service and the other services included in the benchmark calculation, existing tariffed rates, bidding deadlines, and bidding procedure.

(2) Bidding procedure. Bids must be received by the TUSF administrator not later than 60 days from the date of publication in the *Texas Register*.

(A) Every bid must contain:

(i) the level of assistance per line that the bidder would need to provide all services supported by universal service mechanisms;

(ii) information to substantiate that the bidder meets the eligibility requirements in subsection (c)(1) of this section; and

(iii) information to substantiate that the bidder has the ability to serve the relinquishing ETP's customers.

(B) The TUSF administrator shall collect all bids and within 30 days of the close of the bidding period request that the commission approve the TUSF administrator's selection of the successful bidder.

(C) The commission may designate the lowest qualified bidder as the ETP for the affected service area or areas.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on September 14, 2001.

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Rhonda G. Dempsey
Rules Coordinator
Public Utility Commission of Texas
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Proposal publication date: March 30, 2001
For further information, please call: (512) 936-7308

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TITLE 19. EDUCATION

PART 2. TEXAS EDUCATION AGENCY

CHAPTER 100. CHARTERS

SUBCHAPTER A. OPEN-ENROLLMENT CHARTER SCHOOLS

19 TAC §100.1

The Texas Education Agency (TEA) adopts an amendment to §100.1, concerning application, selection, and amendment procedures and criteria for open-enrollment charter schools, with changes to the proposed text as published in the June 1, 2001, issue of the *Texas Register* (26 TexReg 3893). The section specifies provisions relating to the application form for submission by applicants seeking a charter to operate an open-enrollment charter school; the submission, withdrawal, and review and scoring of an application; applicant interviews; criteria to be considered and additional conditions; and the charter contract and revision of terms.

Texas Education Code (TEC), §7.102(c)(9) and §12.110, requires the State Board of Education (SBOE) to adopt application and selection procedures and criteria for granting open-enrollment charters. Since January 1, 2001, §100.1 has included a provision that prohibits communication during the application phase between a member of the SBOE or a member of an external application review panel and an applicant for an open-enrollment charter school. The no-contact provision requires the SBOE to reject an application for violation of the provision if a material violation is found. The adopted amendment to §100.1 changes the no-contact provision to allow contact between charter applicants and SBOE members during the application period, but still prohibits contact between charter applicants and members of an external review panel during that period. The adopted amendment also requires majority, as opposed to unanimous, SBOE committee recommendation for granting approval to charters with student enrollment lower than 50 students.

House Bill (HB) 6, 77th Texas Legislature, 2001, was enacted subsequent to the amendment to §100.1 being published as proposed. HB 6 amended TEC, §§12.101, 12.114, and 12.116, and transferred authority for open-enrollment charter school revisions and renewals from the SBOE to the commissioner of education. In response to HB 6, the following additional changes have been made to delete references to charter renewal and amendment procedures.

Language was deleted in the section title to remove reference to amendment procedures and criteria.

Language was deleted in subsection (h) to remove reference to no-contact provisions for a renewal application.

Language was deleted in subsection (i) to remove reference to minimum enrollment criteria for the renewal and amendment of an existing charter.

Subsection (l) was deleted to remove the procedures for the SBOE to approve amendments to the terms of an open-enrollment charter.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Texas Education Code (TEC), §§7.102(c)(9), 12.101, 12.110, 12.114, and 12.116, which authorizes the SBOE to adopt application and selection procedures and criteria for granting open-enrollment charters. TEC, §12.114, and §12.116, were amended by House Bill 6, 77th Texas Legislature, 2001, transferring authority for amendments and renewals from the SBOE to the commissioner of education.

§100.1. Application and Selection Procedures and Criteria.

(a) Prior to each selection cycle, the State Board of Education (SBOE) shall adopt an application form for submission by applicants seeking a charter to operate an open-enrollment charter school. The application form shall address the content requirements specified in Texas Education Code (TEC), §12.111, and contain the following:

(1) the timeline for selection;

(2) scoring criteria and procedures for use by the review panel appointed under subsection (d) of this section;

(3) selection criteria, including the minimum score necessary for an application to be eligible for selection; and

(4) the earliest date an open-enrollment charter school selected in the cycle may open.

(b) The Texas Education Agency (TEA) shall review applications submitted under this section. If an application does not contain all required information and documentation, the TEA may notify the applicant of deficiencies. Further, the TEA may notify the applicant of substantive deviations from state and federal requirements affecting the operation of open-enrollment charter schools or the applicant's eligibility to be granted a charter. The TEA may establish procedures and schedules for responses to such notifications. Failure of the TEA to identify any deficiency or substantive deviation, or notify an applicant thereof, does not constitute a waiver of the requirement and does not bind the SBOE.

(c) Upon written notice to the TEA, an applicant may withdraw an application.

(d) Eligible applications shall be reviewed and scored by an appointed review panel. Two-thirds of the panel members shall be appointed by the SBOE. One-third of the panel members shall be appointed by the commissioner of education. The panel shall review and score applications in accordance with the procedures and criteria established in the application form. Review panel members shall not discuss applications with or accept meals, entertainment, gifts, or gratuities in any form from any person or organization with an interest in the results of the selection process for open-enrollment charters. Members of the review panel shall disclose to the TEA immediately upon discovery any past or present relationship with an open-enrollment charter applicant, including any current or prospective employee, agent, officer, or director of the sponsoring entity, an affiliated entity, or other party with an interest in the selection of the application.

(e) Applications that are not scored at or above the minimum score established in the application form are not eligible for SBOE selection during that cycle. The SBOE may at its sole discretion decline to grant an open-enrollment charter to an applicant whose application was scored at or above the minimum score. No recommendation, ranking, or other type of endorsement by a member or members of the review panel is binding on the SBOE, except as provided in this section.

(f) The SBOE or its designee(s) shall interview applicants whose applications received the minimum score established in the application form. The SBOE may specify individuals required to attend the interview and may require the submission of additional information and documentation prior or subsequent to an interview.

(g) The SBOE may consider criteria that include, but are not limited to, the following when determining whether to grant an open-enrollment charter:

(1) indications that the charter school will improve student performance;

(2) innovation evident in the program(s) proposed for the charter school;

(3) impact statements from any school district whose enrollment is likely to be affected by the proposed charter school, including information relating to any financial difficulty that a loss in enrollment may have on a district;

(4) evidence of parental and community support for the proposed charter school;

(5) the qualifications, backgrounds, and histories of individuals and entities who will be involved in the management and educational leadership of the proposed charter school;

(6) the history of the sponsoring entity of the proposed charter school, as defined in the application form;

(7) indications that the governance structure proposed for the charter school is conducive to sound fiscal and administrative practices; and

(8) indications that the proposed charter school would expand the variety of charter schools in operation with respect to the following:

(A) representation in urban, suburban, and rural communities;

(B) instructional settings;

(C) types of eligible entities;

(D) types of innovative programs;

(E) student populations and programs; and

(F) geographic regions.

(h) An applicant for an open-enrollment charter shall not communicate with a member of an external application review panel appointed by the SBOE concerning a charter school application beginning on the date the panel member is notified of appointment to serve on a specific review cycle and ending when the SBOE takes final action awarding charters under that application. On finding a material violation of the no-contact period, the SBOE shall reject the application or applications affected.

(i) The SBOE may consider minimum enrollment criteria.

(1) Each application for an open-enrollment charter shall state a minimum student enrollment of no fewer than 50 students. The SBOE may grant a lower minimum student enrollment only on majority

recommendation of members voting from the committee with jurisdiction over charters.

(2) The SBOE may grant a lower minimum student enrollment in accordance with paragraph (1) of this subsection upon finding that either the nature of the charter warrants a minimum enrollment lower than 50 students.

(j) The SBOE may grant an open-enrollment charter subject to additional conditions not contained in the application and may require fulfillment of such conditions before the charter school is permitted to operate.

(k) An open-enrollment charter shall be in the form and substance of a written contract signed by the chair of the SBOE and the chief operating officer of the school. The chief operating officer of the school shall mean the chief executive officer of the open enrollment charter holder under TEC, §12.101.

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 September 17, 2001.

TRD-200105545
Criss Cloudt
Associate Commissioner for Accountability Reporting and Research
Texas Education Agency
Effective date: October 7, 2001
Proposal publication date: June 1, 2001
For further information, please call: (512) 463-9701

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TITLE 22. EXAMINING BOARDS

PART 23. TEXAS REAL ESTATE COMMISSION

CHAPTER 535. PROVISIONS OF THE REAL ESTATE LICENSE ACT

SUBCHAPTER I. LICENSES

22 TAC §535.91, §535.92

The Texas Real Estate Commission (TREC) adopts amendments to §535.91, concerning renewal applications and §535.92, concerning satisfaction of mandatory continuing education requirements by real estate licensees, without changes to the proposed text as published in the June 29, 2001, issue of the *Texas Register* (26 TexReg 4823).

The amendment to §535.91 requires each licensee to provide a permanent mailing address to TREC and report any change in that address within 10 days after the change occurs. No fee is charged for changing the mailing address. Requiring each licensee to provide a permanent mailing address permits the licensee to select the address that is best suited to delivery of official communications from TREC, and adoption of the amendment is necessary to enable TREC to communicate effectively with its licensees. The amendment also requires TREC to mail license renewal notices for brokers and inactive licensees to the broker or licensee's permanent mailing address. If the licensee is an active salesperson, the renewal notice will be mailed to the permanent mailing address of the salesperson's sponsoring broker, ensuring that the broker is aware of the need for renewal of the sponsored salesperson's license. In the event a licensee fails to provide a permanent mailing address, the last known mailing address of the licensee will be presumed to be the permanent mailing address for the licensee.

The amendment to §535.92 deletes provisions relating to mailing of the renewal notice which have been moved to §535.91.

No comments were received regarding the proposal.

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

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 September 14, 2001.

TRD-200105477
Mark A. Moseley
General Counsel
Texas Real Estate Commission
Effective date: October 4, 2001
Proposal publication date: June 29, 2001
For further information, please call: (512) 465-3900

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SUBCHAPTER R. REAL ESTATE INSPECTORS

22 TAC §§535.208, 535.210, 535.216

The Texas Real Estate Commission (TREC) adopts amendments to §535.208, concerning applications for a real estate inspector or professional inspector license, §535.208, concerning fees paid by inspectors, and §535.216, concerning inspector license renewals, without changes to the proposed text as published in the June 29, 2001, issue of the Texas Register (26 TexReg 4823).

The amendments to §535.208 and §535.210 were proposed in connection with the passage of House Bill 695 by the 77th Legislature (2001). House Bill 695 repeals a provision in Texas Civil Statutes, Article 6573a, under which a person whose previous inspector license has expired is assessed an additional fee when the person applies for another license. The new law also requires TREC to collect a fee not to exceed $20 when an inspector files a request for a new license certificate reflecting a change of name, return to active status, or change in sponsoring professional inspector.

The amendment to §535.208 adopts by reference two revised forms applicants use to obtain a license as a real estate inspector or professional inspector. The forms have been modified by deletion of language imposing an additional fee if the applicant previously held an inspector license within the year preceding the filing of the application.

The amendment to §535.210 sets the fee for requesting a license certificate due to change of name, return to active status, or change in sponsoring professional inspector at and increases

from $10 to $20 the fee for requesting a license due to a change of place of business or to replace a lost or destroyed license.

The amendment to §535.216 requires all inspectors to provide a permanent mailing address to TREC and report a change within 10 days after the change occurs. TREC will use the licensee's permanent mailing address as the address to which license renewal notices and other official correspondence is sent.

Adoption of these amendments is necessary for TREC to bring the sections into compliance with revised Texas Civil Statutes, Article 6573a, to make fees consistent for TREC's licensees and to facilitate communications between TREC and its licensees.

No comments were received regarding the proposal.

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

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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Proposal publication date: June 29, 2001
For further information, please call: (512) 465-3900

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SUBCHAPTER T. EASEMENT OR RIGHT-OF-WAY AGENTS

22 TAC §535.403

The Texas Real Estate Commission (TREC) adopts an amendment to §535.403, concerning renewals of registration for easement or right-of-way agents, without changes to the proposed text as published in the June 29, 2001, issue of the Texas Register (26 TexReg 4823). The amendment requires all registrants to provide a permanent mailing address to TREC and report a change within 10 days after the change occurs. There is no fee charged for reporting a change of mailing address. Adoption of the amendment is necessary for TREC to be able to communicate effectively with registrants. TREC will use the permanent mailing address provided by the registrant as the address to which registration renewal notices and other official correspondence are sent.

No comments were received regarding the proposal.

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

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 28. INSURANCE

PART 1. TEXAS DEPARTMENT OF INSURANCE

CHAPTER 21. TRADE PRACTICES

SUBCHAPTER T. SUBMISSION OF CLEAN CLAIMS

28 TAC §§21.2803 - 21.2807, 21.2809, 21.2811, 21.2815 - 21.2820

The Commissioner of Insurance adopts amendments to §§21.2803 - 21.2807, 21.2809, 21.2811, 21.2815, and new §§21.2816 - 21.2820 concerning the submission of clean claims to health maintenance organizations (HMOs) and insurers who issue preferred provider benefit plans (preferred provider carriers). Sections 21.2803, 21.2805, 21.2809, 21.2811, 21.2815, 21.2816, 21.2818 and 21.2819 are adopted with changes to the proposed text as published in the August 3, 2001 issue of the *Texas Register* (26 TexReg 5747). Sections 21.2804, 21.2806, 21.2807, 21.2817 and 21.2820 are adopted without changes and will not be republished.

The amendments and new sections are necessary to provide greater clarity and more specificity in prompt payment procedures and will more fully implement legislation enacted by the 76th Legislature in House Bill 610, as contained in Texas Insurance Code Articles 3.70-3C §3A and 20A.18B.

House Bill 610, which became effective on September 1, 1999, basically gives HMOs and preferred provider carriers 45 days to pay or deny, in whole or in part, "clean claims" submitted by contracted physicians and providers. In addition, an HMO or preferred provider carrier that acknowledges coverage but intends to audit a clean claim is required to pay 85% of the contracted rate within the statutory claims payment period. House Bill 610 gives the department the authority to determine, by rule, what constitutes a "clean claim." It further gives the department authority to adopt rules as necessary to implement the statutory requirements.

On December 17, 1999, the department proposed rules to provide definitions and procedures for determining and paying clean claims, which were adopted by order dated May 23, 2000. A revision to the sections concerning data elements and audit procedures was effective on February 14, 2001. In the original rule's adoption order, the department, in responding to comments on various sections of the rule, stated its intent to monitor complaints and acknowledged that further agency action could be necessary to further refine clean claims submission and payment procedures as contemplated in House Bill 610.

The department has noted a significant increase in the number of complaints received from physicians and providers involving delays in claims payment. These complaints, coupled with the department's continuing communication with the physician and provider community, as well as with HMOs and preferred provider carriers, indicate a need to further refine the rule to ensure that the original intent of House Bill 610--the timely and efficient payment of clean claims--is being implemented.

The Commissioner held a public hearing on the proposed sections on August 22, 2001, under Docket Number 2490, at the William P. Hobby Jr. State Office Building, 333 Guadalupe Street in Austin, Texas.

Changes have been made to the proposed sections as published; however, none of the changes introduce a new subject matter or affect additional persons other than those subject to the proposal as originally published. In response to comments, the following changes have been made to the proposed sections: The wording in §21.2803(c) and (d) was changed to identify information that is either contained in or in the process of being incorporated into a patient's medical or billing record maintained by the physician or provider. This change was made in response to comments from carriers who indicated that information may be readily available in the physician's or provider's office, but not yet incorporated into the patient's medical or billing record. The purpose of the proposed rule change was to limit the type of information being required as attachments or additional clean claim elements to information that is easily accessed by physicians or providers. The wording in §21.2805 was changed to include the language in §21.2804, which clarifies that a claim filed during the 60 day period following receipt of a disclosure of an additional clean claim element does not have to contain that required element. After the 60 day period, a claim must contain the required additional clean claim element in order to be considered "clean." Language has been added to §21.2809(e) to clarify that a carrier may seek a refund by chargeback or other method on a clean claim following the audit process if the carrier determines that it did not have liability on the claim. The wording in §21.2811 relating to disclosures of processing procedures was changed to clarify that disclosures made in contracts are not subject to the requirements of §21.2818. The proposed language in §21.2811(a) was deleted and new subsection (c) was added to clarify that disclosures and disclosure formats do not apply to disclosures contained in contracts. Based on the numerous and diverse comments received from physicians, providers, HMOs and preferred provider carriers, the proposed language of "greater of the" and "any" was removed from §21.2815. The department recognizes that further analysis of physician and provider penalty payments is needed to determine the best way to address the concerns of all parties. The wording in §21.2815 was modified to clarify that failure to pay "correctly" on a clean claim would be failing to pay the "correct amount" on a clean claim "in accordance with the contract." The department, when evaluating whether clean claims are paid accurately, will consider the contractual amount of the fee that is due for services identified in the claim. The department clarified in §21.2815 that denial of a clean claim for which payment should have been made, rather than denial of a valid clean claim, constitutes a violation. Changes made to §21.2816 allow for the submission of claims mail logs electronically and provide that a claim is presumed received on the third business day after the day the claim is mailed and the claims mail log is faxed or electronically submitted. The department added language to §21.2816 to clarify that the parties may agree by contract to establish procedures to create a rebuttable presumption of receipt of a claim. The following subsections were renumbered accordingly. The department recognizes that some HMOs' or preferred provider carriers' clearinghouses may generate a rejection of a claim, rather than a confirmation of receipt. A change was made to §21.2816(d) so that in those cases, the physician's or provider's clearinghouse shall provide the appropriate confirmation. Section 21.2816(e) was changed to reflect that claims faxed after the payor's normal business hours are presumed received on the following business day. Changes were made to §21.2816(g) to clarify that if a claims mail log is utilized by a physician or provider, the log must contain the information outlined in §21.2816(g). In addition, the department has added to §21.2816(g) the "claimant's federal tax identification number" and "designated address" as information which must be included on the claims mail log. Changes were made to §21.2818 to indicate that disclosure formats do not apply to disclosures made in contracts.

Section 21.2803, which sets out the elements of a clean claim, clarifies that while attachments and additional elements can be required as part of a clean claim, such requests by HMOs and preferred provider carriers for required attachments and additional clean claim elements must be for documents which are either contained in or in the process of being incorporated into a patient's medical or billing record maintained by the physician or provider.

Sections 21.2804, 21.2805 and 21.2806, which relate to required disclosures, further clarify that the disclosure of data elements, attachments, and additional clean claim elements must conform to the disclosure formats of §21.2818, unless such disclosure is made in a contract. The rules also clarify that an HMO or preferred provider carrier must give the 60 day disclosure of required data elements, attachments or additional clean claim elements, unless the disclosure is included in the contract between the HMO or preferred provider carrier and the physician or provider. The department has received many complaints from providers and physicians who received the disclosure pursuant to §21.2804 or §21.2805, but had claims rejected before the end of the 60 days for failing to include the attachment or additional clean claim element referenced in the disclosure. Claims filed after the 60 day period must include the required attachment or additional data element in order to be considered "clean." The amendments do not change the current practice, but further reinforce the language in §§21.2804, 21.2805 and 21.2806.

Section 21.2807 clarifies that the statutory claims payment period begins upon receipt of a clean claim at the address designated by the HMO or preferred provider carrier to receive claims. Regardless of whether the recipient of the claim is a delegated claims processor, or some other entity the HMO or preferred provider carrier designates, such as a clearinghouse or repricing company, receipt of the clean claim will begin the statutory claims payment period.

Section 21.2809 clarifies the scope of the audit process utilized by HMOs and preferred provider carriers by providing a specific time limitation of 180 days to complete the audit. The rule also provides that payments made to comply with the audit time limitations are not admissions of liability on a clean claim, which replaces a similar provision in the current rule. It also provides that an HMO or preferred provider carrier can continue to investigate clean claims past the audit time limitation to determine its liability on those claims and seek a refund, if appropriate.

Section 21.2811 states that the disclosure of information regarding processing procedures to physicians or providers must conform with the formats in §21.2818, unless the disclosure is contained in a contract between the HMO or preferred provider carrier and the physician or provider.

Section 21.2815 clarifies that if an HMO or preferred provider carrier fails to pay the correct amount on a clean claim in accordance with the contract or denies a clean claim for which payment should have been made, that failure is considered a violation of Article 20A.18B(c) or Article 3.70-3C §3A(c). By failing to pay the clean claim correctly or by denying a clean claim that should have been paid, the HMO or preferred provider carrier has failed to take any of the measures outlined in existing §21.2807 and §21.2809.

Section 21.2816, concerning date of claim receipt, clarifies how the physician or provider can demonstrate that a claim has been received by an HMO or preferred provider carrier. It also clarifies that parties may contract to establish procedures to create a rebuttable presumption for the date of claim receipt. Section 21.2816 provides a mechanism to establish a rebuttable presumption of the date of claim receipt and clarifies when the 45 day time period begins. For situations in which multiple claims are included in one mailing or hand delivery, and to provide notice of claims sent by regular mail service, §21.2816 outlines a method for either party to identify all individual claims sent in a single mailing or delivery. By specifying through procedures contained in §21.2816 when a claim is presumed to have been received by the HMO or preferred provider carrier, each party should be able to ensure that claims sent are also received, which will result in claims being acted on in the appropriate time frame. The section also identifies the information that must be included in a claims mail log, if a physician or provider chooses to maintain one, and includes an example form. The claims mail log may be faxed or electronically transmitted.

Section 21.2817 outlines statutory and regulatory provisions in Article 20A.18B, Article 3.70-3C §3A and §21.2809, which cannot be altered by contracts between the HMOs and preferred provider carriers and physicians and providers. The department has received reports that some contracts between physicians or providers and HMOs and preferred provider carriers include language which circumvents the intent of Article 20A.18B or Article 3.70-3C §3A by extending the 45 day time frame for paying clean claims or by limiting a physician's or provider's right to reasonable attorney's fees if the physician or provider resorts to the judicial system to obtain payment for their services.

Section 21.2818 clarifies that when a document containing a required disclosure, other than a contract, is sent by the HMO or preferred provider carrier to the physician or provider, the document must contain a heading that demonstrates that the document contains a disclosure. Section 21.2819 provides that the amendments and new sections apply to claims filed for nonconfinement services, treatment or supplies rendered on or after September 12, 2001 and to claims filed for services, treatments, or supplies for in-patient confinements in a hospital or other institution that began on or after September 12, 2001. Section 21.2820 provides for severability of the rule. The repeal of §21.2816 is published elsewhere in this issue of the *Texas Register*.

GENERAL

Many commenters expressed support for the proposed amendments and other commenters expressed support for certain sections. Numerous commenters acknowledged and applauded the department's attention to the various prompt pay issues, educational efforts and the creation of a Provider Ombudsman. Commenters suggested that both insurers and providers need to work together to solve the prompt pay problems. One commenter believed that the proposed amendments do not resolve the issues or problems. The commenter suggested that delays in payments are due to systemic problems of both insurers and providers, not intentional behavior/acts. The commenter expressed concerns that the proposed rules will increase tension and create additional problems between carriers and providers.

AGENCY RESPONSE: The department appreciates the commenters' support. The department encourages carriers and providers to work together to solve problems. The department recognizes that these rules do not address all issues relating to prompt payment of claims and strongly encourages cooperation between carriers and providers with regard to ongoing issues. The department does not agree that the rules will increase tension or create additional problems between carriers and providers. To the contrary, the department believes that both providers and carriers have reflected a desire to work together to address issues related to prompt payment of claims. The department is committed to working with both parties to address these issues. The department will continue its educational efforts, provide information on its website, and provide guidance and leadership as necessary to resolve prompt payment issues. The department also encourages providers and carriers to work together, with or without the department's presence, to develop web pages or other educational materials to educate each other regarding various issues. The department reminds the commenters that the statute does not provide an exception for noncompliance due to systemic problems.

Comment: A commenter recommended that TDI adopt a rule stating that the department will publish quarterly or semi-annual reports of justified versus unjustified provider complaints. The commenter also proposed that a rule be adopted allowing HMOs and preferred provider carriers to report patterns of claims filing errors. The commenter proposed language requiring the department to notify a physician or provider in writing when a pattern of errors was observed and educate the physician or provider regarding the patterns of errors. The proposed language by the commenter would also require the department to maintain a website link generally educating providers about commonly occurring claims filing errors.

AGENCY RESPONSE: Information regarding complaints is available to the public upon request pursuant to the Public Information Act. The department agrees with the commenter's request to periodically provide information regarding provider complaints, but does not need a rule to do so. The department will make the provider complaint data available on the department website in the very near future. Information from HMOs and preferred provider carriers (hereinafter referred to as carriers), regarding patterns of claims filing errors may be helpful to carriers and providers and may assist the department in ascertaining areas of the rule that may need clarification or amendment. The department welcomes the receipt of information collected by carriers which addresses patterns of claims filing errors, but declines to adopt a rule requiring carriers to report such information. The department disagrees that a rule is necessary requiring the department to maintain a website link educating physicians and providers about commonly

occurring claims filing errors. The department has conducted workshops and has had extensive contact with representatives from carriers as well as physicians and providers and has gathered and distributed information on claims filing practices. In addition, the department has established a website to provide information to physicians and providers, which may in the future provide more detailed information on claims filing errors. The department is strongly committed to continuing educational efforts for providers and carriers on all the issues related to clean claims and prompt pay.

Comment: Many commenters suggested that insurers be required to provide to physicians and providers the logic for bundling, and some commenters suggested that carriers not be allowed to change the information for a specified period of time and then only with notice to the physician or provider. A few commenters cited downcoding services and bundling codes as examples of failures to pay correctly, saying that these practices affect the patient-physician relationship. Several commenters recommended that plans disclose their bundling logic and other coding requirements to the physician or provider 30 days after it is requested; provide notices of changes in fee schedules to be received 90 days before the date of change; and allow the physician or provider to terminate the contract 30 days after receiving the information. One commenter said that a carrier must be required to disclose its fee schedules, downcoding, and bundling procedures in order for a physician or provider, as well as the department, to determine if a claim is paid correctly. The commenter believed that these practices are already addressed in statute (Article 20A.18B and Article 3.70-3C), and the department should clarify their legality by rule.

AGENCY RESPONSE: The department acknowledges the commenters' concerns. However, the department believes any revision of the rule to include bundling and downcoding practices would be a substantive change which would require republication of the proposed rule. If the rule is republished, then the comment period is reopened and this will result in prolonging the implementation date of the rules. The department will be studying downcoding, bundling of services, and fee schedule disclosures and will continue to monitor complaints for possible future action.

It is the department's position that Article 20A.18B(i) and Article 3.70-3C §3A(i), relating to claims processing policies and procedures, do not require carriers to disclose bundling and downcoding procedures. The policies and procedures identified in these statutes are those necessary for notifying physicians and providers of the information needed to file a clean claim and when the physician or provider can expect to be paid, and do not include bundling or downcoding disclosures.

Comment: Two commenters requested deadlines for the filing of claims. One commenter proposed the following: "No HMO or preferred provider carrier shall be in violation of §21.2815, §21.2807 or §21.2809 with respect to any clean claim which is initially submitted more than ninety (90) days after the service is rendered by the provider or the physician." One commenter suggested a 180 day deadline. Another commenter suggested that a provider who does not submit the claim within the specified time limits would forfeit the right to payment of the claim, and also recommended that the time frame for submission of a claim by a provider be extended by contract.

AGENCY RESPONSE: The department acknowledges the suggestions but declines to address setting a deadline for the filing of claims. The department believes that most contracts between physicians or providers and carriers contain provisions stating when a claim must be submitted after a service has been provided. The rule does not address the payment of clean claims submitted after the contractual claim filing deadline has expired.

Comment: Several commenters expressed concern over the substantial outstanding accounts receivable which they are currently experiencing for payments due for clean claims over 45 days.

AGENCY RESPONSE: The department recognizes the commenters' concerns; however, the department would like to clarify that not all claims are subject to the prompt payment requirements outlined in the statute or rules. For example, the department does not have jurisdiction over claims involving self-funded ERISA plans; workers' compensation; self-funded government, school and church health plans, including self-funded plans for the Employees Retirement System of Texas, the Teacher Retirement System of Texas, the University of Texas and the Texas Association of School Boards; out-of-state insureds; Medicaid/Medicare; federal employee plans; and TRICARE Standard (CHAMPUS). If the claim on which the complaint is based is one for which the department has jurisdiction, the commenters should file a complaint with the department.

Comment: One commenter stated that physician/carrier contracts are "full of legal terms and clauses" and that most physicians do not have the resources to adequately review contracts. The commenter requested that standardized language in contracts like those used in real estate transactions be required.

AGENCY RESPONSE: The department recognizes that contracts between physicians or providers and carriers can be complex. The department encourages all parties to carefully review contract terms to ensure that the parties are in full agreement with the terms, and seek appropriate counsel when necessary. Because each carrier and physician/provider relationship may have unique circumstances which would need to be addressed in the contract, the department does not believe that a standardized contract would be feasible. If either party is unsure of the meaning of a contract provision, the department encourages seeking clarification before proceeding.

Comment: A commenter noted in the preamble to the proposed rules, that the department did not identify the period of time in which it had noticed an increase in complaints regarding a delay in payment. The commenter questioned whether the complaints mentioned are under the requirements of House Bill 610.

AGENCY RESPONSE: While the preamble to the proposed rule amendments did not identify the time period in which the department noticed an increase in complaints, the department clarifies that such time period was subsequent to House Bill 610 and the adoption and effective date of the original clean claim rules.

Comment: A commenter stated that the proposed rule did not consider physician costs in the calculation of costs for small and micro-businesses.

AGENCY RESPONSE: In the preamble to the proposed rule, the department analyzed the costs and benefits of its proposal. With regard to physicians and providers, the department concluded that the proposed rule did not require that the mail log be maintained and that, in any event, it believed most physicians' and providers' practices currently had a method for keeping track of claims sent by mail or hand delivery. Accordingly, no costs were assessed for physicians and providers, including any that would qualify as small or micro-businesses. This analysis is still correct,

as physicians and providers are not required to comply with this portion of the rule, which is completely optional. The proposed rule's cost benefit analysis also stated that any other costs of other parts of the rule were the result of the legislative enactment of House Bill 610 rather than as a result of the adoption, enforcement or administration of the proposed rule amendments.

Comment: Some commenters stated that duplicate claims clog the system, are costly, and delay claims payment. Commenters requested that physicians be prohibited from submitting duplicate claims before the 45th day after a claim is initially submitted. A commenter proposed language addressing duplicative claims and suggested that denials of duplicative claims within the statutory time frame for the original claim not be considered by the department in determining whether an HMO or preferred provider carrier has complied with these rules. A commenter suggested changes which would prohibit a provider from submitting a duplicate claim unless requested to do so by the carrier.

AGENCY RESPONSE: The department recognizes concerns regarding duplicate claims filing, and discourages physicians and providers from resubmitting claims before the end of the statutory claims payment period. The department will continue to monitor complaints regarding duplicate claims and may address this issue in the future.

Comment: One commenter requested that in future rulemaking the department address verification or preauthorization of proposed health care services, and the retrospective denial of medically necessary services. The commenter also asked that these rules be forwarded to federal and state agencies for consideration of their application to both Medicare and Medicaid HMOs.

AGENCY RESPONSE: The department appreciates the comment and will monitor and evaluate for possible future action.

Comment: A commenter stated that the proposed rules should be changed to recognize the distinction between providers and individual market carriers, indicating that the proposed rules should not apply to insurers in the individual market. Two commenters indicated that individual market carriers often will not be able to make a determination about a claim within the 45 day time frame, and that chargebacks are problematic because they would require withholding payment on another insured's claim. The commenter suggested changing the definition of a clean claim to exclude claims for which an individual market carrier may not be liable due to limitations in the policy.

A commenter also suggested that for individual policies and association group individual certificates, the clean claim designation should be suspended for a period not to exceed 75 days when the original clean claim or medical records reasonably raise a claim benefit issue of pre-existing condition, fraud in the application process, misrepresentation in the application process, or other limitation of coverage via a rider. The commenter proposed language which would allow individual market carriers to use "best reasonable efforts" to complete its claims investigation within 75 days, upon which the clean claim would be reinstated with original time frames.

A few commenters were concerned about how costly and time-consuming the processing of claims has become for carriers as well as providers and suggested changing the rule to require payment within 45 days after the receipt of documentation to process the claim for individually underwritten health insurance plans.

AGENCY RESPONSE: The department disagrees. While the department acknowledges that individual market carriers may have unique needs, House Bill 610 does not provide for a distinction between types of carriers and compliance with prompt pay requirements. If a carrier cannot make a determination of a clean claim within the statutory claims payment period, the carrier can continue to investigate the claim, but must advise the physician or provider in writing that it will audit the clean claim and pay 85% of the contracted rate. If the carrier determines that it had no liability on a clean claim, the carrier is entitled to reimbursement of the audit payment on that claim.

Comment: A few commenters suggested that the rules be amended to address fraud, recommending that when a clean claim raises issues of fraud, the 45 day time period be tolled in order to obtain documentation of potential fraud.

A commenter believed that the proposed rules will have a negative impact on fraud prevention activities. Carriers are required to pay 85% of a submitted claim even for potentially fraudulent claims. Providers who submit fraudulent claims are very proficient at claims submission and the commenter is very concerned about the requirement to "pay first, ask questions later," especially when it is difficult to recover the monies paid on these types of claims. The commenter also noted that House Bill 1562 places a duty on insurers to prevent the payment of fraudulent claims and suggested that §21.2809 include language related to the handling and payment of suspected fraud.

AGENCY RESPONSE: One of the purposes of the audit period is to allow carriers to investigate clean claims in which fraud is suspected. Therefore, the department declines to change the rule to toll the claims payment period even though additional information may be needed to determine the presence of fraud. The rules require that the carrier pay the remaining 15% of the contracted fee at the end of the 180 day audit period. The rules also allow a carrier to continue to investigate clean claims to determine liability and to obtain a refund of the audit payments if the carrier is not liable for the clean claim.

The department acknowledges the commenter's concerns and the difficulty a carrier may have in recovering monies paid on fraudulent claims. The department also recognizes the passage of House Bill 1562 and believes other provisions of that bill, including amendments to the Occupations Code related to unprofessional conduct by a health care provider and amendments to the Insurance Code, including but not limited to, the notice required to be on all forms the carrier provides for a person to use in making a claim against the policy, should help deter fraudulent claims submissions by providers.

Comment: A commenter stated that claims for patients injured in motor vehicle accidents are being denied, and suggested that companies be required to pay claims for treatment of resulting injuries and seek a reimbursement from the auto insurance companies.

AGENCY RESPONSE: The department disagrees with the suggested change to the rule. If a carrier determines it has no liability on a clean claim, it can deny the claim within the 45 day time frame. If the provider believes that claims are being improperly denied and the department has jurisdiction over the claim, the department encourages the provider to file a complaint with the department.

Comment: Commenters urged that phrases such as "unless otherwise agreed to by contract" be deleted from the rule to stay within the "legislative intent" of House Bills 610 (76th session) and 1862 (77th session), as well as Senate Bill 1468 (76th session.)

AGENCY RESPONSE: The department declines to make the suggested change as the rule does not prevent the parties' ability to contract, unless such arrangements conflict with statutory or regulatory requirements. The rule is within the legislative intent of House Bill 610 and Senate Bill 1468. House Bill 1862 was not enacted into law.

Comment: Many commenters recommended that claim processing administrative changes made by payors be filed with the state and that only one change per year, with 60 days notice, should be allowed.

AGENCY RESPONSE: The department disagrees that claims processing administrative changes should be limited to one change per year. Changes in processing procedures may be required for various reasons, some of which are unforeseen by carriers and physicians or providers. For example, carriers may need to change claims office addresses or telephone numbers due to internal organizational changes or due to termination of the contract between a third party administrator and the carrier.

Comment: A commenter suggested that if carriers cannot handle the volume of their enrollees, they should stop signing up enrollees until their pay systems are fixed.

AGENCY RESPONSE: The department recognizes the commenter's concerns and will continue to monitor carriers for compliance with the prompt pay statutes and rules and take appropriate action when necessary. The department has authority under other provisions of the Insurance Code to prohibit carriers from enrolling new members or issuing new policies under certain circumstances and may utilize such means where appropriate.

Comment: A commenter stated that there is no reward for carriers who pay claims early or who review a claim and try to make it clean rather than denying it. Another commenter asserted that the proposed rules, plus administrative actions of TDI, place a tremendous burden on insurers who may cease working with providers to remedy deficiencies in claims and will instead automatically deny all non-clean claims.

AGENCY RESPONSE: Although the rules provide no reward for carriers who pay claims early or who attempt to make a deficient claim clean rather than deny it, the department acknowledges and appreciates that some carriers do. The department encourages this practice to continue and recognizes that there may be an administrative cost advantage to carriers who pay claims early and "clean" up claims, rather than reprocessing previously deficient claims.

The commissioner is charged with enforcing the statute. The department's administrative actions were taken because of complaints that carriers were not complying with the law. The department recognizes that a carrier is allowed to deny all non-clean claims; however, the department is concerned with the commenter's indication that they will eliminate current processes of working with providers to remedy deficiencies. The department encourages carriers to educate providers on common claim filing deficiencies and other issues and/or notify the department of such deficiencies or issues. The department will continually update its web page and take other steps necessary to assist both providers and carriers.

Comment: Some commenters urged the department to facilitate electronic claims filing and remove any barriers to electronic claims payment. A commenter suggested that the department use its authority to create a statewide electronic submission system. The commenter believed that an electronic system would standardize and simplify the number of required steps for submitting claims, eliminate opportunities for errors and would also reduce processing costs. A commenter recommended that the department address better ways to ensure prompt payment, including a "Corrective Action Process." The commenter recommended that, in lieu of fines for noncompliance, carriers be required to update and improve computers and systems for facilitating electronic claims submission.

AGENCY RESPONSE: The department will be studying means to facilitate electronic claims filing and payment and may propose rules or take other action, as appropriate. The department is committed to ensuring compliance with the prompt pay statute and rules, and will utilize all available means to ensure the accurate and timely payment of claims. Such means may include corrective action plans requiring systems improvements to facilitate prompt payments.

Comment: One commenter requested that the department implement by rule as much as possible of the provisions of House Bill 1862, which was not enacted during the past legislative session. Another commenter proposed that the department adopt the language in House Bill 1862 for access to insurance data.

AGENCY RESPONSE: Rulemaking on prompt payment must be based on the provisions of House Bill 610, which gives the department the authority to define a clean claim and otherwise implement the provisions of the statute. The department will continue to review issues relating to the prompt payment of clean claims and will propose further rules as necessary.

Comment: Several commenters expressed concerns about the differing requirements that carriers have regarding attachments and additional clean claim elements. The commenters proposed language which would require using a standardized form such as the HCFA 1500 or UB 92 and would only allow carriers to require as data elements those that can be required in an electronic transaction consistent with federal law. Some commenters expressed concerns about the physician's ability to fill out required data fields, including Block 14, 15, 24C, and 32 and recommended that these fields either be eliminated or clarified. One commenter suggested changes to Block 7, 10, 11a, 11d, 14 and 15, 24C, and 32.

AGENCY RESPONSE: The department recognizes the commenters' concerns about differing requirements by carriers and the use of a standardized form. However, the standardized elements referenced in the comments were not part of the proposed rule and cannot be considered as part of this adoption order. A rule change to the data elements would be substantive change from the proposed language and would require republishing of the rule.

Comment: One commenter objected to the requirement that a copy of the patient's insurance card be included with a complaint filed with the department. The commenter recommended that either the verification of insurance eligibility or the insurance authorization for services be used. The commenter also objected to the requirement that complaints for mailed paper claims be accompanied by a certified mail return receipt.

AGENCY RESPONSE: The rule does not address the process for filing a complaint at the department about claims payment delays. In order to process complaints, the department generally requests a copy of the card to verify the department's jurisdiction and to expedite the complaint handling process. Before the adoption of these rules, a certified mail return receipt was necessary for the department to determine when a claim was received.

Comment: Commenters stated that the agency definition for "billed charges" conflicts with House Bill 610 and recommended that the definition of billed charges in §21.2802 be changed to charges "as submitted" by the physician or provider.

AGENCY RESPONSE: Changes to §21.2802 were not part of this rule proposal. The department's original rule adoption order clarified its intent that "billed charges" means usual and customary, to prevent physicians and providers from billing in excess of their usual charge.

Comment: A commenter stated that with the passage of House Bill 2600, Article 3.70-3C of the Insurance Code applies as a minimum standard for insurance carrier networks for workers' compensation and therefore the proposed regulations affect the bill payment process under workers' compensation. The commenters stated that the clean claim rules are redundant, are often times in direct conflict with the Texas Workers' Compensation Commission payment guidelines contained in Chapters 134 and 133 of the Texas Administrative Code, and are not suited for workers' compensation. The commenter stated the proposed rules do not include their application to workers' compensation and, unless clarified, workers' compensation carriers and administrators will be regulated by two sets of rules that often conflict. The commenter requested that the rule be clarified to specifically exclude application to workers' compensation.

AGENCY RESPONSE: The department disagrees that a change is needed. Neither the rule nor House Bill 2600 stipulate that workers' compensation claims are subject to the clean claim rules under the Texas Administrative Code Chapter 21 or Article 3.70-3C. While House Bill 2600 does incorporate standards of Article 3.70-3C to those insurance carrier networks and regional health care delivery networks created under the Texas Labor Code §§408.0221 and 408.0223, the standards incorporated are limited to that of preferred provider networks and not to the payment of claims. Additionally, House Bill 2600 states that the standards for preferred provider networks under Article 3.70-3C are adopted by reference except to the extent they are inconsistent with the Labor Code.

§21.2803

Comment: A few commenters expressed concerns about delay tactics used by carriers, including a carrier's insistence on receiving prior records or other information before remitting payment, and asking for information from the patient and delaying payment of the claim until the information is verified. Examples of information requested include: certification of enrollment from the registrar's office of a school and a signed, written statement from the insured indicating that there is no other coverage. A commenter recommended a rule prohibiting carriers from requiring physicians to provide this information, if the current rule does not address this. Another commenter recommended using a "universal form" that physicians could have patients fill out and send with the claim to avoid "fishing expeditions" for information.

AGENCY RESPONSE: The rules address the commenters' concerns by limiting the information that carriers may require as clean claim attachments or additional elements. If a physician or provider submits a clean claim, the carrier must act on the claim within 45 days, pursuant to §21.2807. A carrier cannot "pend" a clean claim past the 45 day time frame, but the carrier can pay 85% of the contracted rate and audit the clean claim. The department believes that a "universal form" may not meet the needs of all carriers.

§21.2803(c) and (d)

Comment: Some commenters indicated that some providers may have information in their office which is not located in the medical file. Commenters recommended that the rule be changed to address the issue and suggested language about information which should be "reasonably" maintained by the physician or provider and which supports the services provided. A commenter recommended changing the rule to allow as attachments "information that is or, in accordance with community standards for medical recordkeeping, should be contained in the ...file." Another commenter stated that the language appears "too limiting" and suggested the information relate to the episode of care. Several commenters requested that attachments only include information the provider already has in his/her possession, be clinical in nature, and should be allowed only if necessary to clarify the claim. One commenter suggested limiting requests to information which is "necessary to the payment and substantiation of the medical claim." Another commenter recommended that claims include information from healthcare facilities.

AGENCY RESPONSE: The department acknowledges that there may be information maintained by the physician or provider which has not been placed into the patient's medical or billing record. Therefore, the department has changed §21.2803(c) as follows: "An HMO or preferred provider carrier may only require as attachments information that is either contained in or in the process of being incorporated into a patient's medical or billing record maintained by the physician or provider." The department disagrees with proposed changes that would broaden the scope of information that can be required as attachments or additional clean claim elements beyond information contained in the patient's medical or billing record. The department believes that it will be difficult to determine what "community standards" are.

Comment: A commenter proposed that if there is a change in required data elements and attachments, the additional element or attachment must be mutually acceptable to the provider and carrier. Other commenters complained about the burden created when carriers change the required information, and suggested that changes to attachments or additional clean claim elements should only be allowed once a year. A few commenters suggested a standardized form for filing claims. One commenter suggested a standardized definition of a clean claim, thus eliminating attachments and clean claim elements. Another commenter pointed out that standardized forms are used in the submission of claims. Several commenters requested that mandatory clean claim elements be limited to those required in the HCFA 1500 and UB 92 forms. The commenters also requested that health plans be required to keep a log of all contractual amendments, notices, and changes regarding claims filing.

AGENCY RESPONSE: Carriers must have the ability to react to changes in medical technology and to changes in provider billing patterns, etc., and must have the ability to change their requirements for attachments and additional clean claim elements so that claims can be properly and timely adjudicated. The carrier has a duty to ensure that claims are adjudicated properly because payment of noncovered services eventually increases the premiums charged to the carrier's other enrollees. The department believes that frequent administrative changes are not in the carrier's interest and that such changes are not made arbitrarily.

In addition, the rules contain a definition of a clean claim and identify those elements that must be included to ensure that a claim is "clean." While two standardized forms, the HCFA 1500 or UB 92, are used for the submission of claims, the department

recognizes that some claims may require other supporting information, and the rules provide a mechanism for that information to be required as part of the clean claim. The log containing contractual amendments and other changes would be a new requirement placed on carriers, and since it was not in the proposed rule, it would require republishing of the rule.

Comment: A commenter stated that some carriers request all medical records in order to process a claim and another commenter sought clarification on when a medical record is required as an attachment for a clean claim. One commenter sought clarification as to whether or not a health plan can contract away its responsibility to pay for the requested medical record. Another commenter stated that it is important that the regulations provide physicians the ability to limit to the medical record what could be supplied with a claim. A commenter complained that it received requests for medical records four or five times for the same types of services. One commenter indicated that a carrier listed attachments that "may" be required in order to consider a claim "clean" and expressed concerns about which attachments would be required.

AGENCY RESPONSE: The department acknowledges the commenters' frustration but also recognizes that carriers must have the ability to obtain documentation needed to process their claims. Medical records may be required as a clean claim attachment to assure that carriers have prompt access to that documentation. If a medical record is required as an attachment, it must be included with the claim in order for the claim to be considered "clean." In some cases, the carrier may request, not require, additional information after the clean claim is received. The department encourages physicians and providers to promptly provide the requested information. However, if the medical record is not required and the claim is clean, the carrier must act on the claim within 45 days, even if the carrier has not received the records. In terms of the cost of providing medical records, the department is not aware of any law or rule that would prohibit the contract between a physician or provider and carrier from containing provisions regarding the payment of medical records.

A carrier cannot list information that it may require as an attachment and then deny the claim as deficient for failing to include the "potential" attachment. Disclosures are intended to put the physician and provider on notice of exactly what information is required in order to submit a clean claim. A "laundry list" of potential attachments is inappropriate. The department will view a claim as clean if it does not include the information on the list of documents that may be required.

Comment: A commenter stated that carriers should only be able to ask for the same attachments that were requested previous to the effective date of House Bill 610. Some commenters suggested that the clean claim requirements be the same as those identified in House Bill 1862, which are the elements required by HCFA. A commenter proposed extensive language which would include requiring requests for attachments in writing within 30 days of receipt of the claim, only allowing one request per claim, requiring a determination of claim eligibility within 15 days of receipt of the attachment and using date of claim receipt requirements to determine when a request for submission of an attachment is received.

AGENCY RESPONSE: The department disagrees that a rule change is necessary. House Bill 610 removed a carrier's ability to pend a claim while awaiting receipt of medical records or other attachments that the carrier requested following receipt of a clean claim. The ability to require attachments as clean claim elements provides a method to assure that carriers will be able to receive the information they need to promptly process the claims. The department believes that the rule as adopted sets reasonable limits on required attachments and additional clean claim elements.

The department recognizes that a "one size fits all" approach does not work with regard to the submission of clean claims because different types of insurance products require different supporting documentation. Nevertheless, the adopted rules limit the information that can be required as a clean claim attachment or element to that which is in or in the process of being incorporated into the patient's medical or billing record.

§21.2804 and §21.2805

Comment: Some commenters indicated that it was not clear if an additional attachment or clean claim element can be requested during or after the 60 day period. Some commenters proposed language that claims filed after the 60 day period must include required attachments.

AGENCY RESPONSE: The language in the adopted rule clarifies that claims filed during the 60 day period cannot be required to include the attachment or additional clean claim element. After the 60 day period, properly disclosed attachments must be included for a claim to be considered "clean." If a claim is filed after the 60 day period and does not include a required attachment or additional data element, then the claim is not "clean." At any time during claims processing, a carrier can request documentation it believes is necessary to process the claim; however §21.2804 and §21.2805 only address required attachments or additional clean claim elements.

For clarification, however, the department has changed §21.2805 to add that, "Claims filed during the 60 day period after receipt of the disclosure do not have to include the required additional clean claim element identified in the disclosure."

Comment: Some commenters suggested adding clarifying language making providers and physicians subject to the same requirements for receipt of disclosures and verification of receipt with regard to the date of notification that HMOs or preferred provider carriers are subject to in regards to date of claims submission. A commenter suggested adding clarifying language stating that a request for additional information to complete a claim, process a claim, or make payment of a claim is presumed received by the physician or provider as outlined in §21.2816.

AGENCY RESPONSE: The department acknowledges the commenters' suggestions, but believes that no changes are necessary at this time. The department has not received complaints indicating that physicians or providers are not receiving disclosure notices or other claims processing information. The department will monitor any complaints that HMOs or preferred provider carriers are having difficulty demonstrating receipt of disclosures by physicians or providers and may address this issue in the future.

§§21.2804, 21.2811, and 21.2818

Comment: Some commenters requested that the formatting requirements of §21.2818 not apply to disclosures made in provider manuals or contracts. A commenter recommended deleting this requirement and inserting it at the end of §21.2804(1). Another commenter recommended amending proposed §21.2811(a) by adding: "...for disclosures not made in contracts or provider manuals..." Another commenter suggested clarification that, if notice of additional clean claim elements

and attachments are disclosed at the commencement of the contract effective date, then 60 days advance notice of changes is not required.

AGENCY RESPONSE: The department agrees. The department did not intend for §21.2818 to apply to disclosure of processing procedures for contracts, as outlined in §21.2811(a). The disclosures subject to §21.2811 and §21.2818 include manuals or documents which set forth the procedures for filing claims, or any other document containing written notice.

§21.2807

Comment: One commenter recommended clarifying that the HMO or preferred provider carrier remains responsible for timely payments of claims so long as the claim was submitted as directed by the HMO or preferred provider carrier. The commenter believed it was important that the responsibility of the payment for the claim reside with the payor, regardless of delegation to another party.

AGENCY RESPONSE: The department agrees. If a clean claim is submitted to the address designated by the carrier pursuant to §21.2811(a), then the carrier or its delegated claims payor must act on the claim within 45 days of its receipt at the designated address.

§21.2808

Comment: A commenter stated that although no proposed changes were made to this section of the rule, the commenter believes that the 45 day period in which a carrier must notify a provider that a claim is deficient is excessive. The commenter proposed the notification period be reduced to 30 days.

AGENCY RESPONSE: The department appreciates the commenter's recognition that no change was proposed to this rule. As no change was proposed, the department cannot consider the recommended change in this adoption order. The department directs the commenter to the original adoption order in which this issue was addressed in detail.

Comment: Two commenters recommended a change to §21.2808 addressing deficient claims which would require the insurer/HMO to advise the provider of the nature of the deficiency and clarify that the claims payment period would not run until a clean claim is submitted.

AGENCY RESPONSE: The department disagrees for the reason stated in the response to previous commenters. In addition, the claims payment period does not begin until a clean claim, as defined by rule, is received by the carrier. If a deficient claim is filed, then the claims payment period is not triggered. Pursuant to §21.2808, the carrier must notify the provider that the claim is deficient within 45 days of receipt. The rule does not require that the carrier identify the nature of the deficiency as the physician or provider should have the information necessary to determine deficiencies pursuant to §§21.2803 - 21.2806.

§21.2809

Comment: Several commenters indicated that the proposed rule does not offer any incentive for the provider to submit additional information to the HMO or preferred provider carrier within the 180 calendar day audit period. The commenters stated that the 180 day period could be complied with, so long as the providers promptly respond to additional information requests. Commenters recommended extensions of the time frame if providers do not make timely responses to requests for information. A commenter proposed that the audit completion period be tied to the receipt of information from the provider. Another commenter suggested that language be included which compels the physician or provider to participate in the audit process. A commenter expressed concerns about the carriers' ability to get medical records to conduct an audit. Commenters recommended that the audit time be tolled until the carrier gets the records necessary to undertake the audit, indicating that this could allow the audit time to be shortened. A commenter stated that there is no penalty for failure to comply with timely requests for records. A commenter expressed concerns about claims being considered "clean" when there is a need for further investigation.

AGENCY RESPONSE: The department recognizes that the carrier may want to gather additional information during the audit period and believes that physicians and providers will have an incentive to furnish this information in order to receive the remaining 15% of the contracted rate. The department has adopted the 180 day audit deadline to address physician and provider concerns about an open-ended audit period. At the end of 180 days, the audit must be concluded and any subsequent payment or refund made. This does not prohibit a carrier from continuing to investigate the claim and accessing information necessary to determine its liability.

