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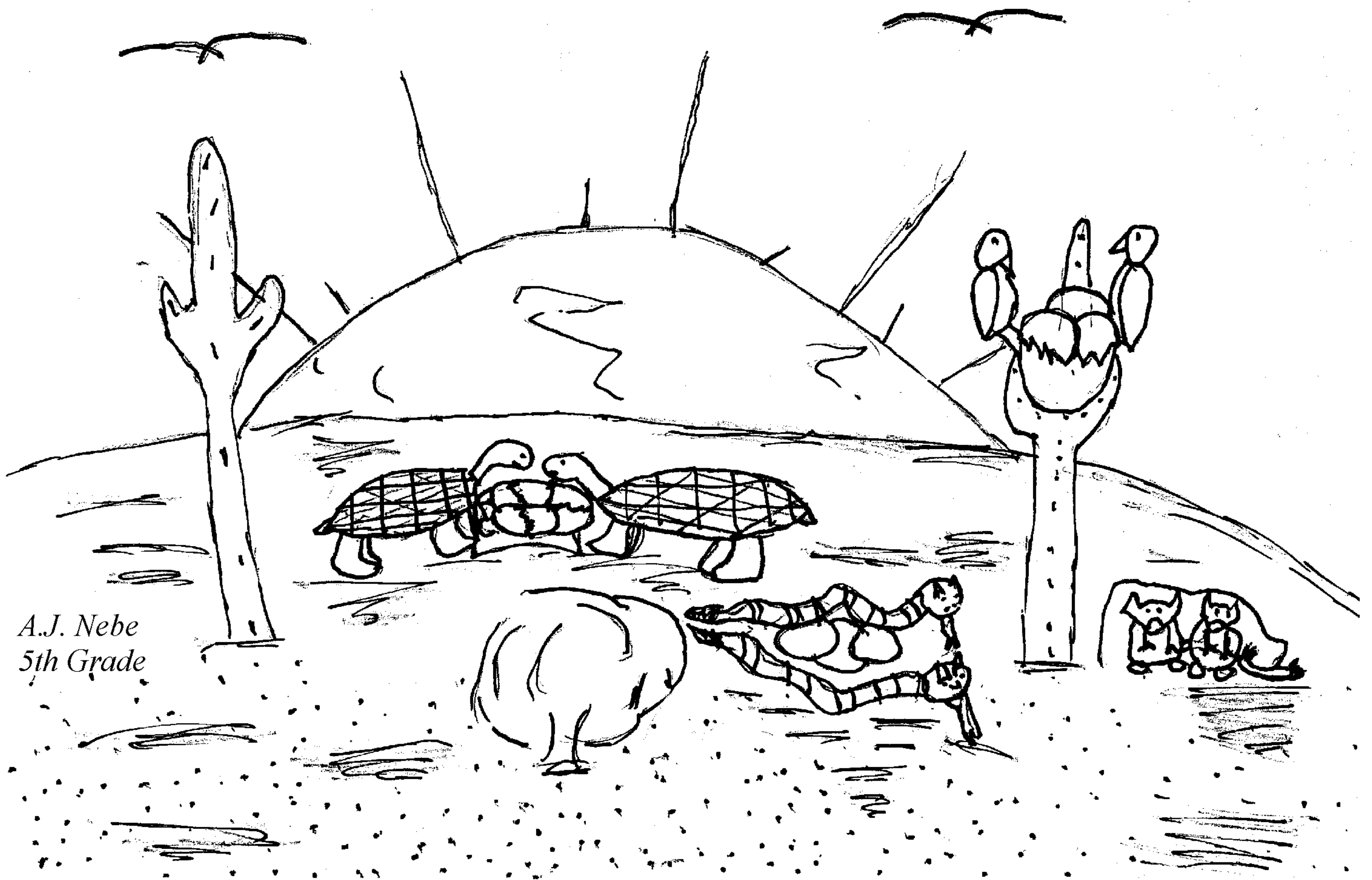

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Open Meetings

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

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

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

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

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

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

THE GOVERNOR

As required by Government Code, §2002.011(4), the *Texas Register* publishes executive orders issued by the Governor of Texas. Appointments and proclamations are also published. Appointments are published in chronological order. Additional information on documents submitted for publication by the Governor's Office can be obtained by calling (512) 463-1828.

Appointments

Appointments for September 26, 2002

Designated as Presiding Officer of the Interagency Council of Autism and Pervasive Developmental Disorders, pursuant to SB 361, 77th Legislature, for a term at the pleasure of the Governor, Margaret Hasse Cowen of San Antonio.

Appointed to the Interagency Council on Autism and Pervasive Developmental Disorders, pursuant to SB 361, 77th Legislature, for terms to expire on February 1, 2003, Lora Bennett of Austin, Patrick H. Herndon of Spicewood, Opal Irvin of Dimebox, Margaret Hasse Cowen of San Antonio, Richard E. Garnett, Ph.D. of Fort Worth, Barbara N. Villanueva of Plano.

Appointed to the Commission on Uniform State Laws, effective October 1, 2002, for terms to expire on September 30, 2008, Peter K. Munson of Pottsboro, Rodney Wayne Satterwhite of Midland, Karen Roberts Washington of Dallas. All three individuals are being reappointed.

Appointed to the Texas Commission for Volunteerism and Community Service for terms to expire on April 1, 2004, Don Bostic of El Paso (replacing Robert Horton of Austin whose name was withdrawn), David B. Jones of Houston (replacing Marcus Cosby of Houston who resigned).

Appointed to the Texas Commission for Volunteerism and Community Service for terms to expire on April 1, 2005, Gregorio Flores, III of San Antonio (replacing Amy Meadows of Dallas whose term expired), Randi Shade of Austin (replacing Rosemary Mauk of Fort Worth whose term expired).

Appointments for September 27, 2002

Appointed to the Texas Commission on Jail Standards for a term to expire on January 31, 2005, Michael M. Seale, M.D. of Houston (replacing Adela Valdez of Harlingen who resigned).

Appointed to the Texas Commission on Jail Standards for terms to expire on January 31, 2007, William C. Morrow of Midland (replacing Lee Hamilton of Abilene who resigned), Charles J. Sebesta, Jr. of Caldwell (replacing Patrick Keel of Austin whose term expired).

Appointed to the Nueces River Authority Board of Directors for terms to expired on February 1, 2007, Joe M. Cantu of Pipe Creek (replacing Ernestine Carson of Barksdale whose term expired), Robert M. Dullnig of San Antonio (replacing Kay Lynn Theeck of Washington whose term expired), Eduardo L. Garcia of Corpus Christi (replacing James Dodson of Robstown whose term expired), Dan S. Leyendecker of Corpus Christi (replacing Ariel Garcia of Corpus Christi whose term expired), Patty Puig Mueller of Corpus Christi (reappointed), Scott James Petty of Hondo (replacing Hazel Graff of Hondo whose term expired).

Appointed to the Texas School Safety Center Board, pursuant to SB 430, 77th Legislature for terms to expire on February 1, 2003, Janace Ponder of Amarillo, Lucy Rubio of Corpus Christi, Judge Cheryl Lee Shannon of Dallas.

Appointed to the Texas School Safety Center Board, pursuant to SB 430, 77th Legislature for terms to expire on February 1, 2004, James M. Boyle Ed.D off Temple, Garry Edward Eoff of Brownwood, Jane A. Wetzel of Dallas.

Appointed to the School Safety Center Board, pursuant to SB 430, 77th Legislature, for a term to expire February 1, 2004, Charles A. Brawner of Katy.

Rick Perry, Governor

TRD-200206372

Appointments for October 1, 2002

Appointed to the Texas State Board of Medical Examiners for terms to expire on April 13, 2007, Thomas D. Kirksey, M.D. of Austin (reappointed), Eddie J. Miles, Jr. of San Antonio (reappointed).

Rick Perry, Governor

TRD-200206395

Executive Order

RP 19

Relating to the current appeal for blood donations in Texas.

WHEREAS, the Texas members of America's Blood Centers have issued an unprecedented joint appeal for blood donors, and

WHEREAS, although donated blood inventory levels vary across the state, severe shortages have disrupted non-emergency schedules in metropolitan areas such as Houston, Dallas, San Antonio, Fort Worth, and Austin; and

WHEREAS, the cause of this shortage has been linked to increased patient needs over the summer and challenges arising from recent donor travel restrictions imposed by the U. S. Food and Drug Administration; and

WHEREAS, donating blood provides a lifesaving service to patients with cancer, burns, transplants, or other surgeries;

NOW, THEREFORE, I, Rick Perry, Governor of the State of Texas, by virtue of the power and authority vested in me by the Constitution and laws of the State of Texas, do hereby order the following:

Each state agency in Texas is encouraged to allow their employees to take one hour of compensatory or vacation time to donate blood to address this current shortage.

This executive order supersedes all previous orders and shall remain in effect and in full force until modified, amended, rescinded, or superseded by me or by a succeeding Governor.

Given under my hand this the 25th day of September, 2002.

Rick Perry, Governor

TRD-200206373

Proclamation

BY THE GOVERNOR OF THE STATE OF TEXAS (41-2904)

TO ALL TO WHOM THESE PRESENTS SHALL COME:

BE IT KNOWN THAT I, RICK PERRY, GOVERNOR OF THE STATE OF TEXAS, DO HEREBY ORDER A GENERAL ELECTION to be held throughout the State of Texas on the first TUESDAY NEXT AFTER THE FIRST MONDAY IN NOVEMBER, 2002, same being the 5th day of NOVEMBER, 2002; and

NOTICE THEREOF IS HEREBY GIVEN to the people of Texas and to the COUNTY JUDGE of each county who is directed to cause said election to be held at each precinct in the county on such date for the purpose of electing Members of Congress, state and district officers, and Members of the Legislature, as required by Section 3.003 of the Texas Election Code.

IN TESTIMONY WHEREOF, I have hereunto signed my name and have officially caused the Seal of State to be affixed at my Office in the City of Austin, Texas, this the 25th day of September, 2002.

Rick Perry, Governor

TRD-200206374

Proclamation

BY THE GOVERNOR OF THE STATE OF TEXAS (41-2905)

TO ALL TO WHOM THESE PRESENTS SHALL COME:

WHEREAS, the 77th Regular Session of the Texas Legislature, convened in January of 2001 in accordance with Article III, Section 5 of the Texas Constitution and Section 301.001 of the Texas Government Code; and

WHEREAS, during that session, the legislature approved 20 joint resolutions by a vote of two-thirds of all the members of each House pursuant to Article XVII, Section 1 of the Texas Constitution; and

WHEREAS, pursuant to the terms of those resolutions and in accordance with the Texas Constitution, the Legislature has set the date of the election for voting on one of the resolutions to be November 5, 2002; and

WHEREAS, Section 3.003 of the Texas Election Code requires the election to be ordered by proclamation of the Governor;

NOW, THEREFORE, I, RICK PERRY, GOVERNOR OF THE STATE OF TEXAS, by the authority vested in me by the Constitution and Statutes of the State of Texas, do hereby order a special election to be held throughout the State of Texas on the FIRST TUESDAY AFTER THE FIRST MONDAY in NOVEMBER, 2002, the same being the FIFTH day of NOVEMBER, 2002; and,

NOTICE THEREOF IS HEREBY GIVEN to the COUNTY JUDGE of each county who is directed to cause said election to be held in the county on such date for the purpose of adopting or rejecting the constitutional amendment proposed by one joint resolution, as submitted by the 77th Legislature, Regular Session, of the State of Texas.

Pursuant to Section 274.001 of the Texas Election Code, the proposition for the joint resolution will appear as follows:

PROPOSITION 1

"The constitutional amendment authorizing the commissioners court of a county to declare the office of constable in a precinct to be dormant if the office has not been filled by election or appointment for a lengthy period and providing a procedure for the reinstatement of the office."

The Secretary of State shall take notice of this proclamation and shall mail a copy of this order immediately to every County Judge of this state and all appropriate writs will be issued and all proper proceedings will be followed to the end that said election may be held and its result proclaimed in accordance with law.

IN TESTIMONY WHEREOF, I have hereunto signed my name and have officially caused the Seal of State to be affixed at my Office in the City of Austin, Texas, this the 25th day of September, 2002.

Rick Perry, Governor

TRD-200206375

Proclamation

BY THE GOVERNOR OF THE STATE OF TEXAS (41-2906)

TO ALL TO WHOM THESE PRESENTS SHALL COME:

I, RICK PERRY, Governor of Texas, do hereby certify that a Hurricane Watch has been declared by the National Hurricane Center for the Texas Coast and that Hurricane Lili poses a threat of imminent disaster along the Texas Coast beginning October 1, 2002.

THEREFORE, in accordance with the authority vested in me by Section 418.014 of the Texas Government Code, I do hereby proclaim the existence of such threat and direct that all necessary measures, both public and private as authorized under Section 418.015 of the code, be implemented to meet that threat.

As provided in section 418.016, all rules and regulations that may inhibit or prevent prompt response to this threat are suspended for the duration of the incident.

In accordance with the Statutory requirements, copies of this proclamation shall be filed with the applicable authorities.

IN TESTIMONY WHEREOF, I have hereunto signed my name and have officially caused the Seal of State to be affixed at my Office in the City of Austin, Texas, this the 1st day of October, 2002.

Rick Perry, Governor

TRD-200206412

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.

Request for Opinions

RQ-0605

The Honorable Dib Waldrip, Comal County, Criminal District Attorney, 150 North Seguin, Suite 307, New Braunfels, Texas 78130

Re: Authority of a county to require the owner of a "junked vehicle" to erect a fence to screen the vehicle from public view (Request No. 0605-JC)

Briefs requested by October 27, 2002

RQ-0606

The Honorable Pete P. Gallego, Chair, Committee on General Investigating, Texas House of Representatives, P.O. Box 2910, Austin, Texas 78768-2910

Re: Authority of the Texas Education Agency to make multiple coordinated health programs available to elementary schools (Request No. 0606-JC)

Briefs requested by November 1, 2002

RQ-0607

Mr. Felipe T. Alanis, Commissioner of Education, Texas Education Agency, 1701 North Congress Avenue, Austin, Texas 78701-1494

Re: Relative authority of the State Board of Education and the Commissioner of Education with regard to the adoption of academic excellence evaluators and the evaluation of school districts under section 39 of the Education Code (Request No. 0607-JC)

Briefs requested by November 2, 2002

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

TRD-200206399
Susan D. Gusky
Assistant Attorney General
Office of the Attorney General
Filed: October 2, 2002

EMERGENCY RULES

Emergency Rules include new rules, amendments to existing rules, and the repeals of existing rules. A state agency may adopt an emergency rule without prior notice or hearing if the agency finds that an imminent peril to the public health, safety, or welfare, or a requirement of state or federal law, requires adoption of a rule on fewer than 30 days' notice. An emergency rule may be effective for not longer than 120 days and may be renewed once for not longer than 60 days (Government Code, §2001.034). An emergency rule may be effective for not longer than 120 days and may be renewed once for not longer than 60 days. (Government Code, §2001.034).

TITLE 4. AGRICULTURE

PART 1. TEXAS DEPARTMENT OF AGRICULTURE

CHAPTER 20. COTTON PEST CONTROL

SUBCHAPTER C. STALK DESTRUCTION PROGRAM

4 TAC §20.22

The Texas Department of Agriculture (the department) adopts on an emergency basis, an amendment to §20.22, concerning the authorized cotton destruction dates for Pest Management Zone 2 (Zone 2), and Pest Management Zone 3 (Zone 3), Area 1. A prior emergency amendment filed by the department on September 18, 2002, granted an extension until September 28, 2002, for Zone 2, Area 1 and Zone 2, Area 2 that includes all of Nueces and Kleberg County and the northern portion of Kenedy County encompassing the area above an east-west line through Katherine and Armstrong, Texas. That emergency amendment is now being amended to extend the cotton destruction deadline for the areas covered by Zone 2, Area 1 that includes Webb and Duval counties, and that portion of Zone 2, Area 2, including all of Nueces and Kleberg County and the northern portion of Kenedy County encompassing the area above an east-west line through Katherine and Armstrong, Texas; all of Jim Wells County, and Zone 2, Area 3, which includes Aransas and San Patricio counties and south and east of U.S. Highway 59 in Bee and Live Oak counties. In addition, the department is extending the destruction deadline for Zone 3, Area 1.The department is acting on behalf of cotton farmers in the affected areas of Zone 2 and Zone 3.

The current cotton destruction deadline is September 28, for Zone 2, Area 1, 2 and 3 is September 28. The destruction deadline for Zone 2, Area 4 and Zone 3, Area 1 is October 1. The destruction deadline will be extended through October 15, 2002 for all of Zone 2, Areas 1, 2, 3, and 4, and Zone 3, Area 1. The department believes that changing the cotton destruction date is both necessary and appropriate. This extension is effective only for the 2002 crop year.

Excessive amounts of rainfall have occurred across the cotton growing area of these two zones, preventing cotton producers from completing harvest and destruction of hostable cotton in a timely manner. A failure to act to extend the cotton destruction deadline could create a significant economic loss to Texas cotton producers in the counties in these zones and the state's economy.

The emergency amendment to §20.22(a) changes the date for cotton stalk destruction for all of Zone 2, Areas 1,2,3, and 4, and Zone 3, Area 1 thorough October 15, 2002.

The amendment is adopted on an emergency basis under the Texas Agriculture Code, §74.006, which provides the Texas Department of Agriculture with the authority to adopt rules as necessary for the effective enforcement and administration of Chapter 74, Subchapter A; §74.004, which provides the department with the authority to establish regulated areas, dates and appropriate methods of destruction of stalks, other parts, and products of host plants for cotton pests and provides the department with the authority to consider a request for a cotton destruction extension due to adverse weather conditions; and the Government Code, §2001.34, which provides for the adoption of administrative rules on an emergency basis, without notice and comment.

§20.22. Stalk Destruction Requirements.

(a) Deadlines and methods. All cotton plants in pest management zones 1-8 shall be rendered non-hostable by the stalk destruction dates indicated for the zone. Destruction shall periodically be performed to prevent the presence of fruiting structures. Destruction of all cotton plants in Zones 9 and 10 shall be accomplished by shredding and plowing and completely burying the stalk. Soil should be tilled to a depth of 2 or more inches in Zone 9 and to a depth of 6 or more inches in Zone 10.