As stated in the original rule's adoption order when the issue of getting necessary information was raised, the department believes that the carrier and physicians or providers could agree by contract to the time in which the physician or provider must supply any requested information that is not already required as an attachment or element of a clean claim. The department also recognizes that carriers may need information from non-contracted physicians or providers, the insured/enrollee, or other sources. As to non-contracted physicians or providers, other laws address response time for requests for medical information necessary in the collection of fees for medical services, including Occupations Code, Title 3, Chapter 159 (Physician-Patient Communication); Health and Safety Code, Title 4, Chapter 241 (Hospitals); and Health and Safety Code, Title 4, Chapter 311 (Powers and Duties of Hospitals). While the department is not aware of any law that requires insureds/enrollees or other sources to provide requested information within a certain time period, it is anticipated that most insureds/enrollees will provide the information as they want their physician or provider to be paid since they are still seeking care or could in the future seek care from the physician or provider. As to other sources, the department cannot compel a response within a certain time frame, but anticipates that most sources will respond as promptly as circumstances will allow and as a matter of good business practice.

Comment: A commenter stated that if an HMO or preferred provider carrier takes the 30 days allowed to pay after the end of a full audit period, then it is possible that it could take 255 days from the date of billing to claims payment, which the commenter indicated was unreasonable. The commenter proposed that the audit time be reduced to 90 calendar days and recommended that the remaining 15% be credited as interest to the provider at a rate of prime +2% until the amounts are paid. Other commenters suggested that the carrier pay 100% of the claim when a claim is audited because of the difficulty of office software to carry the 15% balance.

AGENCY RESPONSE: The department disagrees that 180 days is unreasonable. The rule as originally adopted imposed no time limit for completion of the audit. Because a carrier could experience delays in receiving records or other documentation from an

enrollee's current or former physician or provider, and because the physician or provider has already received 85% of the contracted rate, the department believes that 180 days is reasonable and strengthens the rule as it existed prior to the adoption of these amendments. A carrier cannot be required to pay 100% of a claim when it is audited because the statute specifically requires an audit payment of 85% of the contracted rate.

Comment: Some commenters suggested deleting subsection (e) (relating to liability on a claim) from §21.2809, stating that any carrier that cannot complete claim processing and investigation in 225 days should not be operating and that it would create an indefinite audit process. Commenters also stated that insurers are not entitled to restitution for an overpayment that resulted solely from the insurer's mistake. Another commenter stated that subsection (d) should be stricken as it undermines the long standing position of hospitals, which is supported by case law, that carriers are estopped from recovering payments made in error when the carrier should have known whether or not they had liability. Several commenters objected to a carrier's ability to recoup funds paid in audit payments for which the carrier had no liability and suggested language which would require the carrier to provide written notice with specific information and allow the physician or provider to make arrangements for recoupment within 45 days of the notice.

AGENCY RESPONSE: The department disagrees with eliminating subsection (e). While the majority of clean claims are adjudicated within 45 days of receipt, it is possible that some clean claims will require an investigation that cannot be completed in 45 days. In such cases, the carrier is required to pay 85% of the contracted rate as an audit payment while it continues its investigation. While the rule as originally adopted did not impose a time limit for completion of the audit, the amended rule requires carriers to pay the remaining 15% of the contracted rate of an audit payment when liability cannot be determined within 180 days for the reasons stated above. Neither House Bill 610 nor the rules require carriers to make irrecoverable payments on clean claims for which the carrier is not liable. Audit payments are not claim payments made due to a carrier's error but are payments required by statute while a carrier continues its investigation. Further, the statute specifically provides for the refund of the audit payments to the carrier if it does not have liability for the clean claim. The rule already requires the carrier to provide written notification of audit results. The department is aware of the case referenced by the commenters but does not believe that House Bill 610 intended for carriers to pay for claims for which they are not liable, but rather intended to shift the economic burden from the provider to the carrier. This is a different situation than what has been addressed by the courts.

Comment: A commenter requested clarification of whether an audit reflects all situations when a claim is not paid or denied by day 45. Two commenters requested clarification of the definition of an audit and recommended that the definition include "the review and processing of a clean claim, including the investigation and determination of any benefits under other health benefit plans or any limitations or exclusions under the health care plan or policy." A commenter wanted to modify the language to provide a traditional and common sense meaning to the term "audit."

AGENCY RESPONSE: The department will not consider changes in the definition of the "audit" due to a potential conflict with the requirements of §21.2803(e). In addition, the definition of "audit" was not subject to the proposal and cannot be considered as a part of the adoption order.

Comment: Two commenters requested that the audit provision be changed from 180 days to 120 days. Several other commenters recommended that the time be changed to 90 days. One commenter suggested that whatever time frame is required for the physician to submit a claim should be the same time for the payor to audit the claim so that the two are comparable. One commenter stated that 180 days to audit a claim is "ridiculous" and indicated that the provider should then get the same 180 days to research the audit results. One commenter "applauds" the 180 day time frame.

AGENCY RESPONSE: As stated in the introduction to the proposed rule, it is the department's understanding that most claims requiring additional research are routinely resolved in substantially less time than 180 days, and that a very small percentage of claims require 180 days to resolve. The department identified a maximum 180 day time frame as an outside limit, which it believes will provide carriers sufficient time to complete an audit. The department anticipates carriers will complete audits and make additional payments or request refunds within a much shorter time frame than 180 days.

Comment: A commenter recommended clarifying that a carrier may seek a refund or offset of either or both the initial 85% and the remaining portion of an audited claim paid to the physician or provider if the carrier determines that the claim should have been denied.

AGENCY RESPONSE: The department agrees that clarification is needed to address the recoupment of audit payments after the audit period has ended. The department has added the following to §21.2809(e): "If a carrier determines that it does not have liability on a clean claim, the carrier may seek a refund through chargeback or other means, in accordance with subsection (b) of this section."

Comment: One commenter expressed concerns about differentiating between payment of the 85% of an audited claim and 100% of the contracted rate. The commenter suggested the rule mandate that an HMO or preferred provider carrier clearly identify on the Explanation of Benefits (EOB) when only 85% of the line item is being paid. Another commenter requested that the department consider addressing unclear language on EOBs. Several commenters requested that the words "at least" be inserted before the 85% because of difficulty with tracking partial payments and proposed language requiring health plans to identify partial payments and provide notice of an audit on the EOB.

AGENCY RESPONSE: The department disagrees, as the rule already addresses notification of audit payments. Section 21.2807(b) requires a carrier to notify a physician or provider in writing when a claim is being audited, either in whole or in part. The carrier may elect to furnish the physician or provider with written notice of its intent to audit the claim by way of the EOB. If the physician or provider wants more detailed information on the EOB regarding payments of claims, then the physician or provider can negotiate with the carrier to have that information included. The department is unaware of problems concerning unclear language on EOBs but will monitor any complaints filed with the department.

House Bill 610 requires an audit payment of 85% within the statutory claims payment period, but nothing prevents carriers from making a 100% payment on an audited claim.

Comment: A few commenters expressed concern that payors may "recoup" funds for up to two years after payments were made. Concern was expressed that this would prevent the

provider from timely filing a new claim with the appropriate carrier. The commenters suggested adding recoupment requirements for payors, including limiting an insurer's ability to request a refund to 180 days after payment; requiring insurers to pay any filed clean claim within 60 days of notification; forbidding a payor to decline to pay a claim if filed within 60 days; and requiring payors to give 30 days notice of a request for refund. A commenter expressed concerns that chargebacks are not a viable option in the individual policy market because providers may not provide services to enough insureds to accumulate an appropriate chargeback. Another commenter disagreed with allowing chargebacks and suggested that insurance companies should have to request refunds and wait for the provider to issue a check. Other commenters contend that chargebacks and recoupments are extremely burdensome, and requested that a provider first be allowed to make repayment in his/her chosen manner. The commenters also opposed a carrier's ability to recoup without a prohibition on the chargeback "straying across" unrelated products and patients, and waiving by contract the otherwise required reporting requirements medical offices need for accounting purposes.

Two commenters expressed concern about continued audits after the 180th day. One commenter said that the burden should be on the HMO or preferred provider carrier to convince a physician or provider that a refund is due, and proposed language which would prohibit an HMO or preferred provider carrier from making a chargeback unless the physician or provider requested it. Another commenter proposed language that would prohibit an HMO or preferred provider carrier from seeking a refund more than one year after receiving information requested to resolve the claim. One commenter provided examples of difficulty in recovering audit payments from providers.

AGENCY RESPONSE: If a payor determines at some point that it did not have liability on a claim paid pursuant to the clean claims statutes or rules, then the payor is entitled to seek reimbursement of the claim. This recoupment may be done by chargeback or by some other means reached by agreement of the parties. House Bill 610 does not permit physicians or providers to keep audit payments if a determination is made that a carrier was not liable on a claim.

House Bill 610 anticipated that upon completion of the audit process, either an additional payment from the carrier or a refund would be due. Chargebacks are one of the means a carrier can utilize to obtain the refund, although they are not the only recourse available to recoup payments made to physicians and providers. Contracts between physicians or providers and carriers can identify the methods under which recoupment can occur. Also, the parties may reach a mutual agreement regarding recoupment procedures.

The 85% audit payment is not a claim payment and is required to be paid on the 45th day even though a carrier may eventually determine that it had no liability on the clean claim. In previous adoption orders on the clean claim rule, the department explained that the audit payment was not a claim payment but was a temporary shifting of the economic burden from the provider to the carrier while the claim investigation process is conducted. House Bill 610 does not require that a carrier convince the physician or provider that the audit payment should be returned. Rather, the statute requires the physician or provider to return the audit payment within 30 days after the physician or provider receives notice of the audit results or any appeal rights of the enrollee are exhausted. For the protection of its other enrollees, a carrier must have certainty that it can promptly recover audit payments made on clean claims for which it did not have liability, even if a determination is made after an extended period of time. The department disagrees that chargebacks should only be made if the physician or provider agrees to it. Section 21.2809(b) requires that if a carrier intends to make a chargeback, the written notification of the audit results shall also include a statement that the carrier will make a chargeback unless the physician or provider contacts the carrier to arrange for reimbursement through an alternative method. House Bill 610 does not require payment for services or treatments that are not covered. If a carrier determined that it did not have liability on a clean claim or part of a clean claim for which an audit payment had been made, the carrier can seek recoupment of those funds.

Comment: A commenter requested the 30 day refund period be increased to 45 days. The commenter stated that chargebacks/recoupments by payors create significant accounting problems for providers and should be avoided at all costs. The commenter would support a rule which requires providers to make refunds on undisputed overpayments within 45 calendar days of notification from the payor, with an interest penalty imposed upon providers who fail to make refunds. If chargebacks are to be allowed, the commenter suggested adding language stating that the carrier shall not initiate a chargeback if the provider has notified the carrier in writing, within the 45 calendar day refund period, that the provider disputes the accuracy of the refund request.

AGENCY RESPONSE: The department disagrees with the suggested change from a 30 day refund period to 45 days as the statute requires refunds within 30 days. The department directs the commenter to §21.2809(b) which addresses notification by the carrier of intent to make a chargeback and allows the provider to contact the carrier to arrange for reimbursement through an alternative method.

Comment: A commenter stated that some providers have attempted to bill enrollees for the 15% balance during the audit period, and suggested language which would prohibit this practice.

AGENCY RESPONSE: The rules governing HMOs (28 TAC §11.1102) require that HMO physician or provider contracts contain a provision stating that the physician or provider agree to look only to the HMO for payment for covered services except for stated copayments and deductibles. An effort to collect the 15% audit payment from an enrollee would be a violation of this contractual provision. In addition, the statute pertaining to preferred provider benefit plans (Article 3.70-3C, §3(k)) requires that the provider contract state that if the provider is compensated on a discount fee basis, the insured can only be billed on the discount fee and not the full charge. If a physician or provider bills and receives the 15% audit payment from the insured and subsequently receives the full discounted fee from the carrier, the physician or provider would be in violation of Article 3.70-3C §3(k). The department will monitor complaints for such activities and, if necessary, consider for future rulemaking.

Comment: Two commenters believe that the department is being urged to broadly interpret language in §21.2809 to include verification and utilization management issues. The commenter encouraged the department to look at the original intent and focus on how quickly a claim is paid.

AGENCY RESPONSE: The department is unclear as to what language in §21.2809 is at issue. Because House Bill 610 clearly requires that clean claims be acted on within the statutory time frames, it is reasonable to anticipate that after a reasonable period of time, the audit period would end. The rules identify an appropriate time frame for the termination of the audit period.

§21.2810

Comment: A commenter recommended clarifying that the proof of payment date includes a health plan or insurer's own postage meter.

AGENCY RESPONSE: No change is necessary, nor was any proposed, because this was clarified in rule amendments which became effective on February 14, 2001. Private metered postmarks are an acceptable proof of postmark in those instances when the claims payment is delivered by the U.S. Postal Service.

§21.2815

Comment: Several commenters stated that the rule should identify several different penalties for late payments, including correlating the number of days a claim is late in being paid; increasing penalties; full billed charges plus a penalty; and a monthly fee.

AGENCY RESPONSE: The department recognizes the commenters' concerns; however, House Bill 610 does not provide for "sliding scale" penalties to providers based on how overdue a claim payment is. House Bill 610 did provide for administrative penalties not to exceed $1000 per day for each day that a claim remains unpaid and in violation of the statute. The department recognizes some commenters believe that a similar type of provision should apply to physician or provider penalties, and it will study this issue in conjunction with comments regarding the imposition of the "greater of" billed charges or the contracted penalty rate.

Comment: Some commenters stated that the addition of the "greater of" language in the proposed rule exceeds the department's statutory authority. Commenters provided recommended language or recommended deleting the "greater of" language. One commenter expressed concern over the uncertainty for health plans in the process of business planning and forecasting created by the greater of language. The commenter stated that a defined contracted penalty rate, such as an interest or multiplier penalty, helps forecast a "worst-case" scenario. One commenter supported the proposed language and indicated that billed charges were less difficult to calculate. A commenter also indicated that the proposed language could prompt unscrupulous individuals to artificially inflate their billed charges. Another commenter was also concerned that providers would delay providing certain types of information so that they would get billed charges. A commenter stated that the imposition of billed charge penalties on small group employer plans could "decimate" health plans. Some commenters expressed concerns about the cost to third party payors. A commenter remarked that it might impair the ability to contract with physicians. One commenter was concerned about the "punitive" nature of the rule change. One commenter also indicated that billed charges were "draconian" penalties. Another commenter indicated that billed charges as penalties are more appropriate in the realm of physician claims, but not provider claims, because there is a standard for usual and customary. Another commenter indicated that billed charges for hospital services are not subjective and are consistent along payor lines. Commenters suggested that it would be fairer to set a reasonable floor for a contracted penalty rate, rather than eliminate a plan's ability to negotiate a penalty rate, and provided suggested language. Some commenters indicated that "flagrantly or persistently overcharging" is prohibited by the Texas Medical Practice Act. Some commenters supported the inclusion of the "greater of" and proposed that the section also apply to contracts which have a claim payment of less than 45 days.

AGENCY RESPONSE: The department acknowledges the many comments it received both for and against the inclusion of the "greater of" language, as well as the suggestions and recommendations. The proposal that carriers pay penalties of the "greater of" billed charges or the contracted penalty rate was described by some commenters as a "draconian penalty," while other commenters questioned the department's authority to interpret the bill in this manner. Although some commenters favored the "greater of" language, many commenters advocated for time-sensitive penalties that increased or compounded the longer a claim remained unpaid in addition to the billed charges. After careful consideration, the department has determined that more analysis is needed to assess the diverse comments and suggestions. The department will not adopt the "greater of" language from §21.2809 and will further study the best means to fully address the provisions of House Bill 610 with regard to penalties paid by carriers to physicians and providers for noncompliance.

Comment: Some commenters stated that the "zero tolerance" standard imposed by the rule establishes an unattainable performance standard, pointing out that the carrier has only one opportunity to process and pay each claim correctly. A commenter indicated that errors can occur from incorrectly loading fee schedules and retroactive contract loading. A commenter proposed a good faith, reasonable standard to make timely payments and to correct errors upon discovery. Some commenters also proposed language establishing an error rate threshold for pursuing penalties or sanctions against HMOs or preferred provider carriers. A commenter stated that the quality standard from the Health Care Financing Administration (HCFA) and National Committee for Quality Assurance (NCQA) is 95% substantial compliance. Another commenter indicated that with the high volume of claims processed, a limit of accuracy of rate paying could be used to determine compliance and proposed a 97% compliance rate. Commenters indicated that mistakes will happen and suggested that the cost of compliance will be transferred to the business community.

AGENCY RESPONSE: The department disagrees that an error rate threshold should be incorporated into the rule. House Bill 610 did not set a range for a compliance standard, but instead requires that claims be paid "in accordance with the contract." The statute does not allow accommodations for error in determining how claims are to be paid. The department recognizes the difficulty carriers may have in ensuring that clean claims are paid correctly and understands that human error may occur within the claims processing system. The department encourages carriers to institute checks and balances to identify and correct mistakes which could lead to inaccurate claims payments.

Comment: One commenter strongly supports requiring claims to be paid correctly and stated that last year it collected over $10 million on incorrectly paid claims. The commenter supports requiring payments for valid clean claims, and pointed out that over 50% of its denials were overturned. The commenter also stated that the payor's risk of loss is not any greater than the provider's risk of loss.

AGENCY RESPONSE: The department appreciates the commenter's support.

Comment: A commenter is concerned that, an over payment as well as an under payment, would not be considered correctly paid and would subject the carrier to penalties. The commenter suggested that this policy be changed to reflect generally accepted and routine business practices between contracting parties. The commenter also suggested that the explanation of this amendment be clarified to reflect that if a carrier corrects an incorrect payment within the statutory period, then it would not be a violation. The commenter believes that a carrier should have whatever remaining days are left in the 45 day period to process any remaining amount due a provider.

AGENCY RESPONSE: House Bill 610 was enacted to address the problem of claims that were not paid in a timely manner. The department believes that the statute requires payment of the total amount of the claim in accordance with the contract to preclude carriers from attempting to circumvent the law by making partial or token payments on claims within 45 days. However, the department does not believe that the law seeks to penalize carriers who overpay claims within 45 days. If a carrier realizes that a claim was underpaid and pays the balance before the statutory claims payment period expires, the carrier has complied with the statute and rule.

Comment: A commenter recommended including a provision that if a provider is paid in 45 days but believes that the payment was not in accordance with the contract, the provider should notify the plan within 60 days and the plan should have 30 days to resolve the complaint. Another commenter recommended that if a claim is paid incorrectly and the provider determines that it was paid incorrectly, then the provider should notify the payor by filing a complaint with either the department or the payor. One commenter suggested that the payor have 30 days to review and adjust the bill if notified that an incorrect amount was paid. A commenter proposed that if a provider knowingly accepts an incorrect payment and does not promptly notify the HMO or preferred provider carrier, the HMO or preferred provider carrier should not have to pay the penalty. Another commenter suggested closing the claim if not notified in 90 days. Another commenter indicated that there should not be a financial incentive to avoid notifying the carrier of incorrect payment in order to maximize the number of claims subject to the penalty and suggested language to address notification of failure to pay correctly and the application of the statutory payment to incorrect payments was provided.

AGENCY RESPONSE: The department disagrees. The carrier is obligated to provide accurate payment on its clean claims. Failure to make a correct payment subjects the carrier to penalties, including a payment to the provider of billed charges or the contracted penalty rate. The incentive created is that of facilitating the payment of clean claims correctly, in accordance with the contract between the physician or provider and the carrier. The statute does not provide that physicians and providers will forfeit their rights to receive accurate payment if a claims payment error is not noted within a specified time. While the department agrees that a physician or provider should notify the carrier in a timely manner of an incorrect payment amount, the department does not believe it is necessary to incorporate this into the rule. The department will continue to review and monitor this situation.

Comment: A commenter was concerned that if the parties have contracted for a shorter payment period, then there would be no penalty for late payment. The commenter suggested language to address this. Another commenter asked what happens if a carrier does not pay within 45 days and does not pay the penalties that are supposed to be paid.

AGENCY RESPONSE: The department disagrees with the recommended language. Parties may contract to pay clean claims within a lesser period of time, and the contract may contain provisions for penalties to be paid after the shorter contracted period is not met. However, once a statutory violation has occurred, the rules and statutes outline a subsequent penalty. For example, two parties contract that payments are to be made in 30 days of receipt of a clean claim and failure to pay in 30 days results in an 18% penalty. From day 30 to day 45, the contract terms would govern the claim payment and penalties. On day 46, the carrier would be subject to statutory and regulatory penalties, including administrative penalties. A carrier who fails to act on a clean claim within 45 days has violated the statute and rule and is subject to statutory and regulatory penalties. If the carrier failed to pay the full amount of billed charges or the amount payable under the contracted penalty rate, then the carrier may be subjected to additional penalties. Physicians and providers may file a complaint with the department for assistance.

Comment: Two commenters stated that carriers wanted to use "usual and customary" (U&C) fees instead of full billed charges as the penalty for late payment and expressed concern about the methodology used to determine U&C. Another commenter stated that the provider's billed charges can vary greatly and suggested that the provider establish a fee schedule.

AGENCY RESPONSE: The current rule defines billed charges as the charges made by a physician or provider who renders or furnishes services, treatments, or supplies so long as the charge is not in excess of the general level of charges made by other physicians or providers who render or furnish the same or similar services, treatment, or supplies to persons in the same geographical area and whose illness or injury is comparable in nature or severity. Methodologies have been developed and are in general use by carriers that do not utilize provider networks and are also used by plans that utilize provider networks to determine the usual and customary charges for non-contracting as well as contracting physicians and providers.

Comment: A commenter stated that additional clarification is needed to make sure that the definition of a clean claim includes claims that have not been challenged by the HMO or preferred provider carrier. The commenter recommended that if an HMO or preferred provider carrier does not provide timely notice to the medical provider that a claim is not clean by the 45th day, that claim will be deemed a clean claim for the purpose of the act.

AGENCY RESPONSE: The department disagrees. Physicians and providers are responsible for submitting clean claims. A claim deficiency may be such that critical information is omitted, is incorrect, or is sent to the wrong carrier or address. If a physician or provider submits a deficient claim, the carrier has up to 45 calendar days after receipt of the claim to notify the physician or provider in writing. Carriers who fail to provide timely notice of deficient claims may be subject to administrative penalties.

Comment: A few commenters expressed concern that HMO or preferred provider underwriters would utilize penalties in determining pricing for employers in their health plans. Commenters recommended that HMOs or preferred provider carriers not be allowed to include costs of noncompliance in calculating costs of the health benefit plans.

AGENCY RESPONSE: The department anticipates compliance with the statute and rules. It would not be appropriate for underwriters to utilize the anticipated costs of noncompliance with state law and rules in setting rates.

Comment: A commenter requested clarification on whether a carrier can deny a clean claim for reasons other than the claim is not clean.

AGENCY RESPONSE: A carrier can deny a clean claim if it is not liable for the claim.

Comment: A few commenters stated that "failure to pay a clean claim correctly or denial of a valid clean claim" exceeds express statutory authority. A few commenters suggested using the phrase "to pay a clean claim in accordance with the contract." One commenter recommended the phrase "to properly adjudicate." The commenter also stated that "denial of a valid clean claim" is vague and in opposition to the statute because a claim could be valid but denied because the services were not covered by the policy. Another commenter stated that the phrase "pay a clean claim correctly" is ambiguous given the variety of methods that physicians and payors use to resolve disagreements over what is owed. A commenter stated that a carrier failed to download a fee schedule in November and that failing to pay correctly can have a big impact on a solo medical practice. The commenter recommended retaining the current penalties. A commenter strongly supported significant penalties for failure to pay correctly and cited situations in which it took hundreds of hours of staff time to address incorrectly downloaded fee schedules. Another commenter stated that it is necessary for the rule to state that the payment should be correct and in compliance with the contract. The commenter expressed concerns about claims being paid correctly, according to the provider contract guidelines. A commenter suggested that if a plan pays in good faith but pays incorrectly due to human error, the amount of penalty should mirror the degree of error.

AGENCY RESPONSE: Claims which are paid "correctly" are claims which are paid "in accordance with the contract." The department recognizes that different interpretations may have been placed on the word "correctly" although the meaning was not intended to vary from the statutory language. To address and clarify this issue, the department has changed the language to: "Failure to pay the correct amount of a clean claim in accordance with the contract," and has changed "valid" clean claim to "clean claim for which payment should have been made..."

Comment: A commenter proposed language which would allow an HMO or preferred provider carrier to petition the commissioner for a waiver of the applicability of §21.2815 for a period not to exceed ninety days in the event the HMO or preferred provider carrier is converting or substantially modifying its claims processing systems.

AGENCY RESPONSE: The department disagrees with the requested change. The commissioner can exercise his regulatory discretion in assessing administrative penalties for failure to comply with §21.2815 and may take into consideration whether there are mitigating circumstances that contributed to the carrier's violation of §21.2815. However, House Bill 610 does not give the commissioner the authority to waive the penalties that the statute requires to be paid to physicians and providers.

§21.2816

Comment: Two commenters expressed concern that the entire rule addresses only "submitted" claims, rather than clean claim submissions. One commenter expressed concern that providers will not understand that a claim must be clean before the payment or audit time frames start. The commenter suggested adding the word "clean" before the word "claim" in this section to clarify that clean claims trigger the 45 day payment period and proposed language. A commenter stated that House Bill 610 was meant to only deal with insurers that have a preferred provider program. The commenter is concerned that providers will misinterpret the rules to believe that every contracted provider who submits a claim will get paid and suggested that this be clarified.

AGENCY RESPONSE: The department disagrees with inserting the word "clean" in §21.2816. The department believes that it is important that the rules address when all claims are received because that date triggers the 45 day period in which a carrier must pay, deny, or audit a clean claim or give the physician or provider notice of a deficient claim. In order to ascertain when deficient claims are received by carriers, §21.2816 must apply to all claims.

Even though a physician or provider has a contract with a carrier, if the claim is for an enrollee covered under a self-funded ERISA plan; workers' compensation; self-funded government, school and church health plans, including self-funded plans for Employees Retirement System of Texas, the Teacher Retirement System of Texas, the University of Texas and the Texas Association of School Boards; out-of-state insureds; Medicaid/Medicare; federal employee plans; and TRICARE Standard (CHAMPUS), then the prompt pay statutes and rules do not apply.

Comment: Some commenters stated that the proposed language will increase the administrative burden and costs for all parties. One commenter indicated that is was not clear from the rule whether there was liability on the part of the health plan when accepting a log filed by a physician or provider. The commenter stated that if the log is intended to be verification of liability for a claim, then the department understated the cost statement, and recommended deleting this provision. If the provision is not deleted, the commenter recommended clarifying that the log be used only as a means of confirming which and how many claims are included in a submission by a provider or physician and that the acceptance and review of the log does not confirm or guarantee member eligibility of a particular claim. A commenter suggested language encouraging physicians and providers to submit claims electronically or submit each mailed claim separately, one claim per mailing. Another commenter stated that filling out logs for each individual claim, mailing copies of each log on each claim and maintaining copies of each log generates a tremendous amount of unnecessary paper. A commenter stated that although not required, "if a provider sends it, the carriers should do something with it." The commenter also expressed concerns about incorrect information on the logs that would result in claims with easily remedied errors being returned. Several commenters expressed concerns about the maintenance and submission of claims mail logs and stated that they interpreted the rules as requiring the maintenance and submission of logs in "designated situations." Commenters also proposed eliminating the section.

Some commenters stated that the format of the claims log imposes a record-keeping requirement that is outside the formats available in most accounting systems and would result in a costly manual process. Some commenters recommended requiring carriers to provider fax numbers for log submissions. Commenters suggested that the patient billing record or internal

bill date be accepted instead of the log. The commenters expressed concern that high volume providers would not be able to obtain the rebuttable presumption of mailing due to the amount of expense in complying with the process. The commenters indicated that payors would have to provide many operating fax machines to receive faxed logs. The commenter also expressed concerns about obtaining the payor's fax number. The commenters stated that the log requires duplicate information already contained on the claim. Commenters recommended changing in §21.2816(a) the word "shall" to "may," proposed language deleting references to the mail log, and suggested that the provider retain a copy of the mailed claim printed or stamped with the word "mailed" followed by the mailing date. One commenter stated that a payor may have 20 to 30 addresses to send claims logs to and suggested that each carrier maintain a single address to receive claims and the "logbook."

AGENCY RESPONSE: The department disagrees that §21.2816 should be deleted. The claims mail log is optional. To the extent that a physician, provider, HMO or preferred provider carrier believes that use of a log would be expensive or time-consuming, it is not required to be used by any of those entities. Rather, the claims mail logs are only intended as a means of creating a rebuttable presumption of which and how many claims are included in either mailed or hand-delivered claim submissions, and are not verifications of liability. The department disagrees that the proposed rule's cost note, which analyzed anticipated costs to carriers, was understated. The department encourages the electronic submission of claims, which would not necessitate the use of a claims mail log, but recognizes that for some providers or carriers, electronic transmission of claims is not the most efficient means to submit claims.

The department recognizes that creating and processing the claims mail log may generate expense and consume time for all parties involved. However, in order to provide a means to establish a rebuttable presumption that a mailed or hand-delivered claim was received, a procedure was established in the rule. For those physicians and providers who indicated that the claims mail log would create a tremendous burden, a resolution may be to either send claims by certified mail, return receipt requested, by fax (if acceptable to the carrier), or by electronic transmission. However, to accommodate the many concerns raised by physicians, providers and carriers, the department changed the section so that parties can agree by contract on the means to establish a rebuttable presumption of receipt of a claim.

The department recognizes the commenters' concerns about the potential problems associated with facsimile transmissions of claims mail logs. It is the department's intent that a mutually acceptable means of receiving claims mail logs, including electronic transmission, be reached between the parties involved. Therefore, the department has changed the rule to allow electronic, as well as faxed, submission of claims mail logs.

The department did not intend that only one claim would be entered on each log. The sample log as published in the proposed rule included only one line for entry of information in order to minimize the space required in the publication. Further, because the log is intended only as a means to establish a rebuttable presumption of claim receipt, errors on the mail log do not render the associated claim deficient.

In response to the comment that a carrier should do something with a log sent by a provider, the rule does not require either party to utilize the claims mail log. However, if a physician or provider wishes to establish a rebuttable presumption that a claim was sent by mail or hand delivered, the department has established a mechanism to do so. The claims mail log may also be used by the carrier to demonstrate that certain identified claims were not included in a mailing. A carrier may have some other mechanism to identify which claims are received from a particular physician or provider on any certain date. That information could be used, if necessary, to rebut the presumption that a claim was received.

§21.2816(b)

Comment: A commenter states that it is unclear whether the proposed methods of submission are required to be accepted by the HMO or preferred provider carrier. The commenter recommended the following language: "For purposes of establishing a rebuttable presumption to demonstrate the date of mailing or delivery of a claim, the physician or provider shall, as appropriate depending on the method of submission allowed by the health plan..." The commenter further recommended adding language that clarifies that claims may only be transmitted by facsimile if the health plan has opted to accept facsimile transmission. Commenters also suggested adding language that clarifies that a date-stamped cover sheet is not proof of facsimile transmission. The commenter suggested adding a subsection (h) to address appropriate methods of claims transmission as being defined in the contract between the HMO or preferred provider carrier and the physician or provider. Another commenter recommended a change in the rule that would require that a hand-delivered claim be delivered to a designated person/persons located at a specified address.

AGENCY RESPONSE: The department agrees in part and disagrees in part. Section 21.2816 outlines the means that may be utilized to submit claims from physicians and providers to carriers. The processing procedures for filing claims are addressed in §21.2811. Section 21.2811(a) provides that procedures for filing claims may be set out in contracts, manuals, other documents, or by any method mutually agreed upon by the contracting parties. As such, the department believes that §21.2811 applies to the procedures for filing claims, which would include mutually acceptable means of transmitting claims. The department agrees that additional clarification is necessary and changed the language to clarify the process.

The rule indicates that proof of fax or electronic transmission is necessary. A date-stamped cover sheet without an accompanying transmission acknowledgement would not be sufficient.

§21.2816(b)(1)

Comment: Two commenters stated that additional clarification is needed with regard to logs for submissions and resubmissions. A commenter indicated that some providers continue to refile claims before the 45 days have expired. The commenters recommended that physicians and providers be required to post information regarding payments received and place that information on resubmission forms (logs). The commenters also recommended that physicians and providers be required to submit completed logs with all information before the logs are accepted into the system.

AGENCY RESPONSE: The department disagrees. By providing a rebuttable presumption of when a claim has been received, the department believes that the need to resubmit duplicate claims

will be eliminated, except when initiated by the carrier. The department will continue to monitor complaints regarding duplicate claims and resubmissions and may address in future department actions. In addition, to further clarify the format of the claims mail log, the department has changed §21.2816(g) as follows: "The claims mail log maintained by physicians and providers shall include the following..."

§21.2816(c)

Comment: Commenters indicated that a presumed claim delivery date of three days through the U.S. Postal Service is inappropriate and does not take into account Sundays and holidays and varying delivery dates. A commenter recommended deletion of the presumed delivery of mail rule. Two commenters included charts and graphs indicating how many days it takes for mail to be received. Commenters recommended varying days, including a three, five and seven business day requirement, or deleting the proposed language. A commenter suggested adding clarifying language concerning fax transmission and receipt. One commenter stated that according to its analysis, only 60% of claims were received within 3 days, with some as high as 31 days. Another commenter encouraged the department to continue the mail delivery standard. A commenter expressed concern about the use of the claims mail log and suggested that a claim be considered received three days after mailing, like the vast majority of businesses do. Two commenters questioned the department's authority to establish a rebuttable presumption of when a claim was received. One commenter suggested that the presumption should apply to both carriers and providers.

AGENCY RESPONSE: While the department is aware that the U.S. Postal Service does not guarantee to deliver mail in any specified time frame, it also recognizes that the majority of mailed items do reach their intended destinations within reasonable time frames. Nevertheless, the department agrees to change the time for presumed receipt under §21.2816(c) to three business days.

One of the benefits of the claims mail log is to provide a means for carriers to identify those claims listed on the mail log that it has not received from the physician or provider. If the physician or provider faxed or electronically transmits a copy of the claims mail log to the carrier, the carrier is on notice for that claim. If claims do not arrive within a reasonable time frame following receipt of the claims mail log, the carrier can contact the physician or provider regarding the claims listed on the log. Carriers may establish some other processing means to identify claims which are not received. The department has authority under the statute to implement rules and to define a clean claim. The receipt of a clean claim has been a problematic area and the department believes it is appropriate to address this issue in the implementation of House Bill 610.

Comment: A few commenters also indicated that there is a concern of misdirected mail ranging from 5 - 17% per day, and requested clarification regarding misdirected mail. Another commenter stated that the U.S. Postal Service has an error rate of 1/2% on 200 billion pieces of mail and expressed concerns about late claims. A commenter stated that some claims get lost in the mail while others are illegible or incomplete, and expressed concern about paying 85% of the claim when that happens. A commenter complained that 25% of the claims they mail are lost and that electronic claims payment is not an option for their association.

AGENCY RESPONSE: While some claims do get lost in the mail, a carrier that monitors the mail logs received from physicians and providers will be able to identify those claims that have not been received. The commenter may consider filing claims by certified mail or by utilizing the claims mail log process set forth in §21.2816. The department understands the commenters' concern and notes that a claim that is illegible or incomplete is not a clean claim; therefore, the statutory claims payment period would not begin to run.

§21.2816(d)

Comment: A commenter stated that health plans often do not generate confirmation of receipt of electronic claims but will issue rejections, and recommended the following: "If the HMO's or preferred provider carrier's clearinghouse does not provide a confirmation of receipt of the claim or a rejection of the claim within 24 hours of submission by the physician or provider..."

AGENCY RESPONSE: The department agrees and has changed §21.2816(d) to include the suggested language.

§21.2816(e)

Comment: Some commenters suggested clarifying that a faxed claim should be presumed received during normal business hours and recommended the following: "If a claim is faxed, the claim is presumed received on the date of the fax transmission acknowledgment within normal business hours of the HMO or preferred provider carrier. All claims received after normal business hours are presumed to be received the following business day." Another commenter suggested "after 5:00 p.m." One commenter suggested adding "to the correct fax number destination."

AGENCY RESPONSE: The department agrees clarification is needed and has added the following to §21.2816(e): "Claims faxed after the payor's normal business hours are presumed received the following business day."

§21.2816(g) and (h)

Comment: Two commenters indicated that the proposed rule did not include a stipulation that each log represents the claims of only one provider. The commenters recommended changing the language to include a resubmission log and certain information to be provided on that log. The commenters recommended that "provider identification number and address to which claims were sent" be included on the claims mail log.

AGENCY RESPONSE: The department disagrees that a resubmission log should be created. The department anticipates that the need for refiling claims will be diminished as a result of the enactment of these rules. The department strongly discourages the resubmission of claims before the statutory claims payment period.

One of the purposes of the log is to address situations in which multiple claims are included in one mailing or hand delivery to identify individual claims sent in a single mailing. If a single claim is mailed or hand-delivered, the log may be used to identify the claim included in the mailing or hand delivery. The claims mail log should contain only claim information for the entity, physician or provider to be paid. For example, a clinic with multiple physicians could submit a single log for claims, so long as the clinic is the payee.

The department agrees that the provider identification number and address to which claims were sent should be included on the claims mail log and has changed the rule and sample form accordingly.

§21.2817

Comment: One commenter stated that an attempt to impair the right of parties to contract, in the absence of specific statutory support, would exceed the authority of the department. Another commenter indicated that under Article 3.70-3C §3(m), a preferred provider carrier can contract to pay a claim after more than 45 days and said that prohibiting extensions of time in the contract is not part of the statute.

AGENCY RESPONSE: First, House Bill 610 was enacted subsequent to, and therefore supercedes, any conflicting language in Article 3.70-3C §3(m). Second, the department disagrees that this section of the rule impairs contractual rights or lacks statutory support. The department has consistently taken the position, as stated in response to comments in the original adoption order, that a carrier can contract to pay a claim in less than 45 days, but cannot by contract extend the statutory claims payment period. In addition, the statute on its face provides that claims shall be paid, denied, or audited "not later than" the 45th day after the claim is received, and also specifically authorizes a physician or provider to recover reasonable attorney's fees in an action to recover payment, and parties had notice of these requirements as of September 1, 1999. Further, this part of the rule does not alter or affect the obligations of the contract.

Comment: One commenter expressed concern that contracts between providers and HMOs or preferred provider carriers will not allow for the complaint or appeal process to the department. The commenter suggested that §21.2817 include a provision prohibiting contractual terms which would prevent the provider from accessing the complaint or appeal process. The commenter expressed concern that managed care companies may use arbitration or mediation clauses to bypass state regulation and the department's Provider Ombudsman. Another commenter stated that it is very important that contracts not allow payors to remove rights under the law. Several stated that plans have an "enormous" advantage in contractual negotiations and proposed adding to this section, "This title may not be waived or nullified by contract."

AGENCY RESPONSE: The department disagrees. Article 20A.12(a) specifically requires each HMO to implement and maintain a complaint system to provide reasonable procedures for the resolution of complaints initiated by enrollees or providers concerning health care services. Likewise, Article 3.70-3C §3(f) requires preferred provider plans to maintain the same type of complaint process. Contracts which contain clauses nullifying a provider's ability to file a complaint and to appeal any decision made would be in violation of statute and agency rule. While carriers may include arbitration or mediation as a means of resolving disputes with medical providers, physicians or providers do not have to agree to those terms. The Provider Ombudsman is available to address issues regarding physician and provider concerns.

§21.2819

Comment: A commenter indicated that it was not clear whether previous notices which complied with the statutes and rules would need to be resubmitted, and provided suggested language.

AGENCY RESPONSE: The department disagrees that a change is necessary. The rule amendment relating to disclosure notices is merely a rewording to further clarify that attachments and additional clean claim elements cannot be required before the 60 day notice period ends. As such, current notices which comply with the statutes and rules will not need to be resubmitted.

Comment: Some commenters stated that an effective date of September 5, 2001 is not realistic and are concerned that the rules are "deemed final" without taking all public comments into consideration. Another commenter suggested that the rules would be adopted regardless of public comment. A commenter indicated that affected parties have already incurred expenses following the adoption of rules in May 2000 and February 2001. A commenter indicated that there will not be adequate time for a "smooth and compliant transition" to the new requirements. Commenters suggested an effective date of December 1, 2001. Three commenters suggested that the rule apply to claims filed on or after January 1, 2002 to allow health plans time to set up systems to track mail logs.

A commenter contends that the proposed effective date of September 5, 2001 conflicts with §2001.036, Government Code which provides that a rule takes effect 20 days after the date it is filed with the Secretary of State. For a rule to be effective immediately with an expedited effective date, an agency must make a finding of imminent peril to the public health, safety, or welfare, which the commenter does not believe is the case with these amendments.

AGENCY RESPONSE: The department disagrees. Comments were received throughout the comment period and each was given full consideration. The department values the input received and carefully reviewed each comment submitted for consideration. As noted in this order, the department changed parts of the proposed rule to address some of the questions, comments and concerns presented in the comments.

Regarding the effective date of the rule, the department agrees that the Administrative Procedure Act provides that, unless a later date is specified, a rule takes effect 20 days after it is filed with the Secretary of State, which in the case of this rule would be 20 days after the date of this order, which is September 12, 2001. Section 21.2819 provides, however, that the provisions contained in the current amendments apply to claims for services, treatments, or supplies which are rendered on or after the date of the order. The department declines to extend the rule's effective date, or the date of services to which these amendments apply, for the following reasons. The provisions of House Bill 610 became effective on September 1, 1999. The initial set of rules which defined a clean claim and otherwise implemented the statute became effective May 23, 2000, and the first set of rule revisions became effective February 14, 2001. The current rules, which contain no major deviations from previous rules, but rather provide further refinement to the procedures for filing and paying clean claims, were proposed on August 3, 2001, following extensive discussions between the department and interested persons and entities, of the issues addressed in this rulemaking. While the department acknowledges some commenters' concerns that adjustments may have to be made to accommodate some of the rule's provisions, the department believes that this will not be critical to achieving the statute's underlying purpose of properly filing and promptly paying claims, which has been in effect for more than two years. For example, while many commenters specifically complain of changes that would be entailed by the mail log provisions, the department has stressed throughout this order that this provision is not mandatory, and has added language to make clear that parties may agree on alternate provisions by contract, if they so desire. The department

has specifically said, in response to another comment, that disclosures need not be resubmitted because of this rule. To the extent that the proposed provision requiring carriers to pay the greater of billed charges or contractual penalties may have required systems changes, that provision has been deleted. Other provisions of the rule have merely clarified existing requirements or have made compliance easier for the parties.

The rules contain reasonable, balanced procedures and are consistent with the requirements of the statute, to which carriers and medical providers have been subject since September 1, 1999. For this reason, the department believes that processes should already be in place to ensure that claims are paid correctly, and that the current rules would not make major changes to those processes.

Comment: A commenter expressed concerns about misleading providers and carriers to think that contracts executed prior to the applicability date will fall under the new rules. A commenter indicated its belief that the rules would apply to all provider contracts regardless of dates of service.

AGENCY RESPONSE: The department recognizes the commenter's concerns. The department does not expect contracts executed prior to the applicability date to be renegotiated as a result of the new rules to the extent that the contracts are consistent with the requirements in the rule.

For: Fort Worth Heart and Vascular Institute, North Texas Perinatal Association, Pediatric Partners of Austin, P.A., Sleep Medicine Associates of Texas, P.A., Tenet Health System, Texas Children's Hospital, Texas Oncology, P.A., and several individuals and physicians.

For, with changes: St. Luke's Episcopal Hospital, Associated Pathologists of Texas, P.L.L.C., Austin Anesthesiology Group, L.L.P., Austin Cardiovascular Associates, Austin Internal Medicine Associates, L.L.P., Austin Radiological Association, Baylor Healthcare System, Bent Tree Family Physicians, Brown & Associates Medical Laboratories, L.L.P., Capitol Anesthesiology Association, Cardiothoracic and Vascular Surgeons, Community First Health Plans, COR Specialty Associates of North Texas, P.A., Dallas County Medical Society, Dallas Surgical Group, Endocrinology Associates of Houston, P.A., Family Medicine Associates of Texas, Genesis Physicians Group, Greater Houston Emergency Physicians, Harris County Medical Association, Heart of Texas Internal Medicine Associates, HealthSmart Preferred Care, Inc., Houston Eye Associates, M. D. Anderson Cancer Center, Medical and Surgical Clinic of Irving, P.A., Memorial Clinical Association, Northwest Diagnostic Clinic, Office of Public Insurance Counsel, Oncology Consultants, P.A., Patient-Physician Network Holding Co., Pediatric Orthopedic Associates of San Antonio, Pinnacle Anesthesia Consultants, Radiation Oncology Center, Scott & White Health Plan, South Texas Cardiothoracic & Vascular Surgical Associates, P.L.L.C., South Texas Medical Clinics, P.A., South Texas Radiology Group, St. Vincent Medical Foundation, Texas Cancer Care, Texas Ear, Nose & Throat Specialists, L.L.P., Texas Health Resources, Texas Hospital Association, Texas Medical Association, Texas Neuroradiology, P.A., Texas Podiatric Medical Association, Texas Primary Care Coalition, The Health Group, The Medical Clinic of North Texas, P.A., TIRR Systems, Walnut Hill Obstetrics & Gynecology Associates, and numerous individuals and physicians.

Against: Aetna, Alliance of American Insurers, Amcare Health Plans, Ascent Assurance, Inc., Blue Cross and Blue Shield of Texas, Center for Orthopaedic Specialties, Golden Rule, Heritage Health Systems & Health Insurance Association of America, Humana Health Plan of Texas, Inc., Humana Insurance Company and Employers Health Insurance Company, Sierra Health Services, Inc., Texas Association of Business & Chambers of Commerce, Texas Association of Health Plans, Texas Association of Life & Health Insurers, Texas Association of Life & Health Underwriters, Texas Association of Preferred Provider Organizations, Texas Professional Benefit Administrators Association, UniCare Life & Health Insurance Company, and United HealthCare of Texas and United HealthCare Insurance Company.

The amendments and new sections are adopted under the Insurance Code Articles 20A.18B, 20A.22, 3.70-3C §3A, 3.70-3C §9 and §36.001. Article 20A.18B(a) provides that a clean claim is determined under the department's rules and Article 20A.18B(o) provides that the commissioner may adopt rules as necessary to implement the Prompt Payment of Physician and Providers section. Article 20A.22(a) provides broad rulemaking authority of the Texas Health Maintenance Organization Act. Article 3.70-3C §3A(a) provides that a clean claim is determined under the department's rules and Article 3.70-3C §3A(n) provides that the commissioner may adopt rules as necessary to implement the Prompt Payment of Preferred Providers section. Article 3.70-3C §9 allows the commissioner to adopt rules to implement the provisions relating to Preferred Provider Benefit Plans. Section 36.001 provides that the Commissioner of Insurance may adopt rules to execute the duties and functions of the Texas Department of Insurance only as authorized by statute.

§21.2803. Elements of a Clean Claim.

(a) Required clean claim elements. A physician or provider submits a clean claim by providing the required data elements specified in subsection (b) of this section to an HMO or a preferred provider carrier, along with any attachments and additional elements, or revisions to data elements, attachments and additional elements, of which the physician or provider has been properly notified as necessary pursuant to subsections (c) and (d) of this section, and §§21.2804 of this title (relating to Disclosure of Necessary Attachments), 21.2805 of this title (relating to Disclosure of Additional Clean Claim Elements), and 21.2806 of this title (relating to Disclosure of Revision of Data Elements, Attachments, or Additional Clean Claim Elements), and any coordination of benefits or non-duplication of benefits information pursuant to subsection (e) of this section, if applicable.

(b) Required data elements. HCFA has developed claim forms which provide much of the information needed to process claims. Two of these forms, HCFA-1500 and UB-82/HCFA, and their successor forms, have been identified by Insurance Code Article 21.52C as required for the submission of certain claims. The terms used in paragraphs (1), (2) and (3) of this subsection are based upon the terms used by HCFA on successor forms HCFA-1500 (12-90) and UB-92 HCFA-1450 claim forms. The parenthetical information following each term is a reference to the applicable HCFA claim form, and the field number to which that term corresponds on the HCFA claim form.

(1) Essential data elements for physicians or noninstitutional providers. Unless otherwise agreed by contract, the data elements described in this paragraph are necessary for claims filed by physicians and noninstitutional providers.

(A) subscriber's/patient's plan ID number (HCFA 1500, field 1a);

(B) patient's name (HCFA 1500, field 2);

(C) patient's date of birth and gender (HCFA 1500, field 3);

(D) subscriber's name (HCFA 1500, field 4);

(E) patient's address (street or P.O. Box, city, zip) (HCFA 1500, field 5);

(F) patient's relationship to subscriber (HCFA 1500, field 6);

(G) subscriber's address (street or P.O. Box, city, zip) (HCFA 1500, field 7);

(H) whether patient's condition is related to employment, auto accident, or other accident (HCFA 1500, field 10);

(I) subscriber's policy number (HCFA 1500, field 11);

(J) subscriber's birth date and gender (HCFA 1500, field 11a);

(K) HMO or preferred provider carrier name (HCFA 1500, field 11c);

(L) disclosure of any other health benefit plans (HCFA 1500, field 11d);

(i) if respond "yes", then

(I) data elements specified in paragraph (3)(A) - (E) of this subsection are essential unless the physician or provider submits with the claim documented proof to the HMO or preferred provider carrier that the physician or provider has made a good faith but unsuccessful attempt to obtain from the enrollee or insured any of the information needed to complete the data elements in paragraph (3)(A) - (E) of this subsection;

(II) the data element specified in paragraph (3)(I) of this subsection is essential when submitting claims to secondary payor HMOs or preferred provider carriers;

(ii) if respond "no," the data elements specified in paragraph (3)(A) - (E) of this subsection are not applicable and therefore are not considered essential if the physician or provider has on file a document signed within the past 12 months by the patient or authorized person stating that there is no other health care coverage; although the submission of the signed document is not an essential data element, a copy of the signed document shall be provided to the HMO or preferred provider carrier upon request.

(M) patient's or authorized person's signature or notation that the signature is on file with the physician or provider (HCFA 1500, field 12);

(N) subscriber's or authorized person's signature or notation that the signature is on file with the physician or provider (HCFA 1500, field 13);

(O) date of current illness, injury, or pregnancy (HCFA 1500, field 14);

(P) first date of previous same or similar illness (HCFA 1500, field 15);

(Q) diagnosis codes or nature of illness or injury (HCFA 1500, field 21);

(R) date(s) of service (HCFA 1500, field 24A);

(S) place of service codes (HCFA 1500, field 24B);

(T) type of service code (HCFA 1500, field 24C);

(U) procedure/modifier code (HCFA 1500, field 24D);

(V) diagnosis code by specific service (HCFA 1500, field 24E);

(W) charge for each listed service (HCFA 1500, field 24F);

(X) number of days or units (HCFA 1500, field 24G);

(Y) physician's or provider's federal tax ID number (HCFA 1500, field 25);

(Z) total charge (HCFA 1500, field 28);

(AA) signature of physician or provider or notation that the signature is on file with the HMO or preferred provider carrier (HCFA 1500, field 31);

(BB) name and address of facility where services rendered (if other than home or office) (HCFA 1500, field 32); and

(CC) physician's or provider's billing name and address (HCFA 1500, field 33).

(2) Essential data elements for institutional providers. Unless otherwise agreed by contract, the data elements described in this paragraph are necessary for claims filed by institutional providers.

(A) provider's name, address and telephone number (UB-92, field 1);

(B) patient control number (UB-92, field 3);

(C) type of bill code (UB-92, field 4);

(D) provider's federal tax ID number (UB-92, field 5);

(E) statement period (beginning and ending date of claim period) (UB-92, field 6);

(F) patient's name (UB-92, field 12);

(G) patient's address (UB-92, field 13);

(H) patient's date of birth (UB-92, field 14);

(I) patient's gender (UB-92, field 15);

(J) patient's marital status (UB-92, field 16);

(K) date of admission (UB-92, field 17);

(L) admission hour (UB-92, field 18);

(M) type of admission (e.g. emergency, urgent, elective, newborn) (UB-92, field 19);

(N) source of admission code (UB-92, field 20);

(O) patient-status-at-discharge code (UB-92, field 22);

(P) value code and amounts (UB-92, fields 39-41);

(Q) revenue code (UB-92, field 42);

(R) revenue description (UB-92, field 43);

(S) units of service (UB-92, field 46);

(T) total charge (UB-92, field 47);

(U) HMO or preferred provider carrier name (UB-92, field 50);

(V) subscriber's name (UB-92, field 58);

(W) patient's relationship to subscriber (UB-92, field 59);

(X) patient's/subscriber's certificate number, health claim number, ID number (UB-92, field 60);

(Y) principal diagnosis code (UB-92, field 67);

(Z) attending physician ID (UB-92, field 82);

(AA) signature of provider representative or notation that the signature is on file with the HMO or preferred provider carrier (UB-92, field 85); and

(BB) date bill submitted (UB-92, field 86).