Figure: 4 TAC §20.22 (a)

(b)-(d) (No Change.)

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

Filed with the Office of the Secretary of State on September 27, 2002.

TRD-200206319
Dolores Alvarado Hibbs
Deputy General Counsel
Texas Department of Agriculture
Effective Date: September 27, 2002
Expiration Date: October 17, 2002
For further information, please call: (512) 463-4075

PROPOSED RULES

Proposed rules include new rules, amendments to existing rules, and repeals of existing rules. A state agency shall give at least 30 days' notice of its intention to adopt a rule before it adopts the rule. A state agency shall give all interested persons a reasonable opportunity to submit data, views, or arguments, orally or in writing (Government Code, Chapter 2001).

Symbols in proposed rule text. Proposed new language is indicated by underlined text. [~~Square brackets and strikethrough~~] indicate existing rule text that is proposed for deletion. "(No change)" indicates that existing rule text at this level will not be amended.

TITLE 1. ADMINISTRATION

PART 3. OFFICE OF THE ATTORNEY GENERAL

CHAPTER 66. FAMILY TRUST FUND DISBURSEMENT PROCEDURES

The Office of the Attorney General (OAG) proposes the repeal of Title 1, Texas Administrative Code (TAC), Subchapter C, §§66.31, 66.39, 66.43, and 66.45; Subchapter E, §§66.71, 66.73, 66.79, 66.81, 66.83, 66.85, 66.87, 66.89, 66.91, and 66.97; and Subchapter F, §66.121, relating to the rules for the administration of the Family Trust Fund. The OAG also proposes new sections to Subchapter A, §66.2 and Subchapter E, §66.79.

The repealed and new sections of the proposed herein are necessary to ensure the more efficient disbursement of funds and administration of grants and contracts under the Family Trust Fund to assist families, pursuant to the Texas Family Code, Chapter 2, The Marriage Relationship, §2.014, Family Trust Fund. The Tex. Fam. Code, §2.014 reflects the Legislature's intent to provide public funds for the following purposes: (1) the development and distribution of a premarital education handbook; (2) grants to institutions of higher learning that conduct research on marriage and divorce to strengthen families and assist children whose parents are divorcing; (3) support for counties to create or administer free or low-cost premarital education courses; (4) programs that intend to reduce the amount of delinquent child support; and (5) other programs the OAG determines will assist families.

Pursuant to Texas Local Government Code §118.013(c) each county clerk shall remit $3 of the fee for a marriage license to the comptroller for deposit in the Family Trust Fund. Senate Bill No. 1, General Appropriations Act, 77th Leg. R. S., (2001), in Supplemental Appropriation Rider 22, appropriated these funds from the deposits of the marriage license fee to the OAG to carry out the duties outlined in Tex. Fam. Code §2.014. It is necessary for the OAG to adopt rules outlining the procedures for the administration and disbursement of these funds in a fair and accurate manner.

Grantees and entities that contract with the OAG to receive Family Trust Fund monies must comply with all applicable state and federal statutes, rules, regulations, and guidelines. The applicable federal and state provisions are addressed in detail in §§66.31, 66.39, 66.43, 66.45, 66.71, 66.73, 66.81, 66.83, 66.85, 66.87, 66.89, 66.91, 66.97, and 66.121. The OAG proposes new rule, in Subchapter A General Provisions and Eligibility, §66.2 Adoptions by Reference, which will adopt by reference all applicable state and federal statutes, rules, regulations, and guidelines in Uniform Grant Management Standards (UGMS), Chapter 783, Tex. Govt. Code (Title 3, TAC, §§5.141 - 5.167), and the Texas Review and Comment System (Title 1, TAC, §§5.191 et seq.). Adoption by reference eliminates the need to repeat the provisions in individual rules and therefore, the OAG proposes the repeal of the unnecessary and redundant sections. The adoption of new rule §66.2 will make redundant the listed rules to be repealed.

Additionally, the OAG proposes the repeal of Subchapter E Grant Adjustments, §66.79, and proposes a new rule, §66.79 Grant Adjustments. The repealed §66.79 defined a process for grant adjustments that was cumbersome and ineffective and that did not appropriately reflect actual practice. The proposed new rule will make the grant adjustment process simpler, more streamlined, and therefore, more efficient, and will more accurately reflect current practice.

Don Clemmer has determined that for the first five-year period the proposed rules are in effect, there will be no fiscal implications to the state or to local governments as a result of enforcing or administering the chapter as proposed.

Mr. Clemmer has determined that for the five-year period in which the proposed rules are in effect, the anticipated public benefit as a result of replacing or deleting these sections is the more efficient administration of the Family Trust Fund program by the OAG, as mandated by the Texas legislature, without increased costs to the state. The proposed rules will enable direct service providers to victims of crime to provide better services and assistance to the victims of crime.

Mr. Clemmer has also determined there will be no direct adverse effect on small businesses or micro-businesses because these rules do not apply to single businesses.

Mr. Clemmer further determined there will be no economic costs to persons required to comply with these rules.

Comments may be submitted, in writing, no later than 30 days from the date of this publication to Natalie Brown, Office of the Attorney General, (512) 463-0192, P.O. Box 12548, Austin, Texas 78711-2548 or by e-mail to natalie.brown@oag.state.tx.us.

SUBCHAPTER A. GENERAL PROVISIONS AND ELIGIBILITY

1 TAC §66.2

The new section is proposed under the Texas Family Code §2.014, which the OAG interprets as authorizing the OAG to adopt rules reasonable and necessary to implement §2.014, in order to provide funds for grants or contracts that support services that assist families.

The proposed new section affects Texas Family Code §2.014.

§66.2. Adoptions by Reference.

(a) Grantees must comply with all applicable state and federal statutes, rules, regulations, and guidelines. In instances where both federal and state requirements apply to a grantee, the more restrictive requirement applies.

(b) OAG adopts by reference the rules, documents, and forms listed below that relate to the administration of Family Trust Fund grants. These requirements apply to all OAG grants, whether state or federal funds, including grants to nonprofit corporations.

(1) Uniform Grant Management Standards (UGMS) adopted pursuant to the Uniform Grant and Contract Management Act of 1981, Chapter 783, Texas Government Code. See 1 T.A.C. §§5.141 - 5.167. These requirements apply to all OAG grants, whether state or federal funds, including grants to nonprofit corporations.

(2) Texas Review and Comment System. See 1 TAC §§5.191 et seq. developed in response to Presidential Executive Order 12372. These requirements apply to all grants funded by OAG.

(3) OAG forms, including the statement of grant award, grantee acceptance notice, and grantee's invoices. These requirements apply to all grants funded by OAG.

This 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 27, 2002.

TRD-200206315
Susan D. Gusky
Assistant Attorney General
Office of the Attorney General
Earliest possible date of adoption: November 10, 2002
For further information, regarding this publication, please call A.G. Younger, Agency Liaison, at (512) 463-2110.

SUBCHAPTER C. SPECIAL CONDITIONS AND REQUIRED DOCUMENTS

1 TAC §§66.31, 66.39, 66.43, 66.45

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

The repeal of these sections is proposed under the Texas Family Code §2.014, which the OAG interprets as authorizing the OAG to adopt rules reasonable and necessary to implement §2.014, in order to provide funds for grants or contracts that support services that assist families.

The repeal of these sections affects Texas Family Code §2.014.

§66.31. Equal Employment Opportunity Program Certification.

§66.39. Uniform Grants Management Standards Certification.

§66.43. Equipment Review and Approval.

§66.45. Contract Review and Approval.

This 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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Susan D. Gusky
Assistant Attorney General
Office of the Attorney General
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SUBCHAPTER E. ADMINISTERING GRANTS

1 TAC §§66.71, 66.73, 66.79, 66.81, 66.83, 66.85, 66.87, 66.89, 66.91, 66.97

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

The repeal of these sections is proposed under the Texas Family Code §2.014, which the OAG interprets as authorizing the OAG to adopt rules reasonable and necessary to implement §2.014, in order to provide funds for grants or contracts that support services that assist families.

The repeal of these sections affects Texas Family Code §2.014.

§66.71. Retention of Report Records.

§66.73. Financial Reports.

§66.79. Grant Adjustments.

§66.81. Copyright.

§66.83. Procurement Procedures.

§66.85. Property Management Standards.

§66.87. Disposition of Property.

§66.89. Transfer of Title of Equipment and Nonexpendable Personal Property.

§66.91. Bonding and Insurance.

§66.97. De-Obligation of Grant Funds.

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

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Susan D. Gusky
Assistant Attorney General
Office of the Attorney General
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SUBCHAPTER E. ADMINISTERING GRANTS

1 TAC §66.79

The new section is proposed under the Texas Family Code §2.014, which the OAG interprets as authorizing the OAG to

adopt rules reasonable and necessary to implement §2.014, in order to provide funds for grants or contracts that support services that assist families.

The proposed new section affects Texas Family Code §2.014.

§66.79. Grant Adjustments.

(a) One of the three designated grant officials must sign all requests for grant adjustments.

(b) Grant adjustments are either budget adjustments or non-budget adjustments.

(1) Grant adjustments consisting of increases in the amount of a grant or the reallocation of funds among or within budget categories are considered budget adjustments, and are allowable only with prior OAG approval.

(2) Non-budget grant adjustments are subject to the following provisions:

(A) Requests to revise the scope, target, or focus of the project, or alter project activities require advance written approval from OAG.

(B) The grantee shall notify OAG in writing of any change in the designated project director, financial officer, or authorized official within five days following the change. When the notice addresses a change of authorized official, the governing body, such as the board, city council, or commissioners' court, must submit the request.

(C) A grantee may submit a written request for a grant extension. These requests will be approved only in extraordinary circumstances.

This 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 27, 2002.

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Susan D. Gusky
Assistant Attorney General
Office of the Attorney General
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SUBCHAPTER F. PROGRAM MONITORING AND AUDITS

1 TAC §66.121

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

The repeal of this section is proposed under the Texas Family Code §2.014, which the OAG interprets as authorizing the OAG to adopt rules reasonable and necessary to implement §2.014, in order to provide funds for grants or contracts that support services that assist families.

The repeal of this section affects Texas Family Code §2.014.

§66.121. Independent Annual Audit.

This 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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Susan D. Gusky
Assistant Attorney General
Office of the Attorney General
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CHAPTER 66. FAMILY TRUST FUND DISBURSEMENT PROCEDURES

The Office of the Attorney General (OAG) proposes amendments to 1 Texas Administrative Code (TAC), Subchapter B §§ 66.15 and 66.19; Subchapter C §§ 66.41 and 66.47; Subchapter D § 66.57; Subchapter E §§ 66.67, 66.75, 66.77, 66.93, 66.95, 66.103, and 66.107; and Subchapter F § 66.119, relating to rules for disbursement of funds and administration of grants and contracts under the Family Trust Fund for programs that assist families, pursuant to the provisions of the Texas Family Code, Chapter 2, The Marriage Relationship, § 2.014. The Tex. Fam. Code, § 2.014 reflects the Legislature's intent to provide public funds for the following purposes: (1) the development and distribution of a premarital education handbook; (2) grants to institutions of higher learning that conduct research on marriage and divorce to strengthen families and assist children whose parents are divorcing; (3) support for counties to create or administer free or low-cost premarital education courses; (4) programs that intend to reduce the amount of delinquent child support; and (5) other programs the OAG determines will assist families.

Pursuant to Texas Local Government Code § 118.013(c) each county clerk shall remit $3 of the fee for a marriage license to the comptroller for deposit in the Family Trust Fund. Senate Bill No. 1, General Appropriations Act, 77th Leg. R. S., (2001), in Supplemental Appropriation Rider 22, appropriated these funds from the deposits of the marriage license fee to the OAG to carry out the duties outlined in Tex. Fam. Code § 2.014. It is necessary for the OAG to adopt rules outlining the procedures for the administration and disbursement of these funds in a fair and accurate manner.

The proposed amendments address the grant application process, the scope of grants, and the processes of approval, funding, award, and grant acceptance. The proposed amendments also identify documents that should be included in a grant application packet. The proposed amendments address monitoring of the grant program and audits and the administration of the Family Trust Fund Disbursements. The proposed amendments also advise the public of the independent functions the OAG has regarding administration of the Family Trust Fund.

Subchapter B §§ 66.15 and 66.19 address the grant application process, the scope of grants, and the process of approval and funding. Section 66.15 as amended requires the application package be received by the OAG on the first business day

in May of the year in which the application is submitted. Section 66.19 as amended clarifies that a grant can be funded for two years though the project may be of longer duration and requires grantees to submit budgets.

Subchapter C §§ 66.41 and 66.47 identify documents that should be included in a grant application packet. Section 66.41 as amended adds that the Certified Assurances Certification that must be included in the application packet includes the Uniform Grant Management Standards requirements. Section 66.47 as amended removes the requirement that the governing body of the grantee secure a fidelity bond.

Subchapter D § 66.57 addresses the award and grant acceptance process. Section 66.57 as amended provides that grant funds may not be requested until the acceptance notice is executed.

Subchapter E §§ 66.67, 66.75, 66.77, 66.93, 66.95, 66.103, and 66.107 provide for the administration of the Family Trust Fund Disbursements. Section 66.67 as amended corrects the reference to authorized person in (3) to refer to the authorized official and deletes the requirement that the name of the authorized official be consistent with the signature on the application page of FTFG-1. Section 66.75 as amended would remove the requirement that the grantee submit the final financial expenditure report, final progress report, and the inventory of grant property to the OAG. Section 66.77 as amended requires a grantee to send an Invoice to OAG instead of its final Request for Funds and provides the address. Section 66.93 as amended removes the list of reasons that the OAG may withhold funds from a specific project and reorganizes the remaining provisions. Section 66.95 as amended removes the list of reasons the OAG may terminate a grant and reorganizes the lettering of the remaining provisions. Section 66.103 as amended states that failure to comply with conflict of interest provisions of this section may result in termination of the grant award. Section 66.107 as amended requires the grantee to submit progress reports in accordance with OAG instructions.

Subchapter F § 66.119 address monitoring of the grant program and audits. Section 66.119 as amended provides that monitoring may include both on-site and desk reviews, removes the list of specific monitoring activities, and reorganizes the lettering of the remaining provisions.

Don Clemmer, Assistant Attorney General, has determined that for the first five-year period the proposed amendments are in effect, there will be no fiscal implications to the state or to local governments as a result of enforcing or administering the chapter as proposed.

Mr. Clemmer has determined that for the five-year period in which the proposed amendments are in effect, the anticipated public benefit is the more efficient administration of the Family Trust Fund program by the OAG, as mandated by the Texas legislature, without increased costs to the state. The proposed amendments to these sections will enable grantees to improve programs to better serve and strengthen Texas families.

Mr. Clemmer has also determined there will be no direct adverse effect on small businesses or micro-businesses because these rules do not apply to single businesses.

Mr. Clemmer further determined there will be no economic costs to persons required to comply with the rule.

Comments may be submitted, in writing, no later than 30 days from the date of this publication to Natalie Brown, Office of the Attorney General, (512) 463-0192, P.O. Box 12548, Austin, Texas 78711-2548 or by e-mail to natalie.brown@oag.state.tx.us.

SUBCHAPTER B. GRANT APPLICATION, SCOPE OF GRANT, APPROVAL AND FUNDING

1 TAC §66.15, §66.19

These amended sections are proposed under the Texas Family Code § 2.014, which the OAG interprets as authorizing the OAG to adopt rules reasonable and necessary to implement § 2.014, in order to provide funds for grants or contracts that support services that assist families.

The proposed amended sections affect Texas Family Code § 2.014.

§66.15. Grant or Contract Application.

(a) (No change.)

(b) The original and one copy of the application package must be received by the OAG by the first business day in May of the year in which the application is submitted [~~each year~~]. Applications received after the deadline for submission will not be considered. [~~This deadline does not apply to applications received in the FY 2001.~~]

(c) (No change.)

§66.19. Grant or Contract Period.

(a) A project will be funded for a 12-month period, beginning no earlier than September 1 of each year, and ending August 31 of each year. [~~This funding period does not apply to applications received for projects in the FY 2001.~~]

(b) The maximum number of years that a grant [~~project~~] may be funded is two years.

(c) An applicant may submit a single application for funding for a two year period. If the application is approved, the project will be funded for the first year and will receive automatic consideration for second year funding. No additional application will be required for the second year, but the OAG may require a grantee to submit updated attachments, contracts, budgets [~~bonds~~], resolutions, and other information as necessary. The OAG will base its final decision on second year funding on first year performance, including the timeliness and thoroughness of reporting, the success of the project in meeting its goals, and the outcome of OAG on-site visits.

This 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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Susan D. Gusky
Assistant Attorney General
Office of the Attorney General
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SUBCHAPTER C. SPECIAL CONDITIONS AND REQUIRED DOCUMENTS

1 TAC §66.41, §66.47

The amended sections are proposed under the Texas Family Code § 2.014, which the OAG interprets as authorizing the OAG to adopt rules reasonable and necessary to implement § 2.014, in order to provide funds for grants or contracts that support services that assist families.

The proposed amended sections affects Texas Family Code § 2.014.

§66.41. Certified Assurances.

An application must include a signed copy of the Certified Assurances Certification , which includes UGMS requirements.

§66.47. Resolutions.

(a) Local governmental [~~Governmental~~] entities whose authorized official designated in the grant application is not the executive officer of the localgovernmental entity must submit a resolution from their governing body that gives the authorized official the power to accept, reject or amend a grant. The resolution must state [~~that the governing body will secure a fidelity bond covering the full amount of the OAG funds upon acceptance of any grant award as provided in §66.91 of this title and~~] that in the event of loss or misuse of OAG funds, the governing body assures that the grant funds will be returned to the OAG in full. The resolution from the governing body shall contain a statement that the governing body of the localgovernmental entity may not use the existence of a grant award to offset or decrease total salaries, expenses, and allowances that the applicant receives from the governing body at or after the time the grant is awarded.

(b) A nonprofit organization whose authorized official designated in the grant application is not the executive officer of the organization must submit a resolution from its governing body that gives the authorized official the power to accept, reject or amend a grant. The resolution must state [~~that the governing body will secure a fidelity bond covering the full amount of the OAG funds upon acceptance of any grant award as provided in §66.91 of this title and~~] that in the event of loss or misuse of OAG funds, the governing body assures that the grant funds will be returned to the OAG in full. The resolution from the governing body shall contain a statement that the governing body of the organization may not use the existence of a grant award to offset or decrease total salaries, expenses, and allowances that the applicant receives from the governing body at or after the time the grant is awarded.

This 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-200206333
Susan D. Gusky
Assistant Attorney General
Office of the Attorney General
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For further information, please call: (512) 463-2110

SUBCHAPTER D. AWARD AND GRANT ACCEPTANCE

1 TAC §66.57

The amended section is proposed under the Texas Family Code § 2.014, which the OAG interprets as authorizing the OAG to adopt rules reasonable and necessary to implement § 2.014, in order to provide funds for grants or contracts that support services that assist families.

The proposed amended section affects Texas Family Code § 2.014.

§66.57. Notification of Award.

An applicant must accept or reject a grant award in writing and forward the notice to the OAG so that the notice is received by the OAG within 45 days of the grant award. Grant funds may not be requested until the acceptance notice is executed. [~~Failure by the applicant to execute the grantee acceptance notice within this time period and promptly forward that notice to the OAG shall be construed as a rejection of the grant award, and the funds will be deobligated. In addition,~~] Each [~~each~~] applicant who accepts a grant award must implement the grant within 60 days of the designated start date indicated on the statement of grant award. [~~Failure to do so will be construed by the OAG as relinquishment by the applicant of the grant award.~~] Any exception to this paragraph will require the review and written approval of the OAG Grants Coordinator.

This 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 30, 2002.

TRD-200206334
Susan D. Gusky
Assistant Attorney General
Office of the Attorney General
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For further information, please call: (512) 463-2110

SUBCHAPTER E. ADMINISTERING GRANTS

1 TAC §§66.67, 66.75, 66.77, 66.93, 66.95, 66.103, 66.107

The amended sections are proposed under the Texas Family Code § 2.014, which the OAG interprets as authorizing the OAG to adopt rules reasonable and necessary to implement § 2.014, in order to provide funds for grants or contracts that support services that assist families.

The proposed amended sections affect Texas Family Code § 2.014.

§66.67. Grant Officials.

A grantee must have three persons designated to serve as grant officials as follows:

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

(3) The authorized official [~~person~~] is the person authorized to apply for, accept, decline, or cancel the grant for the applicant agency. This person may be, for example, the executive director of the state agency, county judge, mayor, city manager, assistant city manager, or designee if authorized by the governing body. [~~The name must be consistent with the signature on application page FTFG-1.~~]

§66.75. Inventory Reports.

A grantee must maintain an inventory report on file at its principal office of all equipment purchased as part of the grant project. [~~This report must be consistent with the final financial expenditure report. The~~

~~grantee must submit the report to the OAG with the final progress report. The grantee must complete and submit to the OAG an inventory of grant property at least once every two years.~~]

§66.77. Invoices [~~Requests for Funds~~].

A grantee must ensure that its final invoice [~~Request for Funds~~] is postmarked no later than the 90th calendar day (liquidation date as defined in the application package) after the end of the grant period and mailed to the OAG. Grant Coordinator, 300 West 15th Street, 15th Floor, P. O. Box 12548, Austin, TX 78711-2548. If this date falls on a weekend or federal holiday, then the OAG will honor a postmark on the next business day. On the liquidation date, if grant funds are on hold for any reason, the funds will lapse and cannot be recovered by the grantee. Under no circumstances will the OAG make payments to a grantee who submits its invoice [~~Request for Funds~~] with a postmark after the above deadlines.

§66.93. Withholding Funds.

(a) The OAG may withhold funds from a grantee if a grantee fails to comply with established guidelines, grant conditions, or contractual agreements, or when funds are depleted or insufficient to fund allocations. [~~The OAG may withhold funds from a specific project for reasons that include, but are not limited to:~~]

[~~(1) failure to comply with any applicable federal or state law, rule, regulation, policy, or guideline, or with the terms of any grant agreements;~~]

[~~(2) failure to submit reports of expenditures and status of funds, grantee progress reports, or special required reports at the time and in the form established for such reporting;~~]

[~~(3) failure to maintain proper records as required by these rules;~~]

[~~(4) failure to conduct the grant project according to the terms of the application for a grant, the statement of grant award, the grantee acceptance notice, or a grant adjustment notice;~~]

[~~(5) failure to comply with any condition that has been made a part of the statement of grant award by reference or inclusion therein or through the issuance of a grant adjustment notice;~~]

[~~(6) failure to commence project operations within 60 days of the project start date;~~]

[~~(7) failure to submit audit reports, including management letters and responses to audit findings;~~]

[~~(8) failure to provide timely and adequate responses to audit or monitoring report findings; or~~]

[~~(9) failure to provide accurate information in a grant application, in grantee records, or in reports to the OAG.~~]

[~~(b) The OAG may withhold funds from all projects operated by a grantee for reasons that include, but are not limited to:~~]

[~~(1) failure to respond to any deficiency listed in this section;~~]

[~~(2) failure to return to the OAG within the required time unused grant funds remaining in the expired grant; or~~]

[~~(3) refusal to return to the OAG any grant funds improperly accounted for or expended for ineligible purposes under a grant that has expired.~~]

[~~(c) The OAG will not give advance notice that a grantee may be placed on financial hold. It is the responsibility of a grantee to submit all reports and other required information in a timely fashion and to comply with OAG grant guidelines.~~]

[~~(d) The OAG will notify a grantee when a grant is placed on financial hold. A grantee may, within 10 days of receiving notification, request in writing a reconsideration of the determination to withhold funds. A grantee should send this request to the OAG Grants Coordinator, together with any documentation in support of the reconsideration. The grants coordinator will review the determination to withhold funds based on the documentation submitted. The OAG will send the final determination to the grantee in writing.~~]

(b) [~~(e)~~] The OAG will release funds if the grantee has provided evidence satisfactory to the OAG that the deficient conditions have been corrected, unless the OAG has terminated the grant as provided in §66.95 of this title.

§66.95. Grant Termination.

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

[~~(c) The OAG may terminate a grant if:~~]

[~~(1) deficient conditions make it unlikely that the grant's objectives will be accomplished;~~]

[~~(2) deficient conditions cannot be corrected within a period of time judged acceptable by the OAG;~~]

[~~(3) a grantee provided inaccurate information in a grant application, in grantee records, or in reports to the OAG; or~~]

[~~(4) a grantee has acted in bad faith.~~]

(c) [~~(d)~~] The OAG will notify a grantee of deficient conditions and grounds for termination. When a grant is terminated all unexpended or unobligated funds awarded to a grantee will revert to the OAG. The OAG may consider a grantee ineligible for any future grant award if the OAG has terminated a grant for cause.

(d) [~~(e)~~] In lieu of termination a grant project, the OAG may require the transfer of the grant project by moving the administration of the project to a different agency.

(e) [~~(f)~~] A grantee may ask for a review of the termination of a grant by writing to the First Assistant of the OAG. The request for review must be received by the OAG within ten days from the date of the suspension or termination notification. A grantee may submit written documentation in support of its request. The First Assistant of the OAG will consider any documentation submitted by a grantee in support of an appeal. The decision of the First Assistant of the OAG concerning termination is final and not subject to judicial review.

§66.103. Conflict of Interest.

Failure to comply with this section may [~~shall~~] result in termination of the grant award and may affect future funding decisions. No grantee personnel, member of a grantee board or governing body, or other person affiliated with the grant project may participate in any proceeding or action where grant funds personally benefit, directly or indirectly, the individual or any relative. Grant personnel and officials must avoid any action that might result in or create the appearance of using their official positions for private gain; giving preferential treatment to any person; losing complete independence or impartiality; making an official decision outside of official channels; or affecting adversely the confidence of the public in the integrity of the program or the OAG.

§66.107. Progress Reports.

[~~(a)~~] A grantee must submit progress reports in accordance with the instructions provided by the OAG and as outlined for each specific program area. To remain eligible for funding, a grantee must be able to show not only the number of services provided, but the impact and quality of those services.

[~~(b) A grantee must submit reports only for those activities supported by OAG grant funds, grantee match, and program income.~~]

[~~(c) The OAG may prescribe forms for such reports, which a grantee must use.~~]

[~~(d) The project director must sign all progress reports.~~]

[~~(e) The OAG will automatically place projects on financial hold for failure to submit complete and correct progress reports by the specified deadline. The OAG will not send reminder notices or make reminder telephone calls prior to placing funds on hold. A history of delinquent reports may affect future funding decisions.~~]

[~~(f) The OAG will not make a grant award for second-year funding projects unless all progress reports due by the award date are complete, correct, and on file at the OAG.~~]

This 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 30, 2002.

TRD-200206335
Susan D. Gusky
Assistant Attorney General
Office of the Attorney General
Earliest possible date of adoption: November 10, 2002
For further information, please call: (512) 463-2110

SUBCHAPTER F. PROGRAM MONITORING AND AUDITS

1 TAC §66.119

The amended section is proposed under the Texas Family Code § 2.014, which the OAG interprets as authorizing the OAG to adopt rules reasonable and necessary to implement § 2.014, in order to provide funds for grants or contracts that support services that assist families.

The proposed amended section affects Texas Family Code § 2.014.

§66.119. Monitoring.

(a) (No change.)

(b) The OAG will monitor both financial and program aspects of a grant project to evaluate progress and determine compliance. Monitoring may [~~will~~] include both on-site and desk reviews and may involve any information that the OAG deems relevant to the project. The purpose of the monitoring is to ensure that a grantee is meeting performance goals and that grant funds are expended in compliance with applicable laws, rules, grant agreements and other contracts. [~~On-site monitoring includes, but is not limited to the review of:~~]

[~~(1) adequacy of the accounting systems, files, equipment and property management, and administration;~~]

[~~(2) relationship of actual expenditures and match requirements compared to approved budgets;~~]

[~~(3) accuracy of financial information, reasonableness of cost allocation plans, and expenditure documentation;~~]

[~~(4) timeliness of submission of financial expenditure and progress reports;~~]

[~~(5) need for, reasonableness of, and authorization for costs;~~]

[~~(6) charges to cost pools used in calculating indirect cost rates;~~]

[~~(7) adherence to federal, state, and OAG guidelines and program requirements;~~]

[~~(8) accuracy of statistics on project activities and goal achievement indicators; and~~]

[~~(9) documentation of and progress toward achieving the project's output and outcome goals.~~]

(c)-(g) (No change.)

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

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Susan D. Gusky
Assistant Attorney General
Office of the Attorney General
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For information regarding this publication, please contact A.G. Younger, Agency Liaison, at 512-463-2110.

PART 4. OFFICE OF THE SECRETARY OF STATE

CHAPTER 81. ELECTIONS

SUBCHAPTER D. VOTING SYSTEMS CERTIFICATION

1 TAC §81.64

The Office of the Secretary of State, Elections Division, proposes new §81.64, creating a requirement for vendors of certified voting systems to submit detailed reports upon the Secretary of State's request explaining problems that have surfaced with particular systems in the course of conducting an election and the actions taken by the vendor to resolve the problem.

Ann McGeehan, Director of Elections, has determined that for the first five-year period that this rule is in effect there will be no fiscal implications for state or local governments as a result of enforcing or administering the rule.

Ms. McGeehan has determined also that for each year of the first five years that the rule is in effect the public benefit anticipated as a result of enforcing the rule will be to create a clearinghouse at the Secretary of State of problems that have arisen with particular voting systems. The rule will also be a means by which the Secretary of State will be informed of issues that have arisen with systems post-certification; under current law and administrative rule, there is no requirement that vendors or the entity holding an election notify this office of voting system failures. There will be no effect on small businesses. There should be no significant economic cost to persons who are required to comply with the rule as proposed.

Comments on the proposal may be submitted to Ann McGeehan, Director of Elections, Office of the Secretary of State, P.O. Box 12060, Austin, Texas 78711-2060.

The rule is proposed under the Texas Election Code, Chapter 31, Subchapter A, §31.003, which provides the Secretary of State with authority to promulgate rules to obtain uniformity in the interpretation and application of the Texas Election Code, and under the Code, Chapter 122, §122.001(c), which authorizes the Secretary of State to prescribe additional standards for voting systems. The Texas Election Code, Chapter 122, is affected by this proposed rule.

§81.64. Notice of Voting System Malfunction Required; Submission of Explanatory Report by Vendor Required Upon Request of Secretary of State.

(a) A vendor (or the political subdivision, if no private vendor supports their system) must give notice to the Secretary of State within 24 hours of a malfunction of its voting system software or equipment in an election held in this state. The notice may be verbal or in writing.

(b) Following the notice, the Secretary of State shall determine whether further information on the malfunction is required. At the request of the Secretary of State, a vendor (or the political subdivision, if no private vendor supports their system) must submit a report to the Secretary of State's office detailing the reprogramming (or any other actions) necessary to redress a voting system malfunction in an election held using the vendor's system. The report shall address whether permanent changes are necessary to prevent similar malfunctions in the future.

(c) The report shall be submitted within 30 days after the date of the request by the Secretary of State.

(d) Failure to submit a report within the required period shall be grounds to decertify the system.

(e) The authority holding the election in which the voting system malfunction occurred may submit the report in lieu of a report from the system's vendor.

(f) A copy of this report will be attached to the system's most recent certification on file in the Secretary of State's Office.

(g) The Secretary of State's Office will distribute a copy of this report to all counties using the voting system in question.

This 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 26, 2002.

TRD-200206289
Dave Roberts
General Counsel
Office of the Secretary of State
Earliest possible date of adoption: November 10, 2002
For further information, please call: (512) 463-5562

PART 15. TEXAS HEALTH AND HUMAN SERVICES COMMISSION

CHAPTER 354. MEDICAID HEALTH SERVICES

SUBCHAPTER F. PHARMACY SERVICES

DIVISION 4. LIMITATIONS

1 TAC §354.1875

The Health and Human Services Commission (HHSC) proposes amendments to §354.1875, Limitations on Provider Charges to Recipients. The proposed amendment is pursuant to cost containment strategies identified in the Appropriations Act passed in the 77th Texas Legislature. In accordance with Article II, Special Provisions relating to Medicaid Cost Containment, Rider 33 (k), the proposed amended rule establishes cost sharing requirements for Medicaid recipients.

The proposed amendment to §354.1875, with simultaneously proposed new rule §354.3200, Cost Sharing for Medicaid Recipients, gives HHSC authority to impose Medicaid cost sharing for recipients. The proposed rule amendment allows HHSC to reduce the amount of the reimbursement paid to a pharmacy provider for those prescriptions provided to Medicaid recipients who are required to make a copayment. Medicaid recipients are not currently required to participate in the cost of their care. Copayment requirements provide an incentive to Medicaid recipients to utilize services in a more prudent, efficient, and cost effective manner and create an awareness of the overall cost of providing services.

Cost sharing presents opportunities for long-term savings to the Medicaid Program. Federal regulations permit cost sharing amounts to be established by the State, within certain limitations, and may include copayments for specific services. Federal regulations also limit cost sharing to certain categories of recipients. The rule assures that recipients will have access to Medicaid benefits even if they are unable to contribute. Cost sharing provisions are subject to approval by the Centers for Medicare and Medicaid Services. HHSC intends to implement cost sharing as authorized under 42 C.F.R. §447.51, et seq.

Beginning in FY 2003, nearly 600,000 adult Medicaid enrollees (TANF, Aged, Blind, Disabled) 19 years and older are included in the cost sharing requirement. Pregnant women, children under 19 years, individuals residing in institutions, individuals receiving hospice services, American Indians and Alaska Natives are exempt from cost sharing requirements. Collection of the copay will be at the point-of-service. Medicaid enrollees at all federal poverty income levels will be required to make copayments. The copay amount for generic medication is $0.50 and the copay amount for brand name medications is $3.00.

Copay information will be noted on the Medicaid ID form 3087 and in the pharmacy system. Copays are required but pharmacists are instructed not to refuse service based on inability to pay. Medicaid recipients will be informed that the maximum monthly copay for any individual is capped at $8.00. This maximum is likely to benefit recipients with unlimited prescription drug benefits. Cost sharing policy will be evaluated at the end of one year to determine the impact on recipient utilization. Medicaid outreach and educational efforts for recipients will focus on appropriate prescription drug use. The outreach and educational efforts for enrollees and providers will be done in collaboration with stakeholder groups.

Pharmacists will collect and retain the copay; however, pharmacy reimbursement is reduced by 50% of the value of the copay (e.g., $0.25 reduction for a generic copay of $0.50). Savings are derived from reductions in reimbursement. Additional savings are derived from redirection to generics or therapeutic alternatives.

Don Green, Chief Financial Officer, has determined that during the first five years that the proposed amended rule is in effect,

the fiscal implications to state government are anticipated cost savings associated with Medicaid cost sharing achieved through the implementation of the proposed new rule §354.3200, Cost Sharing for Medicaid Recipients, and §354.1875, Limitations on Provider Charges to Recipients. This proposed amended rule will not result in any fiscal implications for local health and human service agencies. Local governments will not incur additional costs.

Mr. Green has also determined that for each year of the first five years the proposed amended rule is in effect, the public will benefit from adoption of the rule. The anticipated public benefit, as a result of enforcing the proposed provision, will be that Medicaid recipients will utilize services in a more prudent, efficient, and cost effective manner and with an awareness of the overall cost of providing services. Because Medicaid recipients cannot be denied access to care if unable to make a copayment, and, because there is a cap on copayments, no significant impact on access to care is expected.

The proposed amended rule will not result in additional costs to persons required to comply with the proposed amended rule, nor does the proposed amended rule have any anticipated adverse affect on small or micro-businesses. Medicaid enrolled pharmacy providers will be required to alter their business practices in order to comply with the amended rule as proposed. HHSC will provide policy notification, information, and training to enrolled providers in order to assure minimal business impact. The proposed amended rule will not negatively affect local employment.