(3) Data elements that are necessary, if applicable. Unless otherwise agreed by contract, the data elements contained in this paragraph are necessary for claims filed by physicians or providers if circumstances exist which render the data elements applicable to the specific claim being filed. The applicability of any given data element contained in this paragraph is determined by the situation from which the claim arose.

(A) other insured's or enrollee's name (HCFA 1500, field 9), is applicable if patient is covered by more than one health benefit plan, generally in situations described in subsection (e) of this section. If the essential data element specified in paragraph (1)(L) of this subsection, "disclosure of any other health benefit plans", is answered yes, this is applicable unless the physician or provider submits with the claim documented proof to the HMO or preferred provider carrier that the physician or provider has made a good faith but unsuccessful attempt to obtain from the enrollee or insured any of the information needed to complete this data element;

(B) other insured's or enrollee's policy/group number (HCFA 1500, field 9a), is applicable if patient is covered by more than one health benefit plan, generally in situations described in subsection (e) of this section. If the essential data element specified in paragraph (1)(L) of this subsection, "disclosure of any other health benefit plans," is answered yes, this is applicable unless the physician or provider submits with the claim documented proof to the HMO or preferred provider carrier that the physician or provider has made a good faith but unsuccessful attempt to obtain from the enrollee or insured any of the information needed to complete this data element;

(C) other insured's or enrollee's date of birth (HCFA 1500, field 9b), is applicable if patient is covered by more than one health benefit plan, generally in situations described in subsection (e) of this section. If the essential data element specified in paragraph (1)(L) of this subsection, "disclosure of any other health benefit plans," is answered yes, this is applicable unless the physician or provider submits with the claim documented proof to the HMO or preferred provider carrier that the physician or provider has made a good faith but unsuccessful attempt to obtain from the enrollee or insured any of the information needed to complete this data element;

(D) other insured's or enrollee's plan name (employer, school, etc.) (HCFA 1500, field 9c), is applicable if patient is covered by more than one health benefit plan, generally in situations described in subsection (e) of this section. If the essential data element specified in paragraph (1)(L) of this subsection, "disclosure of any other health benefit plans", is answered yes, this is applicable unless the physician or provider submits with the claim documented proof to the HMO or preferred provider carrier that the physician or provider has made a good faith but unsuccessful attempt to obtain from the enrollee or insured any of the information needed to complete this data element;

(E) other insured's or enrollee's HMO or insurer name (HCFA 1500, field 9d), is applicable if patient is covered by more than one health benefit plan, generally in situations described in subsection (e) of this section. If the essential data element specified in paragraph (1)(L) of this subsection, "disclosure of any other health benefit plans," is answered yes, this is applicable unless the physician or provider submits with the claim documented proof to the HMO or preferred provider carrier that the physician or provider has made a good faith but unsuccessful attempt to obtain from the enrollee or insured any of the information needed to complete this data element;

(F) subscriber's plan name (employer, school, etc.) (HCFA 1500, field 11b) is applicable if the health benefit plan is a group plan;

(G) prior authorization number (HCFA 1500, field 23), is applicable when prior authorization is required;

(H) whether assignment was accepted (HCFA 1500, field 27), is applicable when assignment under Medicare has been accepted;

(I) amount paid (HCFA 1500, field 29), is applicable if an amount has been paid to the physician or provider submitting the claim by the patient or subscriber, or on behalf of the patient or subscriber or by a primary plan in accordance with paragraph (1)(L) of this subsection and as required by subsection (e) of this section;

(J) balance due (HCFA 1500, field 30), is applicable if an amount has been paid to the physician or provider submitting the claim by the patient or subscriber, or on behalf of the patient or subscriber;

(K) covered days (UB-92, field 7), is applicable if Medicare is a primary or secondary payor;

(L) noncovered days (UB-92, field 8), is applicable if Medicare is a primary or secondary payor;

(M) coinsurance days (UB-92, field 9), is applicable if Medicare is a primary or secondary payor;

(N) lifetime reserve days (UB-92, field 10), is applicable if Medicare is a primary or secondary payor, and the patient was an inpatient;

(O) discharge hour (UB-92, field 21), is applicable if the patient was an inpatient, or was admitted for outpatient observation;

(P) condition codes (UB-92, fields 24-30), are applicable if the HCFA UB-92 manual contains a condition code appropriate to the patient's condition;

(Q) occurrence codes and dates (UB-92, fields 31-36), are applicable if the HCFA UB-92 manual contains an occurrence code appropriate to the patient's condition;

(R) occurrence span code, from and through dates (UB-92, field 36), is applicable if the HCFA UB-92 manual contains an occurrence span code appropriate to the patient's condition;

(S) HCPCS/Rates (UB-92, field 44), is applicable if Medicare is a primary or secondary payor;

(T) prior payments--payor and patient (UB-92, field 54), is applicable if payments have been made to the physician or provider by the patient or another payor or subscriber, on behalf of the patient or subscriber, or by a primary plan as required by subsection (e) of this section;

(U) diagnoses codes other than principle diagnosis code (UB-92, fields 68-75), is applicable if there are diagnoses other than the principle diagnosis;

(V) procedure coding methods used (UB-92, field 79), is applicable if the HCFA UB-92 manual indicates a procedural coding method appropriate to the patient's condition;

(W) principal procedure code (UB-92, field 80), is applicable if the patient has undergone an inpatient or outpatient surgical procedure; and

(X) other procedure codes (UB-92, field 81), is applicable as an extension of subparagraph (W) of this paragraph if additional surgical procedures were performed.

(c) Attachments. In addition to the required data elements set forth in subsection (b) of this section, HCFA has developed a variety of manuals that identify various attachments required of different physicians or providers for specific services. An HMO or a preferred provider carrier may use the appropriate Medicare standards for attachments in order to properly process claims for certain types of services. An HMO or a preferred provider carrier may only require as attachments information that is either contained in or in the process of being incorporated into a patient's medical or billing record maintained by the physician or provider. Before any attachments may be required, the HMO or preferred provider carrier shall satisfy the notification procedures set forth in §21.2804 of this title (relating to Disclosure of Necessary Attachments).

(d) Additional clean claim elements. Additional elements beyond the required data elements and attachments identified in subsections (b) and (c) of this section may be required. Before any additional clean claim elements may be required, the HMO or the preferred provider carrier shall satisfy the notification procedures set forth in §21.2805 of this title (relating to Disclosure of Additional Clean Claim Elements). An HMO or a preferred provider carrier may only require as additional clean claim elements information that is either contained in or in the process of being incorporated into a patient's medical or billing record maintained by the physician or provider.

(e) Coordination of benefits or non-duplication of benefits. If a claim is submitted for covered services or benefits in which coordination of benefits pursuant to §§3.3501 - 3.3511 of this title (relating to Group Coordination of Benefits) and §11.511(1) of this title (relating to Optional Provisions) is necessary, the amount paid as a covered claim by the primary plan is considered to be an essential element of a clean claim for purposes of the secondary plan's processing of the claim and HCFA 1500, field 29 or UB-92, field 54 must be completed pursuant to subsection (b)(3)(I) and (T) of this section. If a claim is submitted for covered services or benefits in which non-duplication of benefits pursuant to §3.3053 of this title (relating to Non-duplication of Benefits Provision) is an issue, the amounts paid as a covered claim by all other valid coverage is considered to be an essential element of a clean claim and HCFA 1500, field 29 or UB-92, field 54 must be completed pursuant to subsection (b)(3)(I) and (T) of this section. If a claim is submitted for covered services or benefits and the policy contains a variable deductible provision as set forth in §3.3074(a)(4) of this title (relating to Minimum Standards for Major Medical Expense Coverage) the amount paid as a covered claim by all other health insurance coverages, except for amounts paid by individually underwritten and issued hospital confinement indemnity, specified disease, or limited benefit plans of coverage, is considered to be an essential element of a clean claim and HCFA 1500, field 29 or UB-92, field 54 must be completed pursuant to subsection (b)(3)(I) and (T) of this section.

(f) Format of elements. The required elements of a clean claim set forth in subsections (b), (c), (d) and (e), if applicable, of this section must be complete, legible and accurate.

(g) Additional data elements, attachments, or information. The submission of data elements, attachments, or information by a physician or provider with a claim in addition to those required for a clean claim under this section shall not render such claim deficient.

§21.2805. Disclosure of Additional Clean Claim Elements.

An HMO or preferred provider carrier may require additional elements for clean claims beyond the required data elements and attachments identified in §21.2803(b), (c) and (e) of this title (relating to Elements of a Clean Claim). To require such additional elements as part of a clean claim, the HMO or preferred provider carrier shall comply with §21.2818 of this title (relating to Disclosure Formats) and paragraphs (1), (2), or (3) of this section. An HMO or preferred provider carrier may not request additional elements as part of a clean claim unless it has given the physician or provider the disclosure mandated by this section at least 60 calendar days before requiring the additional element as an element of the clean claim and complied with paragraphs (1), (2), or (3) of this section. Claims filed during the 60 day period after receipt of the disclosure do not have to include the required additional clean claim element identified in the disclosure.

(1) Written notice. The HMO or preferred provider carrier may provide written notice to all affected physicians or providers that such additional elements are necessary. The notice shall identify with specificity the additional required elements and must be received by the physician or provider at least 60 calendar days before the HMO or preferred provider carrier designates such additional elements as a requirement of a clean claim.

(2) Manual or other document that sets forth the claims filing procedures. The HMO or preferred provider carrier may provide updated revisions to the physician or provider manual or other document that sets forth the claims filing procedures. The revision shall identify with specificity the additional required elements and must be received by the physician or provider at least 60 calendar days before the HMO or preferred provider carrier designates such additional elements as a requirement of a clean claim.

(3) Contract. The HMO or preferred provider carrier may provide for such additional elements to be required in the contract between the HMO or preferred provider carrier and the physician or provider. As a means of setting forth the additional elements that are required as part of a clean claim, the contract shall either identify with specificity the additional required elements or reference the physician or provider manual or other document that sets forth the claims filing procedures. If the contract identifies with specificity the additional required elements, the additional written notice as specified in paragraphs (1) and (2) of this section is not required. If the contract references the physician or provider manual or other document that sets forth the claims filing procedures as a means of setting forth the additional required elements, the notice specified in paragraph (2) of this section is required. If the contract provides for mutual agreement of the parties as the sole mechanism for requiring additional clean claim elements, then the written notice specified in paragraphs (1) and (2) of this section does not supersede the requirement for mutual agreement.

§21.2809. Audit Procedures.

(a) If an HMO or preferred provider carrier is unable to pay or deny a clean claim, in whole or in part, within the statutory claims payment period specified in §21.2802(25)(B) of this title (relating to Definitions), the unpaid portion of the claim shall be classified as an audit, and the HMO or preferred provider carrier shall pay 85% of the contracted rate on the unpaid portion of the clean claim within the statutory claims payment period.

(b) The HMO or preferred provider carrier shall complete the audit within 180 calendar days from the date the clean claim is received. If the HMO or preferred provider carrier determines upon completion of the audit that a refund is due from a physician or provider, such refund shall be made within 30 calendar days of the later of written notification to the physician or provider of the results of the audit or exhaustion of any subscriber or patient appeal rights if a subscriber or

patient appeal is filed before the 30-calendar-day refund period has expired, and may be made by any method, including chargeback against the physician or provider, or agreements by contract. The written notification of the results of the audit shall include a listing of the specific claims paid and not paid pursuant to the audit, including specific claims and amounts for which a refund is due. Unless otherwise agreed to by contract, if an HMO or preferred provider carrier intends to make a chargeback, the written notification shall also include a statement that the HMO or preferred provider carrier will make a chargeback unless the physician or provider contacts the HMO or preferred provider carrier to arrange for reimbursement through an alternative method. Nothing in this provision shall invalidate or supersede existing or future contractual arrangements that allow alternative reimbursement methods in the event of overpayment to the physician or provider.

(c) Upon completion of the audit as required by subsection (b) of this section, if additional payment is due to the physician or provider, such payment shall be made within 30 calendar days after the completion of the audit.

(d) Payments made pursuant to this section on a clean claim are not an admission that the HMO or preferred provider carrier acknowledges liability on that claim.

(e) Following completion of the audit process, an HMO or preferred provider carrier is not precluded from continuing to investigate its liability on a previously audited claim and seeking a refund of claim payment. If a carrier determines that it does not have liability on a clean claim, the carrier may seek a refund through chargeback or other means, in accordance with subsection (b) of this section.

§21.2811. Disclosure of Processing Procedures.

(a) In contracts with physicians or providers, or in the physician or provider manual or other document that sets forth the procedure for filing claims, or by any other method mutually agreed upon by the contracting parties, an HMO or preferred provider carrier must disclose to its physicians and providers:

(1) the address, including a physical address, where claims are to be sent for processing;

(2) the telephone number at which physicians' and providers' questions and concerns regarding claims may be directed;

(3) any entity along with its address, including physical address and telephone number, to which the HMO or preferred provider carrier has delegated claim payment functions, if applicable; and

(4) the address and physical address and telephone number of any separate claims processing centers for specific types of services, if applicable.

(b) An HMO or preferred provider carrier shall provide no less than 60 calendar days prior written notice of any changes of address for submission of claims, and of any changes of delegation of claims payment functions, to all affected physicians and providers with whom the HMO or preferred provider carrier has contracts.

(c) Except for a disclosure of processing procedures that is contained in a physician or provider contract, a disclosure required by subsection (a) of this section shall comply with §21.2818 of this title (relating to Disclosure Formats).

§21.2815. Failure to Meet the Statutory Claims Payment Period.

An HMO or preferred provider carrier that fails to comply with the requirements of §21.2807(b) of this title (relating to Effect of Filing a Clean Claim) and §21.2809(a) and (c) of this title (relating to Audit Procedures) shall pay the full amount of the billed charges submitted on the clean claim or pay the contracted penalty rate for late payment set forth in the contract between the provider or physician and the HMO or preferred provider carrier. Failure to pay the correct amount on a clean claim in accordance with the contract or denial of a clean claim for which payment should have been made that results in a failure to comply with the requirements of §21.2807(b) and §21.2809(a) and (c) of this title is considered a violation of Article 20A.18B(c) or Article 3.70-3C §3A(c). Any amount previously paid or any charge for a non-covered service shall be deducted from the payment. This section shall not apply when there is failure to comply with a contracted claims payment period of less than 45 calendar days as provided in §21.2802(25)(A) of this title (relating to Definitions), and Article 3.70-3C, §3(m) or Article 20A.09(j) of the Insurance Code.

§21.2816. Date of Claim Receipt.

(a) A physician or provider and an HMO or preferred provider carrier may agree by contract to establish a procedure to create a rebuttable presumption regarding the date of claim receipt.

(b) If a physician or provider and HMO or preferred provider carrier do not by contract agree to a method for the establishment of a rebuttable presumption, then the procedures set forth in paragraphs (1) - (4) of this subsection and subsections (c) - (h) of this section shall be utilized if the physician or provider desires to establish a rebuttable presumption to demonstrate the date of claim receipt. The physician or provider shall, as appropriate:

(1) submit the claim by United States mail, first class, by United States mail return receipt requested or by overnight delivery service, and maintain a log that complies with subsection (f) of this section that identifies each claim included in the submission, include a copy of the log with the relevant submitted claim, fax or electronically submit a copy of the log to the HMO, preferred provider carrier or delegated claims processor on the date of the submission and maintain a copy of the fax transmission acknowledgment or proof of electronic submission;

(2) submit the claim electronically and maintain proof of the electronically submitted claim;

(3) if the HMO or preferred provider carrier accepts claims submission by fax, then fax the claim and maintain proof of facsimile transmission; or

(4) hand deliver the claim, maintain a log that complies with subsection (f) of this section that identifies each claim included in the delivery, include a copy of the log with the relevant hand delivery and maintain a copy of the signed receipt acknowledging the hand delivery.

(c) If a claim for medical care or health care services provided to a patient is submitted by United States mail, first class, the claim is presumed to have been received on the third business day after the date the claim is submitted and the faxed or electronically generated log is transmitted, or if the claim is submitted using overnight delivery service or United States mail return receipt requested, on the date the delivery receipt is signed.

(d) If the claim is submitted electronically, the claim is presumed received on the date of the electronic verification of receipt by the HMO or preferred provider carrier or the HMO's or preferred provider carrier's clearinghouse. If the HMO's or the preferred provider carrier's clearinghouse does not provide a confirmation of receipt of the claim or a rejection of the claim within 24 hours of submission by the physician or provider or the physician's or provider's clearinghouse, the physician's or provider's clearinghouse shall provide the confirmation. The physician's or provider's clearinghouse must be able to verify that the claim contained the correct payor identification of the entity to receive the claim.

(e) If a claim is faxed, the claim is presumed received on the date of the transmission acknowledgment. Claims faxed after the payor's normal business hours are presumed received the following business day.

(f) If a claim is hand delivered, the claim is presumed received on the date the delivery receipt is signed.

(g) The claims mail log maintained by physicians and providers shall include the following information: name of claimant; address of claimant; telephone number of claimant; claimant's federal tax identification number; name of addressee; name of carrier; designated address, date of mailing or hand delivery; subscriber name; subscriber ID number; patient name; date(s) of service/occurrence, total charge, and delivery method.

(h) An example of a claims mail log that may be maintained by physicians and providers is as follows:
Figure: 28 TAC §21.2816(h)

§21.2818. Disclosure Formats.

Any document containing a disclosure required under §§21.2804, 21.2805, 21.2806 or 28.2811 of this title (relating to Disclosure of Necessary Attachments, Disclosure of Additional Clean Claim Elements, Disclosure of Revision of Data Elements, Attachments or Additional Clean Claim Elements, and Disclosure of Processing Procedures), excluding contracts, shall include a heading on the first page of the document in a prominent location and in a type that is boldfaced, capitalized, underlined or otherwise set out from the surrounding written material so as to be conspicuous that identifies the document as one containing a required disclosure.

§21.2819. Applicability.

The amendments to §§21.2803 - 21.2807, 21.2809, 21.2811, 21.2815 of this title (relating to Elements of a Clean Claim, Disclosure of Necessary Attachments, Disclosure of Additional Clean Claim Elements, Disclosure of Revision of Data Elements, Attachments or Additional Clean Claim Elements, Effect of Filing a Clean Claim, Audit Procedures, Disclosure of Processing Procedures, and Failure to Meet the Statutory Claims Payment Period), and new §§21.2816 - 21.2818 of this title (relating to Date of Claim Receipt, Terms of Contracts, and Disclosure Formats) apply to claims filed for non-confinement services, treatments or supplies rendered on or after September 12, 2001, and to claims filed for services, treatments, or supplies for in-patient confinements in a hospital or other institution that began on or after September 12, 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 September 12, 2001.

TRD-200105454
Lynda Nesenholtz
General Counsel and Chief Clerk
Texas Department of Insurance
Effective date: October 2, 2001
Proposal publication date: August 3, 2001
For further information, please call: (512) 463-6327

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28 TAC §21.2816

The Commissioner of Insurance adopts the repeal of §21.2816, concerning submission of clean claims. The repeal is adopted without changes to the proposal as published in the August 3, 2001, issue of the *Texas Register* (26 TexReg 5753).

Repeal of this section is necessary so that new §21.2816 may be adopted to implement legislation enacted by the 75th Legislature in House Bill 610, as contained in Texas Insurance Code Articles 3.70-3C §3A and 20A.18B. This section was renumbered and adopted as §21.2820. Simultaneous to the adoption of this repeal, adopted new §§21.2816 - 21.2820 and amendments to §§21.2803 - 21.2807, 21.2809, 21.2811, and 21.2815 are published elsewhere in this issue of the *Texas Register*.

The purpose of this repeal is to allow the adoption of new sections to further clarify and delineate requirements relating to submission and payment of clean claims. Adopted §21.2820 provides for severability of the rule, and has been renumbered to accommodate the new adopted sections in the subchapter.

No comments were received.

The repeal of §21.2816 is adopted pursuant to the Insurance Code Articles 20A.18B, 3.70-3C §3A and §36.001. Articles 20A.18B(a) and 3.70-3C §3A(a) provide that a clean claim is determined under the Department's rules. Articles 20A.18B(o) and 3.70-3C §3A(n) provide that the commissioner may adopt rules as necessary to implement the Prompt Payment of Physician and Providers section. Section 36.001 provides that the Commissioner of Insurance may adopt rules to execute the duties and functions of the Texas Department of Insurance only as authorized by statute.

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 September 12, 2001.

TRD-200105455
Lynda Nesenholtz
General Counsel and Chief Clerk
Texas Department of Insurance
Effective date: October 2, 2001
Proposal publication date: August 3, 2001
For further information, please call: (512) 463-6327

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CHAPTER 25. INSURANCE PREMIUM FINANCE

SUBCHAPTER A. GENERAL PROVISIONS

28 TAC §25.9

The Commissioner of Insurance adopts an amendment to §25.9 relating to Texas Automobile Insurance Plan Association Financing Disclosure and Premium Finance Comparison Disclosure Form with a change to the proposed text as published in the July 27, 2001 issue of the *Texas Register* (26 TexReg 5606).

The Texas Automobile Insurance Plan Association Financing Disclosure and Premium Finance Comparison Disclosure Form (form), which briefly explains payment options under installment and premium finance plans, is required to be used by all insurance premium finance companies subject to this chapter of the Administrative Code and the Insurance Code, Chapter 24. The Texas Automobile Insurance Plan Association (TAIPA)

Plan of Operation now allows a purchaser of a commercial automobile insurance policy to use an installment plan to pay for the policy. The amendment to §25.9 is necessary to incorporate this change into the form to ensure that the form is consistent with the TAIPA Plan of Operation. The effective date of the new amended form is changed to October 2, 2001. This change is necessary to allow for at least twenty days after filing with the Texas Register for the section to become effective.

The change to the form, which is adopted and incorporated by reference into §25.9, is to allow a commercial automobile insurance premium to be financed. The form briefly explains to the consumer the payment options under installment and premium finance plans. It compares the dollar amounts required for the down payment and monthly payments for both payment options.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Insurance Code Articles 24.09 and §36.001. Article 24.09 authorizes the Commissioner of Insurance to adopt and enforce rules necessary to carry out the provisions of Chapter 24, Financing Insurance Premium. Section 36.001 authorizes the Commissioner to adopt rules for the conduct and execution of the duties and functions of the Texas Department of Insurance as authorized by statute.

§25.9. Texas Automobile Insurance Plan Association Financing Disclosure and Premium Finance Comparison Disclosure Form.

(a) Before an insurance premium finance company may finance a policy insured through the Texas Automobile Insurance Plan Association (TAIPA), it must require disclosure to the insured or prospective insured the payment plan available through TAIPA. A comparison between the terms of financing the policy with an insurance premium finance company and the use of the payment plan available through TAIPA must be made.

(b) This disclosure shall be made using the Premium Finance Comparison Disclosure Form (Disclosure Form), which the Department adopts and incorporates by reference. The Disclosure Form shall be provided to the consumer in both English and Spanish. The effective date of the Disclosure Form is October 1, 2001. This form is published by the Department and may be obtained from the Premium Finance Licensing Unit, Mail Code 107-5A, Texas Department of Insurance, 333 Guadalupe, P.O. Box 149104, Austin, Texas 78714-9104. Reproduction of this form is allowed.

(c) The insurance premium finance company shall maintain copies of the Disclosure Forms as evidence to an examiner that disclosure of the TAIPA payment plan was made to the insured.

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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Lynda Nesenholtz
General Counsel and Chief Clerk
Texas Department of Insurance
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Proposal publication date: July 27, 2001
For further information, please call: (512) 463-6327

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TITLE 30. ENVIRONMENTAL QUALITY

PART 1. TEXAS NATURAL RESOURCE CONSERVATION COMMISSION

CHAPTER 114. CONTROL OF AIR POLLUTION FROM MOTOR VEHICLES

SUBCHAPTER H. LOW EMISSION FUELS

DIVISION 1. GASOLINE VOLATILITY

30 TAC §114.307, §114.309

The Texas Natural Resource Conservation Commission (commission) adopts amendments to §114.307, Exemptions, and §114.309, Affected Counties. The commission adopts these amendments to Chapter 114, Control of Air Pollution from Motor Vehicles; Subchapter H, Low Emission Fuels; Division 1, Gasoline Volatility; and corresponding revisions to the state implementation plan (SIP). The commission adopts these amendments to allow research laboratories and academic institutions to conduct research using gasoline with a higher Reid vapor pressure (RVP), and to provide flexibility by more closely matching the exemptions established for the gasoline RVP rules to those exemptions allowed in the diesel fuel rules as specified in §114.317, Exemptions to Low Emission Diesel Requirements. The amendments to the RVP rules are not expected to have a significant impact on air quality. Section 114.307 is adopted *with changes* to the proposed text as published in the June 22, 2001 issue of the *Texas Register* (26 TexReg 4586). Section 114.309 is adopted *without changes* to the proposed text and will not be republished.

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE ADOPTED RULES

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

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

The research laboratories and academic institutions located within the RVP control areas are concerned that the current language in §114.301 does not allow them to conduct research

and test fuels, additives, and/or motor vehicles using fuels with an RVP higher than allowed during the ozone control period. The ozone control period normally extends from May 1 through October 31 of each year or for about six months. This places an undue hardship on those institutions that need to test with the higher RVP fuels during the ozone control period. Also, test fuels are sometimes required to be stored in quantities greater than the currently exempted 500 gallons. The adopted amendments to §114.307 will clarify that these affected facilities are exempt from the provisions.

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

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

SECTION BY SECTION DISCUSSION

The amendments to §114.307 add new subsections (b) - (e). The amendments to this section will make the exemptions for gasoline consistent with the exemptions for diesel fuel specified in §114.317. Subsection (b) establishes an exemption for gasoline used in research, development, or testing purposes of fuels, additives, and/or motor vehicles. Under the current rules, research facilities and academic institutions are limited to a maximum RVP of 7.8 psi from May 1 through October 1. This exemption will allow research facilities and academic institutions to use higher RVP fuels year- round for their fuels-related research. New subsection (c) establishes an exemption for gasoline used for competition racing purposes. Competition racing gasolines have higher RVP specifications than allowed which would have effectively limited the competition racing events to the non-ozone control periods. This exemption will allow competition racing events year-round. New subsection (d) exempts the owner or operator of a retail fuel dispensing outlet from all monitoring, recordkeeping, and reporting requirements of these rules, except for the requirement to maintain product transfer documents. This exemption will eliminate unnecessary paperwork for retail gasoline dispensing outlets. The recordkeeping requirement related to product transfer documents was left unchanged, because it allows the commission to track gasoline back to its producers if enforcement actions are needed. Finally, new subsection (e) states that gasoline, which does not meet the RVP requirements, is allowed in the affected counties as long as it is not ultimately used to power a gasoline-powered, spark- ignition engine in a motor vehicle or non-road equipment in the affected counties. This exemption will allow gasoline suppliers and transporters to ship and store their higher RVP fuels into and through the affected areas rather than having to ship or store the fuel outside of the affected areas. The exemption in subsection (e) does not apply to fuel used in conjunction with agricultural use; aviation use; research, development, or testing purposes; or as competition racing fuel. The phrase "subsections (a), (b), and (c) of this section" was changed to "subsections (a) - (c) of this section" in subsection (e)(1) and (2) to reflect *Texas Register* style guidelines.

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

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 is not subject to §2001.0225 because it does not meet the definition of a "major environmental rule" as defined in that statute. "Major environmental rule" means a rule, the specific intent of which is to protect the environment or reduce risks to human health from environmental exposure and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. The amendments to Chapter 114 are intended to protect the environment or reduce risks to human health from environmental exposure to ozone but will not affect in a material way, a sector of the economy, competition, and the environment due to its impact on the fuel manufacturing and distribution network of the state. The amendments are intended to provide flexibility in the RVP air pollution control program as part of the strategy to reduce emissions of nitrogen oxides (NO_x) necessary for the counties included in the Houston/Galveston (HGA) ozone nonattainment area to be able to demonstrate attainment with the ozone national ambient air quality standard (NAAQS). Impacts on the fuel manufacturing and distribution network and the environment will not be significant because the amendments simply add a few clarifying exemptions to §114.307, remove monitoring, recordkeeping, and reporting requirements for retail gasoline dispensing outlets except the requirement to maintain product transfer documents, and correct a typographical error. Based on this, the amendments are not major environmental rules.

Additionally, even if these amendments were major environmental rules, §2001.0225 only applies to a major environmental rule that: 1.) exceeds a standard set by federal law, unless the rule is specifically required by state law; 2.) exceeds an express requirement of state law, unless the rule is specifically required by federal law; 3.) exceeds a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or 4.) adopts a rule solely under the general powers of the agency instead of under a specific state law.

This rulemaking action does not meet any of these four applicability requirements. Specifically, the RVP fuel requirements including these amendments were developed in order to meet the ozone NAAQS set by the United States Environmental Protection Agency (EPA) under 42 United States Code (USC), §7409, and therefore meet a federal requirement. Provisions of 42 USC, §7410, require states to adopt a SIP which provides for "implementation, maintenance, and enforcement" of the primary NAAQS in each air quality control region of the state. While §7410 does not require specific programs, methods, or reductions in order to meet the standard, SIPs must include "enforceable emission limitations and other control measures,

means or techniques (including economic incentives such as fees, marketable permits, and auctions of emissions rights), as well as schedules and timetables for compliance as may be necessary or appropriate to meet the applicable requirements of this chapter," (meaning Chapter 85, Air Pollution Prevention and Control). It is true that 42 USC does require some specific measures for SIP purposes, like the inspection and maintenance program, but those programs are the exception, not the rule, in the SIP structure of 42 USC. The provisions of 42 USC recognize that states are in the best position to determine what programs and controls are necessary or appropriate in order to meet the NAAQS. This flexibility allows states, affected industry, and the public, to collaborate on the best methods for attaining the NAAQS for the specific regions in the state. Even though 42 USC allows states to develop their own programs, this flexibility does not relieve a state from developing a program that meets the requirements of §7410. Thus, while specific measures are not generally required, the emission reductions are required. States are not free to ignore the requirements of §7410 and must develop programs to assure that the nonattainment areas of the state will be brought into attainment on schedule.

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

The commission invited public comment on the draft RIA determination, but received no comments.

TAKINGS IMPACT ASSESSMENT

The commission prepared a takings impact assessment for this rulemaking action in accordance with Texas Government Code, §2007.043. The following is a summary of that assessment. The specific purpose of the rulemaking action is to provide flexibility in the RVP fuel program which will act as an air pollution control strategy to reduce NO_x emissions necessary for the eight counties included in the HGA ozone nonattainment area to be able to demonstrate attainment with the ozone NAAQS. Promulgation and enforcement of the adopted rules will not burden private, real property because this rulemaking action does not require an investment in the permanent installation of new refinery processing equipment. Although the rulemaking action does not directly prevent a nuisance or prevent an immediate threat to life or property, the RVP program does prevent a real and substantial threat to public health and safety, and partially fulfill a federal mandate under 42 USC, §7410. Specifically, the emission limitations and control requirements within the RVP program have been developed in order to meet the ozone NAAQS set by the EPA under 42 USC, §7409. States are primarily responsible for ensuring attainment and maintenance of the NAAQS once the EPA has established them. Under §7410 and related provisions, states must submit, for approval by the EPA, SIPs that provide for the attainment and maintenance of NAAQS through control programs directed to sources of the pollutants involved. Therefore, the purpose of these rules is to provide flexibility in implementing low RVP gasoline which is necessary for the HGA ozone nonattainment area to meet the air quality standards established under federal law as NAAQS. Consequently, the exemption which applies to these rules is that of an action reasonably taken to fulfill an obligation mandated by federal law; therefore, this rulemaking action does not constitute a takings under the Texas Government Code, Chapter 2007.

CONSISTENCY WITH THE COASTAL MANAGEMENT PROGRAM

The commission determined that the rulemaking action relates to an action or actions subject to the Texas Coastal Management Program (CMP) in accordance with the Coastal Coordination Act of 1991, as amended (Texas Natural Resources Code, §§33.201 et seq.), and the commission rules in 30 TAC Chapter 281, Subchapter B, concerning Consistency with the CMP. As required by 30 TAC §281.45(a)(3) and 31 TAC §505.11(b)(2), relating to actions and rules subject to the CMP, commission rules

governing air pollutant emissions must be consistent with the applicable goals and policies of the CMP. The commission reviewed this action for consistency with the CMP goals and policies in accordance with the rules of the Coastal Coordination Council, and determined that the action is consistent with the applicable CMP goals and policies. The CMP goal applicable to this rulemaking action is the goal to protect, preserve, and enhance the diversity, quality, quantity, functions, and values of coastal natural resource areas (31 TAC §501.12(1)). No new sources of air contaminants will be authorized and NO_x air emissions will be reduced as a result of the existing RVP rules and these amendments. The CMP policy applicable to this rulemaking action is the policy that commission rules comply with regulations in 40 Code of Federal Regulations (CFR), to protect and enhance air quality in the coastal area (31 TAC §501.14(q)). This rulemaking action complies with 40 CFR 51. Therefore, in compliance with 31 TAC §505.22(e), the commission affirms that this rulemaking action is consistent with CMP goals and policies.

The commission solicited comments on the consistency of the proposed rules with the CMP during the public comment period, and received one comment which will be addressed in the RESPONSE TO COMMENT section.

HEARINGS AND COMMENTERS

The commission scheduled a hearing on July 17, 2001, in Austin, however, the hearing was not officially convened because no one from the public attended. The comment period closed on July 23, 2001. The Texas Department of Transportation (TxDOT) submitted written comment regarding the CMP. No other persons submitted written or oral comment.

RESPONSE TO COMMENT

TxDOT submitted a letter stating that they had reviewed the proposed amendments by the commission to Chapter 114 to certify, as consistent with State law, the proposed amendment. TxDOT stated that they conducted their review in accordance with 31 TAC §505.11(a)(6) and (b)(2), and that they did not have any comments or suggestions to offer on the proposed amendments at this time.

The commission thanks TxDOT for their time and review of our proposed amendments.

STATUTORY AUTHORITY

The amendments are 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 amendments are 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; §382.019, concerning Methods Used to Control and Reduce Emissions from Land Vehicles, which authorizes the commission to adopt rules to control and reduce emissions from engines used to propel land vehicles; §382.037(g), concerning Vehicle Emissions Inspection and Maintenance Program, which authorizes the commission to regulate fuel content if it is demonstrated to be necessary for attainment of the NAAQS; and §382.039, concerning Attainment Program, which authorizes the commission to develop and implement transportation programs and other measures necessary to demonstrate attainment and protect the public from exposure to hazardous air contaminants from motor vehicles.

§114.307. Exemptions.

(a) The following uses are exempt from §§114.301, 114.305, and 114.306 of this title (relating to Control Requirements for Reid Vapor Pressure; Approved Test Methods; and Recordkeeping, Reporting, and Certification Requirements):

(1) any stationary tank, reservoir, or other container:

(A) used exclusively for the fueling of implements of agriculture; or

(B) with a nominal capacity of 500 gallons (1,893 liters) or less; and

(2) all gasoline solely intended for use as aviation gasoline ("av-gas").

(b) Any gasoline that is either in a research, development, or test status; or is sold to petroleum, automobile, engine, or component manufacturers for research, development, or test purposes; or any gasoline to be used by, or under the control of petroleum, additive, automobile, engine, component manufacturers for research, development, or test purposes; or any independent research laboratories or academic institutions for use in research, development, or testing of petroleum, additive, automobile, engine, component products, is exempt from the provisions of this division (relating to Gasoline Volatility), provided that:

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

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

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

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

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

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

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

(e) Gasoline that does not meet the requirements of §114.301 of this title is not prohibited from being transferred, placed, stored,

and/or held within the affected counties so long as it is not ultimately used to power:

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

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

Filed with the Office of the Secretary of State on September 14, 2001.

TRD-200105499
Stephanie Bergeron
Director, Environmental Law Division
Texas Natural Resource Conservation Commission
Effective date: October 4, 2001
Proposal publication date: June 22, 2001
For further information, please call: (512) 239-0348

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CHAPTER 279. WATER QUALITY CERTIFICATION

The Texas Natural Resource Conservation Commission (agency, commission, or TNRCC) adopts amendments to Chapter 279, Water Quality Certification, §§279.1 - 279.12; the repeal of §279.13; and new §279.13; to revise procedures for waivers of certification, amend enforcement provisions, and modify existing language for consistency with other agency rules. Sections 279.2, 279.3, 279.7, 279.8, and 279.11 are adopted *with changes* to the proposed text as published in the May 4, 2001 issue of the *Texas Register* (26 TexReg 3365). Sections 279.1, 279.4 - 279.6, 279.9, 279.10, 279.12; the repeal of §279.13; and new §279.13 are adopted *without changes* to the proposed text and will not be republished.

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE ADOPTED RULES

Title 33 United States Code (USC), §1341, commonly known as the federal Clean Water Act (CWA), §401, requires all applicants for a federal license or permit to conduct any activity that may result in a discharge into navigable waters, including the construction or operation of facilities, to request a certification from the state that the discharge will comply with state water quality standards. The commission rules in Chapter 279 contain the procedures for public notice and review of any such activity proposed to be authorized by federal permit, including applications for dredge and fill permits issued by the U.S. Army Corps of Engineers (Corps). Under Chapter 279, the commission reviews the proposed activity for compliance with 30 TAC Chapter 307, Water Quality Standards, and Texas Water Code (TWC), §§26.011, 26.023, 26.027, 26.121, and 26.127, which direct the commission to act to protect the quality of water in the state. These adopted amendments will provide for the executive director either to review the proposed activity or to waive certification. These adopted amendments will also specifically allow the executive director to waive certification when the applicant agrees to include specific water quality-related conditions in the permit. The adopted amendments will also add detail concerning the time and procedures for the executive director's review of permit applications. These adopted amendments will expand the category of persons who may request a public meeting, allow the executive director to waive public notice in an emergency or when certification is waived, more clearly describe the type of public meetings that may be held on certification decisions in response to public comments received, and change notice requirements for public meetings. If the executive director grants, grants conditionally, or denies certification, these amendments will specify the contents of the statement of this decision. These adopted amendments will specify the persons to receive notice of a decision, and, if the activity is certified, a statement of reasonable assurance that the proposed activity will not violate water quality standards. Finally, these adopted amendments will require applicants to comply with agreements and permit conditions resulting from the certification procedures in these rules, and provide for enforcement for noncompliance.

The commission adopts these changes in order to partially restructure the certification process, making it less cumbersome and more flexible. Some of these amendments are the outgrowth of recent discussions and agreements with the Corps aimed at streamlining certification procedures on 404 Permits. Some of these amendments reflect the commission and the Corps conclusions, upon review of past practices, that the system should be revised to maximize interagency cooperation and minimize possible duplication of effort.

SECTION BY SECTION DISCUSSION

Adopted §279.1, General, will eliminate unnecessary recitation of language from the federal CWA.

Adopted with changes to the proposal, §279.2, Purpose and Policy, subsections (a) and (b) will make grammatical corrections and change references from "TNRCC" to "agency," from "Clean Water Act" to "CWA," and from "Commission" to "commission," for consistency with style conventions of the *Texas Register* and to reflect current definitions in 30 TAC Chapter 3. Subsections (b)(1) - (3) will make grammatical corrections. Subsection (b)(4) will clarify that the executive director may waive certification upon agreement of an applicant to include and comply with water quality-related conditions in the applicant's federal permit. Section 279.2(c) will delete the provision that a commissioner may request that the commission review a certification application prior to the executive director's action on it.

Adopted with changes to the proposal, §279.3, Definitions, will clarify and update the following definitions to clarify acronyms, reflect accurate citations to law and regulations for consistency with definitions found elsewhere, and to make grammatical corrections: 401 Certification, 404 Permit, activity, applicant, aquatic ecosystem, Clean Water Act, emergency, general permit, individual permit, licensing or permitting agency, nationwide permit, National Pollutant Discharge Elimination System (NPDES) permit, regional administrator, and water dependent activity. The definition of general permit will be changed to clarify that they may be issued on a nationwide or regional basis. The definition of pollutant will be changed to conform to TWC, §26.001. The definitions of affected person and person will be deleted because these terms are being eliminated from the adopted rules. The definition of water quality limited segment will be deleted because this term has never been used in the

rules. The definitions of commission and executive director will be deleted because these terms are already defined in Chapter 3. Definitions have been renumbered to reflect these changes.

Adopted §279.4, Application for Certification, subsections (a) - (e) will clarify the use of acronyms, to accurately refer to water rather than waters in the state, and make grammatical corrections. Subsection(b)(3) will state that the executive director may review the final permit decision document before acting on a request for certification.

Adopted §279.5, Notice of Application, subsection (a) will be amended to make a grammatical correction, change "permit agency" to "permitting agency" to be consistent throughout the rules, and eliminate unnecessary references and redundant language. Section 279.5(b) will be amended to make a grammatical correction and to clarify an ambiguous pronoun. Subsection (b)(8) will be amended to use a common acronym (EPA) defined in Chapter 3. Subsection (b)(11) will be deleted because interested persons must respond to the notice, and a list of interested persons making comments on the certification will not be available until after the notice required by this section is mailed. Subsection (c)(3) will be amended to use a current definition (federal CWA) in Chapter 3. Subsection (c) (4) will be amended to use a current definition (agency instead of commission) in Chapter 3 and to specify an agency mail code. Subsection (c)(6) will be amended for consistency with current commission rules and terminology on public meetings and to reflect that any person may request a public meeting. Throughout this section, the term "public hearing" has been changed to "public meeting" to clarify that the proceeding contemplated in this chapter is a notice and comment meeting rather than an evidentiary contested case hearing. Section 279.5(d) will be added to state that the executive director may waive the notice requirements of this subsection when a permit review will be waived. Old §279.5(d) (renumbered §279.5(e)) will be amended to bring the section into consistency with commission rules and terminology on public meetings, to make the references to later sections of Chapter 279 conform to their new titles amended in this rulemaking, to reflect current definitions (agency instead of commission) in Chapter 3, and to make grammatical corrections.

Adopted §279.6, Public Comments, will be amended by removing the requirement for the executive director to consider comments when certification is waived or when public notice has been waived in an emergency.

Adopted with changes to the proposal, the title to §279.7, Public Meetings, will be amended to make the distinction between a hearing and a public meeting. Section 279.7(a) will be amended to provide consistency with commission rules and terminology on public meetings, to clarify that the executive director may conduct a public meeting on any application for 401 Certification based on public comments received during the public comment period or at a request from a commissioner, and to remove the reference to affected person. Subsection (a)(1) through (4) will be deleted to make requests for a public meeting easier and not restricted only to affected persons. Section 279.7(b) will be amended to clarify that the executive director shall notify the appropriate agencies that the executive director will make a certification decision after a public meeting and to provide consistency with commission rules and terminology on public meetings. Section 279.7(c) will be amended to provide consistency with commission rules and terminology on public meetings and to make a grammatical correction. Section 279.7(d) will be amended to change two references from "hearings" to "meetings" in order to be consistent throughout the section.

The title to §279.8, Notice of Public Meeting, will be amended to provide consistency with commission rules and terminology on public meetings. Section 279.8(a) was proposed to be amended to change the number of days for the executive director to notify the applicant of a public meeting from 30 days to ten days to streamline and facilitate the certification process; however, the time period was left at 30 days as a result of comments that ten days was not enough time. Section 279.8(a) and (b) will be amended to provide consistency with commission rules and terminology on public meetings, and to make a grammatical correction. Subsection (c)(2) will be amended to clarify that certifications deal with the discharge of pollutants, not the disposal of waste. Subsection (c)(3) will be amended to make its wording parallel with subsection (c)(2), to clarify that certifications deal with present or future activities, not only with present facilities, and to clarify that certifications deal with the discharge of pollutants, not the disposal of waste. Subsection (c)(8) will be amended to use a current acronym (EPA) defined in Chapter 3. Subsection (c)(11) will be amended to clarify that any person who commented during the public comment period will be notified of a public meeting. Section 279.8(d) will be amended to provide consistency with commission rules and terminology on public meetings, and make grammatical corrections. The proposal to reduce the notice time for public meetings from 30 days to ten days, consistent with the proposed amendment to §279.8(c), was changed back to 30 days as a result of comments that ten days was not enough time.

Adopted §279.9, Executive Director Review of Water Quality Certification Application, will be amended to give the executive director wider discretion to waive certification and certification review as allowed by the federal CWA. Section 279.9(a) will be amended to provide that the executive director shall either conduct a review or waive certification. Section 279.9(b) will be amended to require that if the executive director conducts a review, after the review and any public meeting, the executive director shall make a determination on the proposed activity. Subsection (b)(2) will be amended to clarify which sections of the federal CWA that state certifications cover.

Adopted §279.10, Final Agency Action on National Pollutant Discharge Elimination System (NPDES) Permits, will be amended to enumerate the actions the executive director may take on a certification consistent with procedures identified in the NPDES Memorandum of Agreement (MOA). The title to §279.10 will be amended to use a current definition (agency instead of commission) in Chapter 3 and to spell out the acronym for NPDES. Section 279.10(a) will be amended to use a common acronym (EPA) defined in Chapter 3, to enumerate the actions the executive director may take on a certification, and to make a grammatical correction. Subsection (a)(2) will be amended to make a grammatical correction and to use a common acronym (CWA) defined in Chapter 3. Subsection (a)(3) will be amended to use a current definition (agency instead of commission) from Chapter 3, to use a common acronym (CWA) defined in Chapter 3, and to eliminate an unnecessary recitation of language from the federal CWA. Subsection (a)(4) will be amended to eliminate an unnecessary recitation of language from the federal CWA.

Adopted with changes to the proposal, the title to §279.11, Final Agency Action on Department of the Army Permits, will be

amended to use a current definition, agency instead of commission, from Chapter 3. Section 279.11(a) will be amended to give the executive director the discretion whether to review or waive certification of any particular permit application. Section 279.11(c) will be amended to clarify the procedures to be followed if the executive director reviews a permit application. Subsection (c)(1) will be amended to make grammatical corrections and to reduce the burden on the applicant of demonstrating no practicable alternative. Subsection (c)(2) and (3) will be amended to make grammatical corrections. Subsection (c)(4) will be amended to make grammatical corrections to more clearly express that if the executive director determines the proposed compensatory mitigation will not accomplish the purpose and policy of this chapter, then certification may be denied, even if alternatives are not available. Section 279.11(d) will be amended to clarify what actions the executive director may take, who shall receive notice of the executive director's decision, and to make a grammatical correction. Old subsection (d)(2) and (3) will be amended for reorganization. Renumbered subsection (d)(2) will be amended to clarify the contents of the statement of the executive director's decision, including a description of the materials and information reviewed from old subsection (d)(2), and to make a grammatical correction. Old subsection (d)(3)(A) will be deleted, with needed concepts incorporated into amendments to the old subsection (d)(3). Renumbered subsection (d)(2)(A) will be amended to specify the contents of the statement of the executive director's decision if the activity is certified. Renumbered subsection (d)(2)(A)(i) will be amended to make grammatical corrections clarifying that the executive director must include a statement of reasonable assurance that the activity, if conducted in accordance with the terms of the proposed permit, will not violate the criteria enumerated in §279.9. Renumbered subsection (d)(2)(A)(ii) will be amended to make a grammatical correction. Renumbered subsection (d)(2)(B) will be amended to clarify that if a certification is denied, the executive director's statement must include an explanation of how the proposed activity will not satisfy one or more of the criteria enumerated in §279.9.

Adopted §279.12, Other State Certification, subsection (a)(1) will be amended to make grammatical corrections and to be consistent with state legal terminology. Section 279.12(a)(2) will be amended to make a grammatical correction, to delete subsection (a)(2)(D) - (F), because a list of appropriate or interested persons making comments on the certification will not be maintained until after the notice required by this section is mailed, and to make appropriate grammatical and punctuation corrections to subsection (a)(2)(B) and (C). Subsection (a)(3) will be amended to specify that the comments considered should be received in accordance with §279.5. Subsection (a)(4) will be amended to clarify that the executive director shall maintain a list of all applicable nationwide permits and the executive director's certification action on each permit. Subsection (b)(1) will be amended to make grammatical corrections and to be consistent with state legal terminology. Subsection (b)(2) will be amended to make a grammatical correction, to delete subsection (b)(2)(D) - (F) because a list of appropriate or interested persons making comments on the certification will not be maintained until after the notice required by this section is mailed, and to make appropriate grammatical and punctuation corrections to subsection (b)(2)(B) and (C). Subsection (b)(3) will be amended to specify that the comments considered should be received in accordance with §279.5. Subsection (b)(4) will be amended to clarify that the executive director shall maintain a list of all applicable general permits and the executive director's certification action on each permit. Old subsection (c)(2) will be deleted, and its language moved to old subsection (c)(1) that will be changed to an introductory paragraph for subsection (c). The new introductory paragraph now specifies that the executive director shall send notice to the specified persons and agencies of the decision to deny, grant, grant conditionally, or waive certification, and has a grammatical correction. All remaining subheadings in subsection (c) are proposed to be renumbered accordingly. Old subsection (c)(1)(B) (newly renumbered subsection (c)(2)) will be amended to require that a statement of the basis for the executive director's decision, including a description of the materials and information examined, shall be included in the certification notice; this requirement was formerly included in old subsection (c)(1)(C). New subsection (c)(2)(A) will be added to specify what the executive director's statement must include if the activity is certified. Old subsection (c)(1)(B)(i) (newly renumbered subsection (c)(2)(A)(i)) will be amended to state that the executive director's statement must include reasonable assurance that the activity, if conducted in accordance with the terms of the proposed permit, will not violate criteria enumerated in §279.9; this requirement had been included in old subsection (c)(2)(C)(ii)(I). Newly renumbered subsection (c)(2)(A)(ii) will be amended to require that the executive director's statement must include any monitoring and reporting requirements necessary to assure compliance with criteria enumerated in §279.9; this requirement had been included in old subsection (c)(2)(C)(ii)(II). New subsection (c)(2)(B) will be added to state that if certification is denied, the executive director's statement must include an explanation of why the proposed activity will not satisfy one or more of the criteria enumerated in §279.9; this requirement had been included in old subsection (c)(2)(C)(iii). Old subsection (c)(2)(C) will be deleted because its provisions have been fully incorporated into newly renumbered subsection (c)(2). Old subsection (c)(2) will be deleted because its provisions have been fully incorporated into the introductory paragraph of §279.12(c).

The commission adopts the repeal of current §279.13, Enforcement. New §279.13, Enforcement, will be adopted to eliminate outdated references, and to clarify the agency's existing enforcement authority in the 401 Certification program.

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 action is not subject to §2001.0225 because it does not meet the definition of a "major environmental rule" as defined in the act. The intent of the rules and rule amendments is to protect the environment or reduce risks to human health from environmental exposure. The rule amendments will not have an adverse material impact because the amendments only revise procedures for waivers of certification, amend enforcement provisions, and clarify existing language for consistency with other agency rules, and the amendments do not change the type or number of activities subject to review under the existing rules. Therefore, the rule amendments do not meet the definition of a "major environmental rule." Furthermore, the rulemaking action does not meet any of the four applicability requirements listed in §2001.0225(a). The rules and rule amendments do not exceed a standard set by federal or state law; the rules as a whole do exceed the express requirements of state law, but the rules are specifically required by the federal CWA, §401, for any state agency that chooses to certify permits under §401; the rules and rule amendments do not exceed a requirement of a federal delegation agreement or a contract between the state and an agency or representative

of the federal government to implement a state and federal program; and the rules and rule amendments are not adopted solely under the general powers of the agency, but rather under TWC, §§26.011, 26.023, 26.027, 26.121, and 26.127. The commission invited, but did not receive, public comment on the draft regulatory impact analysis determination.

TAKINGS IMPACT ASSESSMENT

The commission evaluated these amendments and performed an assessment in accordance with Texas Government Code, Chapter 2007. The following is a summary of that assessment. The specific purpose of the amendments is to more effectively implement the MOA with the Corps regarding federal CWA, §401 provisions. The purpose of the MOA is to implement a process for interagency cooperation and agency review of individual 404 Permit applications under the CWA, §401. The amendments would substantially advance this stated purpose by revising procedures for waivers of certification, amending enforcement provisions, and clarifying existing language for consistency with other commission rules.

Promulgation and enforcement of these amendments would be neither a statutory nor a constitutional taking of private real property. Specifically, these amendments do not affect a landowner's rights in private real property because this rulemaking action does not constitutionally burden, restrict, nor limit the owner's right to property, nor does it reduce a property's value by 25% or more beyond that which would otherwise exist in the absence of the amendments. Instead, these amendments merely clarify existing language, revise procedures, and amend enforcement provisions of rules that have been in place for 13 years; rules that require an applicant for a federal wetlands discharge permit to demonstrate to the state that the discharge will not pollute water in the state. Consequently, these amendments do not meet the definition of a taking under Texas Government Code, §2007.002(5). This rulemaking action is reasonably taken to fulfill the requirements of state law to control the quality of the state's water and will not constitute a taking under Texas Government Code, Chapter 2007.