HHSC has determined that the proposed amended rule is not a "major environmental rule" as defined by §2001.0225, Government Code. "Major environmental rule" is defined to mean a rule the specific intent of which is to protect the environment or reduce risks to human health from environmental exposure and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. The proposed amended rule is not specifically intended to protect the environment or reduce risks to human health from environmental exposure.

HHSC has evaluated the takings impact of the proposed amended rule under §2007.043, Government Code. HHSC has determined that this proposal does not restrict or limit an owner's right to his or her property that would otherwise exist in the absence of governmental action and therefore does not constitute a taking. The proposed provision is reasonably taken to fulfill requirements of state law.

Comments on the proposal may be submitted to Dee Sportsman, Program Development, Medicaid/CHIP Division, Texas Health and Human Services Commission, 1100 W. 49th Street, MC Y-997, Austin, Texas 78756-3199 or via facsimile at (512) 794-6818, within 30 days of publication of this proposal in the *Texas Register*.

A public hearing is scheduled for Monday, October 21, 2002 at 1:00 PM to 3:00 PM. The hearing will be held in the Brown Heatly Building, Public Hearing Room 1410, 4900 North Lamar in Austin, Texas.

The amendment is proposed under the Texas Government Code, §531.033, which provides the Commissioner of HHSC with broad rulemaking authority, and under the Human Resources Code, §32.021, and the Government Code, §531.021(a), which provide HHSC with the authority to administer the federal medical assistance (Medicaid) program in Texas.

The proposed amendment affects the Government Code, Chapter 531, and Chapter 32 of the Human Resources Code. No other statutes, articles, or codes are affected by the proposed amended rule.

§354.1875. Limitations on Provider Charges to Recipients.

(a) A provider of Medicaid vendor drug services agrees to accept the vendor payment as payment in full for pharmaceutical services provided each recipient. [~~The provider may neither charge nor take other recourse against Medicaid recipients, their family members, or their representatives for any claims denied or reduced by the department because of the provider's failure to comply with any department rule, regulation, or procedure.~~]

(b) Health and Human Services Commission (HHSC) may reduce the amount of the reimbursement paid to a pharmacy provider under this chapter (relating to Medical Health Services) by any cost sharing amount required of the Medicaid recipient, as described in §354.3200 of this title (relating to Cost Sharing for Medicaid Recipients). The amount of the reduction may not exceed 50% of the cost-sharing amount required of the Medicaid recipient , as described in §354.3200 of this title (relating to Cost sharing for Medicaid recipients).

(c) The provider may neither charge nor take other recourse against Medicaid recipients, their family members, or their representatives for any claims denied or reduced by HHSC because of the provider's failure to comply with any HHSC rule, regulation, or procedure.

This 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 30, 2002.

TRD-200206344
Marina S. Henderson
Executive Deputy Commissioner
Texas Health and Human Services Commission
Earliest possible date of adoption: November 10, 2002
For further information, please call: (512) 424-6576

SUBCHAPTER X. RECIPIENT COST SHARING

1 TAC §354.3200

The Health and Human Services Commission (HHSC) proposes new Chapter 354, §354.3200, concerning recipient cost sharing. New §354.3200 concerns Cost Sharing for Medicaid Recipients. The proposed new rule is pursuant to cost containment strategies identified in the Appropriations Act passed in the 77th Texas Legislature. In accordance with Article II, Special Provisions relating to Medicaid Cost Containment, Rider 33 (k), the proposed new rule establishes cost sharing requirements for Medicaid recipients.

The proposed new rule, §354.3200, with simultaneously proposed amendment to §354.1875, Limitation on Provider Charges to Recipients gives HHSC authority to impose Medicaid cost sharing for recipients. The proposed amended rule allows HHSC to reduce the amount of reimbursement paid to a pharmacy provider for those prescriptions provided to Medicaid

recipients who are required to make a copayment. Medicaid recipients are not currently required to participate in the cost of their care. Copayment requirements provide an incentive to Medicaid recipients to utilize services in a more prudent, efficient, and cost effective manner and create an awareness of the overall cost of providing services.

Cost sharing presents opportunities for long-term savings to the Medicaid Program. Federal regulations permit cost sharing amounts to be established by the State, within certain limitations, and may include copayments for specific services. Federal regulations also limit cost sharing to certain categories of recipients. The rule assures that recipients will have access to Medicaid benefits even if they are unable to contribute. Cost sharing provisions are subject to approval by the Centers for Medicare and Medicaid Services. HHSC intends to implement cost sharing as authorized under 42 C.F.R. §447.51, et seq.

Beginning in FY 2003, nearly 600,000 adult Medicaid enrollees (TANF, Aged, Blind, Disabled) 19 years and older are included in the cost sharing requirement. Pregnant women, children under 19 years, individuals residing in institutions, individuals receiving hospice services, American Indians and Alaska Natives are exempt from cost sharing requirements. Medicaid services impacted are limited to non-emergency services provided in a hospital emergency department and prescription medications. Collection of the copay will be at the point-of-service. Medicaid enrollees at all federal poverty income levels will be required to make copayments. The copay amount for non-emergency services provided in the hospital emergency department is $3.00. The copay amount for generic medication is $0.50 and the copay amount for brand name medications is $3.00.

Copay information will be noted on the Medicaid ID form 3087 and in the pharmacy system. Copays are required but providers are instructed not to refuse service based on inability to pay. Medicaid recipients will be informed that the maximum monthly copay for any individual is capped at $8.00. Cost sharing policy will be evaluated at the end of one year to determine the impact on recipient utilization. Medicaid outreach and educational efforts for recipients will focus on preventive services and appropriate ER and prescription drug use. The outreach and educational efforts for enrollees and providers will be done in collaboration with stakeholder groups.

Non-emergency hospital emergency department services are subject to copay. True emergency services are exempt from copay. The definition of emergency service is consistent with federal regulations. Emergency departments will collect and retain the full copay. Savings are derived by shifting delivery of the non-emergent service to non-emergency settings. Pharmacists will collect and retain the copay; however, pharmacy reimbursement is reduced by 50% of the value of the copay (e.g., $0.25 reduction for a generic copay of $0.50). Savings are derived from reductions in reimbursement. Additional savings are derived from redirection to generics or therapeutic alternatives.

Don Green, Chief Financial Officer, has determined that during the first five years that the proposed new rule is in effect, the fiscal implications to state government are anticipated cost savings associated with Medicaid cost sharing achieved through the implementation of the proposed new rule §354.3200, Cost Sharing for Medicaid Recipients, and §354.1875, Limitations on Provider Charges to Recipients. During the first year that the proposed new rule is in effect, cost savings to HHSC general revenue (GR) will be $4,829,455 for 9 months of State Fiscal Year 2003. Five-year savings, from FY03-FY07, are estimated at $30,701,196 GR and $76,461,938 for all funds. This proposed new rule will not result in any fiscal implications for local health and human service agencies. Local governments will not incur additional costs.

Mr. Green has also determined that for each year of the first five years the proposed new rule is in effect, the public will benefit from adoption of the rule. The anticipated public benefit, as a result of enforcing the proposed provision, will be that Medicaid recipients will utilize services in a more prudent, efficient, and cost effective manner and with an awareness of the overall cost of providing services. For every additional one percent of clients diverted from either the emergency room or from a brand name drug, additional annual savings could be $2,000,000 GR and $5,000,000 all funds. Because Medicaid recipients cannot be denied access to care if unable to make a copayment, and, because there is a cap on copayments, no significant impact on access to care is expected.

The proposed new rule will not result in additional costs to persons required to comply with the proposed new rule, nor does the proposed new rule have any anticipated adverse affect on small or micro-businesses. Medicaid enrolled emergency and pharmacy providers will be required to alter their business practices in order to comply with the new rule as proposed. HHSC will provide policy notification, information, and training to enrolled providers in order to assure minimal business impact. The proposed new rule will not negatively affect local employment.

HHSC has determined that the proposed new rule is not a "major environmental rule" as defined by §2001.0225, Government Code. "Major environmental rule" is defined to mean a rule the specific intent of which is to protect the environment or reduce risks to human health from environmental exposure and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. The proposed new rule is not specifically intended to protect the environment or reduce risks to human health from environmental exposure.

HHSC has evaluated the takings impact of the proposed new rule under §2007.043, Government Code. HHSC has determined that this proposal does not restrict or limit an owner's right to his or her property that would otherwise exist in the absence of governmental action and therefore does not constitute a taking. The proposed provision is reasonably taken to fulfill requirements of state law.

Comments on the proposal may be submitted to Dee Sportsman, Program Development, Medicaid/CHIP Division, Texas Health and Human Services Commission, 1100 W. 49th Street, MC Y-997, Austin, Texas 78756-3199 or via facsimile at (512) 794-6818, within 30 days of publication of this proposal in the *Texas Register*.

A public hearing is scheduled for Monday, October 21, 2002 at 1:00 PM to 3:00 PM. The hearing will be held in the Brown Heatly Building, Public Hearing Room 1410, 4900 North Lamar in Austin, Texas.

The new rule is proposed under the Texas Government Code, §531.033, which provides the Commissioner of HHSC with broad rulemaking authority, and under the Human Resources Code, §32.021, and the Government Code, §531.021(a), which provide HHSC with the authority to administer the federal medical assistance (Medicaid) program in Texas.

The proposed new rule affects the Government Code, Chapter 531, and Chapter 32 of the Human Resources Code. No other statutes, articles, or codes are affected by the proposed new rule.

§354.3200. Cost sharing for Medicaid recipients.

(a) The Health and Human Services Commission (HHSC) may require Medicaid recipients to share in the cost of providing services under the Texas Medical Assistance Program. HHSC may establish cost sharing requirements in accordance with the requirements of 42 U.S.C. §1396a(a)(14).

(b) The cost sharing requirement may not exceed $3.00 per service or prescription or an amount authorized under 42 C.F.R. §447.54 for the following services:

(1) Non-emergency services provided in an emergency department;

(2) Generic drug prescriptions; and

(3) Brand-name drug prescriptions.

(c) HHSC may not require cost sharing for the following categorically or medically needy individuals:

(1) Recipients under 19 years of age;

(2) American Indians or Alaska Natives; or

(3) Pregnant women.

(d) HHSC may not require cost sharing by any Medicaid recipient for the following services

(1) Services furnished to inpatients in a hospital, nursing facility, intermediate care facility for the mentally retarded, or other medical institution, if that individual is required, as a condition of receiving services in such an institution, to spend for costs of medical care all but a minimal amount of the income required for his or her personal needs;

(2) Emergency services (as defined in 42 C.F.R. §447.53(b)(4))

(3) Family planning services and supplies; or

(4) Hospice services.

(e) Cost sharing requirements established by HHSC may not:

(1) prevent access to health care services, prescription medications, medical equipment, supplies, or medical care; or

(2) exceed any annual or monthly caps on cost sharing that HHSC shall establish for an enrollment year for one or more types of services.

(f) In accordance with 42 C.F.R. §447.53(e), no provider may deny services to an eligible individual based on the individual's inability to pay the cost sharing amount.

(g) Specific cost sharing requirements are subject to approval by the Federal Centers for Medicare and Medicaid Services.

This 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 30, 2002.

TRD-200206343

Marina S. Henderson
Executive Deputy Commissioner
Texas Health and Human Services Commission
Earliest possible date of adoption: November 10, 2002
For further information, please call: (512) 424-6576

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CHAPTER 355. MEDICAID REIMBURSEMENT RATES

SUBCHAPTER J. PURCHASED HEALTH SERVICES

DIVISION 28. PHARMACY SERVICES: REIMBURSEMENT

1 TAC §355.8551

The Health and Human Services Commission (HHSC) proposes an amendment to §355.8551, concerning the Texas Medicaid Vendor Drug Program (TMVDP) dispensing fee methodology for payment of professional fees to providers of outpatient pharmacy services. The proposed amendment makes the following changes to §355.8551: (1) it revises the language of the rule to reflect the transfer of the TMVDP to HHSC and the assignment of new section numbers to administrative rules transferred to HHSC; (2) it establishes the dispensing expense at the median expense per prescription of cost study data weighted by Medicaid prescription volume; (3) it revises the inventory management factor to one percent (1%); (4) it deletes the automatic inflation adjustment; and (5) it changes the method of reimbursement for prescription delivery by eliminating the delivery fee and including prescription delivery expenses in the overall dispensing expense for all providers. Implementation of these provisions will serve to increase dispensing fees.

Don Green, Chief Financial Officer, has determined that for the first five years the proposed rule is in effect, there will be an increase in costs to the TMVDP attributable to increases in the dispensing fee. This increase in the fee is being proposed as part of an overall revision of outpatient pharmacy reimbursement that includes a decrease in the product cost reimbursement for all covered drugs. The increases in costs to the TMVDP attributable to dispensing fee increases are estimated to be $3.1 million for State Fiscal Year (SFY) 2003; $4.5 million for SFY 2004; $4.8 million for SFY 2005; $5.1 million for SFY 2006; and, $5.4 million for SFY 2007. The decreases in costs to the TMVDP attributable to decreases in product cost reimbursement are estimated to be $50.2 million for SFY 2003; $67.0 million for SFY 2004; $75.4 million for SFY 2005; $84.9 million for SFY 2006; and, $95.5 million for SFY 2007. The net effects of the increases in dispensing fees and decreases in product cost reimbursement are savings to the TMVDP estimated to be $47.1 million for SFY 2003; $62.5 million for SFY 2004; $70.6 million for SFY 2005; $79.8 million for SFY 2006; and, $90.1 million for SFY 2007.

Steve Lorenzen, Director of Rate Analysis, has determined that for each year of the first five years the proposed section is in effect, the public benefit anticipated as a result of enforcing the section will be that the additional reimbursement to pharmacy providers derived from increases in dispensing fees will help maintain access to medically necessary services and will more accurately reflect provider costs for the provision of outpatient

pharmacy services. There is no anticipated impact on small businesses and micro-businesses to comply with the section as proposed as they will not be required to alter their business practices as a result of the section. There are no anticipated economic costs to persons who are required to comply with the proposed rule. There is no anticipated impact on local employment.

HHSC has determined that this proposed rule is not a "major environmental rule" as defined by §2001.0225 of the Texas Government Code. "Major environmental rule" is defined to mean a rule the specific intent of which is to protect the environment or reduce risk 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 a state or a sector of the state. The proposed rule is not specifically intended to protect the environment or reduce risks to human health from environmental exposure.

HHSC has determined that this proposed rule does not restrict or limit an owner's right to their property that would otherwise exist in the absence of governmental action and therefore does not constitute a taking under §2007.043, Government Code.

Written comments on the proposal may be submitted to Mr. Merle L. Moden, Manager, Rate Analysis, Texas Health and Human Services Commission, 1100 W. 49th Street, Austin, Texas 78756, within 30 days of publication of this proposal in the *Texas Register*. In addition, a public hearing concerning the proposed rule and the changes to product cost reimbursement will be held on October 28, 2002, at 9:00 a.m., in the Public Hearing Room at the Texas Health and Human Services Commission, 12555 Riata Vista Circle, Bldg. #3, Austin, Texas. To comply with federal regulations, a copy of the proposed rule is being sent to each Texas Department of Human Services (DHS) office where it will be available for public review upon request.

The amendment is proposed under the Texas Government Code, §531.033, which provides the commissioner of HHSC with broad rulemaking authority; the Human Resources Code, §32.021, and the Texas Government Code, §531.021(a), which provide HHSC with the authority to administer the federal medical assistance (Medicaid) program in Texas; and the Texas Government Code, §531.021(b), which provides HHSC with the authority to propose and adopt rules governing the determination of Medicaid reimbursements.

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

§355.8551. Dispensing Fee.

The Texas Health and Human Services Commission (Commission) [~~Department of Health (department)~~] reimburses contracted Medicaid pharmacy providers according to the dispensing fee formula defined in this section. The dispensing fee is determined by the following formula: Dispensing Fee = (((Estimated Drug Ingredient Cost + Estimated Dispensing Expense) divided by (1 - Inventory Management Factor)) - Estimated Drug Ingredient Cost). [~~+ Delivery Fee,~~] where:

(1) The estimated drug ingredient costs are defined in §355.8541 [~~§35.601~~] of this title (relating to Legend and Nonlegend Medication) and §355.8545 [~~§35.605~~] of this title (relating to Texas Maximum Allowable Cost).

(2) The estimated dispensing expense is [~~$5.27 for state fiscal year 1997~~] the median dispensing expense per prescription weighted by Medicaid prescription volume determined from the Commission's most recent study of the expense of dispensing Medicaid prescriptions. The Commission conducts dispensing expense studies at least every four (4) years beginning in State Fiscal Year 2002. The dispensing expense may be adjusted in the intervening years, subject to the availability of funds appropriated for this purpose. [~~This will be adjusted annually, subject to the availability of funds to account for general inflation.~~]

[~~(3) The inflation adjustment will be made, subject to the availability of funds, on the first day of the state fiscal year. The projected rate of inflation for the upcoming state fiscal year shall be based upon a forecast of the Implicit Price Deflator-Personal Consumption Expenditures produced by a nationally recognized forecasting firm.~~]

(3) [~~(4)~~] The inventory management factor is 1% [~~2.0%~~].

(4) [~~(5)~~] The total dispensing fee shall not exceed $200 per prescription.

(5) Notwithstanding other provisions of this section, the Commission may consider payment of an alternative dispensing fee to address the inability of Medicaid recipients to access necessary prescription drug services. The underlying justification for such consideration would be a market-based analysis demonstrating such inability.

[~~(6) A delivery fee shall be paid to approved providers offering no-charge prescription to all Medicaid recipients requesting delivery. The delivery fee is $.15 per prescription and is to be paid on all Medicaid prescriptions filled. This delivery fee is not to be paid for over-the-counter drugs which are prescribed as a benefit of this program.~~]

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

Filed with the Office of the Secretary of State on September 30, 2002.

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Marina S. Henderson
Executive Deputy Commissioner
Texas Health and Human Services Commission
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For further information, please call: (512) 424-6576

TITLE 10. COMMUNITY DEVELOPMENT

PART 5. TEXAS DEPARTMENT OF ECONOMIC DEVELOPMENT

CHAPTER 182. BUSINESS ASSISTANCE

SUBCHAPTER B. LINKED DEPOSIT PROGRAM

10 TAC §§182.52, 182.54 - 182.56, 182.58, 182.60

The Texas Department of Economic Development (department) proposes amendments to Chapter 182. Subchapter B Linked Deposit Program, §§182.52, 182.54, 182.55, 182.56, 182.58 and 182.60 relating to encouraging lending to historically underutilized businesses, child-care providers, nonprofit corporations, and to small businesses located in enterprise zones. The Linked Deposit Program is authorized by Texas Government Code, Chapter 481, Subchapter N.

The proposed amendments are necessary to clarify program practices, to conform the rules to the current statute and to reflect the abolishment of the State Depository Board by H.B. 2380 (75th Legislature) . Minor punctuation and grammatical errors have been corrected.

Proposed amendments to §182.52 update the current statutory citation to the definition of the term collateral and remove the reference to the State Depository Board.

Proposed amendments to §182.54 clarify that a lender that is not a state depository must apply to the comptroller for such designation; specify the process for determining the creditworthiness of the borrower; clarify that an original loan application must be submitted to the department; provide when the lender must certify the interest rate; clarify that the time period for the lender's compliance report described as 10 days means 10 business days after funding; clarify the lender's responsibilities to report certain matters concerning the loan to the department and to the comptroller and specify the deadline for such reports; and specify that the lender must comply with all the terms and conditions of the linked deposit agreement.

Proposed amendments to §182.55 clarify that a time period described as 10 days means 10 business days and provides that an original linked deposit application must be forwarded to the comptroller.

Proposed amendments to §182.56 clarify that the lender rather than the department must provide written notice of funding of the loan to the comptroller, clarifies the comptroller's responsibilities to wire the linked deposit and provide documentation to the department concerning the funding, clarifies when the comptroller may adjust the amount of the linked deposit, clarify the reporting requirements and the penalty for failure to comply with the reporting requirements.

Proposed amendment to §182.58 updates the rule to specify that the limit that may be placed in linked deposits is $6 million, in conformity with the current statute.

Proposed amendment to §182.60 clarifies the contact information for communications with the department.

Dan Martin, Director of Business Incentives, has determined for each year of the first five years that the amendments are in effect there will be no fiscal implications to the state or to local governments as a result of the amendments. No cost to either government or the public will result from the amendments. There will be no impact on small businesses or micro-businesses.

Mr. Martin has also determined that for each year of the first five years the amendments are in effect the public benefit anticipated as a result of the amendments is a clearer understanding of the rules and processes for participation in the program. No economic costs are anticipated to persons who are required to comply with the proposed amendments.

Written comments on the proposed amendments may be hand delivered to Texas Economic Development, 1700 North Congress, Suite 130, Austin, Texas 78701, mailed to P.O. Box 12728, Austin, Texas 78711-2728, or faxed to (512) 936-0415 and should be addressed to the attention of Robin Abbott, General Counsel. Comments must be received within 30 days of publication of the proposed amendments.

The amendments are proposed pursuant to Government Code §481.0044(a), which directs the Governing Board of the department to adopt rules for administration of department programs, Government Code §481.193(b), which directs the department to adopt rules for the Linked Deposit Program, and Government Code, Chapter 2001, Subchapter B, which prescribes the standards for rulemaking by state agencies.

Texas Government Code, Chapter 481, Subchapter N, is affected by this proposal.

§182.52. Definition of Terms.

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

(1) Act--The Texas Government Code, Chapter 481, Subchapter N.

(2) Application or linked deposit application--The required original lender's application to the department for participation in the linked deposit program including a borrower's section and a lender's section.

(3) Child-care provider--A small business that operates or proposes to operate a day-care center or group day-care home, as defined by Human Resources Code §42.002.

(4) Collateral--Securities, in accordance with Texas Government Code §404.031, [~~§404.25 and 34 TAC. §171.1,~~] required to be pledged at a minimum of 105% of amounts which exceed the Federal Deposit Insurance Corporation coverage according to the comptroller. [~~and State Depository Board.~~]

(5) Compliance report--A written representation certified as true and correct by an officer of the lender provided to the department that [~~which~~] states that a loan has been funded in accordance with the linked deposit application.

(6) Comptroller--The Texas Comptroller of Public Accounts.

(7) Current market rate--The rate of interest on a United States treasury bill or note whose maturity date most closely matches the maturity date of the linked deposit as determined by reference to the United States treasury bill or note section of the Wall Street Journal.

(8) Default--The failure to perform an obligation established by the loan as determined by the lender, these rules or agreement.

(9) Department--The Texas Department of Economic Development or any successor agency.

(10) Eligible borrower or borrower--Person who proposes to begin operating a small business in an enterprise zone, as defined by Texas Government Code, §2303.003, a historically underutilized business, a nonprofit corporation, or a child-care facility.

(11) Eligible lending institution or lender--Financial institution that makes commercial loans, is an approved depository of state funds, and agrees to participate in the program established by this subchapter and to provide collateral at least equal to the amount of linked deposits placed with it.

(12) Executive director--The executive director of the department.

(13) Governing board--The governing board of the Texas Department of Economic Development.

(14) Historically underutilized business--

(A) a corporation formed for the purpose of making a profit in which at least 51% of all classes of the shares of stock or other equitable securities is owned by one or more persons who are members

of certain groups, including Black Americans, Hispanic Americans, women, Asian Pacific Americans, and American Indians;

(B) a sole proprietorship formed for the purpose of making a profit that is 100% owned, operated, and controlled by a person, described by subparagraph (A) of this definition;

(C) a partnership formed for the purpose of making a profit in which 51% percent of the assets and interest in the partnership is owned by one or more persons described by subparagraph (A) of this definition. Those persons must have proportionate interest and demonstrate active participation in the control, operation, and management of the partnership's affairs; or

(D) a joint venture in which each entity in the joint venture is a historically underutilized business under this subdivision.

(15) Linked deposit--A linked deposit is a time deposit governed by a written deposit agreement between the state and an eligible lending institution that provides:

(A) that the eligible lending institution pay interest on the deposit at a rate that is not less than the greater of:

(i) the current market rate of a United States treasury bill or note of comparable maturity minus 2.0%; or

(ii) 1.5%; and

(B) that the eligible lending institution agree to lend the value of the deposit to an eligible borrower at a rate not to exceed the current market rate of a United States treasury bill or note of comparable maturity plus 4.0%.

(16) Loan--The note or other evidence of indebtedness entered into between the eligible borrower and the lender under the program.

(17) Nonprofit corporation--A not for profit corporation organized under the Texas Non-Profit Corporation Act (Vernon's Texas Civil Statutes, Article 1396-1.01 et seq.).

(18) Person--An individual, corporation, cooperative, organization, government or a government subdivision or agency, business trust, trust, partnership, association, or any other legal entity.

(19) Program--The Linked Deposit Program authorized by the Texas Government Code, Chapter 481, Subchapter N.

(20) Small Business--Corporation, partnership, sole proprietorship, or other legal entity that:

(A) is domiciled in this state;

(B) is formed to make a profit;

(C) is independently owned and operated; and

(D) employs fewer than 100 full-time employees.

§182.54. Application Procedures for the Lender.

A lender must comply with the following procedures to obtain approval of an application for participation in the program:

(1) A lender must be an eligible lending institution as defined by the Act, to participate in the program.

(2) A lender that is not an approved depository may obtain the appropriate designation by filing a state depository application with the comptroller [~~,which will then be submitted to the State Depository Board~~] for approval.

(3) A lender will be provided the linked deposit application and information about the program from the department.

(4) A lender shall determine the borrower's eligibility [~~and creditworthiness~~] according to the application and information [~~forms and checklists~~] provided by the department. [~~and~~] The lender shall determine the borrower's creditworthiness according to the lender's loan review criteria.

(5) A lender shall forward to the department, after review and approval, an original [~~a copy of the~~] linked deposit loan application, certified as true and correct by an officer of the lender.

(6) A lender shall estimate the proposed rate of interest to be charged the applicant in the linked deposit application filed with the department. The lender must certify via telephone communication with the comptroller , before [~~at the time~~] the loan is priced, the actual rate of interest before issuance of the linked deposit. The actual eligible borrower's loan rate shall be sent to the department as part of the lender's compliance report. In no event shall the actual rate of interest exceed the maximum rate of interest allowable under the Act.

(7) In no instance will the linked deposit be wired to the lender until the loan proceeds have been paid to the eligible borrower, and required collateral deposited and approved by the comptroller.

(8) A lender shall submit a [~~the~~] compliance report to the department within ten business days after the loan is funded.

(9) A lender shall notify the department and the comptroller in writing immediately upon a default , [~~and/or~~] in the case of a prepayment or a principal reduction greater than $5,000 in any one fiscal [~~calendar~~] quarter of a loan under the program.

(10) A lender shall comply with all terms and agreements set forth in the state depository application, the linked deposit agreement, [~~application,~~] and any other agreements and representations made to the department and the comptroller, and all other terms and conditions of the loan, these rules, and the Act.

§182.55. Procedure for Review by the Department.

(a) Upon receipt of the application from the lender, the department shall review the application and determine:

(1) the current availability of funds under the program;

(2) the completeness of the application;

(3) the eligibility of the applicant and the lender;

(4) the qualified use of proceeds; and

(5) compliance with the statute and rules.

(b) The department shall notify the lender of any deficiencies in the application 24 hours after receipt of the application. The applicant and the lender may amend the application to comply with the department's comments or withdraw the application. Applications found to be deficient will be considered [~~to be~~] withdrawn if the amended application is not received by the department within 15 business [~~calendar~~] days of the date the lending institution is notified of the deficiency.

(c) The department shall retain a copy of the linked deposit application and forward [~~a copy of~~] the original linked deposit application with the department's recommendation to the comptroller.

§182.56. Acceptance and Rejection Procedures.

(a) The comptroller shall review completed applications from the department.

(b) If the comptroller disagrees with the department's recommendation, the comptroller and the department shall meet to resolve the disagreement.

(c) Unless comptroller disagrees with the department, upon receipt of the completed application, the required collateral from the

lender, and written notice of funding of the loan from the lender [~~department,~~] and execution by the department, the comptroller and the lender of a written deposit agreement containing the information required by Government Code, §481.193(h), the comptroller will wire the linked deposit to the lender in immediately available funds the same day, provided written notice of funding of the loan is received by noon. The comptroller will then provide the department a confirmation report of the linked deposit , as well as the original, fully executed loan application.

(d) The comptroller shall determine the terms and conditions of the linked deposit once the maturity date is established. The applicable interest rate for the linked deposit can be determined by referring to the market rate of a United States treasury bill or note of comparable maturity [~~a compatible United States maturity note~~] as listed in the current issue of the Wall Street Journal. The interest rate to be paid on a linked deposit may be modified during the period of the loan, as [~~so~~] long as the new interest rate complies with the provisions of Government Code, §481.192.

(e) An eligible borrower or a lender may request reconsideration of the rejection of an application by the department executive director or governing board. The executive director's or governing board's decision on the application shall be final and binding.

(f) A lender shall terminate the linked deposit if the loan is prepaid. Quarterly principal reductions of $1,000 or more will result in a corresponding reduction of the linked deposit by the comptroller in a like amount (rounded to the nearest thousand dollars) following [~~at~~] the end of each fiscal quarter ending in November, February, May, and August. Lenders shall submit quarterly reports to the department for each active linked deposit loan. Quarterly reports will be due to the department on the 15th day of the month following the end of each fiscal quarter. If the lender fails to submit the quarterly report to the department, department will send a written notification of noncompliance to the comptroller. Upon completion of the quarterly review by the comptroller and the department, the comptroller will adjust the linked deposit [~~will be adjusted~~] to the outstanding principal balance rounded to the nearest thousand dollars.

(g) If a lender ceases to be a state depository, the comptroller shall [~~may~~] withdraw the linked deposits. If the lending institution, that [~~which~~] has a linked deposit is purchased by or merged with another lending institution, the linked deposit shall be reissued to the acquiring or resulting institution, if all depository requirements are met. Should the linked deposit loan not be obtained by the resulting institution, then the linked deposit shall be returned to the comptroller. The department and the comptroller will allow the borrower 90 days to place the application with another eligible lending institution.

(h) A late payment on a loan by a borrower does not affect the validity of the linked deposit through the period of the fiscal biennium. Should a participant default on a loan and the lending institution proceed with collection by foreclosure, the linked deposit may, as determined by the comptroller, be returned to the comptroller.

§182.58. Program Limitations.

In addition to the limitations already set forth in these rules, the following limitations apply.

(1) Not more than $6 [~~3~~] million may be placed concurrently in all linked deposits under the Act.

(2) At no time before September 1, 1999, shall any one eligible borrower have more than $300,000 in aggregate of loans outstanding under the program.

(3) The minimum amount of a loan is $10,000.

(4) The maximum amount of a loan is $250,000.

(5) The eligible borrower shall apply a loan granted under this program to the purchase, construction, or lease of capital assets, including land, buildings, and equipment.

(6) Lenders are permitted to charge all of their usual and necessary application fees and other fees and expenses in connection with any loan made under the Act and rules.

(7) All linked deposits placed under this program are placed for the period of the loan, subject to the lender remaining an approved lender by the comptroller and provided that the loan for which the linked deposit is being made does not default.

(8) The state shall not be liable for any failure to comply with the terms and conditions of the loan, or any failure to make any payment or any other losses or expenses that occur directly or indirectly from the program.

(9) A person shall not receive approval of an application if they have a loan that [~~which~~] is in default.

(10) The comptroller is not required to maintain a deposit with a lending institution if the loan for which the linked deposit was placed has been extended, renewed, or renegotiated without the submission and approval of a new linked deposit application for the loan as modified.

§182.60. Communications with the Department.

All communications about the program should be directed to Business Incentives [~~Development~~] Division, Linked Deposit Program, Texas Department of Economic Development, P.O. Box 12728, Austin, Texas 78711-2728.

This 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 25, 2002.

TRD-200206262
Tracye McDaniel
Deputy Executive Director
Texas Department of Economic Development
Earliest possible date of adoption: November 10, 2002
For further information, please call: (512) 936-0178

TITLE 16. ECONOMIC REGULATION

PART 2. PUBLIC UTILITY COMMISSION OF TEXAS

CHAPTER 22. PRACTICE AND PROCEDURE
SUBCHAPTER M. PROCEDURES AND FILING REQUIREMENTS IN PARTICULAR COMMISSION PROCEEDINGS

16 TAC §22.251

The Public Utility Commission of Texas (commission) proposes new §22.251, relating to Review of Electric Reliability Council

of Texas (ERCOT) Action. The proposed new section is necessary to establish procedures for affected persons to make written complaints to the commission regarding decisions or acts, committed or omitted, by ERCOT. The scope of permitted complaints includes ERCOT's performance as an independent organization under the Public Utility Regulatory Act (PURA) and ERCOT's promulgation and enforcement of rules relating to reliability, transmission access, customer registration, and settlement. Project Number 25959 is assigned to this proceeding.

In addition to this proposed new section the commission is also proposing under Project Number 25959 the following substantive rules in Chapter 25 of this title (relating to Substantive Rules Applicable to Electric Service Providers): an amendment to §25.361, relating to Electric Reliability Council of Texas (ERCOT), and new §25.362, relating to Electric Reliability Council of Texas (ERCOT) Governance. While commenters may file comments on all sections proposed under Project Number 25959 in one document, commenters are requested to separate in the document their discussions on proposed Procedural Rule §22.251 from their discussions on the substantive rules.

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

Marc H. Burns, Administrative Law Judge, Policy Development Division, has determined that, for each year of the first five-year period the proposed section is in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Mr. Burns has determined that for each year of the first five years the proposed section is in effect the public benefit anticipated as a result of enforcing the section will be standard procedures for the review of ERCOT actions that will result in more efficient processing of these proceedings. There will be no adverse economic effect on small businesses or micro-businesses as a result of enforcing this section. There is no anticipated economic cost to persons who are required to comply with the section as proposed.

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

The commission staff will conduct a public hearing on this rulemaking under the Administrative Procedure Act, Texas Government Code §2001.029 at the commission's offices, located in the William B. Travis Building, 1701 North Congress Avenue, Austin, Texas 78701, on Tuesday, December 3, 2002, at 9:30 a.m. in the Commissioners' Hearing Room.

Comments on the proposed new section (16 copies) may be submitted to the Filing Clerk, Public Utility Commission of Texas, 1701 North Congress Avenue, PO Box 13326, Austin, Texas 78711-3326, within 31 days after publication. Reply comments may be submitted within 45 days after publication.

The commission specifically requests that interested persons comment on the following questions:

1. Does the requirement in the Administrative Procedure Act, Texas Government Code §2003.049(b) that the utility division of the State Office of Administrative Hearings "conduct hearings related to contested cases" bar a commission administrative law judge (ALJ) from conducting a hearing to determine whether to grant a request for suspension of enforcement, as contemplated by proposed §22.251(f) (relating to Suspension of Enforcement)?

2. Does the requirement in the Administrative Procedure Act, Texas Government Code §2003.049(b) that the utility division of the State Office of Administrative Hearings "conduct hearings related to contested cases" bar a commission ALJ from conducting binding mini-trials and moderated settlement conferences by agreement of the parties as contemplated by proposed §22.251(m) (relating to Availability of Alternative Dispute Resolution)?

3. Should proposed §22.251(b) be modified to clarify that all appeals and complaints of ERCOT decisions shall be heard by the commission pursuant to this section prior to an appeal to any court of competent jurisdiction?

4. Should §22.251(c)(1)(E) be deleted because it is duplicative of the flexibility contained in the good cause exception provision, §22.251(c)(2)?

Comments should be organized in a manner consistent with the organization of the proposed rule. The commission invites specific comments regarding the costs associated with, and benefits that will be gained by, implementation of the proposed section. The commission will consider the costs and benefits in deciding whether to adopt the section. All comments should refer to Project Number 25959.

This new section is proposed under the Public Utility Regulatory Act, Texas Utilities Code Annotated §14.002 and §14.052 (Vernon 1998, Supplement 2002) (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; and specifically, PURA §39.151, which grants the commission authority to establish the terms and conditions for the exercise of ERCOT's authority.