CONSISTENCY WITH THE COASTAL MANAGEMENT PROGRAM

The commission reviewed this rulemaking action and found that the rules are identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11(b)(2), relating to Actions and Rules Subject to the Coastal Management Program (CMP), or will affect an action or authorization identified in §505.11(a)(6), and therefore, required that applicable goals and policies of the CMP be considered during the rulemaking process. The commission determined that this rulemaking action is consistent with the applicable CMP goals and policies.

Of the ten CMP goals contained in 31 TAC §501.12, relating to Goals, five are applicable to these rules which include: 1) to protect, preserve, restore, and enhance the diversity, quality, quantity, functions, and values of the coastal natural resource areas (CNRAs); 2) to ensure sound management of all coastal resources by allowing for compatible economic development and multiple human uses of the coastal zone; 3) to minimize loss of human life and property due to the impairment and loss of protective features of CNRAs; 5) to balance the benefits from economic development and multiple human uses of the coastal zone; the benefits from protecting, preserving, restoring, and enhancing CRNAs; the benefits from minimizing loss of human life and property; and the benefits from public access to and enjoyment of the coastal zone; and 7) to make agency and local government decision- making affecting CNRAs efficient by identifying and addressing duplication and conflicts among local, state, and federal regulatory and other programs for the management of CNRAs. Of the 18 policies contained in §501.14, relating to Policies for Specific Activities and Coastal Natural Resource Areas, only one, j) Dredging and Dredged Material Disposal and Placement, is applicable to these rules.

The commission reviewed these rules for consistency with the goals and policies of the CMP mentioned previously, and determined that the rules are consistent with the intent of the five applicable goals and the one applicable policy, and will not result in any significant adverse effects to CNRAs. Promulgation and enforcement of these rules will not violate any standards identified in the applicable CMP goals and policies because these rules implement provisions under TWC, §§26.011, 26.023, 26.027, 26.121, and 26.127, which direct the commission to act to protect the quality of water in the state. These rules amend procedures for public notice and the review of applications for water quality certification, which is consistent with the applicable goals and policies of the CMP. The commission requested public comments regarding the consistency of the proposed rules with the CMP. One written comment letter was received from Michael Behrens, Assistant Executive Director of Engineering Operations, Texas Department of Transportation (TxDOT), and the comments are addressed in the RESPONSE TO COMMENTS section of the preamble.

PUBLIC MEETING AND COMMENTERS

A public meeting was held in Austin on June 5, 2001; however, no person presented oral comments. Written comments were received from Michael Behrens, Assistant Executive Director of Engineering Operations, TxDOT; Charles Heald, Executive Director, TxDOT; Steve Kilpatrick of Dow Chemical Company (DOW); and Sara Burgin, Brown McCarroll, L.L.P. on behalf of Reliant Energy, Inc., American Electric Power, and TXU Business Services (the Utilities).

RESPONSE TO COMMENTS

DOW and TxDOT generally supported the streamlining efforts of the commission, but also suggested revisions. The Utilities expressed neither support nor opposition to the rulemaking action, but suggested revisions.

Streamlining General Comments

DOW, TxDOT, and the Utilities supported the flexibility and streamlining of the tiered approach to 401 Certifications currently being implemented under a MOA with the Corps. All three commenters indicated a concern that the Best Management Practices (BMPs) provided in the Tier I checklist were too limited and reduced the flexibility of the tiered approach. The commenters stated that not all categories of BMPs were appropriate for all projects. TxDOT suggested that individual reviews for special circumstances would defeat the purpose of the streamlining process. DOW and the Utilities suggested that the agency establish a *de minimus* category for small quantity impacts that receive an automatic certification.

The commission appreciates the support of the tiered approach to 401 Certifications. The details of the tiered approach are not specifically proposed as part of this rule revision in part to allow for the flexibility the commenters are requesting. The commission recognizes the limits in trying to develop a "one size fits all"

list of BMPs for any potential application. The approach of the commission has been to provide a list of common BMPs for each of three categories. These categories are erosion control, sedimentation control, and post-construction total suspended sediment (TSS) control. The election by the applicant to incorporate BMPs from the checklist into their permit application is optional. The commission also allows for individual review of alternative BMPs for equivalent effectiveness with the listed BMPs. If the executive director determines an alternative BMP provides equivalent effectiveness, the agency will notify the Corps and allow for the use of the Tier I processing with the alternative BMP. The commission has committed to periodically review alternative BMPs for inclusion in the checklist. To date the commission has not received any request for inclusion of alternative BMPs.

The commission also recognizes that there may be limited circumstances in which all three categories of BMPs are not appropriate. Under these circumstances the applicant always has the flexibility to request an individual certification. Certification using the tiered approach is not required, but is the applicant's option. The commission will continue to provide reviews and certification decisions within the established Corps timeframes for individual permits. The commission has previously certified the Corps' nationwide permits which allow small, *de minimus* projects to proceed without additional review by the commission. It is the commission's intent to continue requiring appropriate BMPs to protect the water quality of the state for individual permits.

CMP Applicability

TxDOT responded to the request for comments regarding the consistency of this rulemaking proposal with the CMP, but did not have any comments or suggestions to offer.

Section 279.3. Definitions

DOW and the Utilities requested the term "affected person" not be deleted.

The commission disagrees because as discussed in response to comments on §279.5(c)(6), the term "affected person" is no longer used in these rules.

TxDOT suggested that the terms "dredged material" or "spoil" be defined separately and stated that under certain circumstances dredged material can be used beneficially for uses including habitat restoration and beach nourishment.

The commission agrees that like many items included in the definition of pollutant, dredged material can be used beneficially. Pollutant is defined in the TWC, §26.001, and includes the term dredged spoil. The commission retains this definition in these rules.

The Utilities expressed confusion about the proposed definitions of general permit and nationwide permit. The proposed language stated that general permits are issued on a regional basis, with the definition of nationwide permit indicating they are a type of general permit.

The commission has modified the definition of general permit to clarify that a general permit may be issued on a nationwide or regional basis.

Section 279.4(b)(3)

DOW and the Utilities requested that the language concerning the executive director acting on the request for certification not be changed from preliminary to final permit decision document. They expressed concern that waiting for a final permit decision document would require additional time to complete the permitting process. DOW stated the agency must be conscious of the need to prevent delays in certification since some projects have severe economic time penalties. The Utilities requested an explanation stating why TNRCC should not begin its certification review when the preliminary decision is received.

The commission agrees that it should be involved in the certification process early. The agency has committed to regular pre-application meetings, providing agency comments during the public notice comment period and other efforts to provide a clear understanding of the agency's expectations for 401 Certifications. This section of the rules is not intended to limit the early participation of the agency, but rather to allow the agency to base its certification decision on the final federal permit decision document. Basing the agency's final certification decision on the final federal permit decision document will prevent inefficiencies from having to revise or modify certifications as the federal permit changes. For example, the agency previously attempted to base the certification decision on the project description contained in the joint public notice issued by the Corps. The MOA provides that for permits that are individually reviewed, the certification will be based on a final decision document from the Corps. This rule change will codify that approach, but will in no way limit the commission's continued support of early involvement by both the applicant and the agency in the certification review process.

Section 279.5(c)(6)

Dow and the Utilities commented that only persons legally affected by water quality certification should be entitled to request a public meeting on a 401 Certification.

The commission disagrees. Since the passage of House Bill 801, 76th Legislature, 1999, the commission has standardized its procedures for acting on requests for public meetings and for contested case hearings. For all other permits and authorizations, the determination of an affected person can only be made by the commission at a regularly scheduled agenda approximately 44 days after a request is received, with at least five weeks' public notice with written responses by the executive director, Office of Public Interest Counsel, and the applicant, and an opportunity to reply by the requestor. The only action the commission may take after determining a requestor is an affected person is referral to the State Office of Administrative Hearings (SOAH) for a contested case hearing. This process is not conducive to streamlining or facilitating the certification process. In contrast, a public meeting for all other permits and authorizations can be requested by any person. Section 279.7 of these rules establishes the opportunity for a public meeting as part of a certification review. These rules address the state certification of a federal permit, not a state permit, therefore, there is no opportunity for referral to SOAH. If the executive director determines that there is a substantial or significant degree of public interest in an application, the executive director's staff arranges for a public meeting. The commission is not prepared to administer two standards for requesting a public meeting and therefore has made no change to the proposed language.

Section 279.8(a)

DOW stated ten days is not sufficient time in some cases to prepare for a public meeting or to have all the appropriate parties present.

The commission had proposed this change to minimize potential time delays. As DOW stated in comments regarding §279.4(b)(3), delays can place additional financial burden on

the applicant in some situations. However, the commission is withdrawing this proposed change and the current requirement for a 30-day notice will remain in the rules.

Section 279.13

The Utilities requested that the commission replace the proposed language with the language of the current §279.13 relating to enforcement. They requested that if the commission does not make that change, that an explanation be provided of the legal authority to initiate enforcement in accordance with the proposed language.

Authority for a state to enforce the terms of a federal permit exists in both federal and state law. TWC, §26.027(d) sets out the state's role in regulating the placement of dredged or fill material into or adjacent to water in the state. A state permit will not be required; however, the commission's authority to control water quality is not otherwise affected. Such authority includes the adoption of rules and regulations to govern and control the discharge of dredged or fill materials. These amendments to Chapter 279 are adopted under this express legislative authority. Additionally, the commission has the duty and the powers necessary or convenient to control the quality of water in the state under TWC, §26.011. Unauthorized discharges from a point source in violation of a commission rule are prohibited by TWC, §26.121(e), and from nonpoint sources by TWC, §26.121(c). The commission has jurisdiction over water quality in the state, including enforcement of water quality rules, under TWC, §5.013(a)(3), and has the authority to adopt rules necessary to carry out its powers and duties, including these rules, under TWC, §5.103(a). Authority to enforce commission rules is set out in TWC, §7.002.Enforcement of the state rules will occur under state law, independent of the federal permit or federal action.

30 TAC §§279.1 - 279.13

STATUTORY AUTHORITY

The amendments and new section are adopted under TWC, §5.102, which grants the commission the authority to carry out its powers under the TWC, §5.103, which provides the commission authority to adopt any rules necessary to carry out its powers and duties under this code and other laws of this state; §5.105, which requires the commission to establish and approve all general policy of the commission by rule; and §5.120, which requires the commission to administer the law for the maximum conservation and protection of the environment and natural resources of the state. Chapter 279 governs the issuance of state water quality certifications under the federal CWA, §401, codified at 33 USC, §1341.

§279.2. Purpose and Policy.

(a) This chapter establishes procedures and criteria for applying for, processing, and reviewing state certifications under CWA, §401, for activities under the jurisdiction of the agency. It is the purpose of this chapter, consistent with the Texas Water Code and the federal CWA, to maintain the chemical, physical, and biological integrity of the state's waters.

(b) It is the policy of the commission to achieve no overall net loss of the existing wetlands resource base with respect to wetlands functions and values in the State of Texas. All activities under the jurisdiction of the agency that require a federal license or permit and that may result in any discharge to waters of the United States are subject to review for consistency with the federal CWA and the Texas Surface Water Quality Standards. After such a review, the agency shall:

(1) grant certification for any activity that will not result in any discharge in violation of water quality standards or any other appropriate requirements as set forth in §279.9 of this title (relating to Executive Director Review of Water Quality Certification Application);

(2) grant conditional certification stating that the conditions necessary to prevent any activity that will result in a discharge from violating water quality standards or any other appropriate requirements as set forth in §279.9 of this title;

(3) deny certification for any activity that will result in a discharge in violation of water quality standards or any other appropriate requirements as set forth in §279.9 of this title; or

(4) waive certification. The agency may condition the waiver of certification upon the agreement of an applicant to include and comply with specific water quality-related conditions in the applicant's federal permit.

(c) The executive director is delegated the responsibility for performing all certification functions under this chapter on behalf of the commission, except that at the request of the executive director, the commission may review the question of certification prior to the executive director's determination on certification.

§279.3. Definitions.

In addition to the terms defined in §3.2 of this title (relating to Definitions), the following words and terms, when used in this chapter, shall have the following meanings.

(1) 401 Certification - A certification issued by the state as authorized under the federal CWA, §401.

(2) 402 Permit - See NPDES permit.

(3) 404 Permit - A Department of the Army permit issued under the authority of the federal CWA, §404, which authorizes the discharge of dredged or fill material into waters of the United States.

(4) Activity - The construction, operation, maintenance, or modification of facilities, structures, channels, or equipment that may result in any discharge into or adjacent to waters in the state or which may otherwise affect water quality.

(5) Applicant - Any person who applies for any license or permit granted by an agency of the federal government to conduct any activity that may result in any discharge into or adjacent to water in the state.

(6) Aquatic Ecosystem - Water in the state, including wetlands, that serve as habitat for interrelated and interacting communities and populations of plants and animals.

(7) Clean Water Act - 33 United States Code, §§1251 - 1387, also known as the federal Clean Water Act (CWA), §§101 - 607.

(8) Department of the Army Permits - All permits and licenses issued by the Department of the Army Corps of Engineers including 404 Permits and permits issued under the authority of the Rivers and Harbors Act of 1899, §10.

(9) Discharge - Deposit, conduct, drain, emit, throw, run, allow to seep, or otherwise release or dispose of any pollutant, or to allow, permit, or suffer any of these acts or omissions.

(10) District engineer - The Department of the Army representative responsible for administering, processing, and enforcing federal laws and regulations relating to the U.S. Army Corps of Engineers, including permitting.

(11) Emergency - A condition either meeting the requirements of federal law as constituting an emergency or applicable provisions of §305.21 of this title (relating to Emergency Orders and Temporary Orders Authorized).

(12) General permit - A permit issued by a federal licensing or permitting agency on a nationwide or regional basis.

(13) Individual permit - A permit that is issued by a federal licensing or permitting agency following an evaluation of any activity including, but not limited to, the construction or operation of a facility that may result in any discharge into waters of the United States.

(14) Licensing or permitting agency - Any agency of the federal government to which application is made for any license or permit to conduct an activity that may result in any discharge into or adjacent to water in the state.

(15) Nationwide permit - A type of general permit authorized by a federal licensing or permitting agency that applies throughout the nation.

(16) National Pollutant Discharge Elimination System (NPDES) permit - A written document issued by the regional administrator of the EPA under the federal CWA, §402, which authorizes the discharge of any pollutant, or combination of pollutants, into navigable waters of the United States.

(17) Pollutant - Dredged spoil, solid waste, incinerator residue, sewage, garbage, sewage sludge, filter backwash, munitions, chemical wastes, biological materials, radioactive materials, heat, wrecked or discarded equipment, rock, sand, cellar dirt, and industrial, municipal, and agricultural waste discharged into any water in the state. The term "pollutant" does not include tail water or runoff water from irrigation or rainwater runoff from cultivated or uncultivated rangeland, pastureland, and farmland.

(18) Practicable - Available and capable of being done after taking into consideration cost, existing technology, and logistics in light of overall project purposes.

(19) Regional administrator - The administrator of the EPA, Region VI.

(20) Water dependent activity - An activity that is proposed for or adjacent to an aquatic site that requires access, proximity to, or siting within an aquatic site to fulfill its basic purpose.

(21) Water Quality Standards - Texas Surface Water Quality Standards, Chapter 307 of this title (relating to Texas Surface Water Quality Standards).

§279.7. Public Meetings.

(a) The executive director may conduct a public meeting on any application for 401 certification if the executive director determines, based on public comment received during the public comment period, that such a meeting would be appropriate. The executive director shall conduct a public meeting on an application for 401 certification if a request for such a meeting is made by a commissioner.

(b) If a public meeting is held, the executive director shall notify the licensing and permitting agency and request an extension of time to consider the certification.

(c) All meetings held under this section shall be conducted by a representative of the executive director. The representative shall receive comments concerning all matters affecting the 401 certification.

(d) After the meeting the executive director may consider any information provided at the meeting and any other information appropriate to determine whether to certify the activity.

§279.8. Notice of Public Meeting.

(a) The executive director shall notify the applicant not less than 30 days before the date set for meeting that a public meeting will be held on the application. The notice shall be by certified mail, return receipt requested.

(b) The notice of meeting shall identify the application; the date; time; place and nature of the meeting; the legal authority and jurisdiction under which the meeting is to be held; the proposed action; the requirements for submitting written comments; the method for obtaining additional information; and other information as the executive director deems necessary.

(c) The executive director will transmit the notice by first-class mail or by personal service to:

(1) the adjacent landowners;

(2) the mayor and health authorities of the city or town in which the activity is or will be located or in which pollutants will be discharged;

(3) the county judge and health authorities of the county in which the activity is or will be located or in which pollutants will be discharged;

(4) the Texas Parks and Wildlife Department;

(5) the United States Department of Interior Fish and Wildlife Service;

(6) the Texas Water Development Board;

(7) the United States Commerce Department, National Marine Fisheries Service;

(8) the EPA, Region 6;

(9) the Texas General Land Office;

(10) the Secretary of the Coastal Coordination Council; and

(11) any person from whom written comment was received during the comment period, provided that the comment included a legible mailing address for the commenter.

(d) The date of mailing the notice of meeting shall be at least 30 days before the date set for the meeting.

§279.11. Final Agency Action on Department of the Army Permits.

(a) The executive director shall review or waive certification of any permit application in accordance with §279.9 of this title (relating to Executive Director Review of Water Quality Certification). When an application is reviewed, the executive director shall take final action within 60 days after receiving the certification request from the U.S. Army Corps of Engineers (Corps) as required by 33 Code of Federal Regulations, §325.2(b) unless the executive director, in consultation with the Corps, determines a shorter or longer period is reasonable.

(b) Certification of discharges into aquatic ecosystems shall avoid unacceptable adverse impacts, including cumulative and secondary impacts.

(c) If the executive director reviews a request for certification of a 404 Permit activity, the review shall be performed using the following criteria.

(1) No discharge shall be certified if there is a practicable alternative to the proposed discharge that would have less adverse impact on the aquatic ecosystem, so long as the alternative does not have other more significant adverse environmental consequences. Activities

that are not water dependent are presumed to have a practicable alternative, unless the applicant demonstrates otherwise. For the purposes of this section compensatory mitigation is not considered an alternative.

(2) No discharge of dredged or fill material shall be certified unless appropriate and practicable steps have been taken that will minimize potential adverse impacts of the discharge on the aquatic ecosystem.

(3) Certification shall require appropriate and practicable compensatory mitigation for all unavoidable adverse impacts that remain after all practicable avoidance and minimization have been completed. Compensatory mitigation requirements will provide for a replacement of impacted functions and values.

(4) If the executive director determines that the impacts of the project are so significant that the proposed compensatory mitigation will not accomplish the purpose and policy of this chapter, certification may be denied even if an alternative is not available.

(d) The executive director shall send notice of the decision to deny, grant, grant conditionally, or waive certification, including a copy of the certification decision, to the applicant, the Corps, the designated contact of any other licensing or permitting agency, and any person so requesting. The notification shall be in writing and shall include:

(1) the name and address of the applicant;

(2) if certification is granted or denied, a statement of the basis for the executive director's decision, including a description of the materials and information examined during the executive director's review. The statement shall include:

(A) if the activity is certified:

(i) a statement that there is a reasonable assurance the activity, if conducted in accordance with the terms of the proposed permit, will not violate the criteria enumerated in §279.9 of this title; or

(ii) a statement of conditions, including any monitoring and reporting requirements necessary to assure compliance with the criteria enumerated in §279.9 of this title;

(B) if certification is denied, an explanation of how the proposed activity will not satisfy one or more of the criteria enumerated in §279.9 of this title.

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 September 14, 2001.

TRD-200105500
Stephanie Bergeron
Director, Environmental Law Division
Texas Natural Resource Conservation Commission
Effective date: October 4, 2001
Proposal publication date: May 4, 2001
For further information, please call: (512) 239-0348

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30 TAC §279.13

STATUTORY AUTHORITY

The repeal is adopted under TWC, §5.102, which grants the commission the authority to carry out its powers under the TWC; §5.103, which provides the commission authority to adopt any rules necessary to carry out its powers and duties under this code and other laws of this state; §5.105, which requires the commission to establish and approve all general policy of the commission by rule; and §5.120, which requires the commission to administer the law for the maximum conservation and protection of the environment and natural resources of the state. Chapter 279 governs the issuance of state water quality certifications under the federal CWA, §401, codified at 33 USC, §1341.

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 September 14, 2001.

TRD-200105501
Stephanie Bergeron
Director, Environmental Law Division
Texas Natural Resource Conservation Commission
Effective date: October 4, 2001
Proposal publication date: May 4, 2001
For further information, please call: (512) 239-0348

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TITLE 34. PUBLIC FINANCE

PART 5. TEXAS COUNTY AND DISTRICT RETIREMENT SYSTEM

CHAPTER 107. MISCELLANEOUS RULES

34 TAC §107.6

The Texas County and District Retirement System has adopted amended rule 34 TAC §107.6, relating to the penalty for late reporting of monthly information and contributions required of subdivisions participating in the system. Amended §107.6 was adopted with one change in Subsection (b) to correct a typographical error. The rule was published for public comment in the July 27, 2001, issue of the *Texas Register* (26 TexReg 5609). No comments were received from the public.

The rule has been adopted to provide a waiver from the late reporting penalty in circumstances beyond the control of the reporting subdivision. The rule extends the due date when it falls on a weekend or legal holiday and waives the penalty when the subdivision timely uses approved same-day or overnight delivery services as specified in the rule.

The rule has been adopted pursuant to §845.407, Government Code, as amended by Senate Bill 523 of the 77th Legislature.

§107.6. Penalty for Late Reporting.

(a) In this section "report" means the combination of all information and contributions required to be provided to and deposited with the system for each month of participation, in accordance with Subchapter E, Chapter 845, Government Code.

(b) A due date of a monthly report that is a Saturday, Sunday, or legal holiday is extended to the first day that is not a Saturday, Sunday, or legal holiday, but the dates provided by §845.407(c) for eligibility for an exemption from a penalty assessment are not extended if they fall on a Saturday, Sunday, or legal holiday. The penalty for

a past-due report consists of an administrative fee in the amount provided by §845.407(a), Government Code, plus interest on the past-due amounts for each day past due computed at an annual rate provided by that subsection.

(c) If a report is past due, the system shall mail an advice to the governing board and correspondent of the subdivision stating the due date of the report, that the report was not received by the due date, that unless the subdivision submits proof satisfactory to the system that the report was sent in compliance with §845.407(c), Government Code, the subdivision is subject to a penalty for late reporting in accordance with §845.407(a), Government Code, and that the amount of the penalty will be computed and assessed on receipt of the report.

(d) After the system receives the past-due report, a notice shall be mailed to the governing board and correspondent of the subdivision stating that a penalty has been assessed for late reporting in accordance with §845.407, Government Code, and indicating the date the report was received by the system, the number of days the report was past due, the amount of contributions on which interest was charged, the accumulated interest and the administrative fee. The notice shall inform the governing board and correspondent that if the penalty is not paid within the period provided by §845.407(a), Government Code, the penalty shall be deducted from the subdivision's account in the Subdivision Accumulation Fund and credited to other funds of the system in accordance with that subsection.

(e) The amount of the penalty stated in the notice described by Subsection (d) of this section becomes fixed and final on the tenth business day following the date of the notice and may not be modified thereafter for any reason.

(f) For purposes of §805.407, Government Code, approved same-day or overnight delivery services are:

(1) Airborne Express;

(2) DHL Worldwide Express;

(3) Emery Worldwide;

(4) Federal Express;

(5) Lone Star Overnight; and

(6) United Parcel Service.

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 September 11, 2001.

TRD-200105410
Ray Henry
Deputy Directory
Texas County and District Retirement System
Effective date: October 1, 2001
Proposal publication date: July 27, 2001
For further information, please call: (512) 637-3230

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TITLE 40. SOCIAL SERVICES AND ASSISTANCE

PART 1. TEXAS DEPARTMENT OF HUMAN SERVICES

CHAPTER 12. SPECIAL NUTRITION PROGRAMS

SUBCHAPTER A. CHILD AND ADULT CARE FOOD PROGRAM

40 TAC §§12.3, 12.6, 12.19

The Texas Department of Human Services (DHS) adopts amendments to §12.3, §12.6, and §12.19, without changes to the proposed text published in the June 29, 2001 issue of the *Texas Register* (26 TexReg 4833).

The justification for the amendments is to stipulate that contractors who operate or sponsor the participation of child care centers and family day care homes must provide information about the Child and Adult Care Food Program (CACFP) and its benefits to the parents or guardians of children enrolled in their facilities as stipulated by the Agricultural Risk Protection Act of 2000 (Public Law 106-224). The amendments allow CACFP child and adult care center contractors who contract with a food service management company (FSMC) to renew their FSMC contract annually for each of the two consecutive years following the original procurement year, provided there is no change in scope of service to the original FSMC contract. The amendments also reduce the number of on-site monitoring visits required by contractors of their FSMC's food preparation site(s) from three times a year to once annually.

The department received no comments regarding adoption of the amendments.

The amendments are adopted under the Human Resources Code, Title 2, Chapters 22 and 33, which authorizes the department to administer public and nutritional assistance programs.

The amendments implement the Human Resources Code, §§22.001-22.030 and §§33.001-33.024.

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 September 12, 2001.

TRD-200105453
Paul Leche
General Counsel, Legal Services
Texas Department of Human Services
Effective date: October 2, 2001
Proposal publication date: June 29, 2001
For further information, please call: (512) 438-3734

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TEXAS DEPARTMENT OF INSURANCE

Notification Pursuant to the Insurance Code, Chapter 5, Subchapter L

As required by the Insurance Code, Article 5.96 and 5.97, the ***Texas Register*** publishes notice of proposed actions by the Texas Board of Insurance. Notice of action proposed under Article 5.96 must be published in the ***Texas Register*** not later than the 30th day before the board adopts the proposal. Notice of action proposed under Article 5.97 must be published in the ***Texas Register*** not later than the 10th day before the Board of Insurance adopts the proposal. The Administrative Procedure Act, the Government Code, Chapters 2001 and 2002, does not apply to board action under Articles 5.96 and 5.97.

The complete text of the proposal summarized here may be examined in the offices of the Texas Department of Insurance, 333 Guadalupe Street, Austin, Texas 78714-9104.)

This notification is made pursuant to the Insurance Code, Article 5.96, which exempts it from the requirements of the Administrative Procedure Act.

Texas Department of Insurance

Proposed Action on Rules

The Commissioner of Insurance, at a public hearing under Docket No. 2498 on October 16, 2001, at 9:00 a.m., in the LBJ Library Auditorium, 2313 Red River, Austin, Texas, will consider a proposal made in a staff petition. Staff's petition seeks (1) adoption of new mandatory amendatory endorsements to certain residential property insurance policies; (2) adoption of new mandatory offer endorsements to certain residential property insurance policies; (3) amendments to the policy writing rules of the Homeowners and Dwelling Sections of the Texas Personal Lines Manual (Manual); (4) adoption of new rating rules and attendant rating examples in the Manual; and (5) adoption of amendments to the Texas Statistical Plan for Residential Risks (Residential Statistical Plan). These proposed new endorsements and Manual changes are designed to modify current coverage for mold or other fungi losses that are ensuing losses resulting from covered water damage and to provide coverage for ensuing mold or other fungi losses resulting from water damage through mandatory offer endorsements that have special limits of liability (such coverage is referred to herein as mold coverage or mold claims or losses). These new endorsements and Manual changes will also require amendments to the Residential Statistical Plan to capture data that reflects mold losses because such data for mold losses is currently aggregated with the data for other causes of loss. Staff's petition (Ref. No. P-0901-13-I), was filed on September 19, 2001.

Staff proposes the consideration and adoption of nine mandatory amendatory endorsements which will be required to be attached to certain residential property insurance policies: (1) Endorsement No. HO-161A which will be attached to Texas Homeowners Form-A (HO-A), (2) Endorsement No. HO-162A which will be attached to Texas Homeowners Form-B (HO-B), (3) Endorsement No. HO-163A which will be attached to Texas Homeowners Form-C (HO-C), (4) Endorsement No. HO-164A which will be attached to the Texas Homeowners Tenant Policy-Form B (HO-BT), (5) Endorsement No. HO-165A which will be attached to the Texas Homeowners Condominium Policy-Form B (HO-B-CON), (6) Endorsement No. HO-166A which will be attached to the Texas Homeowners Tenant Policy-Form C (HO-CT), (7) Endorsement No.167A which will be attached to the Texas Homeowners Condominium Policy-Form C (HO-C-CON), (8) Endorsement No. TDP-004A which will be attached to the Texas Dwelling Policy-Form 1 (TDP-1) and the Texas Dwelling Policy-Form 2 (TDP-2), and (9) Endorsement No. TDP-005A which will be attached to the Texas Dwelling Policy-Form 3 (TDP-3).

Staff further proposes the consideration and adoption of nine mandatory offer endorsements that allow consumers to purchase, for an additional premium, a specified percentage of mold coverage: (1) Endorsement No. HO-161 which may be attached to Texas Homeowners Form-A (HO-A), (2) Endorsement No. HO-162 which may be attached to Texas Homeowners Form-B (HO-B), (3) Endorsement No. HO-163 which may be attached to Texas Homeowners Form-C (HO-C), (4) Endorsement No. HO-164 which may be attached to the Texas Homeowners Tenant Policy-Form B (HO-BT), (5) Endorsement No. HO-165 which may be attached to the Texas Homeowners Condominium Policy-Form B (HO-B-CON), (6) Endorsement No. HO-166 which may be attached to the Texas Homeowners Tenant Policy-Form C (HO-CT), (7) Endorsement No. HO-167 which may be attached to the Texas Homeowners Condominium Policy-Form C (HO-C-CON), (8) Endorsement No. TDP-004 which may be attached to the Texas Dwelling Policy-Form 1 (TDP-1) and the Texas Dwelling Policy-Form 2 (TDP-2), and (9) Endorsement No. TDP-005 which may be attached to the Texas Dwelling Policy-Form 3 (TDP-3).

Staff also proposes the consideration and adoption of two policy writing Manual rules: (1) Rule IV-A, "Section I Mandatory Offer Endorsements" in the Homeowners Section, and (2) Rule IV, "Mandatory Offer Endorsements" in the Dwelling Section. These rules specify the percentages of mold coverage that are available for purchase by the insured and the required procedures for the insurers to phase in the new mold coverage endorsements.

Staff also proposes the consideration and adoption of new rating rules in the Manual: Rating Rule VI-O for Homeowners, Tenants, and Condominium Policies and Rating Rule VI-L for Dwelling, Additional Extended Coverage, and Physical Loss Form. These rating rules will be used in calculating the applicable premium for mandatory offer ensuing mold and other fungi coverage. Staff additionally proposes the consideration and adoption of attendant rating examples in the Homeowners and Dwelling Sections of the Manual.

Staff also proposes the consideration and adoption of conforming amendments to the coding section, premiums section, and losses section of the Residential Statistical Plan.

Copies of staff's petition, including exhibits with the full text of the proposed endorsements and Manual rules and changes to the Residential Statistical Plan are available for review on the Texas Department of Insurance internet website at http://www.tdi.state.tx.us and in the office of the Chief Clerk of the Texas Department of Insurance, 333 Guadalupe Street, Austin, Texas. For further information or to request copies of the petition, please contact Sylvia Gutierrez at (512) 463-6327; refer to Ref. No. P-0901-13-I.

To be considered, written comments on the proposed changes must be submitted no later than 5:00 p.m. on October 29, 2001, to Lynda H. Nesenholtz, General Counsel and Chief Clerk, Mail Code 113-2A, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104. An additional copy of the comments must be submitted simultaneously to Marilyn Hamilton, Associate Commissioner, Property and Casualty Division, Mail Code 104-PC, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104. While the public hearing will be held before the end of the comment period, no action will be taken by the Commissioner until after the expiration of the comment period.

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).

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be a valid exercise of the agency's authority.

TRD-200105619
Lynda Nesenholtz
General Counsel and Chief Clerk
Texas Department of Insurance
Filed: September 19, 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.

Proposed Rule Review

Texas Education Agency

Title 19, Part 2

The Texas Education Agency (TEA) proposes the review of 19 TAC Chapter 105, Foundation School Program, pursuant to the Texas Government Code, §2001.039.

As required by the Texas Government Code, §2001.039, the TEA will accept comments as to whether the reason for adopting 19 TAC Chapter 105 continues to exist. The comment period will last for 30 days beginning with the publication of this notice.

Comments or questions regarding this rule review may be submitted to Criss Cloudt, Accountability Reporting and Research, Texas Education Agency, 1701 North Congress Avenue, Austin, Texas 78701-1494, (512) 463-9701, or electronically to rules@tea.state.tx.us.

TRD-200105544
Criss Cloudt
Associate Commissioner, Accountability Reporting and Research
Texas Education Agency
Filed: September 17, 2001

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Texas Commission on Fire Protection

Title 37, Part 13

The Texas Commission on Fire Protection (the Commission) proposes to review Title 37, Texas Administrative Code, Part 13, Chapter 453, concerning Minimum Standards for Hazardous Materials Technician, in accordance with Government Code, §2001.039, added by Acts 1999, 76th Legislature, Chapter 1499, Article I, Section 1.11. Specifically, the following sections of Chapter 453 will be reviewed: §453.1 Hazardous Materials Technician Certification, §453.3 Minimum Standards for Hazardous Materials Technician Certification, §453.5 Examination Requirements, and §453.7 International Fire Service Accreditation Congress (IFSAC) Certification.

As part of the review of Chapter 453, the Commission is proposing amendments to §453.3 and §453.7. The proposed amendments may be found in the proposed rule section of this issue of the *Texas Register*. The assessment of Chapter 453 by the Commission at this time indicates that the original reasons for the adoption of these rules continue to exist. The proposed amendments are non-substantive changes to correct a typographical error and punctuation.

The Commission is accepting comment on the review of Chapter 453. The comment period will last for 30 days beginning with the publication of this notice of intention to review. Comments on the proposal may be submitted in writing within 30 days following the publication of this notice in the *Texas Register* to Gary L. Warren Sr., Executive Director.

Any questions pertaining to this notice of intention to review should be directed to the *Texas Register* Liaison, Texas Commission on Fire Protection, P. O. Box 2286, Austin, Texas 78768-2286 or e-mailed to info@tcfp.state.tx.us.

TRD-200105475
Gary L. Warren Sr.
Executive Director
Texas Commission on Fire Protection
Filed: September 14, 2001

♦ ♦ ♦

Texas Department of Health

Title 25, Part 1

The Texas Department of Health (department) will review and consider for readoption, revision or repeal Title 25, Texas Administrative Code, Part 1, Chapter 229. Subchapter X. Licensure of Device Distributors and Manufacturing, §§229.431 - 229.444.

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.

An assessment will be made by the department as to whether the reasons for adopting or readopting these rules continue to exist. This assessment will be continued during the rule review process. Each rule will be reviewed to determine whether it is obsolete, whether the rule reflects current legal and policy considerations, and whether the rule

reflects current procedures of the department. The review of all rules must be completed by August 31, 2003.

Comments on the review may be submitted in writing within 30 days following the publication of this notice in the *Texas Register* to Linda Wiegman, Office of General Counsel, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756. Any proposed changes to these rules as a result of the review will be published in the Proposed Rule Section of the *Texas Register* and will be open for an additional 30 day public comment period prior to final adoption or repeal by the department.

TRD-200105625
Susan K. Steeg
General Counsel
Texas Department of Health
Filed: September 19, 2001

♦ ♦ ♦

The Texas Department of Health (department) will review and consider for readoption, revision or repeal Title 25, Texas Administrative Code, Part 1, Chapter 241. Shellfish Sanitation, Subchapter A. Texas Crab Meat, §241.1 - 241.7, and Subchapter B. Molluscan Shellfish, §§241.50 - 241.67.

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.

An assessment will be made by the department as to whether the reasons for adopting or readopting these rules continue to exist. This assessment will be continued during the rule review process. Each rule will be reviewed to determine whether it is obsolete, whether the rule reflects current legal and policy considerations, and whether the rule reflects current procedures of the department. The review of all rules must be completed by August 31, 2003.

Comments on the review may be submitted in writing within 30 days following the publication of this notice in the *Texas Register* to Linda Wiegman, Office of General Counsel, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756. Any proposed changes to these rules as a result of the review will be published in the Proposed Rule Section of the *Texas Register* and will be open for an additional 30 day public comment period prior to final adoption or repeal by the department.

TRD-200105591
Susan K. Steeg
General Counsel
Texas Department of Health
Filed: September 18, 2001

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Texas Natural Resource Conservation Commission

Title 30, Part 1

The Texas Natural Resource Conservation Commission (commission) files this notice of intention to review Chapter 290, Public Drinking Water, Subchapter A, Certification of Person to Install, Exchange, Service, or Repair Residential Water Treatment Facilities. This review of Chapter 290 is proposed in accordance with the requirements of Texas Government Code, §2001.039, and the General Appropriations Act, Article IX, §9 - 10.13, 76th Legislature, 1999, which require state agencies to review and consider for readoption each of their rules every four years. The review must include an assessment of whether the reasons for the rules continue to exist. As part of a concurrent rulemaking, Chapter 290, Subchapter A is proposed as 30 TAC Chapter 30, Subchapter H, Certification of Water Treatment Specialists. The proposal is discussed in the preamble for Chapter 30, and published in this issue of the *Texas Register*.

CHAPTER SUMMARY

Chapter 290, Subchapter A provides for the certification of persons for the installation, exchange, servicing, and repair of residential water treatment facilities. Standards of qualifications are set to insure the public health and to protect the public from unqualified persons engaging in activities relating to water treatment. This subchapter is proposed as Chapter 30, Subchapter H.

PRELIMINARY ASSESSMENT OF WHETHER THE REASONS FOR THE RULES CONTINUE TO EXIST

The commission conducted a preliminary review and determined that the reasons for the rules in Chapter 290, Subchapter A continue to exist. The rules are needed to protect the public from unqualified persons engaging in activities relating to water treatment by providing qualifications for persons certified to install, exchange, service, and repair residential water treatment facilities. The commission derives the authority for this subchapter from Texas Civil Statutes, Article 6243-101 as amended by House Bill 2912 of the 77th Legislature, 2001.

PUBLIC COMMENT

This proposal is limited to the review in accordance with the requirements of Texas Government Code, §2001.039, and the General Appropriations Act, Article IX, §9 - 10.13, 76th Legislature, 1999. The commission invites public comment on whether the reasons for the rules in Chapter 290, Subchapter A continue to exist. 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, 2001-044-325- WT. Comments must be received in writing by 5:00 p.m., October 18, 2001. For further information, contact Melissa Estes, Policy and Regulations Division, at (512) 239-3937.

TRD-200105540
Stephanie Bergeron
Division Director, Environmental Law Division
Texas Natural Resource Conservation Commission
Filed: September 14, 2001

♦ ♦ ♦

Adopted Rule Review

Texas Bond Review Board

Title 34, Part 9

The Texas Bond Review Board adopts the rules review in accordance with Texas Government Code, §2001.039, and the General Appropriations Act, Article IX §§9 - 10.13, 76th Legislature, 1999, which require state agencies to review and consider for readoption each of its rules every four years. The review must include an assessment of whether the reasons for the rules continue to exist. The proposed notice of intention to review was published in the October 20, 2000, issue of the *Texas Register* (25 TexReg 10571).

The Texas Bond Review Board readopts Chapter 190, Allocation of the State's Limit on Certain Private Activity Bonds. The Texas Bond Review Board readopts Chapter 181, Subchapter A, Bond Review Rules. The Texas Bond Review Board repeals Chapter 181, Subchapter B, Public School Facilities Funding Program Rules.

CHAPTER SUMMARY

Chapter 190 provides for allocation of the state's limit on certain private activity bonds. The chapter provides for: distribution of the allocation cap among eligible issuers of tax-exempt bonds and record keeping and reporting requirements.

Chapter 180, Subchapter A, provides for review of applications for issuance of state debt and record keeping and reporting requirements.

Chapter 180, Subchapter B, provides for administration of a loan program for eligible school districts and record keeping requirements.

ASSESSMENT OF WHETHER THE REASONS FOR THE RULES CONTINUE TO EXIST

The board determined that the reasons for the rules in Chapter 190 and Chapter 181, Subchapter A, continue to exist. The rules provide specific directives which must be met to satisfy statutory requirements and are needed to implement provisions of Chapter 1231, Government Code.

The board determined that the reasons for the rules in Chapter 181. Subchapter B, no longer exist.

PUBLIC COMMENT

The public comment period closed on November 20, 2000. No comments on the assessment of whether the reasons for the rules continue to exist were received during or after the comment period.

TRD-200105558
James T. Buie
Executive Director
Texas Bond Review Board
Filed: September 17, 2001

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Texas Department of Health

Title 25, Part 1

The Texas Department of Health (department) has reviewed Title 25, Health Services, Part 1, Texas Department of Health, Chapter 205, Product Safety, Subchapter A, Bedding Rules.

The notice of intent to review was published in the February 5, 1999, issue of the *Texas Register* (24 TexReg 831). 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 department adopted) adopts the repeal of §205.11, amendments to §§205.1 - 205.6 and §§205.8 - 205.10; and new §§205.11 - 205.17. The department also adopts §205.7 that was proposed for readoption without changes because no needed revisions were identified during the review and was published in the proposed preamble in the April 2, 1999, issue of the *Texas Register* (24 TexReg 2599). The adopted rules were published in the September 24, 1999, issue of the *Texas Register* (24 TexReg 8181), and the rules became effective October 3, 1999. The rule review completion date is October 3, 1999.

TRD-200105444
Susan K. Steeg
General Counsel
Texas Department of Health
Filed: September 12, 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: 1 TAC §81.114(b)

	1st Degree	2nd Degree	3rd Degree
Consanguinity Blood Relation	Father Mother Son Daughter	Grandfather Grandmother Grandson Granddaughter Brother Sister	Aunt Uncle Great-grandson Great-granddaughter Great-grandfather Great-grandmother Niece Nephew
Affinity Relation by Marriage	Father Mother Son Daughter	Spouse's Grandfather Spouse's Grandmother Spouse's Granddaughter Spouse's Grandson Spouse's Sister Spouse's Brother	

Figure: 1 TAC §81.117(a)

The formula for estimating turnout for the 2002 primary elections is:

$$A \times B + C = D$$

Where: A = the percentage of voter turnout for governor or another statewide race in the 1998 party primary (percentage is the sum of all votes cast for all candidates for governor or other statewide office in the 1998 primary divided by the number of registered voters).

B = the number of registered voters as of December 2001.

C = 25% of the number resulting when you multiply A x B.

D = Preliminary Estimated 2002 Turnout.

Figure: 1 TAC §81.118(a)

Number of Election Workers Per Voting Precinct (Includes one judge and one alternate judge who serves as a clerk)		
Estimated Turnout per Polling Location	**Paper Ballot**	**Punch Card, Optical Tabulators and Voting Machine**
200 or fewer	3	3
201-400	5	4
401-700	6	5
701-1,100	8	6
1,101 or more	12	8

Figure: 1 TAC §81.124(g)

Administrative Personnel		
# of Polls	**Costs Allowed Thru March 31**	**Additional Month For Runoff**
10 or less	$300	$75
11-25	$1,500	$375
26-50	$3,000	$750
51-140	$12,000	$3,000
141-325	$24,000	$6,000
326-500	$40,000	$10,000
Over 501	$52,000	$13,000

Figure: 1 TAC §81.126(a)

Number of Voting Machines, Devices, and/or Precinct Ballot Counters		
Estimated Voter Turnout Per Voting Precinct	**Voting Machines**	**Punch Card Devices**
300 or fewer	2	2
301 - 600	2	4
601 - 900	2	6
For each additional: 300 voters	1	2

Figure: 1 TAC §81.149(a)

Number of Election Workers Per Joint-Voting Precinct (Includes two co-judges and two alternate judges who serves as a clerk)		
Estimated Turnout per Joint-Polling Location	**Paper Ballot**	**Punch Card, Optical Tabulators and Voting Machine**
200 or fewer	4	4
201-400	6	5
401-700	7	6
701-1,100	9	7
1,101 or more	13	9

Figure: 1 TAC §81.152(a)

The formula for estimating turnout for the 2002 joint primary elections is:

$$(A \times B) + C + D = E$$

Where: A = the percentage of voter turnout for governor or another statewide race in the 1998 party primary (percentage is the sum of all votes cast for all candidates for governor or other statewide office in the 1998 primary divided by the number of registered voters).

B = the number of registered voters as of December 2001.

C = 25% of the number resulting when you multiply A x B.

D = Other party's estimated turnout figure.

E = Preliminary Estimated 2002 Turnout for Joint-Primary Election.

Figure: 28 TAC §21.2816(h)

CLAIMS MAIL LOG

Name of Claimant: _____

Claimant Address: _____

_____

Claimant Telephone: (____) _____

Claimant Federal Tax ID# _____

Name of Addressee: _____

Name of Carrier: _____

Designated Address: _____

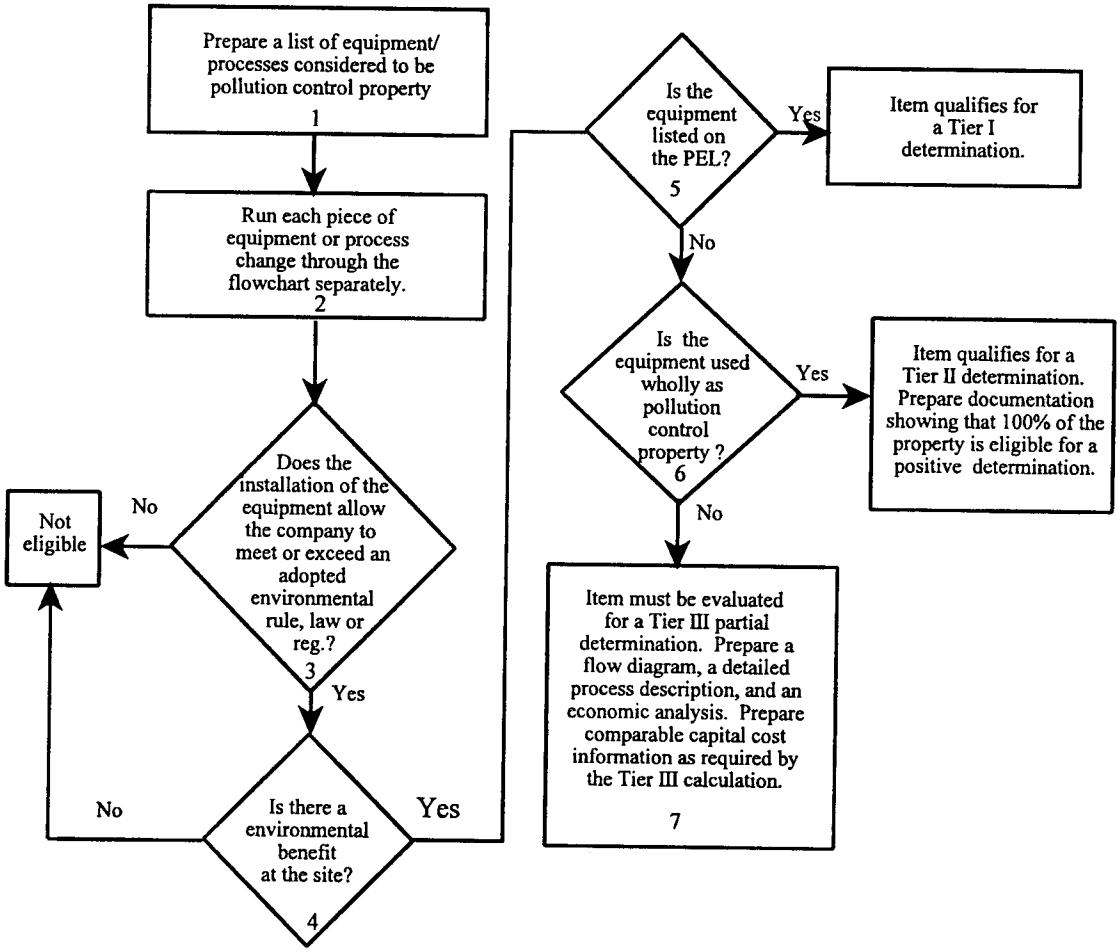
Date of Mailing or Hand delivery: _____ Page ____ of____

Subscriber Name	Subscriber ID#	Patient Name	Date(s) of Service/Occurrence	Total Charge	Delivery Method (M) (HD)

Figure: 30 TAC §17.15

Prop 2 Decision Flow Chart

Applicants must use this flowchart for each piece of equipment or process change. In order for a piece of equipment or process change to be eligible for a positive use determination the item must generate 'yes' answers to the questions asked in boxes 3 and 4.



Where:

[1] Prepare a list of all property that is considered to be pollution control property.

[2] Process each item on the list through the flow chart separately.

[3] Determine the specific state, local, or federal environmental regulation, rule or law that is being met or exceeded by the use of this property. If an adopted state, local, or federal environmental regulation, rule or law can not be identified the property is not eligible for a positive use determination.

[4] Determine the environmental benefit that this property provides at the site where it is installed. If an environmental benefit at the site can not be identified, the property is not eligible for a positive use determination.

[5] If the equipment is listed on the Predetermined Equipment List (PEL), determine the reference number for that item. Include all PEL equipment for the project in a single list that is included with the application.

[6] If the equipment is not on the PEL, determine whether the equipment is used wholly for pollution control. If the equipment is used wholly for pollution control, the equipment shall qualify as 100% pollution control property.

[7] If the equipment is not used wholly for pollution control the equipment must be evaluated as a partial determination.

Figure: 30 TAC §17.17(b)

$$\frac{\left[(\text{Production Capacity Factor x Capital Cost New}) - \text{Capital Cost Old - Byproduct}\right]}{\text{Capital Cost New}} x\ 100$$

Where:

[1] The Production Capacity Factor is calculated by dividing the capacity of the existing equipment or process by the capacity of the new equipment or process. The Production Capacity Factor is only used when there is an increase in production capacity.

[2] Capital Cost New is the estimated total capital cost of the new equipment or process.

[3] Capital Cost Old is the cost of comparable equipment or process without the pollution control. The standards used for calculating Capitol Cost Old are as follows:

[3.1] If comparable equipment without the pollution control feature is on the market in the United States, then an average market price of the most recent generation of technology must be used.

[3.2] If the conditions in variable 3.1 of §17.17(b) does not apply and the company is replacing an existing unit, then the company shall convert the original cost of the unit to today's dollars by using a published industry specific standard.

[3.3] If the conditions in variables 3.1 and 3.2 of §17.17(b) do not apply, and the company can obtain an estimate of the cost to manufacture the alternative equipment without the pollution control feature, then an average estimated cost to manufacture the unit must be used. The comparable unit must be the most recent generation of technology.

Figure: 30 TAC §17.17(c)

$$BP = \sum_{t=1}^{n} \frac{\left[\left(Byproduct\ Value\right) - \left(Storage\ \&\ Transport\right)\right]_t}{\left(1 + Interest\ Rate\right)^t}$$

[i] **Byproduct Value** - The retail value of the recovered byproduct for a one year period. Typically, the most recent three-year average price of the material as sold on the open market should be used in the calculation. If the price varies from state-to-state, the applicant shall calculate an average, and explain how the figures were determined.

[ii] **Storage and Transport** - These costs are the costs to store and transport the byproduct. These costs will reduce the market value of the byproduct. The applicant shall provide verification of how these costs were determined and itemized.

[iii] **n** - This is the estimated useful life in years of the equipment that is being evaluated for a use determination.

[iv] **Interest rate** - This is the current Prime Lending Rate that is in effect at the time the application is submitted. The Prime Lending Rate is defined by the Wall Street Journal as the base rate on corporate loans posted by at least 75% of the nation's 30 largest banks. The Prime Lending Rate is posted daily in the Wall Street Journal and on most financial or investment web sites.

Figure 1: 30 TAC Chapter 30--Preamble

Programs	Projected to Apply	Current 2 Year License Fee *	Proposed 2 Year License Fee	Difference	Change of Terms	Additional Cost/(Savings)
Municipal Solid Waste - Type A	400	$20	$70	$50	4 to 2 yrs	$20,000
Municipal Solid Waste - Type B	100	$15	$70	$55	4 to 2 yrs	$5,500
Municipal Solid Waste - Type B	500	$10	$70	$60	4 to 2 yrs	$30,000
Wastewater Operator	9,320	$40	$70	$30	3 to 2 yrs	$279,600
Water Operator	13,000	$40	$70	$30	3 to 2 yrs	$390,000
OSSF Designated Represen-tative	599	$100	$70	($30)	No Change	($17,970)
Total	23,919					$707,130

* Based on current term. For example, MSW-A license holders pay $40 every four years, which equates to $20 every two years.

Figure 2: 30 TAC Chapter 30--Preamble

Programs	Projected to Apply	Current 2 Year License Fee	Proposed 2 Year License Fee	Difference	Change of Terms	Additional Cost/(Savings)
BPAT	3,500	$0	$70	$70	0 to 2 yrs	$245,000
CSI	1,500	$0	$70	$70	3 to 2 yrs	$105,000
OSSF Site Evaluator	1,000	$0	$70	$70	No Change	$70,000
OSSF Installer	3,000	$150 *	$70	($80)	No Change	($240,000)
Landscape Irrigator	5,500	$170 *	$70	($100)	1 to 2 yrs	($550,000)
Landscape Installer	300	$100 *	$70	($30)	1 to 2 yrs	($9,000)
LPST Licenses	450	$150 *	$70	($80)	No Change	($36,000)
UST Licenses	679	$350 *	$70	($280)	1 to 2 yrs	($190,120)
Residential Water Treatment	525	$20 *	$70	$50	2,3,5 to 2 yrs	$26,250
Waste-water Operator	500	$40 *	$70	$30	3 to 2 yrs	$15,000
Water Operator	500	$40 *	$70	$30	3 to 2 yrs	$15,000
Total Licenses	17,454				**Cost Sub Total**	($548,870)
BPAT/CSI/OSSF Site Evaluator Classes	6,000				**Cost for Classes**	$2,400,000 ($400 per class)
					Total Cost	$1,851,130

* Based on current term. For example, Wastewater license holders pay $60 every three years, which equates to $40 every two years.

Figure: 30 TAC §30.270(a)(2)

License	*Minimum Working Experience*	*Education*	*Approved Training*
Class 1	none	less than high school	none
Class 2	if 3 years	less than high school	basic course
	if 2 years	high school or GED	basic course
	if 1 year	1 year college	basic course
Class 3	if 3 years	high school or GED	basic and advanced courses
	if 2 years	2 years college	basic and advanced courses
	if 1 year	college degree	basic and advanced courses

Figure: 30 TAC §30.340(a)

License	**Education**	**Required Work Experience**	**Required Training**
Class D or Class I	High School diploma (HSD) or Equivalent	0	20 hours
Class C or Class II	HSD or equivalent	2 years	60 hours
Class B or Class III	Bachelors HSD or equivalent	2½ years 5 years	100 hours 100 hours
Class A	Masters Bachelors HSD or equivalent	4 years 5 years 8 years	160 hours 160 hours 160 hours

Figure: 30 TAC §30.340(f)

License	Required Courses	Elective Courses
Class D	Basic Wastewater Operation	None
Class C	Basic Wastewater Operation Wastewater Treatment plus one elective course	Wastewater Collection Wastewater Laboratory Water Utility Calculations Water Utility Safety
Class B	Wastewater Treatment Wastewater Collection Wastewater Laboratory Water Utility Safety plus one elective course	Water Utility Calculations Water Utility Management Advanced Wastewater Laboratory
Class A	Wastewater Treatment Wastewater Collection Wastewater Laboratory Water Utility Management Water Utility Safety plus one elective course	Water Utility Calculations Advanced Wastewater Laboratory Wastewater Technology Advanced Management
Class I	Wastewater Collection	None
Class II	Basic Wastewater Operation Wastewater Collection plus one elective course	Water Utility Safety Pump and Motor Maintenance
Class III	Basic Wastewater Operation Wastewater Collection Water Utility Safety Pump and Motor Maintenance plus one elective course	Water Utility Management Water Utility Calculations Pre-treatment Facility Inspection

Figure: 30 TAC §30.349

Number of Facilities Served	**Fee**
0 - 4	$70
5 - 9	$150
10 - 19	$250
20 or more	$400

Figure: 30 TAC §30.350(e)

Treatment System	Permitted Daily Average Flow	Category
No Discharge Treatment Systems	All Flows	D
Pond Systems Preceded by Imhoff Tanks, Primary Clarifiers, or Facultative Lagoons	1.0 million gallons per day (MGD) or less	D
	Greater than 1.0 MGD	C
Activated Sludge (Extended Aeration Mode) and Oxidation Ditch Systems	0.10 MGD or less	D
	Greater than 0.10 MGD to 1.0 MGD	C
	Greater than 1.0 MGD to 10.0 MGD	B
	Greater than 10.0 MGD	A
Activated Sludge (Modes other than Extended Aeration)	0.050 MGD or less	D
	Greater than 0.050 MGD to 1.0 MGD	C
	Greater than 1.0 MGD to 10.0 MGD	B
	Greater than 10.0 MGD	A
Trickling Filter, Rotating Biological Contactor (RBC), or other Fixed Film Processes	0.50 MGD or less	D
	Greater than 0.50 MGD to 2.0 MGD	C
	Greater than 2.0 MGD to 10.0 MGD	B
	Greater than 10.0 MGD	A

Figure: 30 TAC §30.350(n)

Category of Collection System	Daily Average Flow	Minimum Class of Operator Required
Category I	Less than 100,000 gallons per day (gpd)	Class I or Class D
Category II	100,000 gpd to 1 million gallons per day (MGD)	Class II or Class C
Category III	Over 1 MGD	Class III or Class B

Figure: 30 TAC §30.390(a)

License	Education	Work Experience	Training Credits
Class D	High School Diploma (HSD) or equivalent	None	20 hours
Class C, Distribution, Groundwater, Surface water	HSD or equivalent	2 years	60 hours
Class B, Distribution and Groundwater	Bachelors HSD or equivalent	2 ½ years 5 years	100 hours 100 hours
Class B, Surface water	Bachelors HSD or equivalent	2 ½ years 5 years	100 hours 100 hours Effective January 1, 2003, 120 hours of training are required.
Class A	Masters Bachelors HSD or equivalent	4 years 5 years 8 years	160 hours 160 hours 160 hours

Figure: 30 TAC §30.390(f)

License	Required Training Courses	Elective Training Courses
Class D	Basic Waterworks Operation	None
Class C Surface Water	Basic Waterworks Operation Surface Water Production I * Surface Water Production II * Must be taken before Surface Water Production II	None
Class C Groundwater	Basic Waterworks Operation Groundwater Production Plus one elective course	Water Distribution Water Laboratory Water Utility Safety Water Utility Calculations Chlorinator Maintenance Pump and Motor Maintenance Valve and Hydrant Maintenance
Class C Water Distribution	Basic Waterworks Operation Water Distribution Plus one elective course	Water Laboratory Water Utility Safety Water Utility Calculations Chlorinator Maintenance Pump and Motor Maintenance Valve and Hydrant Maintenance.
Class B Surface Water	Surface Water Production I * Surface Water Production II Water Distribution Water Utility Safety Water Laboratory Water Utility Management (effective January 1, 2003) * Must be taken before Surface Water Production II	None
Class B Groundwater	Groundwater Production Water Laboratory Water Distribution Water Utility Safety Plus one elective course	Water Utility Management Water Utility Calculations Chlorinator Maintenance Pump and Motor Maintenance Valve and Hydrant Maintenance

Class B Water Distribution	Water Distribution Water Utility Safety Pump and Motor Maintenance Valve and Hydrant Maintenance Plus one elective course	Water Utility Management Water Utility Calculations Chlorinator Maintenance Water Laboratory
Class A	Surface Water Production I Surface Water Production II Groundwater Production Water Distribution Water Laboratory Water Utility Management Water Utility Safety	Plus additional training to meet the 160 hour requirement

Figure: 30 TAC §30.399

Number of Public Water Systems Served	Fee
0 to 4	$70
5 to 9	$150
10 to 19	$250
20 or more	$400

Figure: 30 TAC §285.91(9)

Table IX. OSSF System Designation.

SYSTEM DESCRIPTION	SYSTEM TYPE	PLANNING MATERIAL TO BE PREPARED BY R.S. or P.E.[2]	INSTALLER REQUIREMENTS
Septic Tank & Absorptive Drainfield	Standard	No	Class I or II
Septic Tank & ET Drainfield (Unlined) Septic Tank & ET Drainfield (Lined)	Standard Standard	No No	Class I or II Class II
Septic Tank & Pumped Drainfield	Standard	No	Class I or II
Septic Tank & Leaching Chamber	Proprietary	No	Class I or II
Septic Tank & Gravelless Pipe	Proprietary	No	Class I or II
Septic Tank & Low Pressure Dosing	Non-standard	Yes	Class II
Septic Tank & Absorptive Mounds	Non-standard	Yes	Class II
Septic Tank & Soil Substitution	Non-standard	Yes	Class I or II
Septic Tank, Secondary Treatment, Filter & Surface Application	Non-standard	Yes	Class II
Aerobic Treatment & Standard Absorptive Drainfields	Proprietary	Yes	Class II
Aerobic Treatment & ET Drainfield	Proprietary	Yes	Class II
Aerobic Treatment & Leaching Chamber	Proprietary	Yes	Class II
Aerobic Treatment & Gravelless Pipe	Proprietary	Yes	Class II
Aerobic Treatment, Filter & Drip Emitter	Proprietary	Yes	Class II
Aerobic Treatment & Low Pressure Dosing	Proprietary	Yes	Class II
Aerobic Treatment & Absorptive Mounds	Proprietary	Yes	Class II
Aerobic Treatment & Surface Application	Proprietary	Yes	Class II
Any Other Treatment System	---	Yes	Class II
Any Other Subsurface Disposal System	---	(1)	(1)
Any Other Surface Disposal System	---	Yes	Class II
Non-Standard Treatment when Secondary Treatment Required	Non-Standard	Engineer Only	Class II
Holding Tank	---	No	Class I or II

(1) Determined by the executive director based upon review required by §285.5(b)(2) of this Chapter (relating to submittal requirements for planning materials).

(2) The site evaluation is required to be performed by either a site evaluator or a professional engineer.

Figure: 30 TAC §285.91(10)

Table X. Minimum Required Separation Distances for On-Site Sewage Facilities.

FROM	TO: Tanks	Soil Absorption Systems, & Unlined ET Beds	Lined Evapotranspiration Beds	Sewer Pipe With Watertight Joints	Surface Application (Edge of Spray Area)	Drip Irrigation
Public Water Wells[2]	50	150	150	50	150	150
Public Water Supply Lines[2]	10	10	10	10	10	10
Wells and Underground Cisterns	50	100	50	20	100	100
Private Water Line	10	10	5	10[5] except at connection to structure	No separation distances	10
Wells (Pressure Cemented or Grouted to 100 ft. or Pressure Cemented or Grouted to Watertable if Watertable is Less Than 100 ft. deep)	50	50	50	20	50	50
Streams, Ponds, Lakes, Rivers, Creeks (Measured From Normal Pool Elevation and Water Level); Salt Water Bodies (High Tide Only)	50	75, LPD (Secondary Treatment & Disinfection) - 50	50	20	50	25 when $R_a \leq 0.1$ 75 when $R_a > 0.1$ (With Secondary Treatment & Disinfection - 50)
Foundations, Buildings, Surface Improvements, Property Lines, Easements, Swimming Pools, and Other Structures	5	5	5	5	No Separation Distances Except: Property lines - 20[6] Swimming Pools - 25	No Separation Distances Except[4]: Property Lines - 5
Slopes Where Seeps may Occur	0 (special support may be required for zero separation distances)	25	5	10	25	10 when $R_a \leq 0.1$ 25 when $R_a > 0.1$
Edwards Aquifer Recharge Features (See Chapter 213 of this title relating to Edwards Aquifer)[3]	50	150	50	50	150	100 when $R_a \leq 0.1$ 150 when $R_a > 0.1$

1. All distances measured in feet, unless otherwise indicated.
2. For additional information or revisions to these separation distances, see Chapter 290 of this title (relating to Public Drinking Water).
3. No OSSF may be installed closer than 75 feet from the banks of the Nueces, Dry Frio, Frio, or Sabinal Rivers downstream from the northern Uvalde County line to the recharge zone.
4. Drip irrigation lines may not be placed under foundations.
5. Private water line/wastewater line crossings should be treated as public water line crossings, see Chapter 290 of this title (relating to Public Drinking Water).
6. Separation distance may be reduced to 10 feet when sprinkler operation is controlled by commercial timer. See §285.33(d)(2)(G)(i).

Figure: 30 TAC §344.1(10)(D)

MINIMUM PRECIPITATION RATE FOR LANDSCAPE SYSTEMS BY ZONE

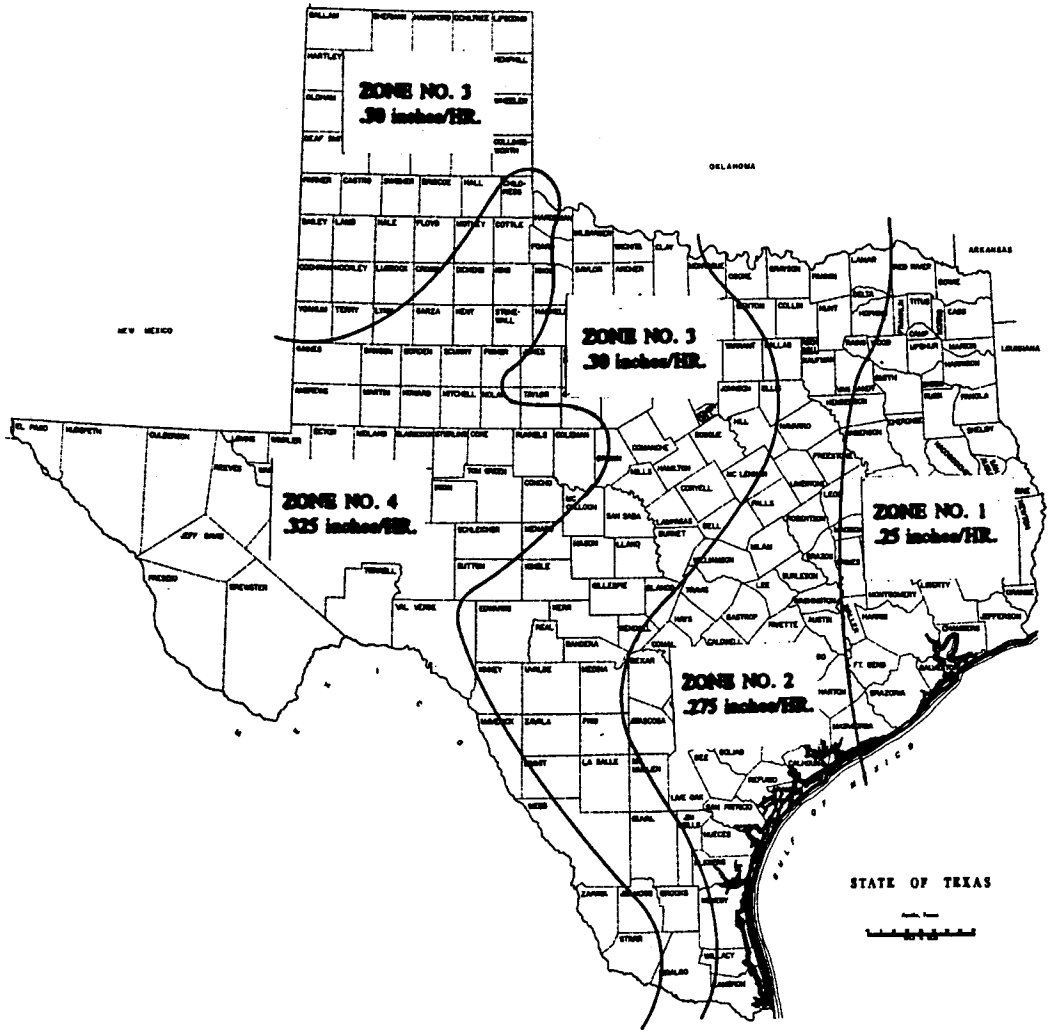


Figure: 37 TAC §439.17

Required Hours	No. Questions	Maximum No. Pilot Questions	Time Allowed
0-100	50	5	1 hour
101-200	75	10	1.5 hours
201-300	100	15	2 hours
301-400	125	20	2.5 hours
401 or more	150	25	3 hours

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.

State Auditor's Office

Notice of Contract Award

The State Auditor's Office (SAO) announces the award of a contract to KPMG LLP (KPMG) to perform the federal portion of the Texas statewide audit.

The Texas statewide audit is an annual audit of the State's financial statements, including an audit of federal funds received by state agencies and universities. The purpose of the federal portion of the audit is to ensure that federal funds have been spent in accordance with applicable grant requirements and cost principles.

SAO has historically performed all of the statewide audit, including the federal portion of the audit. SAO will continue to perform the statewide audit, with the exception of the federal portion of the audit, which will be performed under contract by KPMG and its subcontractors.

KPMG will manage the audit engagement from its offices located at 111 Congress Avenue, Suite 1100, Austin, Texas, 78701.

The Request for Offers soliciting audit services was published in the May 25, 2001 issue of the *Texas Register* (26 TexReg 3849) Historically-underutilized businesses (HUBs) were encouraged to submit or participate in the submission of an offer. As a result, KPMG has retained the services of the following HUB subcontractors to participate in performing audit services under the contract:

CC Garcia & Co., P.C.

Leal & Carter

Richard Mendoza, CPA

Arturo Montemayor III, CPA, P.C.

Monday N. Rufus, P.C.

The contract awarded to KPMG commences September 1, 2001 and terminates April 30, 2003, except that SAO, at its sole option, may extend the period of performance through April 30, 2004. The total value of the contract is divided into three segments:

Fiscal Year 2001 Audit: $1,721,104.00

Fiscal Year 2002 Audit: $1,728,270.00

Fiscal Year 2003 Audit (at SAO's option): $1,735,498.00

Approximately 25 percent of the total contract award will be allocated to HUB subcontractors.

KPMG is required to provide detailed reports of its audit results to SAO by February 20 of each year of the contract period. KPMG's reports will be incorporated into SAO's statewide audit reports.

TRD-200105456
Douglas C. Brown
General Counsel
State Auditor's Office
Filed: September 13, 2001

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Capital Area Metropolitan Planning Organization

Advertisement for Model RFP

ADVERTISEMENT FOR SEALED PROPOSALS

CAPITAL AREA METROPOLITAN PLANNING ORGANIZATION IS REQUESTING SEALED PROPOSALS FROM QUALIFIED CONSULTANTS FOR THE FOLLOWING PROJECT:

Development of Highway and Transit Network Components For Long Range Plan Update (CAMPO-01-FY 02)

Proposal Packets may be obtained from the Capital Area Metropolitan Planning Organization Office, 1011 San Jacinto, Austin, Texas 78701. A pre-proposal conference is scheduled for Monday, October 8, 2001 at 10:00 a.m. in the Third Floor Conference Room at the CAMPO Office.

All proposals must be submitted to the Capital Area Metropolitan Planning Organization Office at the aforementioned address no later than **1:00 p.m., CST, Thursday, October 25, 2001**. No late proposals or faxed proposals will be accepted.

For further information, please contact Daniel Yang, Project Manager, (512) 499-6423 or e-mail Daniel.Yang@ ci.austin.tx.us

THE CAPITAL AREA METROPOLITAN PLANNING ORGANIZATION HEREBY NOTIFIES ALL OFFERORS THAT IN REGARD TO ANY CONTRACT ENTERED INTO PURSUANT TO THIS ADVERTISEMENT, MINORITY BUSINESS ENTERPRISES AND HISTORICALLY UNDERUTILIZED BUSINESSES WILL BE

AFFORDED EQUAL OPPORTUNITIES TO SUBMIT OFFERS IN RESPONSE TO THIS INVITATION AND WILL NOT BE DISCRIMINATED AGAINST ON THE GROUNDS OF RACE, COLOR, SEX, NATIONAL ORIGIN, OR DISABILITY IN CONSIDERATION FOR AN AWARD.

TRD-200105597
Michael R. Aulick
Executive Director
Capital Area Metropolitan Planning Organization
Filed: September 18, 2001

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Coastal Coordination Council

Notice and Opportunity to Comment on Requests for Consistency Agreement/Concurrence Under the Texas Coastal Management Program

On January 10, 1997, the State of Texas received federal approval of the Coastal Management Program (CMP) (62 Federal Register pp. 1439-1440). Under federal law, federal agency activities and actions affecting the Texas coastal zone must be consistent with the CMP goals and policies identified in 31 TAC Chapter 501. As required by federal law, the public is given an opportunity to comment on the consistency of proposed activities in the coastal zone undertaken or authorized by federal agencies. Pursuant to 31 TAC §§506.25, 506.32, and 506.41, the public comment period for these activities extends 30 days from the date published on the Coastal Coordination Council web site. Requests for federal consistency review were received for the following projects(s) during the period of September 7, 2001, through September 13, 2001. The public comment period for these projects will close at 5:00 p.m. on October 19, 2001.

FEDERAL AGENCY ACTIONS:

Applicant: Patrick Flynn; Location: The project is located on the south side of State Highway 65, approximately 1.5 miles west of Stowell, Chambers County, Texas. The project can be located on the U.S.G.S. quadrangle map entitled: Stowell, Texas. Approximate UTM Coordinates: Zone 15; Easting: 363774; Northing 3296133. CCC Project No.: 01-0332-F1; Description of Proposed Action: The applicant proposes to install, operate, and maintain structures and equipment necessary for oil and gas drilling, production, and transportation activities. The completed project will result in the filling of 2.71-acres of a typical wetland that has been improved for use as pasture for cattle. The applicant proposes to purchase 9-acre credits from Wetlands Mitigation Replacement of Southeast Texas as mitigation. Type of Application: U.S.A.C.E. permit application #22444 is being evaluated under §404 of the Clean Water Act (33 U.S.C.A. §§125-1387). NOTE: The CMP consistency review for this project may be conducted by the Railroad Commission of Texas as part of its certification under section 401 of the Clean Water Act.

Applicant: Matagorda County Navigation District No. 1; Location: The project is located at the South Bay Marina at 10 Eighth Street, Palacios, Matagorda County, Texas. The project can be located on the U.S.G.S. quadrangle map entitled: Palacios, Texas. Approximate UTM Coordinates: Zone 14; Easting: 771550; Northing 3177300. CCC Project No.: 01-0335-F1; Description of Proposed Action: The applicant proposes to amend Army Permit 21476. The revisions will affect the structure proposed for the east side of the marina, which opens into Tres Palacios Bay. The structure will be 38.5-foot wide by 32.1-foot long and will have eight 4-foot wide finger piers and one 8-foot wide finger pier. The 10-foot walkway along the east bulkhead will be moved onto the shore and the roof will be eliminated. The total covered area has been reduced from 12,680 square feet to 1,644 square feet. Type of Application: U.S.A.C.E. permit application #21476(01) is being evaluated under §10 of the Rivers and Harbors Act of 1899 (33 U.S.C.A. §403).

Applicant: Time Warner Communications; Location: The project is located at the Corpus Christi Ship Channel's Industrial Canal at the U.S. Army Corps of Engineers Station 1103+72.94, below Harbor Bridge, Corpus Christi, Nueces County, Texas. The project can be located on the U.S.G.S. quadrangle map entitled: Corpus Christi, Texas. Approximate UTM Coordinates: Zone 14; Easting: begin 658150, end 658053; Northing: begin 3077352, end 3077185. CCC Project No.: 01-0336-F1; Description of Proposed Action: The applicant proposes to directly drill (bore) a fiber optic line below the Corpus Christi Ship Channel (CCSC). The bore hole size would be approximately 4 inches in diameter and the total length would be approximately 1410 linear feet. The bore would start approximately 500 feet south of the CCSC bank on the island between Mesquite Street and the paved area below Harbor Bridge. The end of the bore would be located on the north side approximately 300 feet north of the bank of the CCSC. No discharge of dredged or fill material would result from this project. The purpose of the project is to run a fiber optic line from the Time Warner Communications facility to North Beach. The need for this line is to provide for high-speed data, video, and communications. Type of Application: U.S.A.C.E. permit application #22376 is being evaluated under §10 of the Rivers and Harbors Act of 1899 (33 U.S.C.A. §403).

Applicant: Texas Department of Transportation; Location: The project is located in Humble Channel of Laguna Madre, 6.0 miles above the mouth at Corpus Christi Bay at Corpus Christi, Nueces County, Texas. CCC Project No.: 01-0337-F1; Description of Proposed Action: The proposed bridge would run parallel and adjacent to the existing structure. The new bridge will be 787-feet long and 84-feet wide. It will provide four 12-foot travel lanes, two 12-foot outside shoulders, and two 4-foot inside shoulders. It will provide a vertical clearance of 9.3 feet above mean high water, elevation 0.5 feet above NAVD.88. Actual clearance between piers will be approximately 80 feet with a horizontal clearance of 58 feet clear channel available. Type of Application: U.S. Coast Guard Bridge Permit Amendment No. CGD8-03a-01 for a bridge project across the Humble Channel of Laguna Madre at Corpus Christi, Nueces County, Texas.

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-200105623
Larry R. Soward
Chief Clerk, General Land Office
Coastal Coordination Council
Filed: September 19, 2001

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Comptroller of Public Accounts

Notice of Request for Proposals

Pursuant to Chapter 2254, Subchapter B, Texas Government Code, the Comptroller of Public Accounts (Comptroller) announces this Request

for Proposals (RFP) for provision of consulting services to the Comptroller in the conduct of a study to determine the number and type of fraudulent claims and overpayments paid by the state's publicly funded health care programs, including Medicaid and Worker's Compensation for state employees each biennium (Study). The Comptroller reserves the discretion to award one or more contracts for the Study (Contract) for one or more combinations of different segments or parts of the Study. The successful respondent(s) will be expected to begin performance of the Contract(s) on or about January 7, 2002.

Statement of Services: The Comptroller requires highly specialized consulting expertise and experience for the services to be provided under the Contract(s). The Comptroller issues the RFP to solicit proposals from qualified, independent consultants to provide services including medical documentation reviews, conduct client telephone surveys, prescription documentation reviews, worker's compensation peer review of medical documentation and provide other analysis and opinions regarding the Study findings and report to the Comptroller, as more fully set forth in the RFP.

Contact: Parties interested in submitting a proposal should contact William Clay Harris, Assistant General Counsel, Contracts, Comptroller of Public Accounts, Room-G-24, LBJ State Office Building, 111 East 17th St., Austin, Texas, 78774, telephone number: (512) 936-5854, regarding the request. The Comptroller will provide further information only to those specifically requesting it. All Questions must be sent in writing via facsimile to William Clay Harris, Assistant General Counsel, Contracts, Comptroller of Public Accounts, facsimile number: (512) 475-0973. All Questions and inquiries must be received in writing no later than 2:00 p.m. Central Zone Time (CZT) on Friday, October 12, 2001. Official responses to questions and inquiries will be posted electronically on or about Friday, October 19, 2001, or as soon thereafter as practicable, on the Texas Marketplace: http://www.marketplace.state.tx.us.

Closing Date: To be considered, all proposals must be received at the foregoing address in the issuing office on or before 2:00 p.m. CZT on Friday, November 2, 2001. Proposals received after this time and date will not be considered.

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. The Comptroller will make the final decision.

The Comptroller reserves the right to accept or reject any or all proposals submitted. The Comptroller is under no legal or other obligation to execute any contracts on the basis of this notice. The Comptroller shall pay for no costs incurred by any entity in responding to this RFP.

The anticipated schedule of events is as follows: Issuance of RFP - September 28, 2001, after 2:00 p.m. CZT; Deadline for Questions - 2:00 p.m. CZT, October 12, 2001; Release of Official Responses to Questions - after 2:00 p.m. CZT, October 19, 2001, or as soon thereafter as practical; Deadline for Proposals - 2:00 p.m. CZT, November 2, 2001; Contract Execution - December 17, 2001, or as soon thereafter as practical; Commencement of Project Activities - January 7, 2002.

TRD-200105602
Pamela Ponder
Deputy General Counsel for Contracts
Comptroller of Public Accounts
Filed: September 19, 2001

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Notice of Request for Proposals

Pursuant to Chapters 791 and 2256, Texas Government Code, the Comptroller of Public Accounts acting on behalf of the Texas Treasury Safekeeping Trust Company (Comptroller), announces its Request for Proposals (RFP) for investment management and related services for the Texas Local Government Investment Pool (TexPool). The successful respondent or respondents must be able to begin performance of the contract no later than January 2, 2002, with transition to services under the new contract completed by September 1, 2002. The Comptroller's current contract for similar services expires August 31, 2002 unless terminated sooner according to its terms. Prior to submitting a response to this RFP, interested respondents should review the enabling legislation and the following website: http://www.texpool.com. The Comptroller reserves the right, in its sole judgment and discretion, to award one or more contracts as a result of the issuance of this RFP.

Contact: Parties interested in submitting a proposal or reviewing the RFP should contact Thomas H. Hill, Assistant General Counsel, Contracts, Comptroller of Public Accounts, 111 E. 17th St., Rm G-24, Austin, Texas, 78774, telephone number: (512) 305-8673, to obtain a copy of the RFP. The Comptroller will mail copies of the RFP only to those specifically requesting a copy. The complete RFP will be available for pick-up at the above-referenced address on Friday, September 28, 2001, between 2:00 p.m. and 5:00 p.m., Central Zone Time (CZT), and during normal business hours thereafter. The Comptroller will also make the complete RFP available electronically on the Texas Marketplace after Friday, September 28, 2001, 2:00 p.m. CZT.

Questions: All questions concerning the RFP must be in writing and submitted no later than October 12, 2001, 2:00 p.m. Mandatory Letters of Intent to propose are also due by 2:00 p.m. on October 12, 2001. Questions must be faxed to (512) 475-0973, Attn: Thomas H. Hill, Assistant General Counsel, Contracts. Proposals will not be accepted from firms that do not submit Mandatory Letters of Intent to propose by this deadline. On or before October 19, 2001 (or as soon thereafter as practical) the Comptroller expects to post answers to these written questions as a revision to the Texas Marketplace notice of the issuance of this RFP. The address of the Texas Marketplace is www.marketplace.state.tx.us. Contract execution is expected to take place on or before December 14, 2001 (or as soon thereafter as practical).

Closing Date: Proposals must be received in the Assistant General Counsel's Office at the address specified above no later than 2:00 p.m. (CZT), on Wednesday, October 31, 2001. Proposals received after this time and date will not be considered.

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. The Comptroller will make the final decision.

The Comptroller reserves the right to accept or reject any or all proposals submitted. The Comptroller is under no legal or other obligation to execute a contract on the basis of this notice or the distribution of any RFP. The Comptroller shall pay no costs or any other amounts incurred by any entity in responding to this Notice or the RFP.

The anticipated schedule of events is as follows: Issuance of RFP - September 28, 2001, 2:00 p.m. CZT; Mandatory Letters of Intent Due:-- October 12, 2002, 2:00 p.m., CZT, Questions Due - October 12, 2001, 2:00 p.m. CZT, Answers to Questions Posted - on October 19, 2001, or as soon thereafter as practical; Proposals Due - October 31, 2001, 2:00 p.m. CZT, Contract Execution - December 14, 2001, or as soon thereafter as practical; Commencement of Work - January 2, 2002; Transition Complete - September 1, 2002.

TRD-200105612
Pamela G. Ponder
Deputy General Counsel for Contracts
Comptroller of Public Accounts
Filed: September 19, 2001

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Notice of Request for Proposals

Notice of Request for Proposals: Pursuant to Sections 403.011, 2155.001, and 2156.121, Texas Government Code, and Chapter 54, Subchapters F and G, Texas Education Code, the Comptroller of Public Accounts (Comptroller) on behalf of the Texas Prepaid Higher Education Tuition Board (Board) announces its Request for Proposals (RFP) for the purpose of selecting a financial institution or financial institutions to act as plan manager or plan managers in connection with the administration of a higher education savings plan authorized under SB 555. The plan manager(s) will manage the investment of funds in a program for savings trust agreements from which distributions will be made for qualified higher education expenses at eligible educational institution as provided in §529, Internal Revenue Code of 1986, as amended, and will market the higher education savings plan as directed by the Board. The Comptroller and the Board reserve the right to award more than one contract under the RFP. If approved by the Board, the successful respondent(s) will be expected to begin performance of the contract on or about January 11, 2002, and should begin opening and managing accounts on or about April 22, 2002.

Contact: Parties interested in submitting a proposal should contact John C. Wright, Assistant General Counsel, Contracts, Comptroller of Public Accounts, 111 E. 17th St., Room G-24, Austin, Texas 78774, (512) 305-8673, to obtain a complete copy of the RFP. The Comptroller will mail copies of the RFP only to those parties specifically requesting a copy. The RFP will be available for pick-up at the above referenced address on Friday, September 28, 2001, between 2:00 p.m. and 5:00 p.m. Central Zone Time (CZT), and during normal business hours thereafter. The Comptroller will also make the entire RFP available electronically on the Texas Marketplace after Friday, September 28, 2001, 2:00 p.m. CZT. The website address is www.marketplace.state.tx.us.

Questions and Non-Mandatory Letters of Intent: All written inquiries, questions, and non-mandatory Letters of Intent to propose must be received at the above-referenced address not later than 2:00 p.m. (CZT) on Friday, October 19, 2001. Prospective proposers are encouraged to fax non-mandatory Letters of Intent and Questions to (512) 475-0973 to ensure timely receipt. The Letter of Intent must be addressed to John C. Wright, Assistant General Counsel, Contracts, and must contain the information as stated in the corresponding Section of the RFP and be signed by an official of that entity. Non-mandatory Letters of Intent and Questions received after this time and date will not be considered. On or before Friday, October 26, 2001, the Comptroller expects to post responses to questions as a revision to the Texas Marketplace notice on the issuance of this RFP.

Closing Date: Proposals must be delivered to the Office of Assistant General Counsel, Contracts, at the location specified above (ROOM G24) no later than 2:00 p.m. (CZT), on Friday, November 9, 2001. Proposals received in ROOM G24 after this time and date will not be considered.

Evaluation Criteria: Proposals will be evaluated under the evaluation criteria outlined in the RFP. The Board makes the final decision on award(s).

The Comptroller and the Board each reserve the right to accept or reject any or all proposals submitted. The Comptroller and the Board are not obligated to execute a contract on the basis of this notice or the distribution of any RFP. The Comptroller and the Board shall not pay for any costs incurred by any entity in responding to this Notice or the RFP.

The anticipated schedule of events pertaining to this solicitation is as follows: Issuance of RFP - September 28, 2001, 2:00 p.m. CZT; Non-Mandatory Letter of Intent to propose and Questions Due - October 19, 2001, 2:00 p.m. CZT; Official Responses to Questions posted - October 26, 2001; Proposals Due - November 9, 2001, 2:00 p.m. CZT; Contract Execution - January 11, 2002, or as soon thereafter as practical; Commencement of Project Activities - January 11, 2001.

TRD-200105622
Pamela Ponder
Deputy General Counsel for Contracts
Comptroller of Public Accounts
Filed: September 19, 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 303.003, 303.009, and 304.003, Tex. Fin. Code.

The weekly ceiling as prescribed by Sec. 303.003 and Sec. 303.009 for the period of 09/25/00 - 10/01/00 is 18% for Consumer [1]/Agricultural/Commercial [2]/credit thru $250,000.

The weekly ceiling as prescribed by Sec. 303.003 and Sec. 303.009 for the period of 09/25/00 - 10/01/00 is 18% for Commercial over $250,000.

The judgment ceiling as prescribed by Sec. 304.003 for the period of 10/01/00 - 10/31/00 is 10% for Consumer/Agricultural/Commercial/credit thru $250,000.

The judgment ceiling as prescribed by Sec. 304.003 for the period of 10/01/00 - 10/31/00 is 10% for Commercial over $250,000.

[1]Credit for personal, family or household use.

[2]Credit for business, commercial, investment or other similar purpose.

TRD-200105577
Leslie L. Pettijohn
Commissioner
Office of Consumer Credit Commissioner
Filed: September 18, 2001

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Credit Union Department

Application(s) to Expand Field of Membership

Notice is given that the following applications have been filed with the Credit Union Department and are under consideration:

An application was received from Entex Credit Union, Houston, Texas to expand its field of membership. The proposal would permit employees of Reliant Energy Entex & Reliant Energy HL& P who work in or are paid from Houston, Texas, to be eligible for membership in the credit union.

An application was received from Houston Energy Credit Union, Houston, Texas to expand its field of membership. The proposal would permit employees of Kforce.com who work in or are paid from Houston, Texas, to be eligible for membership in the credit union.

An application was received from Members Choice Credit Union, Houston, Texas to expand its field of membership. The proposal would permit employees of Oceaneering International, Inc. who work in or are paid from Houston, Texas, to be eligible for membership in the credit union.

An application was received from OmniAmerican Credit Union, Fort Worth, Texas to expand its field of membership. The proposal would permit persons who live, work, attend school in, are paid from, business and non-business entities, organizations and associations located within Parker County, Texas to be eligible for membership in the credit union.

An application was received from OmniAmerican Credit Union, Fort Worth, Texas to expand its field of membership. The proposal would permit persons who live, work, attend school in, are paid from, business and non-business entities, organizations and associations located within Hood County, Texas to be eligible for membership in the credit union.

An application was received from OmniAmerican Credit Union, Fort Worth, Texas to expand its field of membership. The proposal would permit persons who live, work, attend school in, are paid from, business and non-business entities, organizations and associations located within Wise County, Texas to be eligible for membership in the credit union.

An application was received from OmniAmerican Credit Union, Fort Worth, Texas to expand its field of membership. The proposal would permit persons who live, work, attend school in, are paid from, business and non-business entities, organizations and associations located within Johnson County, Texas to be eligible for membership in the credit union.

Comments or a request for a meeting by any interested party relating to an application must be submitted in writing within 30 days from the date of this publication. Credit unions that wish to comment on any application must also complete a Notice of Protest form. The form may be obtained by contacting the Department at (512) 837-9236. Any written comments must provide all information that the interested party wishes the Department to consider in evaluating the application. All information received will be weighed during consideration of the merits of an application. Comments or a request for a meeting should be addressed to the Texas Credit Union Department, 914 East Anderson Lane, Austin, Texas 78752-1699.

TRD-200105611
Harold E. Feeney
Commissioner
Credit Union Department
Filed: September 19, 2001

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Notice of Final Action Taken

In accordance with the provisions of 7 TAC Section 91.103, the Credit Union Department provides notice of the final action taken on the following application(s):

Application(s) to Expand Field of Membership - Approved

San Jacinto Area Credit Union, Pasadena, Texas (#1)- See Texas Register issue dated May 25, 2001.

San Jacinto Area Credit Union, Pasadena, Texas (#2)- See Texas Register issue dated May 25, 2001.

OmniAmerican Credit Union, Fort Worth, Texas (#2)- See Texas Register issue dated May 25, 2001.

Cameron Credit Union, Houston, Texas - See Texas Register issue dated May 25, 2001.

Galleria Credit Union, Dallas, Texas - See Texas Register issue dated May 25, 2001.

Texans Credit Union, Richardson, Texas - See Texas Register issue dated June 29, 2001.

Community Credit Union, Plano, Texas - See Texas Register issue dated June 29, 2001.

West Texas Credit Union, El Paso, Texas - See Texas Register issue dated June 29, 2001.

Fort Worth Community Credit Union, Fort Worth, Texas - See Texas Register issue dated June 29, 2001.

Texaco Houston Credit Union, Bellaire, Texas - See Texas Register issue dated June 29, 2001.

Tyler City Employees Credit Union, Tyler, Texas - See Texas Register issue dated June 29, 2001.

City Credit Union, Dallas, Texas- See Texas Register issue dated June 29, 2001.

Pegasus Credit Union, Dallas, Texas - See Texas Register issue dated June 29, 2001.

Southwest Resource Credit Union, Baytown, Texas - See Texas Register issue dated June 29, 2001.

Austin Metropolitan Financial Credit Union, Austin, Texas - See Texas Register issue dated June 29, 2001.

Application(s) for a Merger or Consolidation - Approved

Jefferson County Employees Credit Union and Beaumont Telco FCU - See Texas Register issue dated June 29, 2001.

TRD-200105610
Harold E. Feeney
Commissioner
Credit Union Department
Filed: September 19, 2001

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Texas Department of Criminal Justice

Notice of Contract Award

The Texas Department of Criminal Justice - Institutional Division publishes this notice of a contract award to Security Response Technologies, Inc., 161 South Main Street, Middleton, Massachusetts 01949. Notice of a Request for Qualifications 696-ID-1-Q045, to review current criteria for assigning appropriate security levels to each TDCJ facility and submit recommendations for revisions and implementation methods was published in the June 27, 2001, edition of the *Texas Register* (26 TexReg 5107). This contract was awarded in accordance with the requirements in Chapter 2254, Subchapter B, Texas Government Code.

The contract number is 696-ID-2-2-C5006 and the not-to exceed contract amount is $50,840.00. Two formal written reports will be submitted detailing the findings of the review and the recommendations for action and implementation. The contract date is September 10, 2001, and expires on December 31, 2001.

TRD-200105550
Carl Reynolds
General Counsel
Texas Department of Criminal Justice
Filed: September 17, 2001

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Notice to Bidders - Correction

The Texas Department of Criminal Justice invites bids for the modification of three existing paint booth exhaust stacks at the Daniel Unit, 938 South FM 1673, Snyder, Texas 79549. The project consists of the construction, and the installation of three existing paint booth exhaust ducts, including but not limited to duct modifications, concrete drilled shafts, and duct support structures with associated painting and site restoration. The work includes sheet metal, concrete, structural steel work as well as other trades, as further shown in the Contract Documents prepared by, RMT Inc., 912 Capital of Texas Hwy South, Suite 300, Austin, Texas 78746-9840.

The successful bidder will be required to meet the following requirements and submit evidence within five days after receiving notice of intent to award from the Owner:

A. Contractor must have a minimum of five consecutive years of experience in his trade and provide references for at least three projects that have been completed of a dollar value and complexity equal to or greater than the proposed project.

B. Contractor must be bondable and insurable at the levels required.

All Bid Proposals must be accompanied by a Bid Bond in the amount of 5.0% of greatest amount bid. Performance and Payment Bonds in the amount of 100% of the contract amount will be required upon award of a contract. The Owner reserves the right to reject any or all bids, and to waive any informality or irregularity.

Bid Documents can be purchased from the Architect/Engineer at a cost of $50 (non-refundable) per set, inclusive of mailing/delivery costs, or they may be viewed at various plan rooms. Payment checks for documents should be made payable to the Architect/Engineer : RMT, Inc., 912 Capital of Texas Highway South, Suite 300, Austin, Texas 77846-5210; Attn: Tommy Slaughter; Phone: 512-327-9840; Fax: 512-327-6163.

A Pre-Bid conference will be held at 11AM on October 10, 2001, at the Daniel Unit, 938 South FM 1673, Snyder, Texas, followed by a site-visit. ONLY ONE SCHEDULED SITE VISIT WILL BE HELD FOR REASONS OF SECURITY AND PUBLIC SAFETY; THEREFORE, BIDDERS ARE STRONGLY ENCOURAGED TO ATTEND.

Bids will be publicly opened and read at 2PM on October 25, 2001, in the Contracts and Procurement Conference Room located in the West Hill Mall, Suite 525, Two Financial Plaza, Huntsville, Texas.

The Texas Department of Criminal Justice requires the Contractor to make a good faith effort to include Historically Underutilized Businesses (HUB's) in at least 57.2% of the total value of this construction contract award. Attention is called to the fact that not less than the minimum wage rates prescribed in the Special Conditions must be paid on these projects.

TRD-200105617
Carl Reynolds
General Counsel
Texas Department of Criminal Justice
Filed: September 19, 2001

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Texas Education Agency

Request for Applications Concerning Prekindergarten and Kindergarten Grant Program, 2001-2002 School Year, Cycle 6

Eligible Applicants. The Texas Education Agency (TEA) is requesting applications under Request for Applications (RFA) #701-02-001 from school districts, shared services arrangements of school districts, and/or open-enrollment charter schools to continue programs implemented during the 2000- 2001 school year in either Cycle 3 or Cycle 4. School districts, shared services arrangements of school districts, and/or open-enrollment charter schools that did not receive Cycle 3 or Cycle 4 grants to expand their existing half-day prekindergarten programs to full-day programs may apply for Cycle 6 grants. However, recipients previously awarded Cycle 5 funds are ineligible to receive grants under Cycle 6.

Description. Cycle 6 of the grant program will be used to provide continuing operating funds for programs that were implemented in the 2000-2001 school year and, funds permitting, for the expansion of existing half-day prekindergarten programs to full-day programs for those school districts and open-enrollment charter schools that did not have full-day programs during the 2000-2001 school year.

Dates of Project. The Prekindergarten and Kindergarten Grant Program (Cycle 6, Prekindergarten Expansion Grants) will be implemented during the 2001-2002 school year. Cycle 6 expansion grants may be renewed for the 2002-2003 school year, provided all terms and conditions of 2001-2002 funding awards have been met.

Project Amount. The 77th Texas Legislature, 2001, appropriated $100 million per year to the Prekindergarten and Kindergarten Grant Program for the 2001-2002 and 2002-2003 school years, representing a total of $200 million in state funds. Cycle 6 grants will be funded based on the additional attendance in the same manner as current Foundation School Program funding.

Selection Criteria. Applications must address each requirement as specified in the RFA to be considered for funding. Priority will be given to school districts and open-enrollment charter schools that received awards under previous Cycle 3 or Cycle 4 funding. If funds remain after funding this priority group, new expansion programs will be funded. Within the group of new expansion program applicants, priority will be given to school districts and open-enrollment charter schools where student performance on the Grade 3 Texas Assessment of Academic Skills (TAAS) tests falls substantially below the state average. Additional priority will be given to school districts and open-enrollment charter schools that serve the highest percentages of eligible (limited English proficient, educationally disadvantaged, and homeless) children. Educationally disadvantaged children are defined as those children eligible to participate in the national free or reduced-price lunch program.

The TEA is not obligated to approve an application, provide funds, or endorse any application submitted in response to this RFA. This RFA does not commit TEA to pay any costs before an application is approved. The issuance of this RFA does not obligate TEA to award a grant or pay any costs incurred in preparing a response.

Requesting the Application. Copies of the RFA may be obtained by writing the Document Control Center, Room 6-108, Texas Education Agency, William B. Travis Building, 1701 N. Congress Avenue, Austin, Texas 78701; by calling (512) 463-9304; by faxing (512) 463-9811; or by e-mailing dcc@tea.state.tx.us. Please refer to the RFA number and title in your request. Provide your name, complete mailing address, and telephone number including area code. The announcement letter and complete RFA will also be posted on the TEA website at http://www.tea.state.tx.us/grant/announcements/grants2.cgi for viewing and downloading.

Further Information. For clarifying information about the RFA or the Prekindergarten and Kindergarten Grant Program, contact Clem Gallerson, School Finance and Fiscal Analysis Department, TEA, telephone (512) 463-8994. Questions regarding prekindergarten curriculum and programs should be addressed to Cami Jones, Curriculum and Professional Development, TEA, telephone (512) 463-9501.

Deadline for Receipt of Applications. Applications must be received in the Document Control Center of the TEA by 5:00 p.m. Central Time, Thursday, October 18, 2001, to be considered.

TRD-200105616
Criss Cloudt
Associate Commissioner, Accountability Reporting and Research
Texas Education Agency
Filed: September 19, 2001

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Edwards Aquifer Authority

Notice of Proposed Initial Regular Permits and Technical Summaries

THE EDWARDS AQUIFER AUTHORITY HEREBY GIVES NOTICE OF the issuance of Proposed Initial Regular Permits ("PIRP") and proposed denials of Applications for Initial Regular Permits ("IRP Applications"). The PIRPs, if issued as final Initial Regular Permits, would authorize the permittees to withdraw groundwater from the Edwards Aquifer according to the terms and conditions set forth in the permits. The conditions contained in the PIRPs concern the permit term, groundwater withdrawal amounts, purpose of use, location of points of withdrawal, place of use, meters, maximum rate of withdrawal, maximum historical use, statutory minimums, phase-1 proportionally adjusted amounts, step-up amounts, phase-2 proportionally adjusted amounts, equal percentage reduction amounts, transfers, reporting, fees, beneficial use, waste, other water sources, termination, interruption, and suspension of groundwater withdrawal amounts, restoration of groundwater withdrawal amounts, diversions of surface water from the Guadalupe River, amendments, conservation, reuse, registration of wells, water use reporting, water quality, well construction, operation, maintenance and closure, well head protection and spacing, interim authorization, filing and recording of permits, change of address or telephone numbers, compliance with applicable law, and enforcement.

A copy of the PIRPs, and proposed denials of IRP Applications, along with the Technical Summaries, are available for public inspection at the offices of the Edwards Aquifer Authority, 1615 North St. Mary's Street, San Antonio, Texas 78215, Monday through Friday between the hours of 7:30 a.m. and 4:30 p.m.

A brief description of the PIRPs and proposed denials of IRP Applications, summary of the reasons for denials, and Technical Summaries are set out in the attached Table of Proposed Initial Regular Permits and Proposed Denials of Applications for Initial Regular Permits.

All PIRPs, and any proposed denials of IRP Applications will be presented to the board of directors for action within 60 days of the date of this Notice, unless a Request for a Contested Case Hearing is submitted within 30 days after publication of this Notice in the *Texas Register* pursuant to 25 TexReg 7529-7530 (to be codified at 31 TAC, §§707.601-707.604 relating to Procedures for Contested Case Hearings on Application.)

An applicant, another applicant for a groundwater withdrawal permit, or a permittee holding a groundwater withdrawal permit may request a hearing on an IRP Application by filing with the Docket Clerk of the Authority on or before the 30th day after the publication of this notice in the *Texas Register* in accordance with §§707.601-707.604. Specifically, the deadline for filing a Request for a Contested Case Hearing is on or before Monday, October 29, 2001.

A Request for a Contested Hearing Packet and instructions for filing a Request for a Contested Case Hearing may be obtained by contacting the Docket Clerk of the Authority, Ms. Brenda J. Davis.

This Notice of Proposed Initial Regular Permits and Technical Summaries is published pursuant 31 TAC, §707.510(b), and will be published in the Texas Register and in the following six newspapers with circulation within the jurisdiction of the Authority: Hondo Anvil Herald; Medina Valley Times; New Braunfels Herald Zeitung; San Antonio Express-News; San Marcos Daily Record; and the Uvalde Leader-News.

The Edwards Aquifer Authority proposes to grant the following Initial Regular Permit:

Notice of Proposed Initial Regular Permits and Technical Summaries

Application Number	Owner Name	Purpose	Proposed Action	Claimed Maximum Historical Use	Proposed IRP	Pool	Place of Use
BE00115	Oakwell Farms Corp.	Irrigation	G	415.000	391.000	San Antonio	Bexar
CO00132	Grace E. Rollins	Municipal	G	5.000	0.500	San Antonio	Comal
ME00301	Kenneth A. Haby and wife, Kathleen Haby	Irrigation	G	496.000	496.000	San Antonio	Medina
UV00467	Lewis R. Cole, Jr. and wife, Kenneth Cole	Irrigation	G	858.000	858.000	Uvalde	Uvalde
UV00616	Sterling Trust	Irrigation	G	830.000	602.000	Uvalde	Uvalde

If you have questions on any information in this notice or in the event you require additional information on hearing procedures, you may contact Ms. Brenda J. Davis, Docket Clerk for the Authority, at (210) 222-2204 or 1-800-292-1047.

TRD-200105618
Gregory M. Ellis
General Manager
Edwards Aquifer Authority
Filed: September 19, 2001

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Commission on State Emergency Communications

Distribution Percentages for Wireless Service Fee Revenue

Pursuant to 1 TAC §252.6 (concerning wireless service fee proportional distribution) and based upon feedback from wireless revenue recipients, the following will be incorporated into the proposed distribution schedule. This distribution table will be presented to the commission for adoption at its October 11, 2001, public meeting.

Attached in this notice is the proposed schedule of distribution percentages for the 9-1-1 Wireless Service Fee. Once finalized, these percentages will be used for distributions made after November 10, 2001. The population amounts were derived from the 2000 US Census information published by the Department of Rural Sociology at Texas A&M University.

If a jurisdiction wishes to change the schedule, it must show the change to itself and the change to another jurisdiction, the net affect of the two changes being zero on the total schedule. Changes must be coordinated between jurisdictions before reporting them back to the Commission on State Emergency Communications (CSEC).

Some population adjustments for cities that are split between jurisdictions (primarily in the Dallas area) have not been changed from last year, due to the difficulty in determining the split. Those are indicated by a box outline around the population amount.

All changes to and comments on the schedule must be received by the CSEC by Tuesday, October 9, 2001. Once all changes have been incorporated in the schedule, it will be presented to the Commission for adoption at its next public meeting. Comments and changes can be sent to Brian P. Millington by email (brian.millington@csec.state.tx.us) or by fax (512) 305-6937, or to the following address: 333 Guadalupe Street, Suite 2-212 Austin, Texas 78701-3942.