Cross Reference to Statutes: Public Utility Regulatory Act §35.004 and 39.151.

§22.251. Review of Electric Reliability Council of Texas (ERCOT) Action.

(a) Purpose. This section prescribes the procedure by which a party, including the commission staff and the Office of Public Utility Counsel, may appeal a decision made by ERCOT or any successor in interest to ERCOT.

(b) Scope of complaints. Any affected person may complain to the commission in writing, setting forth any decision made or act or thing done or omitted to be done by ERCOT in violation or claimed violation of any law that the commission has jurisdiction to administer, of any order, ordinance, rule, or regulation of the commission, or of any protocol or rule adopted or revised by ERCOT pursuant to any law that the commission has jurisdiction to administer. The scope of permitted complaints includes ERCOT's performance as an independent organization under the Public Utility Regulatory Act (PURA) including, but not limited to, ERCOT's promulgation and enforcement of rules relating to reliability, transmission access, customer registration, and settlement.

(c) Requirement of compliance with ERCOT Protocols. A person who is aggrieved by the conduct or a decision of ERCOT must comply with Section 20 of the ERCOT Protocols (Alternative Dispute Resolution Procedures), or Section 21 of the Protocols (Process for Protocol Revision), if applicable, or other applicable sections of the ERCOT Protocols, before presenting the complaint to the commission.

(1) A complainant may present a formal complaint to the commission, without first complying with applicable ERCOT Protocols requiring a party to engage in alternative dispute resolution (ADR) or satisfying other prerequisites, if:

(A) the complainant is commission staff or the Office of Public Utility Counsel;

(B) the complainant is not an ERCOT member or otherwise bound to engage in the ERCOT ADR process;

(C) the complainant seeks emergency relief necessary to resolve health or safety issues or where compliance with ERCOT ADR procedures or other prerequisites would inhibit the ability of the affected party to provide continuous and adequate service;

(D) the complaint relates to the adoption of a protocol or revision of a protocol; or

(E) the complainant shows that compliance with applicable ERCOT protocols requiring a party to engage in ADR or satisfying other prerequisites would be futile.

(2) For any complaint that is not listed in paragraph (1) of this subsection, the complainant may submit to the commission a written request for waiver of the requirement for compliance with ERCOT's ADR procedures or other prerequisites. The complainant shall clearly state the reasons why ADR or any other otherwise applicable procedure is not appropriate. The commission may grant the request for good cause.

(3) For complaints brought by the Office of Public Utility Counsel or a party that is not an ERCOT member or otherwise bound to engage in the ERCOT ADR process, the presiding officer may require informal dispute resolution.

(d) Formal complaint. Except for appeals of ERCOT Protocol revisions approved by the ERCOT Board, which must be appealed within 35 days, a complaint shall be filed within 90 days of the date of the action or decision complained of, unless an ERCOT ADR procedure required by this section has been timely commenced and it is not completed within 90 days of the date of the action or decision complained of, in which case the complaint shall be filed within 60 days of the completion of the ERCOT ADR procedure. The presiding officer may also extend the deadline, upon a showing of good cause, including the parties' agreement to extend the deadline to accommodate ongoing efforts to resolve the matter informally, and the complainant's failure to timely discover through reasonable efforts the injury giving rise to the complaint.

(1) The complaint shall include the following information:

(A) a complete list of all complainants and the parties or persons against whom the complainant seeks relief and the addresses, and facsimile transmission number and e-mail address, if available, of the parties' counsel or other representative;

(B) a statement of the case that ordinarily should not exceed two pages and should not discuss the facts. The statement must contain the following:

(i) a concise description of any underlying proceeding or any prior or pending related proceedings;

(ii) the identity of all persons who would be directly affected by the commission's decision;

(iii) a concise description of the action or decision from which the complainant seeks relief;

(iv) a statement of the ERCOT Protocols, By-Laws, Articles of Incorporation, or law applicable to resolution of the dispute and whether the complainant has complied with the applicable ERCOT Protocols and, if not, the provision of subsection (b) of this section upon which the complainant relies;

(v) a statement of whether the complainant seeks suspension of enforcement of the decision or action complained of; and

(vi) a statement without argument of the basis of the commission's jurisdiction.

(C) a concise statement of all issues or points presented for commission review;

(D) a concise statement without argument of the pertinent facts. Each fact shall be supported by references to the record, if any;

(E) a clear and concise argument for the contentions made, with appropriate citation to authorities and to the record, if any;

(F) a statement of all questions of fact, if any, that the complainant contends require an evidentiary hearing;

(G) a short conclusion that states the nature of the relief sought; and

(H) a record consisting of a certified or sworn copy of any order, decision, or other document constituting or evidencing the matter complained of. The record may also contain any other item pertinent to the issues or points presented for review, including affidavits or other evidence on which the party relies.

(2) If the complainant seeks to suspend enforcement of the decision or action complained of while the complaint is pending and all parties or persons against whom the complainant seeks relief do not agree to the suspension, the complaint shall include a statement of the harm that is likely to result to the complainant if enforcement is not suspended. Harm may include deprivation of a party's ability to obtain meaningful or timely relief if a suspension is not entered.

(3) All factual statements in the complaint shall be verified by affidavit made on personal knowledge by an affiant competent to testify to the matters stated.

(4) A complainant shall file the required number of copies of the formal complaint, pursuant to §22.71 of this title (relating to Filing of Pleadings, Documents, and Other Materials). At or before the time of a document's filing, including the complaint, the filing party shall provide a copy of the document to ERCOT and every other person from whom relief is sought and any other party. A complainant shall also serve the Office of Public Utility Counsel.

(e) Notice. Within 14 days of receipt of the complaint, ERCOT shall provide notice of the complaint by email to all qualified scheduling entities and, in ERCOT's discretion, all relevant ERCOT committees and subcommittees. Notice shall consist of a copy of the complaint (excluding the record of prior proceedings) that includes the docket number.

(f) Response to complaint. A response to a complaint shall be due within 28 days after receipt of the complaint and shall conform to the requirements for the complaint set forth in subsection (d) of this section except that:

(1) the list of parties and counsel is not required unless necessary to supplement or correct the list contained in the complaint;

(2) the response need not include a statement of the case, a statement of the issues or points presented for commission review, or a statement of the facts, unless the responding party contests that portion of the complaint;

(3) a statement of jurisdiction should be omitted unless the complaint fails to assert valid grounds for jurisdiction, in which case the reasons why the commission lacks jurisdiction shall be concisely stated;

(4) the argument shall be confined to the issues or points raised in the complaint;

(5) the appendix need not include any item already contained in an appendix filed by another party; and

(6) if the complainant seeks suspension of the decision or action complained of, the response shall state whether the respondent opposes suspension and, if so, the basis for the opposition, specifically stating the harm likely to result if enforcement is suspended.

(g) Comments by commission staff and motions to intervene. Commission staff representing the public interest shall file comments within 42 days after the date on which the complaint was filed. In addition, any party desiring to intervene pursuant to §22.103 of this Title (relating to Standing to Intervene) shall file a motion to intervene within 42 days after the date on which the complaint was filed. Motions to intervene shall be accompanied by the intervenor's response to the complaint.

(h) Reply. The complainant may file a reply addressing any matter in a party's response or commission staff's comments. A reply, if any, must be filed within 52 days after the date on which the complaint was filed. However, the commission may consider and decide the matter before a reply is filed.

(i) Suspension of enforcement. If the complainant seeks to suspend enforcement of the decision or action complained of while the complaint is pending and all parties or persons against whom the complainant seeks relief do not agree to the suspension, the presiding officer shall determine whether to suspend enforcement, taking into account the harm that is likely to result to the complainant if enforcement is not suspended, and the harm that is likely to result to others if enforcement is suspended, and any other relevant factors as determined by the commission or the presiding officer.

(1) The presiding officer shall convene a hearing as quickly as reasonably possible to determine whether to suspend enforcement. The parties shall be prepared to offer relevant evidence and argument regarding the requested suspension of enforcement.

(2) The presiding officer may issue an order, for good cause, on such terms as may be reasonable to preserve the rights and protect the interests of the parties during the processing of the complaint, including requiring the complainant to provide reasonable security, assurances, or to take certain actions, as a condition for granting the requested suspension of enforcement.

(j) Oral argument. If the facts are such that the commission may decide the matter without an evidentiary hearing on the merits, a party desiring oral argument shall comply with the procedures set forth in §22.262(d) of this title (relating to Oral Argument Before the Commission). In its discretion, the commission may decide a case without oral argument if the argument would not significantly aid the commission in determining the legal and factual issues presented in the complaint.

(k) Extension or shortening of time limits. The time limits established by this section are intended to facilitate the expeditious resolution of complaints brought pursuant to this section.

(1) The presiding officer may grant a request to extend or shorten the time periods established by this rule for good cause shown. Any request or motion to extend or shorten the schedule must be filed prior to the date on which any affected filing would otherwise be due. A request to modify the schedule shall include a representation of whether all other parties agree with the request, and a proposed schedule.

(2) For cases to be determined after the making of factual determinations or through commission ADR as provided for in subsection (m) of this section, the presiding officer or State Office of Administrative Hearings administrative law judge shall issue a procedural schedule.

(l) Standard for review. If the decision or action complained of is based on findings of fact made by an impartial third party under circumstances that are consistent with the guarantees of due process inherent in the procedures described in the Texas Government Code Chapter 2001 (Administrative Procedure Act), including an arbitration conducted pursuant to ERCOT Protocol Section 20.4 (Arbitration Procedures), the commission will reverse a factual finding only if it is not supported by substantial evidence or is arbitrary and capricious. If factual determinations made in connection with the action or decision complained of do not meet these procedural standards, or factual determinations necessary to the resolution of the matter have not been made, the commission will resolve such factual disputes on a *de novo* basis.

(m) Referral to the State Office of Administrative Hearings. If resolution of a complaint does not require determination of any factual issues, the commission may decide the issues raised by the complaint on the basis of the complaint and the response(s). If factual determinations must be made to resolve a complaint brought under this section, and the parties do not agree to the making of all such determinations pursuant to a procedure described in subsection (n) of this section, the matter may be referred to the State Office of Administrative Hearings for the making of all necessary factual determinations and the preparation of a proposal for decision, including findings of fact and conclusions of law, unless the commissioners decide to serve as the finders of fact.

(n) Availability of alternative dispute resolution. Pursuant to Texas Government Code Chapter 2009 (Governmental Dispute Resolution Act), the commission shall make available to the parties alternative dispute resolution procedures described by Civil Practices and Remedies Code Chapter 154, as well as combinations of those procedures. The use of these procedures before the commission for cases brought under this section shall be by agreement of the parties only. The methods of dispute resolution that are available include:

(1) mediation;

(2) binding mini-trials; and

(3) moderated settlement conferences.

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

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Rhonda G. Dempsey
Rules Coordinator
Public Utility Commission of Texas
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CHAPTER 25. SUBSTANTIVE RULES APPLICABLE TO ELECTRIC SERVICE PROVIDERS
SUBCHAPTER D. RECORDS, REPORTS, AND OTHER REQUIRED INFORMATION
16 TAC §25.88

The Public Utility Commission of Texas (commission) proposes new §25.88, relating to Retail Market Performance Measure Reporting. Project Number 24462, *Performance Measures for the Retail Electric Market*, is assigned to this proceeding.

Proposed new §25.88 will establish reporting requirements for the Electric Reliability Council of Texas (ERCOT), retail electric providers (REPs), including competitive affiliates of a municipally owned utility or electric cooperative that have chosen to participate in customer choice and are providing retail electric service outside their certificated service areas, and transmission and distribution utilities (TDUs). The reporting requirements will allow the commission to obtain information to evaluate the performance of the retail electric market. The performance measures focus on key indicators relating to competitive activity and the technical systems necessary to enable customers to enroll with alternative providers and receive timely electric service with accurate and timely bills for that service. The proposed new section also outlines penalties for failure to timely file an accurate performance measures report or for continued failure of an entity to meet reasonable standards of performance.

The standard format for reporting is established as a commission prescribed form in accordance with Procedural Rule §22.80 of this title (relating to Commission Prescribed Forms). This will permit the commission to review and revise the performance measures or the reporting format as necessary to address changing market conditions without the necessity of a full rule amendment.

In the proposed section, the commission attempts to balance its need for information with the time and cost of reporting. Accordingly, the commission directs its focus to those transactions with the most customer impact. The commission acknowledges that a new market will experience start-up difficulties and notes that this section is not intended to institutionalize reporting mechanisms to diagnose short-term problems. Instead, the commission is establishing measures that may be used for long-term evaluation of the retail market. Finally, the commission realizes that penalties for poor performance may not be appropriate in a developing market or for a new entrant; however, consideration in this rulemaking is proper given that the commission may need to impose penalties at a later date if necessary.

Proposed §25.88(g)(2)(B) regarding enforcement by the commission references a proposed new §25.362(h) of this title (relating to Electric Reliability Council of Texas Governance). New §25.362 is being proposed under Project Number 25959, *Rulemaking on Oversight of Independent Organizations in the Competitive Electric Market*, simultaneously with §25.88. The text of new §25.362 may be found in the same issue of the *Texas Register* as this section or on the commission's website through the Interchange or the rulemaking project website for Project Number 25959.

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

Bridget Headrick, Chief Policy Analyst, Policy Development Division, has determined that for each year of the first five-year period the proposed section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Ms. Headrick has determined that for each year of the first five years the proposed section is in effect the public benefit anticipated as a result of enforcing this section will be increased transparency of the performance of the retail electric market which will lead to more effective oversight by the commission. There will be no adverse economic effect on small businesses or micro-businesses as a result of enforcing this section. Entities required to comply with the proposed section may experience some economic costs from the time and resources necessary to report the performance measures. These costs are likely to vary between entities and are not possible to quantify at this time. However, the benefit to competition in the retail electric market is expected to far outweigh any costs of reporting the performance measures.

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

The commission staff will conduct a public hearing on this rulemaking under Government Code §2001.029 at the commission's offices located in the William B. Travis Building, 1701 North Congress Avenue, Austin, Texas 78701, on Tuesday, November 26, 2002, at 10:00 a.m. in the Commissioners' Hearing Room.

The commission seeks comments on the proposed new section from interested persons. Comments on the proposed section (16 copies) may be submitted to the Filing Clerk, Public Utility Commission of Texas, 1701 North Congress Avenue, PO Box 13326, Austin, Texas 78711-3326. The deadline for submission of comments is November 11, 2002. Reply comments may be submitted by November 25, 2002. Comments should be organized in a manner consistent with the organization of the proposed rule. The commission invites specific comments regarding the costs associated with, and benefits that will be gained by, implementation of the proposed section. The commission will consider the costs and benefits in deciding whether to adopt the sections. All comments should refer to Project Number 24462.

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

1. With regard to the competitive market indicators, should the commission measure products offered to commercial and industrial customers? Currently the commission is only able to measure offers made to residential customers by reviewing the mandatory Electricity Facts Labels. Products offered to commercial and industrial customers are typically the result of bilateral contracts to which the commission has little or no knowledge. The commission seeks input on whether it would be desirable for the market to have a general awareness of the volume of products offered to these customer classes. For example, the commission could request REPs to report the number of products offered to commercial and industrial customers, with some broad general categorizing as to whether the contracts differed by terms of price (fixed or indexed), service options (firm or interruptible), or length of contract (less then one year or longer than one year).

2. What is the most appropriate measure to examine the level of customer service or satisfaction given the established customer protection rules, the commission's complaint process, and the natural forces of customer selection in a competitive market? The commission notes that as part of the customer education effort on retail electric choice, a survey was conducted that included a question that asked respondents to think about and describe the satisfaction level they have with their current electric company and responses ranged from "very satisfied" to "very dissatisfied." However, the commission may not be able to continue this survey after 2003. The commission anticipates that many REPs may have made independent business decisions to conduct surveys to measure customer satisfaction and it may be appropriate to request copies of these internal survey results. While the commission acknowledges that no two surveys would be identical, it is likely that all surveys would include a question concerning general satisfaction with service.

3. With regard to the technical market mechanics, should the commission require TDUs and/or REPs to report the number of 810_02 invoices and 820_02 remittance advices that were expected, sent, and/or received on a monthly basis during the reporting quarter, as well as the number of cancels and re-bills sent every month during the reporting quarter by TDUs? Should the commission require submission of data in a form that would reflect the percentage of 810_02 invoices sent within the three business days after the meter read as required by Section 4.4.1 of the standard Tariff for Retail Delivery Service and the percentage of remittances sent within the 35 calendar days as required by Section 4.4.5 of the standard Tariff for Retail Delivery Service? While the commission realizes that these transactions are business related and could be addressed through alternative mechanisms, delays or errors in invoices for transmission and distribution services affect customers to the extent that REPs are not able to submit timely and correct bills to their customers.

In addition to the new section, the commission is proposing a new form for the reporting of performance measures under §25.88. The commission is also requesting comments concerning the new form. Copies of the proposed form can be obtained from the commission's Central Records, the commission's Interchange, and the commission's website under Project Number 24462.

This new section is proposed under the Public Utility Regulatory Act, Texas Utilities Code Annotated (Vernon's 1998 and Supplement 2002) (PURA) §14.002, which provides the Public Utility Commission with authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction; and specifically, PURA §14.001, which provides authority to regulate and supervise the business of each public utility within its jurisdiction and to do anything specifically designated or implied by PURA that is necessary and convenient to the exercise of that power; §14.003, which provides authority to require reports of a public utility; §15.023, which provides for commission imposition of an administrative penalty against a person regulated under PURA who violates PURA or a rule adopted under PURA; §31.003, which requires the commission to report to the Legislature on the scope of competition in electric markets and the effect of competition and industry restructuring on customers in both competitive and noncompetitive markets; §39.001, which sets forth the legislative policy and purpose of PURA Chapter 39, Restructuring of Electric Utility Industry; §39.101, which sets forth customer safeguards; §39.151, which subjects to commission review procedures established by an independent operator relating to the reliability of the regional electrical network and accounting for the production and delivery of electricity among generators and all other market participants; §39.352, which sets forth standards for certification of REPs; §39.356, which provides for suspension, revocation, or amendment of a REP's certificate; and §39.357, which provides for the imposition of administrative penalties on a REP for violations described by §39.356.