Figure: Commission on State Emergency Communications, Distribution Table

Commission on State Emergency Communications
PROPOSED Wireless Emergency Service Fee Distribution Allocation Worksheet
For Use from November 10, 2001 - November 9, 2002

	Gross Population	District & HRC Adjustments Name	Population	Adjusted Population	Distribution Percentage
Atascosa	38,628			38,628	
Bandera	17,645			17,645	
Frio	16,252			16,252	
Gillespie	20,814			20,814	
Karnes	15,446			15,446	
Kendall	23,743			23,743	
Wilson	32,408			32,408	
AACOG Total	**164,936**			**164,936**	**0.7910%**
Bowie	89,306			89,306	
Cass	30,438			30,438	
Delta	5,327			5,327	
Franklin	9,458			9,458	
Hopkins	31,960			31,960	
Lamar	48,499			48,499	
Morris	13,048			13,048	
Red River	14,314			14,314	
Titus	28,118			28,118	
ATCOG Total	**270,468**			**270,468**	**1.2971%**
Burleson	16,470			16,470	
Grimes	23,552			23,552	
Leon	15,335			15,335	
Madison	12,940			12,940	
Robertson	16,000			16,000	
Washington	30,373			30,373	
BVDC Total	**114,670**			**114,670**	**0.5499%**
Bastrop	57,733			57,733	
Blanco	8,418			8,418	
Burnet	34,147			34,147	
Caldwell	32,194			32,194	
Fayette	21,804			21,804	
Hays	97,589			97,589	
Lee	15,657			15,657	
Llano	17,044			17,044	
Travis	812,280			812,280	
Williamson	249,967			249,967	
CAPCO Total	**1,346,833**			**1,346,833**	**6.4591%**
Bell	237,974			237,974	
Coryell	74,978			74,978	
Hamilton	8,229			8,229	

	Gross Population	District & HRC Adjustments Name	Population	Adjusted Population	Distribution Percentage
Lampasas	17,762			17,762	
Milam	24,238			24,238	
Mills	5,151			5,151	
San Saba	6,186			6,186	
CTCOG Total	**374,518**			**374,518**	**1.7961%**
Aransas	22,497			22,497	
Bee	32,359			32,359	
Brooks	7,976			7,976	
Duval	13,120			13,120	
Jim Wells	39,326			39,326	
Kenedy	414			414	
Kleberg	31,549			31,549	
Live Oak	12,309			12,309	
McMullen	851			851	
Nueces	313,645			313,645	
Refugio	7,828			7,828	
San Patricio	67,138	Portland	(14,827)		
		Aransas Pass	(8,138)	44,173	
CBCOG Total	**549,012**			**526,047**	**2.5228%**
Coke	3,864			3,864	
Concho	3,966			3,966	
Crockett	4,099			4,099	
Irion	1,771			1,771	
Kimble	4,468			4,468	
McCulloch	8,205			8,205	
Mason	3,738			3,738	
Menard	2,360			2,360	
Reagan	3,326			3,326	
Schleicher	2,935			2,935	
Sterling	1,393			1,393	
Sutton	4,077			4,077	
Tom Green	104,010			104,010	
CVCOG Total	**148,212**			**148,212**	**0.7108%**
Angelina	80,130			80,130	
Houston	23,185			23,185	
Jasper	35,604			35,604	
Nacogdoches	59,203			59,203	
Newton	15,072			15,072	
Polk	41,133			41,133	
Sabine	10,469			10,469	

	Gross Population	District & HRC Adjustments Name	Population	Adjusted Population	Distribution Percentage
San Augustine	8,946			8,946	
San Jacinto	22,246			22,246	
Shelby	25,224			25,224	
Trinity	13,779			13,779	
Tyler	20,871			20,871	
DETCOG Total	**355,862**			**355,862**	**1.7066%**
Anderson	55,109			55,109	
Camp	11,549			11,549	
Cherokee	46,659	Reklaw	(327)	46,332	
Gregg	111,379	Kilgore	(11,301)		
		Longview	(73,344)	26,734	
Marion	10,941			10,941	
Panola	22,756	Tatum	(1,175)	21,581	
Rains	9,139			9,139	
Upshur	35,291			35,291	
Van Zandt	48,140			48,140	
Wood	36,752			36,752	
ETCOG Total	**387,715**			**301,568**	**1.4462%**
De Witt	20,013			20,013	
Goliad	6,928			6,928	
Gonzales	18,628			18,628	
Jackson	14,391			14,391	
Lavaca	19,210			19,210	
Victoria	84,088			84,088	
GCRPC Total	**163,258**			**163,258**	**0.7829%**
Bosque	17,204			17,204	
Falls	18,576			18,576	
Freestone	17,867			17,867	
Hill	32,321			32,321	
Limestone	22,051			22,051	
HOTCOG Total	**108,019**			**108,019**	**0.5180%**
Brazoria	241,767	Pearland	(37,640)	204,127	
Chambers	26,031			26,031	
Colorado	20,390			20,390	
Fort Bend	354,452	Katy	(11,775)		
		Meadows	(4,912)		
		Missouri City	(52,913)		
		Stafford	(15,681)		
		Sugar Land	(63,328)	205,843	

	Gross Population	District & HRC Adjustments Name	Population	Adjusted Population	Distribution Percentage
Liberty	70,154			70,154	
Matagorda	37,957			37,957	
Walker	61,758			61,758	
Waller	32,663	Waller	(2,092)	30,571	
Wharton	41,188			41,188	
HGAC Total	**886,360**			**698,019**	**3.3475%**
Hidalgo	569,463			569,463	
Willacy	20,082			20,082	
LRGVDC Total	**589,545**			**589,545**	**2.8273%**
Dimmit	10,248			10,248	
Edwards	2,162			2,162	
Kinney	3,379			3,379	
La Salle	5,866			5,866	
Maverick	47,297			47,297	
Real	3,047			3,047	
Uvalde	25,926			25,926	
Val Verde	44,856			44,856	
Zavala	11,600			11,600	
MRGDC Total	**154,381**			**154,381**	**0.7404%**
Archer	8,854			8,854	
Baylor	4,093			4,093	
Clay	11,006			11,006	
Cottle	1,904			1,904	
Foard	1,622			1,622	
Hardeman	4,724			4,724	
Jack	8,763			8,763	
Montague	19,117			19,117	
Young	17,943			17,943	
NRPC Total	**78,026**			**78,026**	**0.3742%**
Collin	491,675	Dallas	(46,596)		
		Frisco	2,648		
		Garland	(14)		
		Plano	(222,030)		
		Richardson	(21,846)		
		Wylie	(15,132)	188,705	
Dallas	2,218,899	Addison	(14,166)		
		Carrollton	(45,678)		
		Cedar Hill	(32,093)		
		Combine	(568)		

	Gross Population	District & HRC Adjustments Name	Population	Adjusted Population	Distribution Percentage
		Coppell	(35,958)		
		Dallas	(1,019,503)		
		Dallas County	(24,224)		
		DeSoto	(37,646)		
		Duncanville	(36,081)		
		Farmers Branch	(27,508)		
		Garland	(215,768)		
		Glenn Heights	(7,224)		
		Grand Prairie	(88,700)		
		Highland Park	(8,842)		
		Hutchins	(2,805)		
		Irving	(191,615)		
		Lancaster	(25,894)		
		Lewisville	(1,569)		
		Mesquite	(124,523)		
		Ovilla	(342)		
		Richardson	(71,960)		
		Rowlett	(35,761)		
		Sunnyvale	(2,693)		
		University Park	(23,324)		
		Wylie	(170)	144,284	
Ellis	111,360	Cedar Hill	(219)		
		Ennis	(16,045)		
		Glenn Heights	(1,463)		
		Mansfield	(142)		
		Ovilla	342	93,833	
Erath	33,001			33,001	
Hood	41,100			41,100	
Hunt	76,596			76,596	
Johnson	126,811	Burleson	(20,976)		
		Mansfield	(351)	105,484	
Kaufman	71,313	Combine	568		
		Dallas	(8)	71,873	
Navarro	45,124			45,124	
Palo Pinto	27,026			27,026	
Parker	88,495	Azle	(1,365)	87,130	
Rockwall	43,080	Dallas	(77)		
		Rowlett	(6,207)		
		Wylie	(200)	36,596	
Somervell	6,809			6,809	
Wise	48,793			48,793	
NCTCOG Total	**3,430,082**			**1,006,354**	**4.8262%**

	Gross Population	District & HRC Adjustments Name	Population	Adjusted Population	Distribution Percentage
Andrews	13,004			13,004	
Borden	729			729	
Crane	3,996			3,996	
Dawson	14,985			14,985	
Gaines	14,467			14,467	
Glasscock	1,406			1,406	
Loving	67			67	
Martin	4,746			4,746	
Pecos	16,809			16,809	
Reeves	13,137			13,137	
Terrell	1,081			1,081	
Upton	3,404			3,404	
Ward	10,909			10,909	
Winkler	7,173			7,173	
PBRPC Total	**105,913**			**105,913**	**0.5079%**
Armstrong	2,148			2,148	
Briscoe	1,790			1,790	
Carson	6,516			6,516	
Castro	8,285			8,285	
Childress	7,688			7,688	
Collingsworth	3,206			3,206	
Dallam	6,222			6,222	
Deaf Smith	18,561			18,561	
Donley	3,828			3,828	
Gray	22,744			22,744	
Hall	3,782			3,782	
Hansford	5,369			5,369	
Hartley	5,537			5,537	
Hemphill	3,351			3,351	
Hutchinson	23,857			23,857	
Lipscomb	3,057			3,057	
Moore	20,121			20,121	
Ochiltree	9,006			9,006	
Oldham	2,185			2,185	
Parmer	10,016			10,016	
Roberts	887			887	
Sherman	3,186			3,186	
Swisher	8,378			8,378	
Wheeler	5,284			5,284	
PRPC Total	**185,004**			**185,004**	**0.8872%**

	Gross Population	District & HRC Adjustments Name	Population	Adjusted Population	Distribution Percentage
Brewster	8,866			8,866	
Culberson	2,975			2,975	
Hudspeth	3,344			3,344	
Jeff Davis	2,207			2,207	
Presidio	7,304			7,304	
RGCOG Total	**24,696**			**24,696**	**0.1184%**
Hardin	48,073			48,073	
Jefferson	252,051			252,051	
Orange	84,966			84,966	
SETRPC Total	**385,090**			**385,090**	**1.8468%**
Bailey	6,594			6,594	
Cochran	3,730			3,730	
Crosby	7,072			7,072	
Dickens	2,762			2,762	
Floyd	7,771			7,771	
Garza	4,872			4,872	
Hale	36,602	Abernathy	(2,839)		
		Plainview	(22,336)	11,427	
Hockley	22,716			22,716	
Kent	859			859	
King	356			356	
Lamb	14,709			14,709	
Lynn	6,550			6,550	
Motley	1,426			1,426	
Terry	12,761			12,761	
Yoakum	7,322			7,322	
SPAG Total	**136,102**			**110,927**	**0.5320%**
Jim Hogg	5,281			5,281	
Starr	53,597			53,597	
Webb	193,117			193,117	
Zapata	12,182			12,182	
STDC Total	**264,177**			**264,177**	**1.2669%**
Cooke	36,363			36,363	
Fannin	31,242			31,242	
Grayson	110,595	Denison	(22,773)		
		Sherman	(35,082)	52,740	
TCOG Total	**178,200**			**120,345**	**0.5771%**

	Gross Population	District & HRC Adjustments Name	Population	Adjusted Population	Distribution Percentage
Brown	37,674			37,674	
Callahan	12,905			12,905	
Coleman	9,235			9,235	
Comanche	14,026			14,026	
Eastland	18,297			18,297	
Fisher	4,344			4,344	
Haskell	6,093			6,093	
Jones	20,785			20,785	
Knox	4,253			4,253	
Mitchell	9,698			9,698	
Nolan	15,802			15,802	
Runnels	11,495			11,495	
Scurry	16,361			16,361	
Shackelford	3,302			3,302	
Stephens	9,674			9,674	
Stonewall	1,693			1,693	
Throckmorton	1,850			1,850	
WCTCOG Total	**197,487**			**197,487**	**0.9471%**
Smith	174,706			174,706	
9-1-1 Network of East Texas	**174,706**			**174,706**	**0.8378%**
Taylor	126,555			126,555	
Abilene/Taylor Cty. 9-1-1	**126,555**			**126,555**	**0.6069%**
Austin	23,590			23,590	
Austin Cty. Emg. Comm. District	**23,590**			**23,590**	**0.1131%**
Bexar	1,392,931			1,392,931	
Comal	78,021			78,021	
Guadalupe	89,023			89,023	
Bexar Metro 9-1-1 Network District	**1,559,975**			**1,559,975**	**7.4812%**
Brazos	152,415			152,415	
Brazos Cty. Emerg. Comm. District	**152,415**			**152,415**	**0.7309%**
Calhoun	20,647			20,647	
Calhoun Cty. 9-1-1 Emg. Comm. District	**20,647**			**20,647**	**0.0990%**
Cameron	335,227			335,227	
Cameron Cty. Emg. Comm. District	**335,227**			**335,227**	**1.6077%**
Denton	432,976	Carrollton	45,678		

	Gross Population	District & HRC Adjustments Name	Population	Adjusted Population	Distribution Percentage
		Coppell	(267)		
		Dallas	(23,578)		
		Fort Worth	(3)		
		Frisco	(2,648)		
		Lewisville	1,569		
		Plano	(2,969)		
		Southlake	(406)	450,352	
Denco Area 9-1-1 District	**432,976**			**450,352**	**2.1598%**
El Paso	679,622			679,622	
El Paso Cty. 9-1-1 District	**679,622**			**679,622**	**3.2593%**
Ector	121,123			121,123	
Emg. Comm. District of Ector Cty.	**121,123**			**121,123**	**0.5809%**
Galveston	250,158	Friendswood	(29,037)		
		League City	(45,444)	175,677	
Galveston Cty. Emg. Comm. District	**250,158**			**175,677**	**0.8425%**
Harris	3,400,578	Friendswood	29,037		
		Katy	11,775		
		League City	45,444		
		Meadows	4,912		
		Pearland	37,640		
		Stafford	15,681		
		Sugar Land	63,328		
		Waller	2,092		
		Missouri City	52,913	3,663,400	
Greater Harris Cty. 9-1-1 Emg. Network	**3,400,578**			**3,663,400**	**17.5687%**
Henderson	73,277			73,277	
Henderson Cty. 9-1-1 Comm. District	**73,277**			**73,277**	**0.3514%**
Howard	33,627			33,627	
Howard Cty. 9-1-1 Comm. District	**33,627**			**33,627**	**0.1613%**
Kerr	43,653			43,653	
Kerr Cty. Emg. 9-1-1 Network	**43,653**			**43,653**	**0.2093%**
Lubbock	242,628	Abernathy	2,839		
		Plainview	22,336	267,803	
Lubbock Cty. Emg. Comm. District	**242,628**			**267,803**	**1.2843%**
McLennan	213,517			213,517	

	Gross Population	District & HRC Adjustments Name	Population	Adjusted Population	Distribution Percentage
McLennan Cty. Emg. Assistance District	**213,517**			**213,517**	**1.0240%**
Medina	39,304			39,304	
Medina Cty. 9-1-1 District	**39,304**			**39,304**	**0.1885%**
Midland	116,009			116,009	
Midland Emg. Comm. District	**116,009**			**116,009**	**0.5563%**
Montgomery	293,768			293,768	
Montgomery Cty. Emg. Comm. District	**293,768**			**293,768**	**1.4088%**
Wichita	131,664			131,664	
Wilbarger	14,676			14,676	
Nortex 9-1-1 Comm. District	**146,340**			**146,340**	**0.7018%**
Potter	113,546			113,546	
Randall	104,312			104,312	
Potter-Randall Cty. Emg. Comm. District	**217,858**			**217,858**	**1.0448%**
Tarrant	1,446,219	Azle	1,365		
		Burleson	20,976		
		Fort Worth	3		
		Mansfield	493		
		Grand Prairie	88,700		
		Irving	191,615		
		Southlake	406	1,749,777	
Tarrant Cty. 9-1-1 District	**1,446,219**			**1,749,777**	**8.3915%**
Harrison	62,110			62,110	
Rusk	47,372	Reklaw	327		
		Tatum	1,175	48,874	
Texas Eastern 9-1-1 Network	**109,482**			**110,984**	**0.5323%**
Addison Police Department			14,166	14,166	**0.0679%**
Aransas Pass Police Department			8,138	8,138	**0.0390%**
Cedar Hill Police Department			32,312	32,312	**0.1550%**
City of Dallas Emg. Comm. Office			1,089,762	1,089,762	**5.2262%**
City of Longview PSAP			73,344	73,344	**0.3517%**
City of Plano			224,999	224,999	**1.0790%**
City of Wylie			15,502	15,502	**0.0743%**
Coppell Police Department			36,225	36,225	**0.1737%**
Dallas County Sheriff's Office			26,917	26,917	**0.1291%**
Denison Fire Department			22,773	22,773	**0.1092%**
DeSoto Police Department			37,646	37,646	**0.1805%**

Commission on State Emergency Communications
PROPOSED Wireless Emergency Service Fee Distribution Allocation Worksheet
For Use from November 10, 2001 - November 9, 2002

	Gross Population	District & HRC Adjustments Name	District & HRC Adjustments Population	Adjusted Population	Distribution Percentage
Duncanville Central Comm. PSAP Office			36,081	36,081	**0.1730%**
Ennis Police Department			16,045	16,045	**0.0769%**
Farmers Branch Police Department			27,508	27,508	**0.1319%**
Garland Police Department			215,782	215,782	**1.0348%**
Glenn Heights Police Department			8,687	8,687	**0.0417%**
Highland Park Department of Public Safety			8,842	8,842	**0.0424%**
Hutchins Police Department			2,805	2,805	**0.0135%**
Kilgore Police Department			11,301	11,301	**0.0542%**
Lancaster Fire/Police Department			25,894	25,894	**0.1242%**
Mesquite Police Department			124,523	124,523	**0.5972%**
Portland Police Department			14,827	14,827	**0.0711%**
Richardson Police Department			93,806	93,806	**0.4499%**
Rowlett Police and Fire Comm. Center			41,968	41,968	**0.2013%**
Sherman Police Department			35,082	35,082	**0.1682%**
University Park Police Department			23,324	23,324	**0.1119%**
Grand Total	**20,851,820**		-	**20,851,820**	**100.0%**

Data Source: 2000 US Census information from the Texas Data Center, Department of Rural Sociology, Texas Agricultural Experiment Station, Texas A&M University. Tables #20 and #26 were used. Web Site Address: http://txsdc.tamu.edu.

TRD-200105604
Paul Mallett
Executive Director
Commission on State Emergency Communications
Filed: September 19, 2001

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Texas Department of Health

Licensing Actions for Radioactive Materials

LICENSING ACTIONS FOR RADIOACTIVE MATERIALS

The Texas Department of Health has taken actions regarding Licenses for the possession and use of radioactive materials as listed in the tables. The subheading "Location" indicates the city in which the radioactive material may be possessed and/or used. The location listing "Throughout Texas" indicates that the radioactive material may be used on a temporary basis at job sites throughout the state.

NEW LICENSES ISSUED:

Location	Name	License #	City	Amend -ment #	Date of Action
Freeport	Huntsman Ethyleneamines Ltd	L05457	Freeport	00	09/07/01

AMENDMENTS TO EXISTING LICENSES ISSUED:

Location	Name	License #	City	Amend -ment #	Date of Action
Amarillo	Northwest Texas Healthcare System Inc	L02054	Amarillo	64	09/11/01
Arlington	Arlington Memorial Hospital Foundation Inc	L02217	Arlington	66	09/07/01
Arlington	Metroplex Hematology Oncology Associates	L03211	Arlington	61	09/12/01
Austin	Austin Heart PA	L04623	Austin	15	09/12/01
Austin	Texas Cardiovascular Consultants PA	L05246	Austin	02	09/07/01
Beaumont	Exxon Mobil Oil Corporation	L00603	Beaumont	63	09/11/01
Brownsville	Brownsville Medical Center	L01526	Brownsville	30	09/05/01
Conroe	Sadler Clinic	L04899	Conroe	15	09/10/01
Corpus Christi	Citgo Refining and Chemicals Company LP	L00243	Corpus Christi	32	08/31/01
Dallas	Texas Hematology/Oncology Center PA	L05397	Dallas	01	09/07/01
Denton	International Isotopes Inc	L05159	Denton	23	09/12/01
DFW Airport	Delta Airlines Inc	L03967	DFW Airport	19	09/12/01
Freeport	The Dow Chemical Company	L00451	Freeport	65	08/30/01
Garland	Baylor Medical Center at Garland	L02398	Garland	10	09/11/01
Houston	Exxonmobil Upstream Research Company	L00205	Houston	52	09/13/01
Houston	The PET Scan Center	L05411	Houston	04	09/06/01
Houston	Tenet Healthcare Ltd	L02432	Houston	30	09/05/01
Houston	Institute of Biosciences and Technology	L04681	Houston	14	09/10/01
Jacksonville	Regional Health Care Center	L05362	Jacksonville	05	09/12/01
Jourdanton	Tri City Community Hospital Ltd	L04966	Jourdanton	06	09/10/01
Jourdanton	Tri City Community Hospital Ltd	L04966	Jourdanton	07	09/12/01
Killeen	Metroplex Hospital	L03185	Killeen	17	09/10/01
Laredo	Laredo Regional Medical Center	L02192	Laredo	21	09/07/01
Mesquite	Medical Center of Mesquite	L02428	Mesquite	26	09/12/01
Mexia	Parkview Regional Hospital	L05144	Mexia	16	09/12/01
Midlothian	Chaparral Steel Midlothian LP	L02015	Midlothian	26	09/07/01
Plano	Columbia Medical Ctr of Plano Subsidiary LP	L02032	Plano	52	09/11/01
Port Arthur	Christus St Mary Hospital	L01212	Port Arthur	66	09/07/01
Port Lavaca	Union Carbide Corporation	L00051	Port Lavaca	71	09/04/01
San Antonio	Southwest General Hospital LLP	L02689	San Antonio	21	09/05/01
San Antonio	Methodist Healthcare System of San Antonio	L00594	San Antonio	159	09/05/01
San Antonio	All American Inspection Inc	L01336	San Antonio	39	09/07/01
San Benito	Healthmont of Texas I LLC	L04567	San Benito	07	08/30/01
Temple	Wilsonart International	L02857	Temple	16	09/10/01
Texarkana	Red River Pharmacy Services	L05077	Texarkana	07	09/07/01
Throughout Tx	Professional Service Industries Inc	L04939	Corpus Christi	05	09/10/01
Throughout Tx	Terracon Inc	L05268	Dallas	04	09/13/01

CONTINUED AMENDMENTS TO EXISTING LICENSES ISSUED:

Location	Name	License #	City	Amend -ment #	Date of Action
Throughout Tx	Texas CMT Inc	L04766	Dallas	07	09/14/01
Throughout Tx	Professional Services Industries Inc	L02476	El Paso	15	09/10/01
Throughout Tx	Computalog Wireline Services Inc	L04286	Fort Worth	41	09/13/01
Throughout Tx	D Arrow Inspection	L03816	Houston	67	09/12/01
Throughout Tx	Ulrich Engineers Inc	L03950	Houston	06	09/11/01
Throughout Tx	Cooperheat-MQS Inc	L00087	Houston	89	09/06/01
Throughout Tx	Metco	L03018	Houston	115	09/07/01
Throughout Tx	Testmasters Inc	L03651	Houston	15	09/10/01
Throughout Tx	Ulrich Engineers Inc	L03950	Houston	06	09/11/01
Throughout Tx	Longview Inspection Inc	L01774	Houston	170	09/11/01
Throughout Tx	Longview Inspection Inc	L01774	Houston	171	09/13/01
Throughout Tx	High Tech Testing Service Inc	L05021	Longview	36	09/11/01
Throughout Tx	Anatec Inc	L04865	Nederland	43	09/13/01
Throughout Tx	Apex Geoscience Inc	L04929	Tyler	09	09/10/01
Tyler	The University of Texas Health Center at Tyler	L01796	Tyler	52	09/12/01
Tyler	Trinity Mother Frances Health System	L01670	Tyler	89	09/12/01

RENEWALS OF EXISTING LICENSES ISSUED:

Location	Name	License #	City	Amend -ment #	Date of Action
San Antonio	Methodist Healthcare System of San Antonio LTD	L02266	San Antonio	73	09/14/01
Throughout Tx	Professional Service Industries Inc	L04941	Longview	06	09/13/01

TERMINATIONS OF LICENSES ISSUED:

Location	Name	License #	City	Amend -ment #	Date of Action
Eastland	Ebaa Iron Inc	L04530	Eastland	02	09/11/01
McKinney	Numed Imaging Centers Inc	L05250	McKinney	05	09/06/01
Throughout Tx	Exell Inc	L04782	Beaumont	05	09/14/01
Waco	Numed Imaging Center Inc	L05363	Waco	01	09/06/01

LICENSE AMENDMENT DENIED:

Location	Name	License #	City	Amend -ment #	Date of Action
Woodland Hills	Syncor International Corporation	L01911	Woodland Hills		09/07/01

In issuing new licenses, amending and renewing existing licenses, or approving exemptions to Title 25 Texas Administrative Code (TAC) Chapter 289, the Texas Department of Health, Bureau of Radiation Control, has determined that the applicants are qualified by reason of training and experience to use the material in question for the purposes requested in accordance with 25 TAC Chapter 289 in such a manner as to minimize danger to public health and safety or property and the environment; the applicants' proposed equipment, facilities and procedures are adequate to minimize danger to public health and safety or property and the environment; the issuance of the new, amended, or renewed license (s) or the issuance of the exemption (s) will not be inimical to the health and safety of the public or the environment; and the applicants satisfy any applicable requirements of 25 TAC Chapter 289.

This notice affords the opportunity for a hearing on written request of a licensee, applicant, or person affected within 30 days of the date of publication of this notice. A person affected is defined as a person who demonstrates that the person has suffered or will suffer actual injury or economic damage and, if the person is not a local government, is (a) a resident of a county, or a county adjacent to the county, in which radioactive material is or will be located, or (b) doing business or has a legal interest in land in the county or adjacent county. A licensee, applicant, or person affected may request a hearing by writing Richard A. Ratliff, P.E., Chief, Bureau of Radiation Control (Director, Radiation Control Program), Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756-3189. For information call (512) 834-6688.

TRD-200105608
Susan Steeg
General Counsel
Texas Department of Health
Filed: September 19, 2001

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Notice of Extension of Due Dates for the Request for Proposals for Increasing Participation of Minorities with Human Immunodeficiency Virus (HIV) in the Texas HIV Medication Program In Harris and Dallas Counties RFP-HIV-0021 (supersedes RFP-HIV-0020)

The Texas Department of Health (department) published a Notice of Request for Proposals (RFP) for Increasing Participation of Minorities with Human Immunodeficiency Virus (HIV) in the Texas HIV Medication Program in Harris and Dallas Counties in the June 22, 2001, issue of the *Texas Register* (26 TexReg 4782). This publication advises of timeline changes superseding RFP-HIV-0020 with RFP-HIV-0021.

Extension of RFP Due Dates

Due to differing information related to due dates posted in the Texas Market Place and the Texas Department of Health (department) Grants and Contracts website, the department is extending the due dates for the above referenced RFP. The following are the due dates that should be followed with this RFP:

Revised Schedule of Events

1. Issuance of RFP (July 31, 2001)
2. Letters of Intent Due (September 18, 2001)
3. Deadline for Technical Assistance Requests (September 21, 2001)
4. Application Deadline (October 8, 2001)
5. Review Process (October 9 -19, 2001)
6. Predetermination Site Visits (October 22 - November 9, 2001)
7. Award Notification to All Applicants (November 15, 2001)
8. Estimated Contract Start Date (January 1, 2002)

To obtain a copy of the RFP

For a copy of the RFP, please contact Ms. Laura Ramos, HIV/STD Health Resources Division, at 512/490-2525 or e-mail: laura.ramos@tdh.state.tx.us. Copies of the RFP and forms may also be obtained at the Bureau of HIV and STD Prevention web site, http://www.tdh.state.tx.us/hivstd/grants/default.htm.

TRD-200105548
Susan Steeg
General Counsel
Texas Department of Health
Filed: September 17, 2001

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Notice of Intent to Revoke Certificates of Registration

Pursuant to 25 Texas Administrative Code §289.205, the Bureau of Radiation Control (bureau), Texas Department of Health (department), filed complaints against the following registrants: West Park Physicians, L.L.P., Arlington, R02175; Protech Evaluation Services, Inc., Stafford, R19376; Preston Medical Center, Dallas, R20012; Leo L. Altenberg, M.D., P.A., Euless, R23743; S. Steve Watson, M.D., Frisco, R23776; Healthsouth, Irving, R24512; Healthsouth Medical Clinic, El Paso, R25292; Arlington Wellness Center, Arlington, R25293; Clear Lake Regional Medical Center, Inc., Webster, Z00279; Mercy Health Systems of Texas, Laredo, Z01227; A Better Way No-Needle Electrolysis, Dallas, Z01372; Spectrum Medical Services, Dallas, Z01183.

The complaints allege that these registrants have failed to pay required annual fees. The department intends to revoke the certificates of registration; order the registrants to cease and desist use of radiation machine(s); order the registrants to divest themselves of such equipment; and order the registrants to present evidence satisfactory to the bureau that they have complied with the orders and the provisions of the Texas Health and Safety Code, Chapter 401. If the fee is paid within 30 days of the date of each complaint, the department will not issue an order.

This notice affords the opportunity to the registrants for a hearing to show cause why the certificates of registration should not be revoked. A written request for a hearing must be received by the bureau within 30 days from the date of service of the complaint to be valid. Such written request must be filed with Richard A. Ratliff, P.E., Chief, Bureau of Radiation Control (Director, Radiation Control Program), 1100 West 49th Street, Austin, Texas 78756-3189. Should no request for a

public hearing be timely filed or if the fee is not paid, the certificates of registration will be revoked at the end of the 30-day period of notice.

A copy of all relevant material is available for public inspection at the Bureau of Radiation Control, Texas Department of Health, Exchange Building, 8407 Wall Street, Austin, Texas, telephone (512) 834-6688, Monday-Friday, 8:00 a.m. to 5:00 p.m. (except holidays).

TRD-200105607
Susan Steeg
General Counsel
Texas Department of Health
Filed: September 19, 2001

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Notice of Intent to Revoke the Certificate of Registration of Laserlite F/X, Incorporated

Pursuant to 25 Texas Administrative Code §289.205, the Bureau of Radiation Control (bureau), Texas Department of Health (department), filed a complaint against the following registrant: Laserlite F/X, Incorporated, Markham, Ontario, Canada, Z01145.

The complaint alleges that the registrant has failed to pay required annual fees. The department intends to revoke the certificate of registration; order the registrant to cease and desist use of radiation machine(s); order the registrant to divest himself of such equipment; and order the registrant to present evidence satisfactory to the bureau that he has complied with the order and the provisions of the Texas Health and Safety Code, Chapter 401. If the fee is paid within 30 days of the date of the complaint, the department will not issue an order.

This notice affords the opportunity to the registrant for a hearing to show cause why the certificate of registration should not be revoked. A written request for a hearing must be received by the bureau within 30 days from the date of service of the complaint to be valid. Such written request must be filed with Richard A. Ratliff, P.E., Chief, Bureau of Radiation Control (Director, Radiation Control Program), 1100 West 49th Street, Austin, Texas 78756-3189. Should no request for a public hearing be timely filed or if the fee is not paid, the certificate of registration will be revoked at the end of the 30-day period of notice.

A copy of all relevant material is available for public inspection at the Bureau of Radiation Control, Texas Department of Health, Exchange Building, 8407 Wall Street, Austin, Texas, telephone (512) 834-6688, Monday-Friday, 8:00 a.m. to 5:00 p.m. (except holidays).

TRD-200105606
Susan Steeg
General Counsel
Texas Department of Health
Filed: September 19, 2001

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Notice of Preliminary Report for Assessment of Administrative Penalties and Notice of Violation on Healthsouth Diagnostic Center of Texas, L.P., dba Healthsouth Diagnostic Center of Arlington

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 Healthsouth Diagnostic Center of Texas, L.P., doing business as Healthsouth Diagnostic Center of Arlington (registrant-M00366) of Arlington. A total penalty of $11,000 is proposed to be assessed to the registrant for alleged violations of 25 Texas Administrative Code, §289.230.

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-200105605
Susan Steeg
General Counsel
Texas Department of Health
Filed: September 19, 2001

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Texas Health and Human Services Commission

Public Notice

The Texas Health and Human Services Commission (HHSC) is planning to submit a Medicaid state plan amendment to revise the nursing facility pediatric care facility special rate class. This revision will describe the reimbursement methodology for determining a facility specific payment rate for children's facilities with distinct pediatric units qualifying for this special rate class. HHSC is revising this pediatric care facility special rate class to include distinct pediatric units to recognize the cost differences that exist in a distinct unit of a nursing facility that specializes in caring for children.

The increase in annual aggregate expenditures for federal fiscal year 2002 resulting from federal approval of the amendment is estimated to be $275,502. The increases in reimbursement will be implemented through changes to the rate setting methodology, which will be published at a future date in the *Texas Register* as proposed rules, and through the publication of both proposed and final rates. Once published, local Texas Department of Human Services Field Offices may be contacted to obtain copies of the proposed changes to the reimbursement methodology available for public review, or contact Carolyn Pratt, Texas Health and Human Services Commission, Winters Building, Mail Code W-425, P.O. Box 149030, Austin, Texas 78714-9030, (512) 438-4057. Written comments concerning the proposed methodology changes and rates can also be submitted to this address.

TRD-200105603
Marina Henderson
Executive Deputy Commissioner
Texas Health and Human Services Commission
Filed: September 19, 2001

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Texas Department of Housing and Community Affairs Manufactured Housing Division

Notice of Administrative Hearing

Thursday, October 4, 2001, 1:00 p.m.

State Office of Administrative Hearings, Stephen F. Austin Building, 1700 N Congress, 11th Floor, Suite 1100

Austin, Texas

AGENDA

Administrative Hearing before an administrative law judge of the State Office of Administrative Hearings in the matter of the complaint of the Texas Department of Housing and Community Affairs vs. Cynthia S. Hyatt dba C & R Mobile Homes Service to hear alleged violations of Section 7(j)(5) of the Texas Manufactured Housing Standards Act, Sections 17.46(b)(1)-(3), (5), (7), (14) and (23) of the Business and Commerce Code and Section 80.54(b)(1) of the Manufactured Housing Rules by misrepresenting the name and responsible parties

of the installer and not delivering the Site Preparation Notice. SOAH 332-02-0049. Department MHD2001001322-DT.

Contact: Jerry Schroeder, P.O. Box 12489, Austin, Texas 78711-2489, (512) 475-2894, jschroed@tdhca.state.tx.us

TRD-200105598
Daisy A. Stiner
Executive Director
Texas Department of Housing and Community Affairs Manufactured Housing Division
Filed: September 19, 2001

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Texas Department of Human Services

Public Notice -- Availability of Intended Use Report

The Texas Department of Human Services (DHS) has published a report outlining the intended use of federal block grant funds during fiscal year 2002 for Title XX social services programs administered by the Texas Department of Human Services, the Texas Department of Health, the Texas Department of Protective and Regulatory Services, the Texas Workforce Commission, the Texas Department of Mental Health and Mental Retardation, Texas Education Agency, and the Texas Interagency Council on Early Childhood Intervention. The report describes department services funded through this federal source and includes a distribution-of-funds section that provides financial information on the allocation of funds to all social services. On July 27, 2001, the proposed Intended Use Report was made available to the public for review and comment. No comments were received. DHS received and responded to requests for copies of the report.

To obtain free copies of the report, send written requests to Chris Traylor, Government Relations Division, Mail Code W-623, Texas Department of Human Services, P.O. Box 149030, Austin, Texas 78714-9030.

TRD-200105593
Paul Leche
General Counsel, Legal Services
Texas Department of Human Services
Filed: September 18, 2001

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Texas Department of Insurance

Notice of Application by Small Employer Carrier to be Risk-Assuming Carrier

Notice is given to the public of the application of the listed small employer carrier to be a risk-assuming carrier under Texas Insurance Code Article 26.52. A small employer carrier is defined by Chapter 26 of the Texas Insurance Code as a health insurance carrier that offers, delivers or issues for delivery, or renews small employer health benefit plans subject to the chapter. A risk-assuming carrier is defined by Chapter 26 of the Texas Insurance Code as a small employer carrier that elects not to participate in the Texas Health Reinsurance System. The following small employer carrier has applied to be risk-assuming carriers:

Aetna U.S. Healthcare, Inc.

The application is subject to public inspection at the offices of the Texas Department of Insurance, Legal & Compliance Division - Jimmy G. Atkins, 333 Guadalupe, Hobby Tower 1, 9th Floor, Austin, Texas.

If you wish to comment on this application to be a risk-assuming carrier, you must submit your written comments within 60 days after publication of this notice in the Texas Register to Lynda H. Nesenholtz, Chief Clerk, Mail Code 113-1C, Texas Department of Insurance, P. O. Box 149104, Austin, Texas 78714-91204. An additional copy of the comments must be submitted to Mike Boerner, Managing Actuary, Actuarial Division of the Financial Program, Mail Code 304-3A, Texas Department of Insurance, P. O. Box 149104, Austin, Texas 78714-9104. Upon consideration of the application, if the Commissioner is satisfied that all requirements of law have been met, the Commissioner or his designee may take action to approve the application to be a risk-assuming carrier.

TRD-200105480
Lynda H. Nesenholtz
General Counsel and Chief Clerk
Texas Department of Insurance
Filed: September 14, 2001

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Notice of Public Hearing

The Commissioner of Insurance, at a public hearing under Docket No. 2498 on October 16, 2001, at 9:00 a.m., in the LBJ Library Auditorium, 2313 Red River, Austin, Texas, will consider a proposal made in a staff petition. Staff's petition seeks (1) adoption of new mandatory amendatory endorsements to certain residential property insurance policies; (2) adoption of new mandatory offer endorsements to certain residential property insurance policies; (3) amendments to the policy writing rules of the Homeowners and Dwelling Sections of the Texas Personal Lines Manual (Manual); (4) adoption of new rating rules and attendant rating examples in the Manual; and (5) adoption of amendments to the Texas Statistical Plan for Residential Risks (Residential Statistical Plan). These proposed new endorsements and Manual changes are designed to modify current coverage for mold or other fungi losses that are ensuing losses resulting from covered water damage and to provide coverage for ensuing mold or other fungi losses resulting from water damage through mandatory offer endorsements that have special limits of liability (such coverage is referred to herein as mold coverage or mold claims or losses). These new endorsements and Manual changes will also require amendments to the Residential Statistical Plan to capture data that reflects mold losses because such data for mold losses is currently aggregated with the data for other causes of loss. Staff's petition (Ref. No. P-0901-13-I), was filed on September 19, 2001.

Staff proposes the consideration and adoption of nine mandatory amendatory endorsements which will be required to be attached to certain residential property insurance policies: (1) Endorsement No. HO-161A which will be attached to Texas Homeowners Form-A (HO-A), (2) Endorsement No. HO-162A which will be attached to Texas Homeowners Form-B (HO-B), (3) Endorsement No. HO-163A which will be attached to Texas Homeowners Form-C (HO-C), (4) Endorsement No. HO-164A which will be attached to the Texas Homeowners Tenant Policy-Form B (HO-BT), (5) Endorsement No. HO-165A which will be attached to the Texas Homeowners Condominium Policy-Form B (HO-B-CON), (6) Endorsement No. HO-166A which will be attached to the Texas Homeowners Tenant Policy-Form C (HO-CT), (7) Endorsement No.167A which will be attached to the Texas Homeowners Condominium Policy-Form C (HO-C-CON), (8) Endorsement No. TDP-004A which will be attached to the Texas Dwelling Policy-Form 1 (TDP-1) and the Texas Dwelling Policy-Form 2 (TDP-2), and (9) Endorsement No. TDP-005A which will be attached to the Texas Dwelling Policy-Form 3 (TDP-3).

Staff further proposes the consideration and adoption of nine mandatory offer endorsements that allow consumers to purchase, for an additional premium, a specified percentage of mold coverage: (1) Endorsement No. HO-161 which may be attached to Texas Homeowners Form-A (HO-A), (2) Endorsement No. HO-162 which may

be attached to Texas Homeowners Form-B (HO-B), (3) Endorsement No. HO-163 which may be attached to Texas Homeowners Form-C (HO-C), (4) Endorsement No. HO-164 which may be attached to the Texas Homeowners Tenant Policy-Form B (HO-BT), (5) Endorsement No. HO-165 which may be attached to the Texas Homeowners Condominium Policy-Form B (HO-B-CON), (6) Endorsement No. HO-166 which may be attached to the Texas Homeowners Tenant Policy-Form C (HO-CT), (7) Endorsement No. HO-167 which may be attached to the Texas Homeowners Condominium Policy-Form C (HO-C-CON), (8) Endorsement No. TDP-004 which may be attached to the Texas Dwelling Policy-Form 1 (TDP-1) and the Texas Dwelling Policy-Form 2 (TDP-2), and (9) Endorsement No. TDP-005 which may be attached to the Texas Dwelling Policy-Form 3 (TDP-3).

Staff also proposes the consideration and adoption of two policy writing Manual rules: (1) Rule IV-A, "Section I Mandatory Offer Endorsements" in the Homeowners Section, and (2) Rule IV, "Mandatory Offer Endorsements" in the Dwelling Section. These rules specify the percentages of mold coverage that are available for purchase by the insured and the required procedures for the insurers to phase in the new mold coverage endorsements.

Staff also proposes the consideration and adoption of new rating rules in the Manual: Rating Rule VI-O for Homeowners, Tenants, and Condominium Policies and Rating Rule VI-L for Dwelling, Additional Extended Coverage, and Physical Loss Form. These rating rules will be used in calculating the applicable premium for mandatory offer ensuing mold and other fungi coverage. Staff additionally proposes the consideration and adoption of attendant rating examples in the Homeowners and Dwelling Sections of the Manual.

Staff also proposes the consideration and adoption of conforming amendments to the coding section, premiums section, and losses section of the Residential Statistical Plan.

Copies of staff's petition, including exhibits with the full text of the proposed endorsements and Manual rules and changes to the Residential Statistical Plan are available for review on the Texas Department of Insurance internet website at http://www.tdi.state.tx.us and in the office of the Chief Clerk of the Texas Department of Insurance, 333 Guadalupe Street, Austin, Texas. For further information or to request copies of the petition, please contact Sylvia Gutierrez at (512) 463-6327; refer to Ref. No. P-0901-13-I.

To be considered, written comments on the proposed changes must be submitted no later than 5:00 p.m. on October 29, 2001, to Lynda H. Nesenholtz, General Counsel and Chief Clerk, Mail Code 113-2A, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104. An additional copy of the comments must be submitted simultaneously to Marilyn Hamilton, Associate Commissioner, Property and Casualty Division, Mail Code 104-PC, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104. While the public hearing will be held before the end of the comment period, no action will be taken by the Commissioner until after the expiration of the comment period.

This notification is made pursuant to the Insurance Code Article 5.96, which exempts it from the requirements of the Government Code Chapter 2001 (Administrative Procedure Act).

TRD-200105620
Lynda Nesenholtz
General Counsel and Chief Clerk
Texas Department of Insurance
Filed: September 19, 2001

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Texas Lottery Commission

Amended Public Hearing for September 14, 2001

A public hearing to receive public comments regarding proposed amendments to 16 TAC Sec. 401.302, 401.303, 401.304, 401.307, 401.308, 401.309, and 401.310, repeal of Sec. 401.301; and new rules Sec. 401.301, 401.313, and 401.314, concerning lottery game rules; and, regarding proposed amendments to 16 TAC Sec. 401.305 and 401.312, concerning "Lotto Texas" on-line game rule and "Texas Two Step" on-line game rule, respectively will be held at 10:00 a.m. on Friday, September 14, 2001 at the Texas Lottery Commission headquarters building, first floor auditorium, 611 E. 6th Street, Austin, Texas 78701. In addition, in an effort to accommodate persons unable to attend the public hearing at 10:00 a.m. because of current transportation difficulties, the public hearing will reconvene at 1:00 p.m. on Friday, September 14, 2001 at the Texas Lottery Commission headquarters building, first floor auditorium, 611 E. 6th Street, Austin, Texas 78701 to receive additional public comments regarding the above referenced rules. Persons requiring accommodation for a disability should notify Michelle Guerrero, Executive Assistant to the General Counsel, Texas Lottery Commission at (512) 344-5113.

TRD-200105461
Kimberly L. Kiplin
General Counsel
Texas Lottery Commission
Filed: September 13, 2001

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Texas Natural Resource Conservation Commission

Extension of Comment Period

In the August 24, 2001 issue of the *Texas Register*, the Texas Natural Resource Conservation Commission (commission) published proposed amendments to 30 TAC Chapter 114, Control of Air Pollution from Motor Vehicle (26 TexReg 6247). The preamble to the proposal stated that the commission must receive all written comments by 5:00 p.m., September 14, 2001. The commission previously extended the deadline for receipt of written comments to 5:00 p.m., September 17, 2001 for this proposal as noticed in the August 31, 2001 issue of the *Texas Register* (26 TexReg 6789). The commission has now extended the deadline for receipt of written comments to 5:00 p.m., September 19, 2001 for this proposal. Written comments should be mailed 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. For further information on the proposed revisions, please contact Jill Burditt at (512) 239-0560. Copies of the proposed amendments can be obtained from the commission's website at www.tnrcc.state.tx.us/oprd/rules/propadop.html.

TRD-200105485
Stephanie Bergeron
Division Director, Environmental Law Division
Texas Natural Resource Conservation Commission
Filed: September 14, 2001

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Municipal Solid Waste Management and Resource Recovery Council Nomination Notice

Request to the following entities: Texas Municipal League; Texas Association of Counties; Texas Association of Regional Councils; Texas Solid Waste Association of North America; League of Women Voters of Texas; National Solid Waste Management Association (Texas

Chapter); Council of Governments; Texas Chemical Council; Recycling Coalition of Texas; Texas Environmental Defense Fund; Lone Star Chapter of the Sierra Club; Texas Bankers Association; Texas Association of Business and Chamber of Commerce; Advocates for Responsible Disposal in Texas; Citizens Environmental Coalition; People Organized for the Defense of the Environment and Resources; Public Citizen; Public Health and Environmental Services; Texas Environmental Education Fund; Texas Environmental Education Partnership; Keep Texas Beautiful, and etc.

The Texas Natural Resource Conservation Commission (TNRCC) is requesting nominations for two individuals to serve on the Municipal Solid Waste Management and Resource Recovery Advisory Council (Council) for the following positions: 1.) a general public representative (term will expire August 31, 2005); and 2.) a general public representative (term will expire August 31, 2007). The appointments will be made by the TNRCC commissioners.

The Council was created by the 69th Legislature in 1983. Members represent various interests; i.e., city and county solid waste agencies, public solid waste district or authority, commercial solid waste landfill operators, planning regions, an environmentalist, city and county officials, financial advisor, registered waste tire processor, professional engineer, solid waste professional, composting/recycling manager, and two general public representatives.

Upon request from the TNRCC commissioners, the Council reviews and evaluates the effect of state policies and programs on municipal solid waste management; makes recommendations on matters relating to municipal solid waste management; recommends legislation to encourage the efficient management of municipal solid waste; recommends policies for the use, allocation, or distribution of the planning fund; and recommends special studies and projects to further the effectiveness of municipal solid waste management and recovery for the state of Texas. The Council members are required by law to hold at least one meeting every three months. The meetings usually last one full day and are held in Austin, Texas. Members who live outside the Austin area are reimbursed travel expenses to attend the meetings.

To nominate an individual: 1.) ensure the individual is qualified for the position which he/she is being considered; 2.) submit a biographical summary which includes work experience; and 3.) provide the nominee a copy of this request. The nominee needs to submit a letter indicating agreement to serve, if appointed.

The deadline for written nominations and letters from nominees must be received by the TNRCC by 5:00 p.m., on October 26, 2001. The appointments will be considered at the commission meeting in Austin on November 20, 2001 at 12100 Park 35 Circle, Building E, Room 201S. Please mail all correspondence to Mr. Gary W. Trim, Waste Permits Division, TNRCC, P.O. Box 13087, MC 126, Austin, Texas 78711-3087 or fax (512) 239-2007. Questions regarding the Council can be directed to Mr. Trim at (512) 239-6708), or e-mail address: *gtrim@tnrcc.state.tx.us*.

TRD-200105572
Stephanie Bergeron
Director, Environmental Law Division
Texas Natural Resource Conservation Commission
Filed: September 17, 2001

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Notice of Opportunity to Comment on Settlement Agreements of Administrative Enforcement Actions

The Texas Natural Resource Conservation Commission (TNRCC or commission) staff is providing an opportunity for written public comment on the listed Agreed Orders (AOs) pursuant to Texas Water Code (TWC), §7.075. Section 7.075 requires that before the commission may approve the AOs, the commission shall allow the public an opportunity to submit written comments on the proposed AOs. Section 7.075 requires that notice of the opportunity to comment must be published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **October 29, 2001**. Section 7.075 also requires that the commission promptly consider any written comments received and that the commission may withdraw or withhold approval of an AO if a comment discloses facts or considerations that the consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the TNRCC's orders and permits issued pursuant to the TNRCC's regulatory authority. Additional notice of changes to a proposed AO is not required to be published if those changes are made in response to written comments.

A copy of each of the proposed AOs is available for public inspection at both the TNRCC's Central Office, located at 12100 Park 35 Circle, Building A, 3rd Floor, Austin, Texas 78753, (512) 239-3400 and at the applicable Regional Office listed as follows. Comments about the AOs should be sent to the attorney designated for the AO at the TNRCC's Central Office at P.O. Box 13087, MC 175, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on October 29, 2001**. Comments may also be sent by facsimile machine to the attorney at (512) 239-3434. The TNRCC attorneys are available to discuss the AOs and/or the comment procedure at the listed phone numbers; however, §7.075 provides that comments on the AOs should be submitted to the TNRCC in **writing**.

(1) COMPANY: Apollo Technology Corporation; DOCKET NUMBER: 2000-1021-IHW-E; TNRCC ID NUMBERS: F0569; LOCATION: 823 and 827 High Street, Comfort, Kendall County, Texas; TYPE OF FACILITY: electroplating facility; RULES VIOLATED: §335.4 and TWC, §26.121, by discharging electroplating wastes onto the ground and into the surface water that flows to Cypress Creek which then flows to the Guadalupe River; §335.6(c) and (d), by failing to notify the executive director of its Small Quantity Generator status, industrial and hazardous waste streams for electroplating sludge, solid waste management units and its activity as a transporter of three drums of hazardous waste to Southwest Powder Coatings, Inc.; §335.10(a), §335.11(a), and Code of Federal Regulations (CFR), §262.20(a) and §263.20(a); by failing to prepare a manifest for three drums of electroplating waste that were transported to Southwest Powder Coatings, Inc.; §335.62 and 40 CFR, §262.11, by failing to conduct a hazardous waste determination and waste classification of the following five waste streams, discharged industrial wastewater, industrial wastewater sludge, electroplating sludge, sandblasting dust, and vinyl tub liners; §335.63, §335.92, and 40 CFR, §262.12 and §263.11(a), by failing to obtain an Environmental Protection Agency identification number for transportation of hazardous waste for three drums of hazardous waste; §335.2(b) and 40 CFR, §270.1(c), by generating hazardous waste and transporting drums of electroplating wastes to an unauthorized facility; PENALTY: $28,500; STAFF ATTORNEY: James Biggins, Litigation Division, MC R- 13, (210) 403-4017; REGIONAL OFFICE: San Antonio Regional Office, 14250 Judson Rd., San Antonio, Texas 78233-4480, (210) 490-3096.

(2) COMPANY: Markline Properties, Inc.; DOCKET NUMBER: 2000-0252-MLM-E; TNRCC ID NUMBERS: 90.00 and 144.00; LOCATION: 29890 Bulverde Lane, Bulverde, Comal County, Texas; TYPE OF FACILITY: non-commercial airport; RULES VIOLATED: §213.4(a)(1), by failing to submit and obtain approval of an Edwards Aquifer water pollution abatement plan prior to constructing and

installing an airplane hanger and non-exempt above ground petroleum storage tank above the Edwards Aquifer Recharge Zone; PENALTY: $1,000; STAFF ATTORNEY: Dwight Martin, Litigation Division, MC 175, (512) 239-0682; REGIONAL OFFICE: San Antonio Regional Office, 14250 Judson Rd., San Antonio, Texas 78233-4480, (210) 490-3096.

(3) COMPANY: Teen Challenge of South Texas, Inc.; DOCKET NUMBER: 1998-0865-PWS-E; TNRCC ID NUMBERS: 0150457; LOCATION: San Antonio, Bexar County, Texas; TYPE OF FACILITY: public water system (facility); RULES VIOLATED: §290.46(e) and Texas Health and Safety Code, §341.033(a), by failing to operate the facility, at all times, under the direct supervision of a competent water works operator holding a valid Grade "D" or higher Ground Water operator's permit; §290.113, by having water produced by the system which exceeded the maximum contaminant level of 0.3 milligrams per liter for iron; §290.43(d)(2), by failing to provide all pressure tanks at the Facility with pressure release devices; §290.113, by failing to meet acceptable Secondary Constituent Levels for total dissolved solids; PENALTY: $2,313; STAFF ATTORNEY: Darren Ream, Litigation Division, MC R-4, (817) 588-5878; REGIONAL OFFICE: San Antonio Regional Office, 14250 Judson Rd., San Antonio, Texas 78233-4480, (210) 490-3096.

TRD-200105576
Paul C. Sarahan
Director, Litigation Division
Texas Natural Resource Conservation Commission
Filed: September 18, 2001

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Notice of Opportunity to Comment on Settlement Agreements of Administrative Enforcement Actions

The Texas Natural Resource Conservation Commission (TNRCC or commission) staff is providing an opportunity for written public comment on the listed Agreed Orders (AOs) pursuant to Texas Water Code (the Code), §7.075, which requires that the TNRCC may not approve these AOs unless the public has been provided an opportunity to submit written comments. Section 7.075 requires that notice of the proposed orders and of the opportunity to comment must be published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **October 29, 2001**. Section 7.075 also requires that the TNRCC promptly consider any written comments received and that the TNRCC may withhold approval of an AO if a comment discloses facts or considerations that indicate the proposed AO is inappropriate, improper, inadequate, or inconsistent with the requirements of the Code, the Texas Health and Safety Code (THSC), and/or the Texas Clean Air Act (the Act). Additional notice is not required if changes to an AO are made in response to written comments.

A copy of each of the proposed AOs is available for public inspection at both the TNRCC's Central Office, located at 12100 Park 35 Circle, Building C, 1st Floor, Austin, Texas 78753, (512) 239-1864 and at the applicable Regional Office listed as follows. Written comments about these AOs should be sent to the enforcement coordinator designated for each AO at the TNRCC's Central Office at P.O. Box 13087, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on October 29, 2001**. Written comments may also be sent by facsimile machine to the enforcement coordinator at (512) 239-2550. The TNRCC enforcement coordinators are available to discuss the AOs and/or the comment procedure at the listed phone numbers; however, §7.075 provides that comments on the AOs should be submitted to the TNRCC in **writing**.

(1) COMPANY: Abilene Roadway Construction Company, Inc.; DOCKET NUMBER: 2001- 0640-MSW-E; IDENTIFIER: Air Account Number TB-0305-G and Municipal Solid Waste Unauthorized Site Number 455030069; LOCATION: Abilene, Taylor County, Texas; TYPE OF; FACILITY: construction; RULE VIOLATED: 30 TAC §330.5 and the Code, §26.121, by failing to obtain authorization to properly dispose of demolition and construction debris; and 30 TAC §111.201 and the THSC, §382.085(b), by conducting outdoor burning of construction and demolition debris generated off-site; PENALTY: $1,600; ENFORCEMENT COORDINATOR: Carolyn Easley, (915) 698-9674; REGIONAL OFFICE: 1977 Industrial Boulevard, Abilene, Texas 79602-7833, (915) 698-9674.

(2) COMPANY: Juan D. Juarez and Juarez Brothers, Inc. dba America Auto Repair; DOCKET NUMBER: 2001-0143-AIR-E; IDENTIFIER: Air Account Number HX-2410-J; LOCATION: Houston, Harris County, Texas; TYPE OF FACILITY: auto paint and body shop; RULE VIOLATED: 30 TAC §116.110(a)(4) and the THSC, §382.085(b), by failing to obtain a permit or permit- by-rule; 30 TAC §115.422(1)(A) and the THSC, §382.085(b), by failing to install and operate a system which totally encloses spray equipment and other parts; and 30 TAC §115.426(a)(1)(A) and the THSC, §382.085(b), by failing to maintain material safety data sheets; PENALTY: $4,800; ENFORCEMENT COORDINATOR: Faye Liu, (713) 767-3500; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(3) COMPANY: Brandenburg Products, Inc. dba Garage Radillo; DOCKET NUMBER: 2001- 0531-PST-E; IDENTIFIER: Petroleum Storage Tank (PST) Facility Identification Number 0031566; LOCATION: Duncanville, Dallas County, Texas; TYPE OF FACILITY: automotive repair shop with retail sales of petroleum products; RULE VIOLATED: 30 TAC §334.7(d)(3), by failing to notify of any change or additional information; 30 TAC §334.49(a) and the Code, §26.3475, by failing to protect the underground storage tank (UST) system from corrosion; 30 TAC §334.50(a)(1)(A) and the Code, §26.3475, by failing to provide a method of release detection; and 30 TAC §115.246(7)(A) and the THSC, §382.085(b), by failing to maintain all of the Stage II vapor recovery records on-site; PENALTY: $5,040; ENFORCEMENT COORDINATOR: Gloria Stanford, (512) 239-1871; REGIONAL OFFICE: 2301 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(4) COMPANY: Burgess-Manning, Inc.; DOCKET NUMBER: 2001-0505-AIR-E; IDENTIFIER: Air Account Number AE-0024-F; LOCATION: near Wichita Falls, Archer County, Texas; TYPE OF FACILITY: pressure vessel manufacturing; RULE VIOLATED: 30 TAC §116.110(a) and the THSC, §382.0518 and §382.085(b), by failing to obtain a permit or satisfy the conditions of a standard exemption; PENALTY: $1,600; ENFORCEMENT COORDINATOR: George Ortiz, (915) 698-9674; REGIONAL OFFICE: 1977 Industrial Boulevard, Abilene, Texas 79602-7833, (915) 698-9674.

(5) COMPANY: Mr. Mohammad H. Abdullah and Mr. Santos Duarte dba Car Care Garage; DOCKET NUMBER: 2001-0212-PST-E; IDENTIFIER: PST Facility Identification Number 0028060; LOCATION: Houston, Harris County, Texas; TYPE OF FACILITY: underground storage tanks and car maintenance; RULE VIOLATED: 30 TAC §334.10(b)(1)(A), by failing to maintain UST records on-site and available review; 30 TAC §334.49(a) and (e), and the Code, §26.3475(d), by failing to provide corrosion protection for the waste oil tank and maintain corrosion protection records; 30 TAC §334.48(c), by failing to conduct inventory control; 30 TAC §334.50(b)(1)(A) and (2)(A)(i)(III), and the Code, §26.3475(c)(1), by failing to monitor USTs for releases, provide proper release detection for the piping, and test a line leak detector; 30 TAC §334.7(d)(3), by failing to amend

UST registration information to show accurate release detection information; 30 TAC §334.93(a) and (b) (now 30 TAC §37.815(a) and (b)), by failing to demonstrate financial assurance for corrective action and third party liability; and 30 TAC §334.22(a), by failing to pay outstanding registration and associated late fees; PENALTY: $8,400; ENFORCEMENT COORDINATOR: Trina Grieco, (713) 767-3500; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(6) COMPANY: Carroll Water Supply Corporation; DOCKET NUMBER: 2000-1340-PWS-E; IDENTIFIER: Public Water Supply Numbers (PWS) 2120007 and 2120103; LOCATION: near Van, Smith County, Texas; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §291.93(3), by failing to submit a planning report; 30 TAC §290.41(f)(3)(F), by failing to provide documentation of a sanitary easement covering all property; 30 TAC §290.46(j), by failing to conduct customer service inspection certifications; 30 TAC §290.39(j)(4), by failing to notify the agency in writing of improvements; and 30 TAC §290.45(b)(1)(D)(iv), by failing to meet this agency's minimum water system capacity requirements; PENALTY: $638; ENFORCEMENT COORDINATOR: Elnora Moses, (903) 535-5100; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3756, (903) 535-5100.

(7) COMPANY: Douglas Utility Company; DOCKET NUMBER: 2001-0234-MWD-E; IDENTIFIER: Texas Pollutant Discharge Elimination System (TPDES) Permit Number 11200-001; LOCATION: Houston, Harris County, Texas; TYPE OF FACILITY: wastewater treatment; RULE VIOLATED: 30 TAC §305.125(1), (4), (5), and (9)(A), Texas Department of Water Resources 150.17.02.004(d)(2) (currently 30 TAC §317.4(d)(2)), TPDES Permit Number 11200-001, and the Code, §26.121, by failing to operate and maintain the wastewater treatment plant to prevent discharge and accumulation of sludge; operate and maintain the facility including, but not limited to, low dissolved oxygen levels, excessive settled solids, and floating solids and debris in the clarifier, and the chlorine contact basin; removal of the mechanical skimmer in the clarifier; have a certified operator inspect the facility daily; and report the unauthorized discharge of foam and solids to the receiving stream; PENALTY: $7,200; ENFORCEMENT COORDINATOR: Catherine Albrecht, (713) 767- 3500; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(8) COMPANY: Duke and Long Distributing Company, Inc.; DOCKET NUMBER: 2001-0247- EAQ-E; IDENTIFIER: Edwards Aquifer Protection Program File Numbers 96011001, 96011002, 96011003, 91121801, and 96041701; LOCATION: Austin, Travis County, Texas; TYPE OF FACILITY: convenience stores with retail sales of gasoline; RULE VIOLATED: 30 TAC §213.5(d)(1), by failing to install and maintain a leak detection system; PENALTY: $15,625; ENFORCEMENT COORDINATOR: Rebecca Clausewitz, (210) 490-3096; REGIONAL OFFICE: 1921 Cedar Bend Drive, Suite 150, Austin, Texas 78758-5336, (512) 339-2929.

(9) COMPANY: Dynegy Midstream G. P., Inc.; DOCKET NUMBER: 2001-0606-AIR-E; IDENTIFIER: Air Account Number GI-0176-T; LOCATION: Sherman, Grayson County, Texas; TYPE OF FACILITY: compressor station; RULE VIOLATED: 30 TAC §122.145(2) and the THSC, §382.085(b), by failing to submit deviation reports; 30 TAC §122.146(1) and the THSC, §382.085(b), by failing to submit annual certification of compliance; and 30 TAC §122.503 and the THSC, §382.085(b), by failing to report a change in any Title V applicability determination; PENALTY: $8,000; ENFORCEMENT COORDINATOR: Cheryl Thompson, (817) 588-5800; REGIONAL OFFICE: 2301 Gravel Drive, Fort Worth, Texas 76118- 6951, (817) 588-5800.

(10) COMPANY: El Paso PVC, Inc.; DOCKET NUMBER: 2001-0434-AIR-E; IDENTIFIER: Air Account Number EE-0141-B; LOCATION: El Paso, El Paso County, Texas; TYPE OF FACILITY: plastic compounding operation; RULE VIOLATED: 30 TAC §116.110(a) and the THSC, §382.085(b) and §382.0518(a), by failing to obtain a permit or satisfy the conditions of a permit by rule; PENALTY: $3,200; ENFORCEMENT COORDINATOR: David Van Soest, (512) 239-0468; REGIONAL OFFICE: 401 East Franklin Avenue, Suite 560, El Paso, Texas 79901-1206, (915) 834-4949.

(11) COMPANY: Harris County Water Control and Improvement District No. 1; DOCKET NUMBER: 2001-0300-MWD-E; IDENTIFIER: TPDES Permit Number 10104-001; LOCATION: Highlands, Harris County, Texas; TYPE OF FACILITY: wastewater treatment; RULE VIOLATED: 30 TAC §305.125(1), TPDES Permit Number 10104-001, and the Code, §26.121, by failing to comply with the permit limits for total suspended solids (TSS) and carbonaceous biochemical oxygen demand; PENALTY: $7,500; ENFORCEMENT COORDINATOR: Shawn Stewart, (512) 239-6684; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(12) COMPANY: Humphrey Company, Ltd.; DOCKET NUMBER: 2001-0402-PST-E; IDENTIFIER: PST Facility Identification Number 0054996; LOCATION: Houston, Harris County, Texas; TYPE OF FACILITY: mechanical contracting; RULE VIOLATED: 30 TAC §334.7(d)(3), by failing amend, update, or change underground storage tank information; and 30 TAC §334.93(a) and (b) (now 30 TAC §37.815(a) and (b)), by failing to demonstrate the required financial assurance for taking corrective action and for compensating third parties; PENALTY: $1,440; ENFORCEMENT COORDINATOR: Rebecca Johnson, (713) 767-3500; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(13) COMPANY: Levonn M. Maggard dba Jones Acres Water Company; DOCKET NUMBER: 2001-0427-PWS-E; IDENTIFIER: PWS Number 2490018 and Certificate of Convenience and Necessity (CCN) Number 11679; LOCATION: Newark, Wise County, Texas; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §291.21(c)(7), §291.93(2)(A), and the Code, §13.136(a), by failing to ensure that his tariff includes an approved drought contingency plan; 30 TAC §288.30(3)(B) and the Code, §13.132(a)(1), by failing to make his adopted drought contingency plan available for inspection; and 30 TAC §290.51(a)3, by failing to pay its public health service fee; PENALTY: $125; ENFORCEMENT COORDINATOR: Sheila Smith, (512) 239-1670; REGIONAL OFFICE: 2301 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(14) COMPANY: Keith Wagnon dba KW Autos; DOCKET NUMBER: 2001-0276-AIR-E; IDENTIFIER: Air Account Number SI-0121-O; LOCATION: Center, Shelby County, Texas; TYPE OF FACILITY: used car lot; RULE VIOLATED: 30 TAC §114.20(c)(1) and the THSC, §382.085(b), by failing to equip a 1987 Dodge Ram with a hot air hose and equip a 1986 Dodge D50 with an exhaust gas recirculation valve; PENALTY: $720; ENFORCEMENT COORDINATOR: John Barry, (409) 898-3838; REGIONAL OFFICE: 3870 Eastex Freeway, Suite 100, Beaumont, Texas 77703-1892, (409) 898-3838.

(15) COMPANY: Laguna Tres Incorporated; DOCKET NUMBER: 2001-0188-PWS-E; IDENTIFIER: PWS Number 1110019; LOCATION: Granbury, Hood County, Texas; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.45(b)(1)(C)(i) and (iii), and the THSC, §341.0315(c), by failing to meet minimum capacity requirements to produce 0.6 gallons per minute (gpm) per connection and a service pump capacity of two gpm per connection; 30 TAC §290.41(c)(1)(D) and (F), and (3)(J), (K), and (P), by failing to

keep livestock from being within 50 feet of a PWS well, secure a sanitary control easement, maintain well number four sealing block by not repairing cracks, maintain the number one and three wellheads, the well number 4 vent in a downward facing position, and provide an all weather access road; 30 TAC §290.44(h)(4), by failing to test backflow prevention devices; and 30 TAC §290.46(u), by failing to provide documentation that the abandoned well is plugged with cement or provide test results that show it is in a non-deteriorated condition; PENALTY: $1,938; ENFORCEMENT COORDINATOR: Cheryl Thompson, (817) 588-5800; REGIONAL OFFICE: 2301 Gravel Drive, Fort Worth, Texas 76118- 6951, (817) 588-5800.

(16) COMPANY: Lake Navigation Company; DOCKET NUMBER: 2001-0106-PWS-E; IDENTIFIER: PWS Number 2270060 and CCN Number 12407; LOCATION: Austin, Travis County, Texas; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.41(c)(1)(F), by failing to obtain sanitary control easements; 30 TAC §290.113(c) (now 30 TAC §290.118(g)(1)), by failing to provide annual written notification to customers; 30 TAC §290.44(d)(5), by failing to provide sufficient valves or blowoffs to flush the system; and 30 TAC §291.93(3), by failing to submit a planning report; PENALTY: $876; ENFORCEMENT COORDINATOR: Larry King, (512) 339-2929; REGIONAL OFFICE: 1921 Cedar Bend Drive, Suite 150, Austin, Texas 78758-5336, (512) 339-2929.

(17) COMPANY: Medina Livestock Sales Co., Ltd. dba Las Aves RV Resort; DOCKET NUMBER: 2001-0254-PWS-E; IDENTIFIER: PWS Number 0100070; LOCATION: Medina, Bandera County, Texas; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.45(c)(1)(A)(i) and (ii), and the THSC, §341.0315(c), by failing to have a well capacity of least one gallon per unit and have a pressure tank capacity of ten gallons per unit; 30 TAC §290.46(d)(2)(A), (f)(3)(B)(iv), and the THSC, §341.0315(c), by failing to maintain the disinfection equipment and maintain records of the free chlorine residual; 30 TAC §290.110(c)(5)(B) and the THSC, §341.0315(c), by failing to monitor the free chlorine residual; and 30 TAC §290.105(b) and the THSC, §341.0315(c), by failing to provide drinking water sources to the public that meet the secondary maximum contaminant level of 0.3 milligrams per liter (mg/L) for iron; PENALTY: $2,500; ENFORCEMENT COORDINATOR: Rebecca Clausewitz, (210) 490-3096; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(18) COMPANY: T. B. Moran Company; DOCKET NUMBER: 2001-0669-MLM-E; IDENTIFIER: Unauthorized Site Number 45514014 and Air Account Number JG-0073-O; LOCATION: Alice, Jim Wells County, Texas; TYPE OF FACILITY: outdoor abrasive cleaning and coating; RULE VIOLATED: 30 TAC §330.5 and the Code, §26.121, by allowing the improper storage and disposal of municipal solid waste; and 30 TAC §116.110(a) and the THSC, §382.085(b) and §382.0518(a), by failing to obtain authorization prior to construction or operation of a source of air emissions; PENALTY: $2,050; ENFORCEMENT COORDINATOR: Carol McGrath, (361) 825-3100; REGIONAL OFFICE: 6300 Ocean Drive, Suite 1200, Corpus Christi, Texas 78412-5503, (361) 825-3100.

(19) COMPANY: Pleasure Point Water Supply Corporation; DOCKET NUMBER: 2001-0428- PWS-E; IDENTIFIER: PWS Number 0030007 and CCN Number 11734; LOCATION: Lufkin, Angelina County, Texas; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §291.21(c)(7), §291.93(2)(A), and the Code, §13.136(a), by failing to ensure that its tariff includes an approved drought contingency plan; 30 TAC §288.30(3)(B) and the Code, §13.132(a)(1), by failing to make its adopted drought contingency plan available for inspection; and 30 TAC §290.51(a)(3), by failing to pay its public health service fee; PENALTY: $125; ENFORCEMENT COORDINATOR: Sheila Smith, (512) 239-1670; REGIONAL OFFICE: 3870 Eastex Freeway, Suite 110, Beaumont, Texas 77703-1892, (409) 898-3838.

(20) COMPANY: PNI Distributing, Inc.; DOCKET NUMBER: 2001-0765-PST-E; IDENTIFIER: Enforcement Identification Number 16437; LOCATION: Cedar Hill, Dallas County, Texas; TYPE OF FACILITY: gasoline retail facility; RULE VIOLATED: 30 TAC §334.5(b)(1)(A), by failing to ensure that the owner or operator has a valid, current delivery certificate; PENALTY: $2,000; ENFORCEMENT COORDINATOR: Sunday Udoetok, (512) 239-0739; REGIONAL OFFICE: 2301 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(21) COMPANY: Rainbow Oils of San Angelo, Inc.; DOCKET NUMBER: 2001-0394-PST-E; IDENTIFIER: PST Facility Identification Number 27447; LOCATION: San Angelo, Tom Green County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.50(b)(1)(A) and (2)(A)(i)(III) and the Code, §26.3475, by failing to monitor for releases on the three tanks, monitor piping for releases, perform annual performance tests on the line leak detectors; and 30 TAC §37.835(b)(2), by failing to maintain evidence of financial assurance; PENALTY: $3,250; ENFORCEMENT COORDINATOR: Mark Newman, (915) 655-9479; REGIONAL OFFICE: 622 South Oakes, Suite K, San Angelo, Texas 76903-7013, (915) 655-9479.

(22) COMPANY: R. R. Ramsower, Inc.; DOCKET NUMBER: 2001-0321-IHW-E; IDENTIFIER: Enforcement Identification Number 16093; LOCATION: Angleton, Brazoria County, Texas; TYPE OF FACILITY: machining company; RULE VIOLATED: 30 TAC §335.4 and the Code, §26.121, by failing to prevent industrial solid waste releases; 30 TAC §335.6(a) and 40 Code of Federal Regulations (CFR) §262.12, by failing to provide notification of status as a generator of industrial solid waste; and 30 TAC §335.9(a)(1), by failing to maintain records applicable to the generation of all hazardous and industrial solid waste activities; PENALTY: $5,600; ENFORCEMENT COORDINATOR: Kevin Keyser, (713) 767-3500; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(23) COMPANY: City of San Benito; DOCKET NUMBER: 2001-0315-PWS-E; IDENTIFIER: PWS Number 0310007; LOCATION: San Benito, Cameron County, Texas; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.45(b)(2)(B) and the THSC, §341.0315(c), by failing to provide a treatment plant capacity of 0.6 gpm per connection; 30 TAC §290.42(a) and (d)(5), and the THSC, §341.0315(c), by failing to provide sufficient water plant capacity to accommodate the maximum daily usage of the plant and provide a flow measure device; 30 TAC §290.44(h)(1)(B)(ii), by failing to provide copies of backflow inspections and test reports; and 30 TAC §290.43(c)(8), by failing to maintain the elevated tanks; PENALTY: $3,063; ENFORCEMENT COORDINATOR: Sandra Hernandez-Alanis, (956) 425-6010; REGIONAL OFFICE: 1804 West Jefferson Avenue, Harlingen, Texas 78550-5247, (956) 425-6010.

(24) COMPANY: Sandy Creek Yacht club, L.P. dba Sandy Creek Marina; DOCKET NUMBER: 2001-0751-PWS-E; IDENTIFIER: PWS Number 2270339; LOCATION: Leander, Travis County, Texas; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.106(a) and (e), and §290.103(5) (now 30 TAC §290.109(c)(2) and (g)), and the THSC, §341.033(d), by failing to collect and submit routine monthly water samples for bacteriological analysis and provide public notice related to its failure to collect and submit samples for bacteriological analysis; and 30 TAC §290.51, by failing to pay public health service fees; PENALTY: $1,600; ENFORCEMENT COORDINATOR: Shawn Stewart, (512) 239-6684; REGIONAL OFFICE:

1921 Cedar Bend Drive, Suite 150, Austin, Texas 78758-5336, (512) 339-2929.

(25) COMPANY: Bennett Shortes; DOCKET NUMBER: 2001-0656-OSS-E; IDENTIFIER: Enforcement Identification Number 16342; LOCATION: Knox City, Knox County, Texas; TYPE OF FACILITY: on-site sewage; RULE VIOLATED: 30 TAC §285.50(c) and the Code, §366.054 and §366.071, by failing to possess a valid agency certification prior to representation as an installer; and 30 TAC §285.58(a)(3) and the Code, §366.054, by failing to obtain the necessary permit authorization; PENALTY: $700; ENFORCEMENT COORDINATOR: Carl Schnitz, (512) 239-1892; REGIONAL OFFICE: 1977 Industrial Boulevard, Abilene, Texas 79602-7833, (915) 698-9674.

(26) COMPANY: Mr. David Fenoglio and Mr. Edward A. Fenoglio dba Perrin Water System and dba Sunset Water System; DOCKET NUMBER: 2001-0491-PWS-E; IDENTIFIER: CCN Numbers 12196 and 11779; LOCATION: Montague, Jack and Montague Counties, Texas; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §291.21(c)(7), §291.93(2)(A), and the Code, §13.136(a), by failing to ensure that their tariffs include approved drought contingency plans; 30 TAC §288.30(3)(B) and the Code, §13.132(a)(1), by failing to make their adopted drought contingency plans available for inspection; and 30 TAC §290.51(a)(3) and the THSC, §341.041, by failing to pay public health service fees; PENALTY: $250; ENFORCEMENT COORDINATOR: David Van Soest, (512) 239-0468; REGIONAL OFFICE: 1977 Industrial Boulevard, Abilene, Texas 79602-7833, (915) 698-9674.

(27) COMPANY: Tom's Food, Inc.; DOCKET NUMBER: 2001-0579-IHW-E; IDENTIFIER: Solid Waste Registration Number 31141; LOCATION: Corsicana, Navarro County, Texas; TYPE OF FACILITY: food processing; RULE VIOLATED: 30 TAC §335.62 and 40 CFR §262.11, by failing to conduct hazardous waste determinations and classifications for all wastes generated; and 30 TAC §335.2(b), by failing to dispose of industrial solid waste at an authorized facility; PENALTY: $3,240; ENFORCEMENT COORDINATOR: Carl Schnitz, (512) 239-1892; REGIONAL OFFICE: 2301 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(28) COMPANY: Twin Coves Water Supply Corporation; DOCKET NUMBER: 2001-0267- PWS-E; IDENTIFIER: PWS Number 0610077; LOCATION: Flower Mound, Denton County, Texas; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.43(c)(5), (d)(3), and the THSC, §341.0315(c), by failing to properly design inlet and outlet connections, provide an air-to-water indicator on the pressure tank; 30 TAC §290.46(d)(2)(A) and (i), (formerly 30 TAC §290.46(f)(3)(E)(iii), and the THSC, §341.0315(c), by failing to maintain records of the annual pressure tank inspections and provide a minimum of 0.2 mg/L free chlorine residual and provide customer service agreements; 30 TAC §290.45(b)(1)(C)(i), (iii), and (iv) (formerly 30 TAC §290.45(b)(1)(B)(i), (ii), and (iii)), and the THSC, §341.0315(c), by failing to provide a minimum well production capacity of 0.6 gpm, a minimum service pump capacity of two gpm, and a minimum pressure tank capacity of 20 gallons per connection; and 30 TAC §290.41(c)(1)(F), (3)(B), (J), and (K), by failing to record and maintain sanitary control easements, provide a well casing which extends 18 inches above the natural ground level, provide a concrete sealing block, and provide a proper well casing vent; PENALTY: $4,813; ENFORCEMENT COORDINATOR: Jorge Ibarra, (817) 588-5800; REGIONAL OFFICE: 2301 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(29) COMPANY: Union Oil Company of California; DOCKET NUMBER: 2001-0477-AIR-E; IDENTIFIER: Air Account Number VB-0011-P; LOCATION: Van, Van Zandt County, Texas; TYPE OF FACILITY: natural gas liquids production; RULE VIOLATED: 30 TAC §122.146(2) and the THSC, §382.085(b), by failing to submit annual Title V compliance certifications; and 30 TAC §122.145(2)(B) and the THSC, §382.085(b), by failing to submit deviation reports; PENALTY: $5,400; ENFORCEMENT COORDINATOR: Carolyn Lind, (903) 535-5100; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3756, (903) 535-5100.

(30) COMPANY: U.S. Department of Justice, Federal Bureau of Prisons, La Tuna Federal Correctional Institution; DOCKET NUMBER: 2001-0544-AIR-E; IDENTIFIER: Air Account Number EE-0577-G; LOCATION: Anthony, El Paso County, Texas; TYPE OF FACILITY: federal corrections institution; RULE VIOLATED: 30 TAC §114.100(a) and the THSC, §382.085(b), by failing to comply with the 2.7% by weight oxygenate requirement; PENALTY: $600; ENFORCEMENT COORDINATOR: John Mead, (512) 239-6010; REGIONAL OFFICE: 401 East Franklin Avenue, El Paso, Texas 79901-1206, (915) 834-4949.

(31) COMPANY: Mr. Rick Frederick dba Walnut Grove Water System; DOCKET NUMBER: 2001-0530-PWS-E; IDENTIFIER: CCN Number 12201; LOCATION: Roanoke, Denton County, Texas; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §291.21(c)(7), §291.93(2)(A), and the Code, §13.136(a), by failing to ensure that its tariff includes an approved drought contingency plan; and 30 TAC §288.30(3)(B) and the Code, §13.132(a)(1), by failing to make its adopted drought contingency plan available for inspection; PENALTY: $125; ENFORCEMENT COORDINATOR: David Van Soest, (512) 239-0468; REGIONAL OFFICE: 2301 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

TRD-200105578
Paul C. Sarahan
Director, Litigation Division
Texas Natural Resource Conservation Commission
Filed: September 18, 2001

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Notice of Opportunity to Comment on Settlement Agreements of Administrative Enforcement Actions

The Texas Natural Resource Conservation Commission (TNRCC or commission) staff is providing an opportunity for written public comment on the listed Agreed Order (AO) pursuant to Texas Water Code (TWC), §7.075. Section 7.075 requires that before the commission may approve the AO, the commission shall allow the public an opportunity to submit written comments on the proposed AO. Section 7.075 requires that notice of the opportunity to comment must be published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **October 29, 2001**. Section 7.075 also requires that the commission promptly consider any written comments received and that the commission may withdraw or withhold approval of an AO if a comment discloses facts or considerations that the consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the TNRCC's orders and permits issued pursuant to the TNRCC's regulatory authority. Additional notice of changes to a proposed AO is not required to be published if those changes are made in response to written comments.

A copy of the proposed AO is available for public inspection at both the TNRCC's Central Office, located at 12100 Park 35 Circle, Building A, 3rd Floor, Austin, Texas 78753, (512) 239-3400 and at the applicable Regional Office listed as follows. Comments about the AO should be sent to the attorney designated for the AO at the TNRCC's Central Office at P.O. Box 13087, MC 175, Austin, Texas 78711-3087 and

must be **received by 5:00 p.m. on October 29, 2001**. Comments may also be sent by facsimile machine to the attorney at (512) 239-3434. The TNRCC attorneys are available to discuss the AO and/or the comment procedure at the listed phone numbers; however, TWC, §7.075 provides that comments on the AO should be submitted to the TNRCC in **writing**.

(1) COMPANY: Crown Central Petroleum Corporation; DOCKET NUMBER: 1999-0486-AIR-E; TNRCC ID NUMBERS: HG0175D; LOCATION: 111 Red Bluff Road, Pasadena, Harris County, Texas; TYPE OF FACILITY: petroleum refinery; RULES VIOLATED: §115.352(4) and §116.115(a), TNRCC Permit Number 20246, Special Condition 1(E), and Texas Health and Safety Code (THSC), §382.085(b), by failing to seal an open-ended line on a check valve on Pump Number 2 in the Fluid Catalytic Cracking Unit (FCCU); §116.115(a), TNRCC Permit Number 6059, Special Condition 5, and THSC, §382.085(b), by failing to maintain the temperature of the oxidation zone of the sulfur recovery unit (SRU) thermal reactor above the minimum required temperature of 2300 degrees Fahrenheit for a cumulative total of approximately 61 days or 1465 hours, §116.115(a), TNRCC Permit Number 6059, Special Condition 12, and THSC, §382.085(b), by failing to maintain the temperature of the sour water stripper (SWS) off-gas above the minimum required temperature of 180 degrees Fahrenheit for a total of 75 hours; §116.115(a), TNRCC Permit Number 6059, Special Condition 23, and THSC, §382.085(b), by failing to submit continuous emission monitoring system data regarding Permit Number 6059 along with quarterly reports; §116.115(a), TNRCC Permit Number 20246, Special Condition 2(D), and THSC, §382.085(b), by failing to submit annual inspection reports; §116.115(a), TNRCC Permit Number 22039, Special Condition 6, and THSC, §382.085(b), by allowing nitrogen oxides emission rates from Boiler Number 4 to exceed the 0.06 pounds per million British thermal units limit for a total of 34 hours; §101.20(1), 40 Code of Federal Regulations (CFR) §60.48b(e), and THSC, §382.085(b), by failing to conduct the relative accuracy test audit on the continuous monitoring system on Boiler Number 4; §101.20(1) and §116.115(c), 40 CFR §60.104(a)(1), TNRCC Permit Number 5953, Special Condition 2, TNRCC Permit Number 22039, Special Condition 4, TNRCC Permit Number 26891, Special Condition 4, and THSC, §382.085(b), by exceeding the hydrogen sulfide (H2S) concentration limit of 160 parts per million by volume (PPMV) in fuel gas on two days; §101.20(1) and §116.115(c), 40 CFR §60.104(a)(2)(i), TNRCC Permit Number 6059, Special Condition 18, and THSC, §382.085(b), by exceeding the sulfur dioxide (SO2) concentration limit of 250 ppmv in tail gas incinerator (TGI) stack gas; §101.20(1) and §116.115(c), 40 CFR §60.104(a)(1) and (2)(i), TNRCC Permit Number 5953, Special Condition 2, TNRCC Permit Number 22039, Special Condition 4, TNRCC Permit Number 26891, Special Condition 4, TNRCC Permit Number 6059, Special Condition 18, and THSC, §382.085(b), by exceeding the H2S concentration limit of 160 ppmv in the fuel gas and exceeding the SO2 concentration limit of 250 ppmv in TGI stack gas; §101.20(1), 40 CFR §60.7(c), and THSC, §382.085(b), by submitting a report without all required information for two incidents of excess emissions; §101.20(1) and §116.115(c), 40 CFR §60.104(a)(1), TNRCC Permit Number 5953, Special Condition 2, TNRCC Permit Number 22039, Special Condition 4, TNRCC Permit Number 26891, Special Condition 4, and THSC, §382.085(b), by exceeding the H2S concentration limit of 160 ppmv in the fuel gas; §101.20(1) and §116.115(c), 40 CFR §60.104(a)(2)(i), TNRCC Permit Number 6059, Special Condition 18, and THSC, §382.085(b), by exceeding the SO2 concentration limit of 250 ppmv in the TGI stack gas; §101.20(1) and §116.115(c), 40 CFR §60.104(a)(1) and (2)(i), TNRCC Permit Number 5953, Special Condition 2, TNRCC Permit Number 22039, Special Condition 4, TNRCC Permit Number 26891, Special Condition 4, TNRCC Permit Number 6059, Special Condition 18, and THSC, §382.085(b), by exceeding the SO2 concentration limit of 250 ppmv in TGI stack gas; §101.20(1), 40 CFR §60.112b(a), and THSC, §382.085(b), by operating Tank 400, an open-top stormwater tank, without required emission controls; §101.20(1) and §116.115(c), TNRCC Permit Number 5953, Special Condition 2, TNRCC Permit Number 6059, Special Conditions 1 and 18, TNRCC Permit Number 22089, Special Condition Number 4, TNRCC Permit Number 26891, Special Condition 4, and THSC, §382.085(b), by exceeding the maximum allowable emission rate for SO2 from the SRU; §116.115(c), TNRCC Permit Number 6059, Special Condition 4, and THSC, §382.085(b), by operating the TGI at a temperature below 1250 degrees Fahrenheit for a total of two hours; §116.115(c), TNRCC Permit Number 6059, Special Condition 12, and THSC, 382.085(b), by failing to maintain the SWS off-gas stream at a minimum temperature of 180 degrees Fahrenheit; §116.115(c), TNRCC Permit Number 6059, Special Condition 26, and THSC, §382.085(b), by failing to timely submit a report of an unscheduled SRU shutdown; §101.20(1) and §116.115(c), 40 CFR §60.104(a)(1) and (2)(i), TNRCC Permit Number 20246, Special Condition 4, TNRCC Permit Number 26891, Special Condition 4, and THSC, §382.085(b), by exceeding the 250 ppmv SO2 concentration limit from the TGI and by exceeding the H2S limit in fuel gas used in the Reformate Splitter and Coker Heater and exceeding the maximum allowable emissions rate for SO2; §101.6 and §101.7, and THSC, §382.085(b), by failing to submit complete upset/maintenance notices for the FCCU and SRU shutdowns; §101.20(1), 40 CFR §60.105(a)(4), and THSC, §382.085(b), by failing to continuously monitor and record the H2S concentration in fuel gases before being burned in any fuel combustion device; PENALTY: $350,000; STAFF ATTORNEY: Rich O'Connell, Litigation Division, MC 175, (512) 239-5528; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Ave., Ste. H, Houston, Texas 77023-1486, (713) 767-3500.

TRD-200105601
Paul C. Sarahan
Director, Litigation Division
Texas Natural Resource Conservation Commission
Filed: September 19, 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 amended and new sections in 30 TAC Chapter 17, Tax Relief for Property Used for Environmental Protection.

The proposed revisions to Chapter 17 implement House Bill 3121, 77th Legislature, 2001, which amended Texas Tax Code, §11.31, Pollution Control Property, to require the commission to adopt specific standards for evaluating applications for use determinations, including partial determinations, and provide for appeals by an applicant and the chief appraiser of the appraisal district for the county in which the property is located.

A public hearing on this proposal will be held October 23, 2001, at 10:00 a.m., Texas Natural Resource Conservation Commission, Building F, Room 2210, 12100 Park 35 Circle (North I-35), Austin. The hearing is structured for the receipt of oral or written comments by interested persons. Individuals may present oral statements when called upon in order of registration. Open discussion will not occur during the hearing; however, agency staff members will be available to discuss the proposal 30 minutes prior to the hearing, and will answer questions before and after the hearing.

Comments may be submitted to 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 2001-045-017-AD. Comments must be received by 5:00 p.m., October 29, 2001. For further information contact Auburn Mitchell at (512) 239-1873.

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-200105486
Stephanie Bergeron
Division Director, Environmental Law Division
Texas Natural Resource Conservation Commission
Filed: September 14, 2001

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Notice of Public Hearing

The Texas Natural Resource Conservation Commission (TNRCC) will conduct a public hearing to receive testimony concerning revisions to 30 Texas Administrative Code (TAC) Chapter 39, concerning Public Notice; Chapter 55, concerning Requests for Reconsideration and Contested Case Hearings, Public Comment; and Chapter 80, concerning Contested Case Hearings; under the requirements of Texas Health and Safety Code, §382.017 and Texas Government Code, Subchapter B, Chapter 2001.

The proposed new and amended sections would implement portions of Senate Bill 688 (an act relating to requirements for public notice and hearing on applications for certain permits that may have environmental impact), enacted by the 77th Texas Legislature, 2001, concerning direct referrals of certain permit applications to the State Office of Administrative Hearings (SOAH). The proposal would also clarify certain public notice rules regarding the circumstances where there is an opportunity to file requests for hearing and reconsideration in response to the chief clerk's transmittal of the executive director's response to comments and modify certain rules relating to the taking of public comment at certain preliminary hearings.

A public hearing on this proposal will be held in Austin on October 25, 2001 at 10:00 a.m. at the Texas Natural Resource Conservation Commission complex in Building F, Room 2210, located at 12100 Park 35 Circle. The hearing will be structured for the receipt of oral or written comments by interested persons. Individuals may present oral statements when called upon in order of registration. There will be no open discussion during the hearing; however, an agency staff member will be available to discuss the proposal 30 minutes prior to the hearing and will answer questions before and after the hearing.

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

Comments may be submitted to Lola Brown, MC 205, Office of Environmental Policy, Analysis, and Assessment, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087, or by fax to (512) 239-4808. All comments should reference Rule Log Number 2001- 028B-055-AD. Comments must be received by 5:00 p.m., October 29, 2001. For further information, please contact Ray Henry Austin, Policy and Regulations Division, (512) 239-6814.

TRD-200105496
Stephanie Bergeron
Division Director, Environmental Law Division
Texas Natural Resource Conservation Commission
Filed: September 14, 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 (commission) will conduct a public hearing to receive testimony concerning the proposed new 30 TAC Chapter 30, Occupational Licenses and Registrations; and proposed revisions to 30 TAC Chapters 285, On-Site Sewage Facilities; 290, Public Drinking Water; 325, Certificates of Competency; 330, Municipal Solid Waste, 334, Underground and Aboveground Storage Tanks; and 344, Landscape Irrigators.

The proposed rules would consolidate all administrative functions affecting ten licensing and registration programs administered by the commission into the new Chapter 30. These revisions implement House Bill (HB) 3111, HB 2912, Articles 7, 8, and 18.04, of the 77th Legislature, 2001, and Sunset Commission recommendations to consolidate agency licensing and registration programs. The proposed rules would also establish uniform procedures for issuing and renewing licenses, setting terms and fees, enforcement activities, and training approval.

A public hearing on the proposal will be held October 11, 2001, at 10:00 a.m. in Room 131E, Building C, at the Texas Natural Resource Conservation Commission complex, located at 12100 Park 35 Circle, Austin. The hearing is structured for the receipt of oral or written comments by interested persons. Individuals may present oral statements when called upon in order of registration. Open discussion will not occur during the hearing; however, an agency staff member will be available to discuss the proposal 30 minutes prior to the hearing and answer questions before and after the hearing.

Comments may be submitted to 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 2001-044-325-WT. Comments must be received by 5:00 p.m., October 18, 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-200105502
Stephanie Bergeron
Division Director, Environmental Law Division
Texas Natural Resource Conservation Commission
Filed: September 14, 2001

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Notice of Public Hearings

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 amendments to §§321.32 - 321.35, and 321.39; and new §321.48 and §321.49 of 30 TAC Chapter 321, Control of Certain Activities by Rule.

The proposed amended and new sections would implement provisions of House Bill 2912, Senate Bill (SB) 2, and SB 1339 enacted by the 77th Legislature, 2001. The proposal would establish requirements for certain concentrated animal feeding operations (CAFOs) located in a "major sole- source impairment zone" or in the "protection zone" of a "sole-source surface drinking water supply," and would conditionally exclude certain poultry operations from the commission's CAFO rules.

Public hearings on this proposal will be held in Austin on October 23, 2001 at 2:00 p.m., Texas Natural Resource Conservation Commission complex, Building F, Room 2210, 12100 Park 35 Circle; and in Waco on October 25, 2001, at 7:00 p.m., McLennan Community College, 1400 College Drive, HPE Building, Room 101 (McLennan Drive). The hearings 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 Lola Brown, MC 205, Texas Natural Resource Conservation Commission, Office of Environmental Policy, Analysis, and Assessment, P.O. Box 13087, Austin, Texas 78711-3087, or by fax to (512) 239-4808. All comments should reference Rule Log Number 2001-041-321-WT. Comments must be received by 5:00 p.m., October 29, 2001. For further information contact Ray Henry Austin at (512) 239-6814.

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-200105497
Stephanie Bergeron
Division Director, Environmental Law Division
Texas Natural Resource Conservation Commission
Filed: September 14, 2001

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Notice of Public Hearings by the Texas Natural Resource Conservation Commission on the Northeast Texas Ozone State Implementation Plan

The Texas Natural Resource Conservation Commission (commission) will conduct two public hearings to receive testimony concerning revisions to the Northeast Texas ozone state implementation plan (SIP) under the requirements of Texas Health and Safety Code, §382.017; Texas Government Code, Subchapter B, Chapter 2001; and 40 Code of Federal Regulations, §51.102 of the United States Environmental Protection Agency (EPA) regulations concerning SIPs.

This proposed SIP revision pertains to Gregg, Harrison, Rusk, Smith, and Upshur Counties in the Northeast Texas area. It contains an emissions summary, photochemical modeling results, a rate-of- progress section, and a control strategy including Agreed Orders with Eastman Chemical Company, Texas Operations; TXU Electric Company; and Southwestern Electric Power Company. The purpose of this SIP revision is to provide a sufficient amount of emissions reductions of ozone precursors to avoid an EPA designation of nonattainment of the ozone national ambient air quality standard.

The commission has also proposed agreements with Eastman Chemical Company, Texas Operations; Southwestern Electric Power Company; and TXU Electric Company as revisions to the SIP. The agreements would make federally enforceable certain reductions of ozone precursor emissions of nitrogen oxides from these sources in the Northeast Texas area.

Public hearings on this proposal will be held in Longview on October 23, 2001 at 7:00 p.m. at the Longview City Hall, City Council Chambers, located at 300 W. Cotton Street; and in Tyler on October 24, 2001 at 7:00 p.m. at the Tyler Junior College Regional Training and Development Center, Room 104, located at 1530 SSW Loop 323. The hearings 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 hearings; however, an agency staff member will be available to discuss the proposal 30 minutes prior to the hearings and will answer questions before and after the hearings.

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

Comments may be submitted to Joyce Spencer, MC 205, Office of Environmental Policy, Analysis, and Assessment, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087, or by fax to (512) 239-4808. All comments should reference Rule Log Number 2001-026- SIP-AI, and must be received by 5:00 p.m., October 24, 2001, although oral and written comments submitted at the October 24, 2001 hearing will be accepted. For further information, please contact Rex Shaddox, Strategic Assessment Division, (512) 239-3503, or Alan Henderson, Policy and Regulations Division, (512) 239-1510. Copies of the SIP revision can be obtained from the commission's website at *www.tnrcc.state.tx.us/oprd/sips/cover.html*, or by calling Ms. Spencer at (512) 239-5017.

TRD-200105613
Stephanie Bergeron
Division Director, Environmental Law Division
Texas Natural Resource Conservation Commission
Filed: September 19, 2001

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Notice of Request for Public Comment and a Non-Adjudicatory Public Hearing for an Implementation Plan to Address Total Maximum Daily Loads and Update to the State Water Quality Management Plan

The Texas Natural Resource Conservation Commission (TNRCC or commission) and the Texas State Soil and

Water Conservation Board (TSSWCB or State Board) have made available for public comment a draft implementation plan concerning atrazine in Aquilla Reservoir near Hillsboro, Texas in Hill County. The TNRCC and TSSWCB will also conduct a non-adjudicatory public hearing to receive comments on the implementation plan.

Aquilla Reservoir is included in the State of Texas Clean Water Act, §303(d), List of impaired water bodies. As required by §303(d) of the federal Clean Water Act, a Total Maximum Daily Load (TMDL) was developed for atrazine. The TMDL was adopted by the commission on

March 23, 2001 as an update to the State Water Quality Management Plan. Upon adoption by the commission, the TMDL was submitted to the United States Environmental Protection Agency for review and approval.

A non-adjudicatory public hearing will be held in Hillsboro, on October 23, 2001, at 7:00 p.m., at the Texas Agricultural Extension Service Office located at the Hill County Courthouse Annex Building, 126 South Covington Street. Individuals may present oral statements when called upon in order of registration. Open discussion will not occur during the hearing; however, an agency staff member will be available to discuss the matter 30 minutes prior to the hearing and will answer questions before and after the hearing. The purpose of the public hearing is to provide the public an opportunity to comment on the proposed plan. The two state agencies request comment on each of the six major components of the implementation plan: description of Control Actions and Management Measures, Legal Authority, Implementation Schedule, Follow-up Monitoring Plan, Reasonable Assurance, and Measurable Outcomes. After the public comment period, TNRCC and TSSWCB staff may revise the implementation plan, if appropriate. The final implementation plan will then be considered for approval by the commission. Upon approval of the implementation plan by the commission, the final implementation plan and a response to public comments will be made available on the commission website at *http://www.tnrcc.state.tx.us/water/quality/tmdl*. The implementation plan is a flexible tool that the governmental and non-governmental agencies involved in TMDL implementation will use to guide their program management.

Written comments should be submitted to Joyce Spencer, Texas Natural Resource Conservation Commission, Office of Environmental Policy, Analysis, and Assessment, MC 205, P.O. Box 13087, Austin, Texas, 78711-3087 or faxed to (512) 239-4808. All comments must be received by 5:00 p.m., October 29, 2001, and should reference 2001-1090-TML. For further information regarding this proposed TMDL implementation plan, please contact Ward Ling, Office of Environmental Policy, Analysis, and Assessment, at (512) 239-6238. Copies of the document summarizing the proposed TMDL implementation plan can be obtained via the commission's website or by calling Joyce Spencer at (512) 239-5017.

Persons with disabilities who have special communication or other accommodation needs who are planning to attend the meeting should contact the agency at (512) 239-4900. Requests should be made as far in advance as possible.

TRD-200105609

Stephanie Bergeron

Division Director, Environmental Law Division

Texas Natural Resource Conservation Commission

Filed: September 19, 2001

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Notice of Water Quality Applications

The following notices were issued during the period of September 6, 2001 through September 13, 2001.

The following require the applicants to publish notice in the newspaper. The public comment period, requests for public meetings, or requests for a contested case hearing may be submitted to the Office of the Chief Clerk, Mail Code 105, P O Box 13087, Austin Texas 78711- 3087, WITHIN 30 DAYS OF THE DATE OF NEWSPAPER PUBLICATION OF THIS NOTICE.

BEECHWOOD WATER SUPPLY CORPORATION has applied for a renewal of TPDES Permit No. 11423-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 50,000 gallons per day. The facility is located on the west shoreline of Toledo Bend Reservoir, approximately 5 miles east of the intersection of State Highway 87 and Farm-to-Market Road 3315 in Sabine County, Texas.

CITY OF BLOOMING GROVE has applied for a renewal of TNRCC Permit No. 11606- 001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 100,000 gallons per day. The facility is located on the west bank of Rush Creek, at a point approximately 4,200 feet southeast of the intersection of State Highway 22 and Farm-to- Market Road 55 in Navarro County, Texas.

BOLES CHILDREN'S HOME, INC. has applied for a renewal of Permit No. 13220-001, which authorizes the disposal of treated domestic wastewater at a daily average flow not to exceed 16,100 gallons per day via surface irrigation of 4.25 acres of nonpublic access grasses. This permit will not authorize a discharge of pollutants into waters in the State. The facility and disposal site are located approximately 2000 feet southeast of State Highway 34 and Farm-to- Market Road 2101 in Hunt County, Texas.

BRIDGESTONE/FIRESTONE, INC. which operates a plant manufacturing polybutadiene and butadiene/stryene copolymers, has applied for a major amendment to TNRCC Permit No. 00454 to authorize the discharge of an additional process wastestream and to remove effluent limitations and monitoring requirements for ammonia-nitrogen found in the National Pollutant Discharge Elimination System (NPDES) permit at Outfall 001. The current permit authorizes the discharge of treated process, utility, storm water, and domestic wastewater at a daily average flow not to exceed 1,000,000 gallons per day via Outfall 001; and storm water on an intermittent and flow variable basis via Outfall 002. The facility is located on the south side of Farm-to- Market (FM) Road 1006, approximately one mile east of the intersection of FM Road 1006 and State Highway 87, southwest of the City of Orange, Orange County, Texas.

CANYON REGIONAL WATER AUTHORITY has applied for a major amendment to Permit No. 14126-001 to authorizes the land application of water treatment sludge for beneficial use on 40 acres. This permit will not authorize a discharge of pollutants into waters in the State. The facility and disposal site are located on the south bank of the Guadalupe River, approximately 1,000 feet southwest of the dam for Lake Dunlap at Dittmar Falls, and approximately 3,000 feet northeast of the Town of Schumansville in Guadalupe County, Texas. The sludge treatment works and the sludge disposal site are located on the south bank of the Guadalupe River, approximately 1,000 feet southwest of the dam for Lake Dunlap at Dittmar Falls, and approximately 3,000 feet northeast of the Town of Schumansville in Guadalupe County, Texas.

CENTRAL POWER AND LIGHT COMPANY has applied to the Texas Natural Resource Conservation Commission (TNRCC) for a renewal of TNRCC Permit No. 02159, which authorizes the discharge of once-through cooling water at a daily average flow not to exceed 1,272,000,000 gallons per day via Outfall 001; the discharge of treated sewage effluent at a daily average flow not to exceed 10,000 gallons per day via Outfall 002; the discharge of ash transport water commingled with low volume wastewater and metal cleaning wastes on an intermittent and flow variable basis via Outfall 003; and the discharge of storm water runoff from the Flue Gas Desulphurization (FGD) dry product storage area via on an intermittent and flow variable basis via Outfall 004. Issuance of this Texas Pollutant Discharge Elimination System (TPDES) permit will replace the existing NPDES Permit No. TX0070068, issued on December 20, 1996 and TNRCC Permit No. 02159, issued on January 23, 1995. The applicant operates the Coleto

Creek Power Station. The plant site is located adjacent to Coleto Creek Reservoir approximately 2.5 miles northeast of the Town of Fannin, Goliad County, Texas.

GREATER WHITEHOUSE UTILITY COMPANY, INC. has applied for renewal of an existing wastewater permit. The applicant has an existing National Pollutant Discharge Elimination System (NPDES) Permit No. TX0095419 and an existing Texas Natural Resource Conservation Commission (TNRCC) Permit No. 12910-001. The draft permit authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 41,300 gallons per day. The plant site is located at 100 Quail Lane, at the intersection of Quail Lane and Bobwhite Lane, approximately 1 3/8 miles southwest of the intersection of State Highway 110 and Farm- to-Market Road 346 in Smith County, Texas.

CITY OF HONDO has applied for a renewal of TNRCC Permit No. 10189-001, which authorizes the discharge of treated domestic at an annual average flow not to exceed 1,800,000 gallons per day. The facility is located in the southwest section of the City of Hondo, approximately 1,400 feet east of the intersection of Farm-to-Market Road 462 and 30th Street in Medina County, Texas.

LAKE TRAVIS II INVESTMENTS, LTD. a private developer, has applied for a new permit, Proposed Permit No. 14257-001, to authorize the disposal of treated domestic wastewater at a daily average flow not to exceed 96,000 gallons per day via subsurface drip irrigation of public access common grounds that total 22.03 acres of turf grass or other ground cover. This permit will not authorize a discharge of pollutants into waters in the State. The facility and disposal site are located approximately 0.8 miles west of Mansfield Dam and 0.5 miles south of Ranch Road 620 in Travis County, Texas.

CITY OF LUFKIN has applied for a renewal of TNRCC Permit No. 10214-001, which authorizes the discharge of treated domestic wastewater at an annual average flow not to exceed 11,300,000 gallons per day. The application also includes a request for a temporary variance to the existing water quality standards for Cedar Creek. The variance would authorize a three-year period in which the U.S. EPA will review the aquatic life use and corresponding dissolved oxygen criterion for Cedar Creek. The review would determine whether a site-specific amendment to water quality standards is justified. The facility is located approximately 1,600 feet northwest of the point where Hurricane Creek intersects Farm-to-Market Road 324 and south of the City of Lufkin in Angelina County, Texas.