Cross Reference to Statutes: Public Utility Regulatory Act §§14.001, 14.002, 14.003, 15.023, 31.003, 39.001, 39.101, 39.151, 39.352, 39.356, and 39.357.

§25.88. Retail Market Performance Measure Reporting.

(a) Purpose. This section establishes reporting requirements to allow the commission to obtain information to be used for evaluation of the performance of the retail electric market in Texas.

(b) Application. This section applies to:

(1) Electric Reliability Council of Texas (ERCOT) as defined in Public Utility Regulatory Act (PURA) §31.002(5) and §25.5 of this title (relating to Definitions);

(2) Retail electric providers (REPs) as defined in PURA §31.002(17) and §25.5 of this title (relating to Definitions), including any competitive affiliates of a municipally owned utility or electric cooperative that have chosen to participate in customer choice pursuant to PURA §40.051(b) or PURA §41.051(b) and are providing electric energy at retail to consumers in Texas outside their certificated retail service areas; and

(3) Transmission and distribution utilities (TDUs) operating in a qualifying power region in the State of Texas as defined in PURA §31.002(19) and §25.5 of this title (relating to Definitions).

(c) Filing requirements. Using forms prescribed by the commission, a reporting entity shall report activities as required by this section. Such reports shall be filed with the commission under the project number assigned by the commission's Central Records Office for all filings required each calendar year.

(1) Each entity shall file with the filing clerk of Central Records at the commission offices in Austin, Texas, four copies of the printed report and any attachments in accordance with §22.71 of this title (related to Filing of Pleadings, Documents, and Other Material). Additionally, entities shall file an electronic version consistent with the commission's electronic filing standards set forth in §22.72(h) of this title (relating to Formal Requisites of Pleadings and Documents to be Filed with the Commission);

(2) A quarterly report shall be filed by the 45th day following the end of the preceding quarterly reporting period. Quarterly periods shall begin on January 1, April 1, July 1, and October 1.

(3) The reporting entity may designate information that it considers to be confidential. Information designated as confidential shall be processed in accordance with commission policy set forth in §22.71 of this title (related to Filing of Pleadings, Documents, and Other Material).

(d) Key performance indicators. Reporting entities shall report on the following key performance indicators on a quarterly basis:

(1) Competitive market indicators. These measures will allow the commission to assess the activity in the competitive market through the number of customers and corresponding load served by non-affiliated REPs and the number of active REPs.

(2) Technical market mechanics. These measures will allow the commission to assess whether the technical systems of the reporting entities are functioning properly to perform market transactions necessary for customers to choose retail electric providers and to receive timely electric service with accurate and timely bills for that service.

(e) Supporting documentation. Each performance measures report shall include:

(1) Analysis. The reporting entity shall include an analysis of its data and performance for the reporting period with a comparison to performance in the previous period.

(2) Report attestation. All reports submitted to the commission shall be attested to by an owner, partner, officer, or manager of the reporting entity under whose direction the report is prepared. The attestation shall also verify that an internal review was conducted to confirm the accuracy of the information contained in the performance measures report.

(3) Supporting documents available for inspection. All supporting documents, including records, books, and memoranda shall be made available at the reporting entity's main office for inspection by the commission or its designee upon request. Supporting documents shall be maintained for a period of 24 months after the report date. Supporting documents may be kept outside the State of Texas so long as those records are returned to the state for any requested inspection by the commission or its designee.

(4) Waiver of certain information. The commission may waive the reporting of any information required in this subchapter if it determines that it is either impractical or unduly burdensome for the reporting entity to furnish the requested information. If any such information is omitted by commission waiver, a written explanation of the omission and copy of the waiver must be included in the report.

(f) Other reports. Reporting entities may be required to submit special reports to allow the commission to analyze the changing dynamics of the retail electric market or to obtain information on specific issues that may require additional diagnostic review.

(1) Supplemental information requested by the commission. Upon request by the commission or its designee, a reporting entity shall provide any special and additional information that relates to the performance measures report. Such request shall specify a time for the reporting entity to respond that is reasonable in consideration of the information requested. Electric cooperatives and municipally owned utilities participating in customer choice and providing retail electric service to customers outside their certificated area may be required to file special or additional reports to the extent the commission determines that such information is necessary and is within the jurisdiction of the commission.

(2) Additional reports requested through ERCOT. Reporting entities may be required to provide to ERCOT, or groups operating under the authority of ERCOT, special and additional information that relates to market performance for specific or diagnostic purposes.

(g) Enforcement by the commission. The commission may impose penalties for failure of a reporting entity to timely file an accurate performance measures report or for continued failure of a reporting entity to meet the expected performance level for any of the appropriate measures.

(1) Prior to imposing penalties, the commission or its designee shall work with the reporting entity to develop a performance improvement plan. The performance improvement plan shall contain specific goals for improving performance within designated time periods and shall be reasonable in view of all relevant circumstances.

(2) If a reporting entity continues to fail to meet expected performance and the goals set forth in the performance improvement plan, the commission may impose the following penalties:

(A) Administrative penalties under PURA, Chapter 15, Subchapter B, consistent with §22.246 of this title (relating to Administrative Penalties);

(B) Any penalty against ERCOT established by the commission in §25.362(h) of this title (relating to Oversight of Independent Organizations in the Competitive Electric Market) and as authorized by PURA §39.151; or

(C) Suspend, revoke, or amend a REP's certificate or registration as authorized by PURA §39.356 and §25.107 of this title (relating to Certification of Retail Electric Providers).

(3) In assessing penalties, the commission shall consider the following factors:

(A) The reporting entity's prior history of performance;

(B) The reporting entity's efforts to improve performance;

(C) Whether the penalty is likely to improve performance; and

(D) Such other factors deemed appropriate and material to the particular circumstances.

(h) Public information. The commission may produce a summary report on the performance measures using the information collected as a result of these reporting requirements. Any such report shall be public information. The commission may provide the reports to any interested entity and post the reports on the commission's Internet website.

(i) Annual commission review. The commission may evaluate the reporting requirements on an annual basis to determine if modifications to the performance measures are necessary due to changing market conditions.

This 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 27, 2002.

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For further information, please call: (512) 936-7308

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SUBCHAPTER O. UNBUNDLING AND MARKET POWER
DIVISION 2. INDEPENDENT ORGANIZATIONS

16 TAC §25.361, §25.362

The Public Utility Commission of Texas (commission) proposes amendments to §25.361, relating to Electric Reliability Council of Texas (ERCOT), and new §25.362, relating to Electric Reliability Council of Texas (ERCOT) Governance. The proposed new rule and amendment will provide standards for the operation of an independent organization in the ERCOT region. In addition to these rules, the commission is also proposing a new procedural rule, §22.251, relating to Review of Electric Reliability Council of Texas Action. Comments will be requested on this proposal through a separate notice. Project Number 25959 is assigned to this proceeding.

Connie Corona, Director, Electric Policy Analysis, Policy Development Division, has determined that for each year of the first five-year period the proposed sections are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the sections.

Ms. Corona has determined that for each year of the first five years the proposed sections are in effect the public benefit anticipated as a result of enforcing the sections will be to provide guidelines under which an independent organization certified by the commission is expected to operate. Providing clear guidelines should enhance the effectiveness of ERCOT in carrying out its important responsibilities in the electric industry in Texas. PURA §39.151(c) requires the commission to certify an independent organization or organizations to perform functions necessary to the operation of a competitive retail electric market. By proposing new §25.362, the commission seeks to make clear its expectations for the management of such an independent organization. At the same time, the independent organization should have the latitude to develop and implement its own specific policies and procedures, under guidelines established by the commission. As such, the commission finds it to be in the public interest to set forth such guidelines in this proposed section.

The commission is proposing that ERCOT be required to provide information to the commission, even if the information is designated as Protected Information under the ERCOT Protocols. It is also proposing procedures for resolving issues relating to the protection or disclosure of such information. It is contemplated that if these provisions are adopted as proposed, they would supercede the existing confidentiality agreement between the commission and ERCOT. The commission considered proposing rules concerning the review of requests for changes in the fees that ERCOT charges, but has decided to defer this matter. It is expected that ERCOT will request a change in its administrative fee, to be effective in 2003, and that a new rule dealing with that subject could not be adopted quickly enough to have any bearing on the processing of that request. Prudent management of its resources by ERCOT is a matter of concern to the commission, but conducting a rulemaking proceeding on this subject would be more appropriate in early 2003 than now.

There will be no adverse economic effect on small businesses or micro-businesses as a result of enforcing these sections. There is no anticipated economic cost to persons who are required to comply with the sections as proposed.

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

The commission staff will conduct a public hearing on this rulemaking under the Administrative Procedure Act, Texas Government Code §2001.029 at the commission's offices, located in the William B. Travis Building, 1701 North Congress Avenue, Austin, Texas 78701, on Tuesday, December 3, 2002 at 9:30 a.m. in the Commissioners' Hearing Room.

Comments on the proposed new and amended sections (16 copies) may be submitted to the Filing Clerk, Public Utility Commission of Texas, 1701 North Congress Avenue, PO Box 13326, Austin, Texas 78711-3326, within 31 days after publication. Reply comments may be submitted within 45 days after publication. The commission requests that interested parties comment on whether the proposed new rules conform fully with its existing rules relating to ERCOT. Comments should be organized in a manner consistent with the organization of the proposed rules. The commission invites specific comments regarding the costs associated with, and benefits that will be gained by, implementation of the proposed sections. The commission will consider the costs and benefits in deciding whether to adopt the sections. All comments should refer to Project Number 25959.

The commission specifically requests that interested persons comment on the following questions:

1. How should proposed §25.362(g) be changed to accommodate ERCOT's transition from a stakeholder board to a hybrid stakeholder/independent Board?

2. Is the requirement in proposed §25.362(i)(3) for a third-party auditor consistent with the Non-unanimous Settlement in Docket Number 23320, *Petition of the Electric Reliability Council of Texas for Approval of the ERCOT Administrative Fee*, Item No. 10, which requires ERCOT to retain an internal auditor?

3. Should proposed §25.362 include a requirement that ERCOT adopt a mechanism for allocating administrative penalty liabilities, such as applying it to line-items in the ERCOT budget or assessing it to members? If "yes," to whom, and/or to what ERCOT budget items, should such a mechanism apply? Do other ISO's have such mechanisms?

The new and amended sections are proposed under the Public Utility Regulatory Act, Texas Utilities Code Annotated §14.002 (Vernon 1998, Supplement 2002) (PURA), which provides the Public Utility Commission with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction; and specifically, PURA §39.151 which requires the commission to certify an independent organization to perform functions necessary for the operation of a competitive electric market.

Cross Reference to Statutes: Public Utility Regulatory Act §14.002, §35.004, §39.151, and §39.155.

§25.361. Electric Reliability Council of Texas (ERCOT).

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

(c) Functions. ERCOT shall operate an integrated electronic transmission information network and carry out the other functions prescribed by this section. ERCOT shall:

(1) administer, on a daily basis, the operational and market functions of the ERCOT system, including scheduling of resources and loads, and transmission congestion management, as set forth in the ERCOT protocols;

(2) serve as the single point of contact for the initiation of transmission transactions;

(3) maintain the reliability and security of the ERCOT region's electrical network, including the instantaneous balancing of ERCOT generation and load and monitoring the adequacy of resources to meet demand;

(4) direct the curtailment and redispatch of ERCOT generation and transmission transactions on a non-discriminatory basis, consistent with ERCOT protocols;

(5) accept and supervise the processing of all requests for interconnection to the ERCOT transmission system from owners of new generating facilities;

(6) coordinate and schedule planned transmission facility outages;

(7) perform system screening security studies, with the assistance of affected TSPs;

(8) plan the ERCOT transmission system, in accordance with subsection (f) of this section;

(9) administer [~~registration~~]procedures for the registration of market participants;

(10) administer the customer registration system;

(11) [~~(10)~~] administer the renewable energy program;

(12) [~~(11)~~] monitor generation planned outages;

(13) disseminate information relating to market operation and the availability of services, in accordance with the ERCOT protocols;

(14) [~~(12)~~] submit an annual report to the commission identifying existing and potential transmission and distribution constraints and system needs within ERCOT with emphasis on critical transmission projects, alternatives for meeting system needs, and recommendations for meeting system needs, pursuant to PURA §39.155 (relating to Commission Assessment of Market Power); and

(15) [~~(13)~~] perform any additional duties required under the ERCOT protocols.

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

(g) Information and coordination. Transmission service providers and transmission service customers shall provide such information as may be required by ERCOT to carry out the functions prescribed by this section and the ERCOT protocols. ERCOT shall maintain the confidentiality of competitively sensitive information as specified in §25.362 of this title (relating to Electric Reliability Council of Texas (ERCOT) Governance) [~~entrusted to it~~]. ERCOT shall also disseminate information relating to market prices and the availability of services, in accordance with the ERCOT protocols. Providers of transmission and ancillary services shall also maintain the confidentiality of competitively sensitive information entrusted to them by ERCOT or a transmission service customer.

(h)-(k) (No change.)

§25.362. Electric Reliability Council of Texas (ERCOT) Governance.

(a) Purpose. This section provides standards for the operation of an independent organization within the ERCOT region.

(b) Application. This section applies to ERCOT or any other organization within the ERCOT region that qualifies as an independent organization under the Public Utility Regulatory (PURA) §39.151.

(c) Adoption of rules by ERCOT and commission review. ERCOT shall adopt and comply with procedures concerning the adoption and revision of protocols, rules, or other statements of general policy that have an impact on the governance of the organization or on reliability, settlement, customer registration, or access to the transmission system.

(1) The procedures shall provide for advance notice to interested persons, an opportunity to file written comments or participate in public discussions, and an evaluation by ERCOT of the costs and benefits to the organization, market participants, and wholesale and retail customers.

(2) The commission shall process requests for review of ERCOT rules and decisions in accordance with §22.251 of this title (relating to Review of Electric Reliability Council of Texas (ERCOT) Action).

(d) Access to meetings. ERCOT shall adopt and comply with procedures for providing access to its meetings to market participants and the general public. These procedures shall include provisions on advance notice of the time, place, topics to be discussed during open and closed portions of the meetings and making and retaining a permanent record of the meetings.

(e) Access to information. ERCOT shall adopt and comply with procedures for persons to request access to records relating to the governance and budget of the organization, market operation, reliability, settlement, customer registration, and access to the transmission system. ERCOT shall make these procedures publicly available.

(1) To the extent it collects market information pursuant to its protocols or operating guides, ERCOT shall provide the commission or the commission staff with the information the commission or the commission staff deems necessary to assess market power and the development and operation of competitive wholesale and retail markets in ERCOT; evaluate possible violations of laws, rules, or codes of conduct; and carry out the commission's responsibilities for oversight of ERCOT.

(2) Commercial, financial or operating information submitted to or collected by ERCOT pursuant to requirements of the protocols or operating guides that is designated as Protected Information pursuant to the Protocols shall be withheld from public disclosure except as otherwise provided in this subsection.

(3) The commission may, upon its own motion or the petition of an affected party, and with reasonable notice to affected parties, require ERCOT to:

(A) Disclose information designated by the Protocols as Protected Information; or

(B) Withhold disclosure of information that the Protocols do not designate as Protected Information.

(4) Information received by the commission under this subsection is subject to release pursuant to the provisions of this section and the Texas Public Information Act (TPIA).

(5) Upon receipt of a request for information maintained by the commission that is designated as "Protected Information" under the ERCOT Protocols from a member of the Texas Legislature, the commission shall provide the information to the requestor subject to

the provisions of Texas Government Code Annotated §552.008(b)(1)-(4). With the permission of the requesting member of the Texas Legislature, the commission shall notify ERCOT and the entity that provided the information to ERCOT of the existence of the request, the identity of the requestor, and the substance of the request.

(6) Commission officers, employees, consultants, agents, and attorneys provided access to Protected Information pursuant to this paragraph shall not disclose such information, except as provided in this subsection.

(7) Except as provided in paragraphs (5) and (6) of this subsection, the commission shall provide notice to ERCOT and the entity that provided the information to ERCOT if it receives a request for Protected Information that the commission has obtained from ERCOT at least 72 hours prior to the disclosure of the requested information (or, in the case of a valid and enforceable order of a state or federal court of competent jurisdiction specifically requiring disclosure of Protected Information earlier than within 72 hours, prior to such disclosure). The commission shall cooperate with ERCOT and any entity that provided the information to ERCOT in seeking to protect the Protected Information from public disclosure by confidentiality agreement, protective order, aggregation of information, or other reasonable measures. Notwithstanding the foregoing, however, nothing shall preclude the commission from considering the release of Protected Information in accordance with paragraph (3) or (8) of this subsection.

(8) If the commission receives a request under the TPIA for information that has been designated as Protected Information, the commission shall, within ten days of receipt of the request, provide notice of the request to ERCOT and to the entity that provided the information to ERCOT. Any person who seeks to protect information from public disclosure must, at a minimum, state in writing the specific reasons why the information is subject to protection from public disclosure and provide legal authority in support of such assertion. After an opportunity has been provided to the requestor and the entity that provided the information to ERCOT to present information or comment to the commission on whether information is subject to protection from public disclosure under the TPIA, a person designated by the commission may make a determination as to whether the information sought is subject to public disclosure under the TPIA. In addition, pursuant to the provisions of the TPIA, the commission may request an opinion from the Office of the Attorney General as to whether the information is subject to protection from public disclosure under the TPIA.

(f) Conflicts of interest. ERCOT shall adopt policies to ensure that its operations are not affected by conflicts of interests relating to its employees' outside employment and financial interests and its contractors' relationships with other businesses. These policies shall include an obligation to protect confidential information obtained by virtue of employment or a business relationship with ERCOT.

(g) Qualifications for membership on governing board. ERCOT shall establish and implement criteria for an individual to serve as a member of its governing board, procedures to determine whether an individual meets these criteria, and procedures for removal of an individual from service if the individual ceases to meet the criteria.