CITY OF NEWARK has applied for a major amendment to TPDES Permit No. 11626-001 to authorize an increase in the discharge of treated domestic wastewater from a daily average flow not to exceed 100,000 gallons per day to a daily average flow not to exceed 150,000 gallons per day, to remove monitoring requirements for total suspended solids and to relocate the discharge point. The facility is located on the east bank of Derrett Creek immediately south of the Newark Beach Road Bridge, about 850 feet west of the intersection of Roger Road and Berke Street in Wise County, Texas.

RIO GRANDE MINING COMPANY, c/o Gault Group, Inc which proposes to operate the Shafter Mine, a silver mining and processing facility, has applied to TNRCC for a new permit, Proposed Permit No. 04297 to authorize the disposal of mine dewatering water at a daily average flow not to exceed 550,000 gallons per day via irrigation of 80 acres. This permit will not authorize a discharge of pollutants into waters in the state. The facility is located west of U.S. Highway 67, approximately one mile west of the Shafer townsite, Presidio County, Texas. The disposal site is located approximately 1/2 mile south of the Shafer Mine.

CITY OF RUSK has applied for a renewal of TNRCC Permit No. 10447-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 1,750,000 gallons per day. The draft permit authorizes the discharge of treated domestic wastewater at an annual average flow not to exceed 1,750,000 gallons per day. The current permit also authorizes the Distribution and Marketing of sewage sludge. The permittee has requested to have this authorization removed from the permit. The plant site is located approximately 0.35 mile west of Farm-to-Market Road 752 and approximately 1.5 miles south of mid-town Rusk in Cherokee County, Texas.

CITY OF TEAGUE AND CITY OF FAIRFIELD has applied for a renewal of TNRCC Permit No. 13579-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 200,000 gallons per day. The plant site is located approximately 3.4 miles southwest of the intersection of U.S. Highway 84 and Interstate Highway 45 and approximately 1.1 miles south of the intersection of U.S. Highway 84 and Boyd Prison Road in Freestone County, Texas.

TEXAS AIRSTREAM HARBOR, INC. has applied for a renewal of TPDES Permit No. 11895-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 10,000 gallons per day. The facility is located approximately 0.5 mile northwest of State Highway 147 at a point approximately 300 feet southerly from the shoreline of Sam Rayburn Reservoir and approximately 5 miles northeast of the City of Zavalla in Angelina County, Texas.

CITY OF WOLFE CITY has applied for a new permit, proposed Texas Pollutant Discharge Elimination System (TPDES) Permit No. 10383-002, to authorize the discharge of treated backwash filters effluent from a water treatment plant at a daily average flow not to exceed 90,000 gallons per day. The facility is located 3/4 mile east of the City of Wolfe City on Farm-to Market Road 1563, south of the Western City Reservoir in Hunt County, Texas.

CITY OF ZAVALLA has applied for a Texas Pollutant Discharge Elimination System (TPDES) wastewater permit. The applicant has an existing Texas Natural Resource Conservation Commission (TNRCC) Permit No. 13871-001 which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 130,000 gallons per day. The plant site is located approximately 0.5 mile west and 1.0 mile south of the intersection of State Highways 69 and 63, and southwest of the City of Zavalla in Angelina County, Texas.

Written comments or requests for a public meeting may be submitted to the Office of the Chief Clerk, at the address provided in the information section above, WITHIN 30 DAYS OF THE ISSUED DATE OF THIS NOTICE

HARRIS COUNTY MUNICIPAL UTILITY DISTRICT NO. 276 has applied for a minor amendment to the Texas Pollutant Discharge Elimination System (TPDES) permit to authorize an increase in the Interim I and Interim II daily average effluent flows. The existing permit authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 500,000 gallons per day. The facility is located approximately 800 feet west of the intersection of State Highway 6 and West Little York Road and approximately 100 feet south of West Little York Road in Harris County, Texas.

TRD-200105595
LaDonna Castañuela
Chief Clerk
Texas Natural Resource Conservation Commission
Filed: September 18, 2001

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Notice of Water Rights Application

Notices mailed during the period August 29, 2001 through September 18, 2001.

APPLICATION NO. 5749; Hilltop Holdings, Inc., 6978 I.H. 35, New Braunfels, Texas 78130, seeks a Water Use Permit pursuant to § 11.121, Texas Water Code, and Texas Natural Resource Conservation Commission Rules 30 TAC §§295.1, et seq. Pursuant to 30 TAC § 295.151. Applicant seeks authorization to store a maximum of 147.5 acre-feet of water for recreational use in a reservoir complex and to divert and use 68.4 acre-feet of water per annum for recreational use into an off-channel reservoir for recreational purpose. The reservoir complex consists of two on-channel reservoirs and one off-channel reservoir. The diverted water, not to exceed 68.4 acre-feet per annum, will be diverted from the two on-channel reservoirs into the off-channel reservoir to maintain it full. The on-channel reservoirs are located on an unnamed tributary of Water Hole Creek, a tributary of York Creek, a tributary of the San Marcos River, tributary of the Guadalupe River, Guadalupe River Basin, Comal County. The reservoir complex, 5.8 miles northeast of New Braunfels, Texas and will impound a maximum of 147.5 acre-feet of water with a total surface area of 21.1 acres. The centerline of the dam for the main on-channel reservoir is N 56.28øW, 517.62 feet from the northeast corner of a three lot subdivision no. 23 of the A.M. Esnaurizar Eleven League Grant, Comal County, also being 29.767øN Latitude and 98.036øW Longitude. The application was received on March 28, 2001. Additional information was received on June 5, 2001. The application was declared administratively complete on August 9, 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.

APPLICATION NO. 5153B; B. Gill Clements has applied for an amendment to his Water Use Permit to add a reservoir upstream of an existing reservoir already authorized on Mine Creek in the Trinity River Basin for game reserve, wetlands creation, and in-place recreational purposes. The proposed and existing reservoirs are located in Henderson County. More information on the application and how to participate in the permitting process given below. B. Gill Clements, 1901 North Akard, Dallas, Texas 75201, applicant, seeks an amendment to Water Use Permit No. 5153, as amended, pursuant to Texas Water Code (TWC) §11.122, and Texas Natural Resource Conservation Commission Rules 30 TAC §§ 295.1, et seq. Notice should be published and mailed pursuant to 30 TAC §295.153 (b) (1) & (2) to the water right holders in the Trinity River Basin. Applicant owns Water Use Permit No. 5153, as amended, which authorizes the owner to maintain a dam and reservoir on Mine Creek, tributary of Coon Creek, tributary of Catfish Creek, tributary of the Trinity River in the Trinity River Basin, in Henderson County for in-place recreational purposes. The reservoir has a capacity of 1,130 acre-feet of water per annum at elevation 325.0 feet above mean sea level. The time priority is September 10, 1987 for the first 443 acre-feet of water and July 20, 1989 for the remaining 687 acre-feet of water for storage. Applicant seeks to amend Water Use Permit No. 5153 to construct and maintain a second dam and reservoir approximately 500 feet upstream of the existing dam and reservoir on Mine creek, tributary of Coon Creek, tributary of Catfish Creek, tributary of the Trinity River in the Trinity River Basin, in Henderson County for game reserve, wetlands creation, and in-place recreation purposes The proposed reservoir is located 8.9 miles south of Athens, Henderson County, Texas and will impound 2,980 acre-feet of water at normal maximum operating level with a surface area of 282 acres. The application was received on July 16, 2001. Additional information was received on August 15, 2001. The Executive Director reviewed the application and determined it to be administratively complete on August 16, 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.

Information Section

A public meeting is intended for the taking of public comment, and is not a contested case hearing. A public meeting will be held if the Executive Director determines that there is a significant degree of public interest in an application.

The Executive Director can consider approval of an application unless a written request for a contested case hearing is filed. To request a contested case hearing, you must submit the following: (1) your name (or for a group or association, an official representative), mailing address, daytime phone number, and fax number, if any: (2) applicant's name and permit number; (3) the statement "[I/we] request a contested case hearing;" and (4) a brief and specific description of how you would be affected by the application in a way not common to the general public. You may also submit any proposed conditions to the requested application which would satisfy your concerns. Requests for a contested case hearing must be submitted in writing to the TNRCC Office of the Chief Clerk at the address provided in the information section below.

If a hearing request is filed, the Executive Director will not issue the requested permit and may forward the application and hearing request to the TNRCC Commissioners for their consideration at a scheduled Commission meeting.

Written hearing requests, public comments or requests for a public meeting should be submitted to the Office of the Chief Clerk, MC 105, TNRCC, P.O. Box 13087, Austin, TX 78711-3087. For information concerning the hearing process, please contact the Public Interest Counsel, MC 103, at the same address. For additional information, individual members of the general public may contact the Office of Public Assistance at 1-800-687-4040. General information regarding the TNRCC can be found at our web site at www.tnrcc.state.tx.us.

TRD-200105594
LaDonna Castañuela
Chief Clerk
Texas Natural Resource Conservation Commission
Filed: September 18, 2001

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Panhandle Regional Planning Commission

Legal Notice

Consultant Proposal Request -- Auditing Services

Notice of Invitation for Proposal

Panhandle Regional Planning Commission (PRPC) is soliciting proposals to perform auditing services which will include three annual audits beginning October 1, 2001 in accordance with the provisions of the Single Audit Act. Detailed information regarding the project is set forth in the Request for Proposal (RFP) which will be available on or after September 28, 2001, at the following location:

Cindy Boone, CPA

Finance Director

Panhandle Regional Planning Commission

P.O. Box 9257

Amarillo, TX 79105

(806) 372-3381

The deadline for submission of proposals in response to this request will be 5:00 p.m. on Friday October 12, 2001.

PRPC reserves the right to accept or reject any or all proposals submitted. PRPC is under no legal requirement to execute a resulting contract on the basis of this advertisement and intends the material provided only as a means of identifying the various contractual alternatives. PRPC will base its choice on demonstrated competence, qualifications, and evidence of superior conformance with criteria.

This RFP does not commit PRPC to pay any costs incurred prior to the execution of a contract. Issuance of this material in no way obligates PRPC to award a contract or pay any cost incurred in the preparation of a response. PRPC specifically reserves the right to vary all provisions set forth at any time prior to execution of a contract where PRPC feels it to be in its own best interest.

TRD-200105590
Cindy Boone
Finance Director
Panhandle Regional Planning Commission
Filed: September 18, 2001

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Texas State Board of Pharmacy

Election of Officers

The Texas State Board of Pharmacy announces the election of the following officers to serve from September 1, 2001 to August 31, 2002: Donna Burkett Rogers, M.S., R.Ph., President; Roger W. Anderson, Dr.P.H., R.Ph., Vice President; Wiki Erickson, Treasurer.

TRD-200105479
Gay Dodson, R.Ph.
Executive Director/Secretary
Texas State Board of Pharmacy
Filed: September 14, 2001

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Public Utility Commission of Texas

Application for Approval of Transmission Cost of Service and Wholesale Transmission Rates

Notice is given to the public of the filing with the Public Utility Commission of Texas (commission) of an application for approval of transmission cost of service and wholesale transmission rates, pursuant to P.U.C. Substantive Rule §25.192.

Project Title and Number: Application of Fannin County Electric Cooperative, Inc. for Approval of Transmission Cost of Service and Wholesale Transmission Rates, Pursuant to P.U.C. Substantive Rule §25.192, Project Number 24312.

Persons who wish to intervene in the proceeding or comment upon 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 no later than October 3, 2001. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7003.

TRD-200105562
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: September 17, 2001

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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 September 10, 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 Republic Power, LP for Retail Electric Provider (REP) certification, Docket Number 24649 before the Public Utility Commission of Texas.

Applicant's requested service area by geography 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 October 5, 2001. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136.

TRD-200105452
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: September 12, 2001

♦ ♦ ♦

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 September 12, 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 Cirro Group, Inc. for Retail Electric Provider (REP) certification, Docket Number 24652 before the Public Utility Commission of Texas.

Applicant's requested service area by geography 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 October 5, 2001. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136.

TRD-200105568
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: September 17, 2001

♦ ♦ ♦

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 September 13, 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 Tenaska Power Services Company for Retail Electric Provider (REP) certification, Docket Number 24681 before the Public Utility Commission of Texas.

Applicant's requested service area by geography includes an area defined by customers.

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 October 5, 2001. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136.

TRD-200105570
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: September 17, 2001

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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 September 14, 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 Conoco Inc. for Retail Electric Provider (REP) certification, Docket Number 24685 before the Public Utility Commission of Texas.

Applicant's requested service area by geography includes an area defined by customers.

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 October 5, 2001. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136.

TRD-200105586
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: September 18, 2001

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Notice of Application for Amendment to Service Provider Certificate of Operating Authority

On June 7, 2001, BlueStar Networks, Inc. filed notification with the Public Utility Commission of Texas (commission) of its intent to cancel its service provider certificate of operating authority (SPCOA) granted in SPCOA Certificate Number 60270. Applicant intends to relinquish its certificate.

The Application: Application of BlueStar Networks, Inc. to Relinquish its Service Provider Certificate of Operating Authority, Docket Number 24253.

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 October 3, 2001. You may contact the commission's Customer Protection Division at (512) 936-7120. Hearing and speech- impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136. All correspondence should refer to Docket Number 24253.

TRD-200105564
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: September 17, 2001

♦ ♦ ♦

Notice of Application for Amendment to Service Provider Certificate of Operating Authority

On September 10, 2001, ATS Telecommunications Systems, Inc. (ATS) filed an application with the Public Utility Commission of Texas (commission) to amend its service provider certificate of operating authority (SPCOA) granted in SPCOA Certificate Number 60102. Applicant intends to relinquish its certificate.

The Application: Application of ATS to Relinquish its Service Provider Certificate of Operating Authority, Docket Number 24641.

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 October 3, 2001. You may contact the commission's Customer Protection Division at (512) 936-7120. Hearing and speech- impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136. All correspondence should refer to Docket Number 24641.

TRD-200105457
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: September 13, 2001

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Notice of Application for Designation as an Eligible Telecommunications Carrier Under 47 U.S.C. §214(e)

Notice is given to the public of an application filed with the Public Utility Commission of Texas (commission), on September 10, 2001 for designation as an eligible telecommunications carrier under 47 U.S.C. §214(e).

Docket Title and Number: Application of WESTEX Telecom for Designation as an Eligible Telecommunications Carrier (ETC) Pursuant to 47 U.S.C. §214(e) and P.U.C. Substantive Rule §26.418. Docket Number 24647.

The Application: Under 47 U.S.C. §214(e), a common carrier designated as an ETC in accordance with that subsection shall be eligible to receive federal universal service support under 47 U.S.C. §254. WESTEX Telecom (WESTEX) is requesting ETC designation in order to

be eligible to receive federal universal service support in the Stanton exchange in the state of Texas. The proposed effective date is October 28, 2001. WESTEX holds Service Provider Certificate of Operating Authority Number 60271.

Persons who wish to comment on this application should notify the Public Utility Commission of Texas by October 15, 2001. Requests for further information should be mailed to 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 (800) 735- 2989 to reach the commission's toll free number (888) 782-8477. The deadline for comment is October 15, 2001, and all correspondence should refer to Docket Number 24647.

TRD-200105566
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: September 17, 2001

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Notice of Application for Designation as an Eligible Telecommunications Provider Pursuant to P.U.C. Substantive Rule §26.417

Notice is given to the public of an application filed with the Public Utility Commission of Texas (commission) on September 10, 2001, for designation as an eligible telecommunications provider pursuant to P.U.C. Substantive Rule §26.417.

Docket Title and Number: Application of WESTEX Telecom. for Designation as an Eligible Telecommunications Provider (ETP) Pursuant to P.U.C. Substantive Rule §26.417. Docket Number 24646.

The Application: WESTEX Telecom (WESTEX) is requesting ETP designation in order to be eligible to receive funds from the Texas Universal Service Fund (TUSF) under the Texas High Cost Universal Service Plan (THCUSP). WESTEX seeks ETP designation in the Stanton exchange in the state of Texas. The proposed effective date is October 28, 2001. WESTEX holds Service Provider Certificate of Operating Authority Number 60271.

Persons who wish to comment on this application should notify the Public Utility Commission of Texas by October 15, 2001. Requests for further information should be mailed to the Public Utility Commission of Texas, P.O. Box 13326, Austin, Texas 78711-3326, or you may 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 (800) 735-2989 to reach the commission's toll free number (888) 782-8477. The deadline for comment is October 15, 2001, and all correspondence should refer to Docket Number 24646.

TRD-200105565
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: September 17, 2001

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Notice of Application for Sale, Transfer, or Merger

Notice is given to the public of the filing with the Public Utility Commission of Texas (commission) of an application for sale, transfer, or merger on September 10, 2001, pursuant to the Public Utility Regulatory Act, Texas Utilities Code Annotated §14.101 (Vernon 1998 & Supplement 2001).

Docket Style and Number: Application of the Lower Colorado River Authority for Sale, Transfer, or Merger Approval of Substation Purchase from the City of Brenham, Docket Number 24644.

The Application: The Lower Colorado River Authority requests approval to purchase two substations from the City of Brenham.

Persons who wish to intervene in the proceeding or 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 telephones (TTY) may contact the commission at (512) 936-7136 or use Relay Texas (toll-free) 1-800-735-2989.

TRD-200105472
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: September 13, 2001

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Notice of Application for Service Provider Certificate of Operating Authority

Notice is given to the public of the filing with the Public Utility Commission of Texas (commission) of an application on September 13, 2001, for a service provider certificate of operating authority (SPCOA), pursuant to §§54.151 - 54.156 of the Public Utility Regulatory Act (PURA). A summary of the application follows.

Docket Title and Number: Application of Tel West Communications, LLC for a Service Provider Certificate of Operating Authority, Docket Number 24682 before the Public Utility Commission of Texas.

Applicant intends to provide plain old telephone service.

Applicant's requested SPCOA geographic area includes the area served by all incumbent local exchange companies throughout the 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 October 3, 2001. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136.

TRD-200105571
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: September 17, 2001

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Notice of Application Pursuant to P.U.C. Substantive Rule §26.208

Notice is given to the public of the filing with the Public Utility Commission of Texas (commission) of an application filed on August 31, 2001, pursuant to P.U.C. Substantive Rules §26.207 and §26.208 by Fort Bend Telephone Company.

Tariff Title and Number: Application of Fort Bend Telephone Company Pursuant to P.U.C. Substantive Rules §26.207 and §26.208. Tariff Number 24576.

The Application: Fort Bend Telephone Company (FBTC) filed proposed tariff revisions to discontinue Improved Mobile Telecommunications Service. FBTC stated the request for discontinuance is a result of a Federal Communications Commission (FCC) order which states that any licensed mobile operation station that has not provided service to subscribers for 90 or more continuous days is considered to have "permanently discontinued" operation, which in turn automatically cancels the license. (See 47 C.F.R. §22.317). FBTC stated it had not had any customers or revenue for this service for more than three years. FBTC requested its application be processed administratively and that no notice be required because no customers would be affected by the proposed changes.

Persons who wish to intervene in the proceeding or 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 telephones (TTY) may contact the commission at (512) 936-7136 or use Relay Texas (toll-free) 1-800-735-2989. Please reference Tariff Number 24576.

TRD-200105450
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: September 12, 2001

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Notice of Application Pursuant to P.U.C. Substantive Rule §26.208

Notice is given to the public of the filing with the Public Utility Commission of Texas (commission) of an application filed on September 4, 2001, pursuant to P.U.C. Substantive Rules §26.207 and §26.208 by TXU Communications Telephone Company.

Tariff Title and Number: Application of TXU Communications Telephone Company Pursuant to P.U.C. Substantive Rules §26.207 and §26.208. Tariff Number 24596.

The Application: TXU Communications Telephone Company (TXU) filed proposed tariff revisions to discontinue Improved Mobile Telecommunications Service. TXU stated the request for discontinuance is a result of a Federal Communications Commission (FCC) order which states that any licensed mobile operation station that has not provided service to subscribers for 90 or more continuous days is considered to have "permanently discontinued" operation, which in turn automatically cancels the license. (See 47 C.F.R. §22.317). TXU stated it had not had any customers or revenue for this service for more than three years. TXU requested its application be processed administratively and that no notice be required because no customers would be affected by the proposed changes.

Persons who wish to intervene in the proceeding or 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 telephones (TTY) may contact the commission at (512) 936-7136 or use Relay Texas (toll-free) 1-800-735-2989. Please reference Tariff Number 24596.

TRD-200105451
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: September 12, 2001

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Notice of Petition for Expanded Local Calling Service

Notice is given to the public of the filing with the Public Utility Commission of Texas (commission) of a petition on August 6, 2001, for expanded local calling service (ELCS), pursuant to Chapter 55, Subchapter C of the Public Utility Regulatory Act (PURA). A summary of the application follows.

Project Title and Number: Petition of the Marathon Exchange for Expanded Local Calling Service, Project Number 24477.

The petitioners in the Marathon exchange request ELCS to the exchanges of Alpine, Fort Davis, and Marfa.

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 October 10, 2001. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136.

TRD-200105563
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: September 17, 2001

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Notice of Petition for Rulemaking for a New Rule to Establish Procedures to Appeal Decisions of an Independent Organization Certified Under PURA §39.151

The Public Utility Commission of Texas (commission) received a petition for rulemaking on September 18, 2001, from the Alliance for Retail Markets (ARM) to adopt a new rule that would establish procedures and standards for a party to appeal and the commission to review adverse decisions of an independent organization certified under Public Utility Regulatory Act (PURA) §39.151. The petition is assigned Project Number 24700, *Petition of Alliance for Retail Markets for Rulemaking to Establish Procedural Rule for Appealing Decisions of an Independent Organization Certified Under PURA §39.151*. Under the Administrative Procedure Act, Texas Government Code §2001.021, the commission shall either deny the petition in writing, stating its reasons for denial, or initiate a rulemaking proceeding not later than the 60th day after the date the petition is filed.

PURA §39.151 provides that the commission shall certify an independent organization or organizations to: (1) ensure access to the transmission and distribution systems for all buyers and sellers of electricity on nondiscriminatory terms; (2) ensure the reliability and adequacy of the regional electrical network; (3) ensure that information relating to a customer's choice of retail electric provider is conveyed in a timely manner to the persons who need information; and (4) ensure that electricity production and delivery are accurately accounted for among the generators and wholesale buyers and sellers in the power region. The commission has certified the Electric Reliability Council of Texas (ERCOT) under PURA §39.151.

ARM states that ERCOT is a private entity exercising governmental functions. ARM advises that the Texas Supreme Court has held that

the Legislature may not constitutionally delegate governmental authority to a private entity, *e.g.* ERCOT, unless the private entity's actions are subject to meaningful review by a state agency or other branch of state government. ARM states that neither the Legislature nor the commission has provided any procedure for an aggrieved party to obtain commission review of adverse decisions rendered by ERCOT or another independent organization certified under PURA §39.151. ARM further states that while the commission has represented that it will review ERCOT's activities generally, the commission has not described the standards it will apply in reviewing decisions by entities certified under PURA §39.151. ARM asserts that this lack of procedures and standards pose a threat to the commission's exclusive jurisdiction to review ERCOT decisions and results in uncertainty that adversely affects both ERCOT and market participants.

Comments on the petition may be filed no later than 3:00 p.m. on Friday, October 19, 2001. Copies of the petition may be obtained from the commission's Central Records, William B. Travis Building, 1701 North Congress Avenue, PO Box 13326, Austin, Texas 78711-3326, or through the Interchange on the commission's web site at www.puc.state.tx.us. All inquiries and comments concerning this petition for rulemaking should refer to Project Number 24700.

TRD-200105621
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: September 19, 2001

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Notice of Petition for Rulemaking to Amend §26.344 Related to Pay Telephone Service Requirements

The Public Utility Commission of Texas (commission) received a petition for rulemaking on September 14, 2001, from Texas Payphone Association, Inc. (TPA) to amend substantive rule §26.344 relating to Pay Telephone Service Requirements. The petition is assigned Project Number 24686, *Petition of Texas Payphone Association, Inc. to Amend Subst. R. §26.344(d)(1)(E).* Under the Administrative Procedure Act, Texas Government Code §2001.021, the commission shall either deny the petition in writing, stating its reasons for denial, or initiate a rulemaking proceeding not later than the 60th day after the date the petition is filed.

Subsection (d)(1)(E) currently states that pay telephone service providers shall not impose a time limit on local calls. TPA's petition states that this provision is in violation of the Federal Telecommunications Act of 1996 (FTA) §276 and the Federal Communications Commission (FCC) orders in CC Docket Number 96-128, Order Number 96-388. Although TPA proposes to delete §26.344(d)(1)(E) in its entirety, TPA states that it would not oppose an amendment to subsection (d)(1)(E) that stated pay telephone service providers shall "not impose a time limit on local calls of less than five minutes."

In support of its proposed amendment, TPA states that FTA §276 directed the FCC to establish regulations to promote the widespread deployment of payphone service to the benefit of the general public. In addition, TPA states that Congress expressly stated that to the extent that any state requirements are inconsistent with FCC regulations, the FCC's regulations on such matters preempt state requirements. TPA states that FCC Order Number 96-388 concluded that the compensation for a local call be deregulated to let the market set the price for individual calls originating on payphones and that all components that generate the total compensation for a local call were deregulated. TPA asserts that the commission has restricted the total compensation for local calls to a single flat rate in contradiction to the FCC order. TPA further states the commission's rule is inconsistent with the vast majority of other states' rules regulating pay telephone service providers.

Comments on the petition may be filed no later than 3:00 p.m. on Friday, October 19, 2001. Copies of the petition may be obtained from the commission's Central Records, William B. Travis Building, 1701 North Congress Avenue, P.O. Box 13326, Austin, Texas 78711-3326, or through the Interchange on the commission's web site at www.puc.state.tx.us. All inquiries and comments concerning this petition for rulemaking should refer to Project Number 24686.

TRD-200105587
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: September 18, 2001

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Public Notice of Amendment to Interconnection Agreement

On September 10, 2001, Allegiance Telecom of Texas, Inc. and Verizon Southwest, collectively referred to as applicants, filed a joint application for approval of amendment to an existing interconnection agreement under Section 252(i) of the federal Telecommunications Act of 1996, Public Law Number 104-104, 110 Statute 56, (codified as amended in scattered sections of 15 and 47 United States Code) (FTA) and the Public Utility Regulatory Act, Texas Utilities Code Annotated, Chapters 52 and 60 (Vernon 1998 & Supplement 2001) (PURA). The joint application has been designated Docket Number 24648. The joint application and the underlying interconnection agreement are available for public inspection at the commission's offices in Austin, Texas.

The commission must act to approve the interconnection agreement within 35 days after it is submitted by the parties.

The commission finds that additional public comment should be allowed before the commission issues a final decision approving or rejecting the amendment to the interconnection agreement. Any interested person may file written comments on the joint application by filing ten copies of the comments with the commission's filing clerk. Additionally, a copy of the comments should be served on each of the applicants. The comments should specifically refer to Docket Number 24648. As a part of the comments, an interested person may request that a public hearing be conducted. The comments, including any request for public hearing, shall be filed by October 11, 2001, and shall include:

1) a detailed statement of the person's interests in the agreement, including a description of how approval of the agreement may adversely affect those interests;

2) specific allegations that the agreement, or some portion thereof:

a) discriminates against a telecommunications carrier that is not a party to the agreement; or

b) is not consistent with the public interest, convenience, and necessity; or

c) is not consistent with other requirements of state law; and

3) the specific facts upon which the allegations are based.

After reviewing any comments, the commission will issue a notice of approval, denial, or determine whether to conduct further proceedings concerning the joint application. The commission shall have the authority given to a presiding officer pursuant to P.U.C. Procedural Rule §22.202. The commission may identify issues raised by the joint application and comments and establish a schedule for addressing those

issues, including the submission of evidence by the applicants, if necessary, and briefing and oral argument. The commission may conduct a public hearing. Interested persons who file comments are not entitled to participate as intervenors in the public hearing.

Persons with questions about this project or who wish to comment on the joint application should contact the Public Utility Commission of Texas, 1701 North Congress Avenue, P. O. Box 13326, Austin, Texas 78711-3326. You may call the commission's Customer Protection Division at (512) 936-7120 or toll free at 1-888-782-8477. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136. All correspondence should refer to Docket Number 24648.

TRD-200105567
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: September 17, 2001

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Public Notice of Amendment to Interconnection Agreement

On September 12, 2001, Sprint Communications Company, LP and Verizon Southwest, collectively referred to as applicants, filed a joint application for approval of amendment to an existing interconnection agreement under Section 252(i) of the federal Telecommunications Act of 1996, Public Law Number 104-104, 110 Statute 56, (codified as amended in scattered sections of 15 and 47 United States Code) (FTA) and the Public Utility Regulatory Act, Texas Utilities Code Annotated, Chapters 52 and 60 (Vernon 1998 & Supplement 2001) (PURA). The joint application has been designated Docket Number 24669. The joint application and the underlying interconnection agreement are available for public inspection at the commission's offices in Austin, Texas.

The commission must act to approve the interconnection agreement within 35 days after it is submitted by the parties.

The commission finds that additional public comment should be allowed before the commission issues a final decision approving or rejecting the amendment to the interconnection agreement. Any interested person may file written comments on the joint application by filing ten copies of the comments with the commission's filing clerk. Additionally, a copy of the comments should be served on each of the applicants. The comments should specifically refer to Docket Number 24669. As a part of the comments, an interested person may request that a public hearing be conducted. The comments, including any request for public hearing, shall be filed by October 15, 2001, and shall include:

1) a detailed statement of the person's interests in the agreement, including a description of how approval of the agreement may adversely affect those interests;

2) specific allegations that the agreement, or some portion thereof:

a) discriminates against a telecommunications carrier that is not a party to the agreement; or

b) is not consistent with the public interest, convenience, and necessity; or

c) is not consistent with other requirements of state law; and

3) the specific facts upon which the allegations are based.

After reviewing any comments, the commission will issue a notice of approval, denial, or determine whether to conduct further proceedings concerning the joint application. The commission shall have the authority given to a presiding officer pursuant to P.U.C. Procedural Rule §22.202. The commission may identify issues raised by the joint application and comments and establish a schedule for addressing those issues, including the submission of evidence by the applicants, if necessary, and briefing and oral argument. The commission may conduct a public hearing. Interested persons who file comments are not entitled to participate as intervenors in the public hearing.

Persons with questions about this project or who wish to comment on the joint application should contact the Public Utility Commission of Texas, 1701 North Congress Avenue, P. O. Box 13326, Austin, Texas 78711-3326. You may call the commission's Customer Protection Division at (512) 936-7120 or toll free at 1-888-782-8477. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136. All correspondence should refer to Docket Number 24669.

TRD-200105579
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: September 18, 2001

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Public Notice of Amendment to Interconnection Agreement

On September 13, 2001, Southwestern Bell Telephone Company and Central Texas Technologies, LP, collectively referred to as Applicants, filed a joint application for approval of amendment to an existing interconnection agreement under Section 252(i) of the federal Telecommunications Act of 1996, Public Law Number 104-104, 110 Statute 56, (codified as amended in scattered sections of 15 and 47 United States Code) (FTA) and the Public Utility Regulatory Act, Texas Utilities Code Annotated, Chapters 52 and 60 (Vernon 2000 & Supplement 2001) (PURA). The joint application has been designated Docket Number 24679. The joint application and the underlying interconnection agreement are available for public inspection at the commission's offices in Austin, Texas.

The commission must act to approve the interconnection agreement within 35 days after it is submitted by the parties.

The commission finds that additional public comment should be allowed before the commission issues a final decision approving or rejecting the amendment to the interconnection agreement. Any interested person may file written comments on the joint application by filing ten copies of the comments with the commission's filing clerk. Additionally, a copy of the comments should be served on each of the applicants. The comments should specifically refer to Docket Number 24679. As a part of the comments, an interested person may request that a public hearing be conducted. The comments, including any request for public hearing, shall be filed by October 15, 2001, and shall include:

1) a detailed statement of the person's interests in the agreement, including a description of how approval of the agreement may adversely affect those interests;

2) specific allegations that the agreement, or some portion thereof:

a) discriminates against a telecommunications carrier that is not a party to the agreement; or

b) is not consistent with the public interest, convenience, and necessity; or

c) is not consistent with other requirements of state law; and

3) the specific facts upon which the allegations are based.

After reviewing any comments, the commission will issue a notice of approval, denial, or determine whether to conduct further proceedings concerning the joint application. The commission shall have the authority given to a presiding officer pursuant to P.U.C. Procedural Rule §22.202. The commission may identify issues raised by the joint application and comments and establish a schedule for addressing those issues, including the submission of evidence by the applicants, if necessary, and briefing and oral argument. The commission may conduct a public hearing. Interested persons who file comments are not entitled to participate as intervenors in the public hearing.

Persons with questions about this project or who wish to comment on the joint application should contact the Public Utility Commission of Texas, 1701 North Congress Avenue, P. O. Box 13326, Austin, Texas 78711-3326. You may call the commission's Customer Protection Division at (512) 936-7120 or toll free at 1-888-782-8477. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136. All correspondence should refer to Docket Number 24679.

TRD-200105584
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: September 18, 2001

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Public Notice of Amendment to Interconnection Agreement

On September 14, 2001, Southwestern Bell Telephone Company and Carrera Communications, LP, collectively referred to as applicants, filed a joint application for approval of amendment to an existing interconnection agreement under Section 252(i) of the federal Telecommunications Act of 1996, Public Law Number 104-104, 110 Statute 56, (codified as amended in scattered sections of 15 and 47 United States Code) (FTA) and the Public Utility Regulatory Act, Texas Utilities Code Annotated, Chapters 52 and 60 (Vernon 1998 & Supplement 2001) (PURA). The joint application has been designated Docket Number 24689. The joint application and the underlying interconnection agreement are available for public inspection at the commission's offices in Austin, Texas.

The commission must act to approve the interconnection agreement within 35 days after it is submitted by the parties.

The commission finds that additional public comment should be allowed before the commission issues a final decision approving or rejecting the amendment to the interconnection agreement. Any interested person may file written comments on the joint application by filing ten copies of the comments with the commission's filing clerk. Additionally, a copy of the comments should be served on each of the applicants. The comments should specifically refer to Docket Number 24689. As a part of the comments, an interested person may request that a public hearing be conducted. The comments, including any request for public hearing, shall be filed by October 15, 2001, and shall include:

1) a detailed statement of the person's interests in the agreement, including a description of how approval of the agreement may adversely affect those interests;

2) specific allegations that the agreement, or some portion thereof:

a) discriminates against a telecommunications carrier that is not a party to the agreement; or

b) is not consistent with the public interest, convenience, and necessity; or

c) is not consistent with other requirements of state law; and

3) the specific facts upon which the allegations are based.

After reviewing any comments, the commission will issue a notice of approval, denial, or determine whether to conduct further proceedings concerning the joint application. The commission shall have the authority given to a presiding officer pursuant to P.U.C. Procedural Rule §22.202. The commission may identify issues raised by the joint application and comments and establish a schedule for addressing those issues, including the submission of evidence by the applicants, if necessary, and briefing and oral argument. The commission may conduct a public hearing. Interested persons who file comments are not entitled to participate as intervenors in the public hearing.

Persons with questions about this project or who wish to comment on the joint application should contact the Public Utility Commission of Texas, 1701 North Congress Avenue, P.O. Box 13326, Austin, Texas 78711-3326. You may call the commission's Customer Protection Division at (512) 936-7120 or toll free at 1-888-782-8477. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136. All correspondence should refer to Docket Number 24689.

TRD-200105588
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: September 18, 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. Verizon Southwest's Application for Approval of LRIC Study for COPTS/COPTS Coin Service Charges Pursuant to P.U.C. Substantive Rule §26.215 on or about September 24, 2001, Docket Number 24678.

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 24678. 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-200105569
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: September 17, 2001

♦ ♦ ♦

Public Notice of Interconnection Agreement

On September 13, 2001, United Telephone Company of Texas, Inc., doing business as Sprint, Central Telephone Company of Texas doing business as Sprint (collectively, Sprint), and New Edge Network, Inc.,

collectively referred to as applicants, filed a joint application for approval of interconnection agreement under Section 252(i) of the federal Telecommunications Act of 1996, Public Law Number 104-104, 110 Statute 56, (codified as amended in scattered sections of 15 and 47 United States Code) (FTA) and the Public Utility Regulatory Act, Texas Utilities Code Annotated, Chapters 52 and 60 (Vernon 1998 & Supplement 2001) (PURA). The joint application has been designated Docket Number 24674. The joint application and the underlying interconnection agreement are available for public inspection at the commission's offices in Austin, Texas.

The commission must act to approve the interconnection agreement within 35 days after it is submitted by the parties.

The commission finds that additional public comment should be allowed before the commission issues a final decision approving or rejecting the interconnection agreement. Any interested person may file written comments on the joint application by filing ten copies of the comments with the commission's filing clerk. Additionally, a copy of the comments should be served on each of the applicants. The comments should specifically refer to Docket Number 24674. As a part of the comments, an interested person may request that a public hearing be conducted. The comments, including any request for public hearing, shall be filed by October 15, 2001, and shall include:

1) a detailed statement of the person's interests in the agreement, including a description of how approval of the agreement may adversely affect those interests;

2) specific allegations that the agreement, or some portion thereof:

a) discriminates against a telecommunications carrier that is not a party to the agreement; or

b) is not consistent with the public interest, convenience, and necessity; or

c) is not consistent with other requirements of state law; and

3) the specific facts upon which the allegations are based.

After reviewing any comments, the commission will issue a notice of approval, denial, or determine whether to conduct further proceedings concerning the joint application. The commission shall have the authority given to a presiding officer pursuant to P.U.C. Procedural Rule §22.202. The commission may identify issues raised by the joint application and comments and establish a schedule for addressing those issues, including the submission of evidence by the applicants, if necessary, and briefing and oral argument. The commission may conduct a public hearing. Interested persons who file comments are not entitled to participate as intervenors in the public hearing.

Persons with questions about this project or who wish to comment on the joint application should contact the Public Utility Commission of Texas, 1701 North Congress Avenue, P. O. Box 13326, Austin, Texas 78711-3326. You may call the commission's Customer Protection Division at (512) 936-7120 or toll free at 1-888-782-8477. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136. All correspondence should refer to Docket Number 24674.

TRD-200105580
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: September 18, 2001

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Public Notice of Interconnection Agreement

On September 13, 2001, United Telephone Company of Texas, Inc., doing business as Sprint, Central Telephone Company of Texas doing business as Sprint (collectively, Sprint), and 1-800-Reconex, Inc., collectively referred to as applicants, filed a joint application for approval of interconnection agreement under Section 252(i) of the federal Telecommunications Act of 1996, Public Law Number 104-104, 110 Statute 56, (codified as amended in scattered sections of 15 and 47 United States Code) (FTA) and the Public Utility Regulatory Act, Texas Utilities Code Annotated, Chapters 52 and 60 (Vernon 1998 & Supplement 2001) (PURA). The joint application has been designated Docket Number 24675. The joint application and the underlying interconnection agreement are available for public inspection at the commission's offices in Austin, Texas.

The commission must act to approve the interconnection agreement within 35 days after it is submitted by the parties.

The commission finds that additional public comment should be allowed before the commission issues a final decision approving or rejecting the interconnection agreement. Any interested person may file written comments on the joint application by filing ten copies of the comments with the commission's filing clerk. Additionally, a copy of the comments should be served on each of the applicants. The comments should specifically refer to Docket Number 24675. As a part of the comments, an interested person may request that a public hearing be conducted. The comments, including any request for public hearing, shall be filed by October 15, 2001, and shall include:

1) a detailed statement of the person's interests in the agreement, including a description of how approval of the agreement may adversely affect those interests;

2) specific allegations that the agreement, or some portion thereof:

a) discriminates against a telecommunications carrier that is not a party to the agreement; or

b) is not consistent with the public interest, convenience, and necessity; or

c) is not consistent with other requirements of state law; and

3) the specific facts upon which the allegations are based.

After reviewing any comments, the commission will issue a notice of approval, denial, or determine whether to conduct further proceedings concerning the joint application. The commission shall have the authority given to a presiding officer pursuant to P.U.C. Procedural Rule §22.202. The commission may identify issues raised by the joint application and comments and establish a schedule for addressing those issues, including the submission of evidence by the applicants, if necessary, and briefing and oral argument. The commission may conduct a public hearing. Interested persons who file comments are not entitled to participate as intervenors in the public hearing.

Persons with questions about this project or who wish to comment on the joint application should contact the Public Utility Commission of Texas, 1701 North Congress Avenue, P. O. Box 13326, Austin, Texas 78711-3326. You may call the commission's Customer Protection Division at (512) 936-7120 or toll free at 1-888-782-8477. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136. All correspondence should refer to Docket Number 24675.

TRD-200105581
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: September 18, 2001

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Public Notice of Interconnection Agreement

On September 13, 2001, Paramount Communications, Inc. doing business as Segurotel and Verizon Southwest, collectively referred to as applicants, filed a joint application for approval of interconnection agreement under Section 252(i) of the federal Telecommunications Act of 1996, Public Law Number 104-104, 110 Statute 56, (codified as amended in scattered sections of 15 and 47 United States Code) (FTA) and the Public Utility Regulatory Act, Texas Utilities Code Annotated, Chapters 52 and 60 (Vernon 1998 & Supplement 2001) (PURA). The joint application has been designated Docket Number 24676. The joint application and the underlying interconnection agreement are available for public inspection at the commission's offices in Austin, Texas.

The commission must act to approve the interconnection agreement within 35 days after it is submitted by the parties.

The commission finds that additional public comment should be allowed before the commission issues a final decision approving or rejecting the interconnection agreement. Any interested person may file written comments on the joint application by filing ten copies of the comments with the commission's filing clerk. Additionally, a copy of the comments should be served on each of the applicants. The comments should specifically refer to Docket Number 24676. As a part of the comments, an interested person may request that a public hearing be conducted. The comments, including any request for public hearing, shall be filed by October 15, 2001, and shall include:

1) a detailed statement of the person's interests in the agreement, including a description of how approval of the agreement may adversely affect those interests;

2) specific allegations that the agreement, or some portion thereof:

a) discriminates against a telecommunications carrier that is not a party to the agreement; or

b) is not consistent with the public interest, convenience, and necessity; or

c) is not consistent with other requirements of state law; and

3) the specific facts upon which the allegations are based.

After reviewing any comments, the commission will issue a notice of approval, denial, or determine whether to conduct further proceedings concerning the joint application. The commission shall have the authority given to a presiding officer pursuant to P.U.C. Procedural Rule §22.202. The commission may identify issues raised by the joint application and comments and establish a schedule for addressing those issues, including the submission of evidence by the applicants, if necessary, and briefing and oral argument. The commission may conduct a public hearing. Interested persons who file comments are not entitled to participate as intervenors in the public hearing.

Persons with questions about this project or who wish to comment on the joint application should contact the Public Utility Commission of Texas, 1701 North Congress Avenue, P. O. Box 13326, Austin, Texas 78711-3326. You may call the commission's Customer Protection Division at (512) 936-7120 or toll free at 1-888-782-8477. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136. All correspondence should refer to Docket Number 24676.

TRD-200105582

Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: September 18, 2001

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Public Notice of Interconnection Agreement

On September 13, 2001, IG2, Inc. doing business as Internet Generation II, Inc. and Verizon Southwest, collectively referred to as applicants, filed a joint application for approval of interconnection agreement under Section 252(i) of the federal Telecommunications Act of 1996, Public Law Number 104-104, 110 Statute 56, (codified as amended in scattered sections of 15 and 47 United States Code) (FTA) and the Public Utility Regulatory Act, Texas Utilities Code Annotated, Chapters 52 and 60 (Vernon 1998 & Supplement 2001) (PURA). The joint application has been designated Docket Number 24677. The joint application and the underlying interconnection agreement are available for public inspection at the commission's offices in Austin, Texas.

The commission must act to approve the interconnection agreement within 35 days after it is submitted by the parties.

The commission finds that additional public comment should be allowed before the commission issues a final decision approving or rejecting the interconnection agreement. Any interested person may file written comments on the joint application by filing ten copies of the comments with the commission's filing clerk. Additionally, a copy of the comments should be served on each of the applicants. The comments should specifically refer to Docket Number 24677. As a part of the comments, an interested person may request that a public hearing be conducted. The comments, including any request for public hearing, shall be filed by October 15, 2001, and shall include:

1) a detailed statement of the person's interests in the agreement, including a description of how approval of the agreement may adversely affect those interests;

2) specific allegations that the agreement, or some portion thereof:

a) discriminates against a telecommunications carrier that is not a party to the agreement; or

b) is not consistent with the public interest, convenience, and necessity; or

c) is not consistent with other requirements of state law; and

3) the specific facts upon which the allegations are based.

After reviewing any comments, the commission will issue a notice of approval, denial, or determine whether to conduct further proceedings concerning the joint application. The commission shall have the authority given to a presiding officer pursuant to P.U.C. Procedural Rule §22.202. The commission may identify issues raised by the joint application and comments and establish a schedule for addressing those issues, including the submission of evidence by the applicants, if necessary, and briefing and oral argument. The commission may conduct a public hearing. Interested persons who file comments are not entitled to participate as intervenors in the public hearing.

Persons with questions about this project or who wish to comment on the joint application should contact the Public Utility Commission of Texas, 1701 North Congress Avenue, P. O. Box 13326, Austin, Texas 78711-3326. You may call the commission's Customer Protection Division at (512) 936-7120 or toll free at 1-888-782-8477. Hearing and speech-impaired individuals with text telephones (TTY) may contact

the commission at (512) 936-7136. All correspondence should refer to Docket Number 24677.

TRD-200105583
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: September 18, 2001

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Public Notice of Workshop on Implementation of HB 2388 and Request for Comments

The Public Utility Commission of Texas (commission) will hold a workshop regarding the implementation of House Bill 2388, 77th Texas Legislature (HB 2388), on Wednesday, October 17, 2001 at 1:30 p.m. in the Commissioner's Hearing Room, located on the 7th floor of the William B. Travis Building, 1701 North Congress Avenue, Austin, Texas 78701. Project Number 24519, *Rulemaking to Implement HB 2388, 77th Leg., Provision of Telecommunications Services to an Area Not Included in a Certificated Service Area*, has been established for this proceeding. Prior to the workshop, the commission requests interested persons file comments on the following questions:

1. Section 56.205 requires the commission hold an evidentiary hearing to determine which provider will be designated to service the petitioned premises. Should all providers eligible to be designated submit cost studies and rate structures prior to or during the hearing? Should all providers eligible to be designated submit a construction schedule prior to or during the hearing? Should the commission's rule specify other documents or information to be provided by providers prior to or during the hearing?

2. Section 56.206 states that the commission shall deny a petition if the commission determines that services cannot be extended to the petitioning premises at a reasonable cost. How should the commission determine what is a reasonable cost?

3. Section 56.209 allows the provider to recover its actual costs of providing service. How should the commission evaluate estimated costs presented at the hearing? What should trigger a review of excessive actual costs versus estimated costs prior to reimbursement from the state universal service fund? How should actual costs be verified prior to reimbursement?

4. Section 56.210 requires that the commission establish a reasonable aid to construction charge, not to exceed $3,000, to be assessed each petitioner. Please comment on what guidelines should be used to determine the assessment to each petitioner. Possible guidelines may include: (a) individual income(s) of the petitioner(s); (b) median income of the petitioning area; and/or (c) original and actual cost of providing service.

5. Sections 56.212 and 56.213 use the phrase "reasonable proximity" with respect to subsequent filed petitions. How should the commission interpret "reasonable proximity"?

6. Please provide an analysis of the legal basis for allowing commission staff to process petitions administratively in the event an eligible provider volunteers to provide service to the petitioned premises.

Responses may be filed by submitting 16 copies to the commission's Filing Clerk, Public Utility Commission of Texas, 1701 North Congress Avenue, P.O. Box 13326, Austin, Texas 78711-3326 within 14 days of the date of publication of this notice. All responses should reference Project Number 24519.

Questions concerning the workshop or this notice should be referred to Jennifer Fagan, Legal Division, (512) 936-7278; Raj Rajagopal, Telecommunications Division, (512) 936-7392; or Gordon Van Sickle, Telecommunications Division, (512) 936-7343. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136.

TRD-200105589
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: September 18, 2001

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Workshop on Rulemaking Regarding High Cost Assistance to a Telecommunication Provider that Volunteers to Provide Voice-Grade Service in an Uncertificated Service Area

On Wednesday, October 17, 2001, the commission will hold a workshop on Project Number 24527, *Rulemaking Regarding High Cost Assistance to a Telecommunications Provider That Volunteers to Provide Voice-Grade Service in an Uncertificated Service Area*. The workshop will begin at 9:00 a.m. in the Commissioners' Hearing Room located on the seventh floor of the William B. Travis Building, 1701 North Congress Avenue, Austin, Texas 78701. Before the workshop commences, the commission requests that interested persons file comments addressing the questions below. Both substantive and procedural aspects of implementing this proposal will be open for discussion at the workshop. The workshop agenda will not be confined solely to questions proposed by the commission staff; a portion of the workshop will be reserved for open discussion of general or specific issues of interest to attendees.

Questions for comment:

1. What alternatives exist for the computation of per/line high cost assistance, and is there a specific methodology that should be utilized for the computation of TUSF support?

2. Would high cost support be calculated on the basis of the average high-cost assistance provided in all of the exchanges contiguous to the uncertificated area? Please indicate why you would or would not support such a calculation.

3. For uncertificated areas addressed under this rulemaking, should a wireless local loop be established as a "strictly" fixed station arrangement for the purpose of universal service support?

4. In order to implement this rule, should the commission initiate a generic proceeding for all uncertificated areas in the state or should the commission address implementation based on a petition filed by an Eligible Telecommunications Provider (ETP) for a specifically identified uncertificated area?

Sixteen copies of comments may be filed with the commission's Filing Clerk, Public Utility Commission of Texas, 1701 North Congress Avenue, P.O. Box 13326, Austin, Texas 78711- 3326 within 14 days of the date of publication of the *Texas Register* notice regarding these questions. All comments should reference Project Number 24527. On or before October 15, 2001, the commission will file an agenda for the workshop, which will be available in Central Records under Project Number 24527. Copies of the agenda will also be available at the workshop.

Questions concerning Project Number 24527 may be referred to John Costello, Telecommunications Division, (512) 936-7377, Tina Ghabel, Policy Development Division, (512) 936-7257 or Jennifer Fagan, Legal Division, (512) 936-7278. Hearing and speech- impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136.

TRD-200105585
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: September 18, 2001

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Stephen F. Austin State University

Notice of Availability of Consulting Services Contract

This request for consulting services is filed under the provisions of the Government Code, Chapter 2254.

Stephen F. Austin State University, Nacogdoches, Texas, requests proposals from fundraising consulting firms to undertake a feasibility study for the College of Fine Arts.

The College of Fine Arts has identified four areas of need in the College, at an estimated cost of $12,000,000.00, that cannot be expected to be funded through state/University funds or traditional giving. These areas are: 1) Renovation and maintenance of existing facilities, 2) Construction of a new performance theatre, 3) Establishment of a scholarship endowment, 4) Establishment of an equipment fund. A feasibility study is needed to determine whether the proposed campaign is feasible, what portions are feasible, what time line is reasonable, and how to proceed efficiently.

The consultant selected for this project must evidence, through previous experience with similar projects or through a comprehensive set of references, the skills, qualifications, knowledge, and experience necessary to complete the project on a timely basis subject to the University's requirements and available funds. The firm or individual selected to perform this project will be chosen on the basis of competitive proposals received in response to this request for proposals.

Proposals must be received in the office of Dr. Richard Berry, Dean of the College of Fine Arts, Stephen F. Austin State University, P. O. Box 13022, 1936 North Street, Nacogdoches, Texas 75962 by October 15, 2001 in order to be considered. Please contact Dr. Berry at (936) 468-2801 for further information.

TRD-200105592
R. Yvette Clark
General Counsel
Stephen F. Austin State University
Filed: September 18, 2001

♦ ♦ ♦

Texas Water Development Board

Notice of Public Hearing

An attorney with the Texas Water Development Board (Board) will conduct two public hearings beginning at: 1:00 p.m. and at 6:30 p.m. on November 1, 2001, in Room 118, Stephen F. Austin Building, 1700 North Congress Avenue, Austin, Texas 78701 to receive public comment on the draft of the 2002 State Water Plan in accordance with 31 TAC §358.3(a). The Board will consider adopting the draft 2002 State Water Plan at its regular Board meeting on December 12, 2001 at 9:00 a.m., at the same location.

Interested persons are encouraged to attend the hearing and to present relevant and material comments concerning the State Water Plan. In addition, persons may provide written comments on or before November 12, 2001 to Phyllis Thomas, Office of Planning, Texas Water Development Board, P.O. Box 13231, Capitol Station, Austin, Texas 78711 or by email to phyllis@twdb.state.tx.us. Copies of the draft 2002 State Water Plan will be available for inspection in Room 472C of the Stephen F. Austin Building from the Water Resources Planning Division, Texas Water Development Board, 1700 North Congress Avenue, Austin, Texas, 78701, 512/463-3154. A copy will also be available on the Board's web site at http://www.twdb.state.tx.us.

TRD-200105626
Suzanne Schwartz
General Counsel
Texas Water Development Board
Filed: September 19, 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).

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