(1) The qualification criteria shall include:

(A) Definitions of the market sectors;

(B) Levels of activity in the electricity business in the ERCOT region that an organization in a market sector must meet, in order for a representative of the organization to serve as a member of the governing board;

(C) Standards of good standing that an organization must meet, in order for a representative of the organization to serve as a member of the governing board; and

(D) Standards of good standing that an individual must meet, in order for the individual to serve as a member of the governing board.

(2) The procedures for removal of a member from service on the governing board shall include:

(A) Procedures for determining whether an organization or individual meets the criteria adopted under paragraph (1) of this subsection; and

(B) Procedures for the removal of an individual from the governing board if the individual or the organization that the individual represents no longer meets the criteria adopted under paragraph (1) of this subsection.

(3) The procedures adopted under paragraph (2) of this subsection shall:

(A) Permit any interested party to present information that relates to whether an individual or organization meets the criteria specified in paragraph (1) of this subsection; and

(B) Specify how decisions concerning the qualification of an individual will be made.

(4) A decision concerning an individual or organization's qualification is subject to review by the commission.

(h) Required reports. Beginning with the conclusion of the 2002 calendar year, ERCOT shall file an annual report with the commission not later than 120 days after the end of each calendar year.

(1) The annual report shall include:

(A) An independent audit of ERCOT's financial statements for the report year;

(B) A schedule comparing actual revenues and costs to budgeted revenues and costs for the report year and a schedule showing the variance between actual and budgeted revenues and costs;

(C) An independent audit of ERCOT's market operation conducted during the report year; and

(D) The annual board-approved budget.

(2) ERCOT shall file quarterly reports no later than 45 days after the end of the first, second and third quarters, which shall include:

(A) All internal audit reports that were produced during the reporting quarter, and

(B) A report on performance measures, as prescribed by the commission.

(i) Compliance with rules or orders. ERCOT shall inform the commission with as much advance notice as is practical if ERCOT realizes that it will not be able to comply with PURA, the commission's substantive rules, or a commission order. If ERCOT fails to comply with PURA, the commission's substantive rules, or a commission order, the commission may, after notice and opportunity for hearing, adopt the measures specified in this subsection or such other measures as it determines are appropriate.

(1) The commission may require ERCOT to submit, for commission approval, a proposal that details the actions ERCOT will undertake to remedy the non- compliance.

(2) The commission may require ERCOT to begin submitting reports, in a form and at a frequency determined by the commission, that demonstrate ERCOT's current performance in the areas of non-compliance.

(3) The commission may require ERCOT to undergo an audit performed by an appropriate independent third party.

(4) The commission may assess administrative penalties under PURA Chapter 15, Subchapter B.

(5) The commission may suspend or revoke ERCOT's certification under PURA §39.151(c) or deny a request for change in the terms associated with such certification.

(6) The imposition of one penalty under this section does not preclude the imposition of other penalties as appropriate for the instance of non- compliance or related instances of noncompliance.

(7) In assessing penalties, the commission shall consider the following factors:

(A) Any prior history of non-compliance;

(B) Any efforts to comply with and to enforce the commission's rules;

(C) The nature and degree of economic benefit or harm to any market participant or electric customer;

(D) The damages or potential damages resulting from the instance of non- compliance or related instances of noncompliance;

(E) The likelihood that the penalty will deter future non-compliance; and

(F) Such other factors deemed appropriate and material to the particular circumstances of the instance of non-compliance or related instances of noncompliance.

(8) The commission may initiate a compliance proceeding or other enforcement proceeding upon its own initiative or after a complaint has been filed with the commission that alleges that the ERCOT has failed to comply with PURA, the commission's substantive rules, or a commission order.

(9) Nothing in this section shall preclude any form of civil relief that may be available under federal or state law.

(j) Priority of commission rules. This section supersedes any procedures or protocols adopted by ERCOT that conflict with the provisions of this section. Except as otherwise provided in this section, the adoption of this section does not affect the validity of any rule or procedure adopted or any action taken by ERCOT prior to the adoption 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 27, 2002.

TRD-200206309
Rhonda G. Dempsey
Rules Coordinator
Public Utility Commission of Texas
Earliest possible date of adoption: November 10, 2002
For further information, please call: (512) 936-7308

TITLE 19. EDUCATION

PART 2. TEXAS EDUCATION AGENCY

CHAPTER 129. STUDENT ATTENDANCE SUBCHAPTER AA. COMMISSIONER'S RULES

19 TAC §129.1025

The Texas Education Agency (TEA) proposes an amendment to §129.1025, concerning student attendance accounting. The amendment would adopt by reference the *2002-2003 Student Attendance Accounting Handbook* which provides student attendance accounting rules for school districts and charter schools. Texas Education Code (TEC), §42.004, requires the commissioner, in accordance with rules of the State Board of Education (SBOE), to take such action and require such reports as may be necessary to implement and administer the Foundation School Program (FSP). SBOE rule, 19 Texas Administrative Code (TAC) §129.21, delineates responsibilities of the commissioner to provide guidelines for attendance accounting, necessary records and procedures required of school districts in preparation of a daily attendance register, and provisions for special circumstances regarding attendance accounting.

Legal counsel with the TEA has recommended that the procedures contained in each annual student attendance accounting handbook be adopted as part of the *Texas Administrative Code*. This decision was made in 2000 given a court decision challenging state agency decision-making via administrative letter/publications. Given the statewide application of the attendance accounting rules and the existence of sufficient statutory authority for the commissioner of education to adopt by reference the student attendance accounting handbook, staff proceeded with formal adoption of rules in this area. The intention is to annually update the rule to refer to the most recently published student attendance accounting handbook.

Each annual student attendance accounting handbook provides school districts and charter schools with the FSP eligibility requirements of all students, prescribes the minimum requirements of all student attendance accounting systems, lists the documentation requirements for attendance audit purposes, specifies the minimum standards for systems that are entirely functional without the use of paper, and details the responsibilities of all district personnel involved in student attendance accounting. The TEA distributes FSP resources under the procedures specified in each current student attendance accounting handbook. One copy of the final printed version of the student attendance accounting handbook is mailed to each district and published on the TEA web site each June/July. A supplement, if necessary, is mailed to each district and published on the TEA web site.

The proposed amendment to 19 TAC §129.1025 adopts by reference the student attendance accounting handbook that has been updated for the current school year. Significant changes in the *2002-2003 Student Attendance Accounting Handbook* include information relating to the following: (1) the requirement that the district or charter school must maintain a procedures manual specific in detail to the school attendance accounting system; (2) data that must be included in student detail reports; (3) documentation, reports, and system requirements for paperless environments; (4) enrollment procedures for students new to district; previously in Special Education; and (5) the deletion

of a previous chart and its replacement with more detailed charts for determining ADA, special education, and grade level coding for children, ages 3-5, with disabilities.

Ed Flathouse, associate commissioner for finance and support systems, has determined that for the first five-year period the amendment is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the amended section.

Mr. Flathouse has determined that for each year of the first five years the amendment is in effect the public benefit anticipated as a result of enforcing the section will be the continued public knowledge of the existence of annual publications that specify attendance accounting procedures for school districts and charter schools. There will not be an effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the proposed amendment.

Comments on the proposal may be submitted to Cristina De La Fuente-Valadez, 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 amendment submitted under the Administrative Procedure Act must be received by the commissioner of education not more than 15 calendar days after notice of the proposal has been published in the *Texas Register*.

The amendment is proposed under Texas Education Code (TEC), §42.004, 74th Texas Legislature, 1995, which authorizes the commissioner of education, in accordance with rules of the State Board of Education, to take such action and require such reports consistent with TEC, Chapter 42, as may be necessary to implement and administer the Foundation School Program.

The amendment implements the Texas Education Code, §42.004, 74th Texas Legislature, 1995.

§129.1025. Adoption By Reference: Student Attendance Accounting Handbook.

(a) The standard procedures that school districts and charter schools shall use to maintain records and make reports on student attendance and student participation in special programs for school year 2002- 2003 [~~2001-2002~~] are described in the official Texas Education Agency (TEA) publication, *2002-2003* [~~2001-2002~~] *Student Attendance Accounting Handbook*, [~~as amended July 2001,~~] which is adopted by this reference as the agency's official rule. A copy of the *2002-2003* [~~2001-2002~~] *Student Attendance Accounting Handbook* is available for examination during regular office hours, 8:00 a.m. to 5:00 p.m., except holidays, Saturdays, and Sundays, at the Texas Education Agency, 1701 North Congress Avenue, Austin, Texas 78701. In addition, the publication can be accessed from the TEA official website.

(b) The commissioner of education shall amend the *2002-2003* [~~2001-2002~~] *Student Attendance Accounting Handbook* and this section adopting it by reference, as needed.

This 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 30, 2002.

TRD-200206321

Cristina De La Fuente-Valadez
Manager, Policy Planning
Texas Education Agency
Earliest possible date of adoption: November 10, 2002
For further information, please call: (512) 463-9701

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TITLE 22. EXAMINING BOARDS

PART 5. STATE BOARD OF DENTAL EXAMINERS

CHAPTER 114. EXTENSION OF DUTIES OF AUXILIARY PERSONNEL--DENTAL ASSISTANTS

22 TAC §114.2

The State Board of Dental Examiners proposes amendments to §114.2, Definition in Chapter 114 which establishes permissible duties for auxiliary personnel, namely dental assistants. The proposed amendments to §114.2 provide for definitional terms.

Pursuant to H.B. 3507, 77th Legislature, 2001, and as provided by §114.3 of this title (relating to Application of Pit and Fissure Sealants), a Texas licensed dentist who is enrolled as a Medicaid Provider with appropriate state agencies may delegate the application of a pit and fissure sealant to a dental assistant, if the dental assistant is employed by and works under the direct supervision of the licensed dentist and is certified. Rule 114.3(d) provides the requirements for a dental assistant wishing to obtain the necessary certification to apply pit and fissure sealants. One such requirement is the completion of a minimum of 16 hours of clinical and didactic education in pit and fissure sealants taken through a Commission on Dental Accreditation (CODA) accredited dental hygiene program.

Three definitional terms are proposed for inclusion in §114.2. They include didactic education, clinical education, and direct supervision. The purpose for inclusion of definitional terms in §114.2 is two-fold. First, clinical education and direct supervision are defined to clarify that providing care to patients during clinical education for certification is required. Second, the purpose for specifying the meaning behind certain terms under §114.3 is to ensure uniformity and similarity in the training and education given to dental assistants and dental hygienists under §115.2 of this title (relating to Permitted Duties).

Amendments to §114.2 include at paragraph (2) didactic education -- requires the presentation and instruction of theory and scientific principles; at paragraph (3) clinical education -- requires providing care to patient(s) under the direct supervision of a dentist or dental hygienist instructor; and at paragraph (4) direct supervision -- the instructor responsible for the procedure shall be physically present during patient care and shall be aware of the patient's physical status and well being.

Dr. James L. Bolton, Interim Executive Director, State Board of Dental Examiners, has determined for the first five year period the amended rule is in effect there will be no fiscal implications for local or state government as a result of enforcing or administering the rule.

Dr. Bolton has determined that for each year of the first five years the amended rule is in effect, the public benefit anticipated as a

result of enforcing the rule will be that dental assistants receive the same level of clinical and didactic training for the application of pit and fissure sealants as that required of a licensed dental hygienist.

It is unknown if there will be any fiscal implications for small businesses. Should such costs be incurred, they will not be of such magnitude to impact the economic viability of a small business. Therefore the SBDE has determined that compliance with the proposed amended rule will not have an adverse economic impact on small business when compared to large businesses, as the cost of compliance, if any, will be minimal.

Comments on the proposal may be submitted to Mei Ling Clendennen, Assistant Executive Director, State Board of Dental Examiners, 333 Guadalupe, Tower 3, Suite 800, Austin, Texas 78701, (512-463-6400). To be considered, all written comments must be received by the State Board of Dental Examiners no later than 30 days from the date that this amended rule is published in the Texas Register.

The amended rule is proposed under Texas Government Code §2001.021 et seq.; Texas Civil Statutes, the Occupations Code §254.001 which provides the State Board of Dental Examiners with the authority to adopt and enforce rules necessary for it to perform its duties, and to ensure compliance with laws relating to the practice of dentistry, and with the provisions of House Bill 3507, Article 4, 77th Legislature, 2001

The proposed amended rule does not affect other statutes, articles, or codes.

§114.2. Definitions [~~Definition~~].

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

(1) Irreversible -- An act that is "irreversible" is not capable of being reversed or corrected. This term includes, but is not limited to the result of intra-oral use of any laser for any purpose including all or part of a whitening process.

(2) Didactic education -- requires the presentation and instruction of theory and scientific principles.

(3) Clinical education -- requires providing care to patient(s) under the direct supervision of a dentist or dental hygienist instructor.

(4) Direct Supervision -- the instructor responsible for the procedure shall be physically present during patient care and shall be aware of the patient's physical status and well being.

This 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 25, 2002.

TRD-200206258
Dr. James L. Bolton
Executive Director
State Board of Dental Examiners
Earliest possible date of adoption: November 10, 2002
For further information, please call: (512) 463-6400

PART 12. BOARD OF VOCATIONAL NURSE EXAMINERS

CHAPTER 235. LICENSING

SUBCHAPTER A. APPLICATION FOR LICENSURE

22 TAC §235.3

The Board of Vocational Nurse Examiners proposes amendment of §235.3 relating to Qualifications for Licensure by Examination. The amendment will address new addition to rule to accommodate licensure of vocational/practical nurses educated in foreign countries as required by multi-state licensure compact, and to assure English-speaking competency for graduates of foreign nursing programs.

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

Ms. Hairston has also determined that for each year of the first five years the rules are in effect the public benefit anticipated as a result of enforcing the rules will be consistency in the rules. There will be no effect on small businesses. There is no anticipated economic costs to persons who are required to comply with the rules as proposed.

Comments may be submitted to Terrie L. Hairston, Executive Director, Board of Vocational Nurse Examiners, 333 Guadalupe, Suite 3-400, Austin, Texas 78701.

The amendment is proposed under Chapter 302, Texas Occupations Code, Subchapter D, Section 302.151(b), which provides the Board of Vocational Nurse Examiners with the authority to make such rules and regulations as may be necessary to carry in effect the purpose of the law.

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

§235.3. Qualifications for Licensure by Examination.

The vocational/practical nurse shall:

(1) have successfully completed an approved program for educating vocational/practical nurses; [~~and~~]

(2) hold a high school diploma issued by an accredited secondary school or equivalent educational credentials as established by the General Education Development Equivalency Test (GED); [~~and~~]

(3) have passed the Test of Spoken English (TSE) examination with a score of 50 or better, if educated in a foreign country; and

(4) [~~(3)~~] have passed the examination approved by the Board of Vocational Nurse Examiners.

This 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 23, 2002.

TRD-200206209

Terrie Hairston, RN, CHE
Executive Director
Board of Vocational Nurse Examiners
Earliest possible date of adoption: November 10, 2002
For further information, please call: (512) 305-7653

22 TAC §235.6

The Board of Vocational Nurse Examiners proposes amendment of §235.6 relating to Applications for Licensure by Endorsement. The amendment will accommodate endorsement of licensees from compact states who hold inactive licenses, but reside in Texas. Compact rules do not allow holding a license in both states. Consistency with proposed changes. To delete employment inference. Should only address licensure requirements. Rule was incorrectly written when implemented.

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

Ms. Hairston has also determined that for each year of the first five years the rules are in effect the public benefit anticipated as a result of enforcing the rules will be consistency in the rules. There will be no effect on small businesses. There is no anticipated economic costs to persons who are required to comply with the rules as proposed.

Comments may be submitted to Terrie L. Hairston, Executive Director, Board of Vocational Nurse Examiners, 333 Guadalupe, Suite 3-400, Austin, Texas 78701.

The amendment is proposed under Chapter 302, Texas Occupations Code, Subchapter D, Section 302.151(b), which provides the Board of Vocational Nurse Examiners with the authority to make such rules and regulations as may be necessary to carry in effect the purpose of the law.

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

§235.6. Applications for Licensure by Endorsement.

An applicant for licensure in Texas by endorsement shall:

(1) (No change.)

(2) be a graduate of an approved vocational/practical nursing program or have completed an acceptable level of education as determined by the Board in a nursing school approved by the State Board of Nurse Examiners of Texas or in some other state, the District of Columbia, a possession of the United States, or a foreign country;[.]

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

(6) hold a [an active and current] vocational/practical nurse license in another state;

(7) be subject to Chapter 239, Subsection E. Reinstatement Process, if applicant's license has been voluntarily surrendered, suspended, or revoked in a Compact state;[.]

(8) show employment in the nursing profession within the past four [five] years or evidence of a completed refresher course or completion of supervised employment for a specified period and a copy of the job description;

(9) comply with additional Board staff specified training, education, or examination requirements if provisions of subsection (3) of this section are met [not employed as a licensed nurse within the past five years];

(10) file another application if original application is not completed within six months; and

(11) not be refunded 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 23, 2002.

TRD-200206208
Terrie Hairston, RN, CHE
Executive Director
Board of Vocational Nurse Examiners
Earliest possible date of adoption: November 10, 2002
For further information, please call: (512) 305-7653

22 TAC §235.12

The Board of Vocational Nurse Examiners proposes amendment of §235.12 relating to failure to appear for scheduled examination. The amendment will address submitting another application is not required since implementation of computerized testing. If candidates miss a testing session, they are only required to repay the test service fee, not the licensure fee.

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

Ms. Hairston has also determined that for each year of the first five years the rules are in effect the public benefit anticipated as a result of enforcing the rules will be consistency in the rules. There will be no effect on small businesses. There is no anticipated economic costs to persons who are required to comply with the rules as proposed.

Comments may be submitted to Terrie L. Hairston, Executive Director, Board of Vocational Nurse Examiners, 333 Guadalupe, Suite 3-400, Austin, Texas 78701.

The amendment is proposed under Chapter 302, Texas Occupations Code, Subchapter D, Section 302.151(b), which provides the Board of Vocational Nurse Examiners with the authority to make such rules and regulations as may be necessary to carry in effect the purpose of the law.

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

§235.12. Failure to Appear for Scheduled Examination.

In order to be rescheduled for an examination, an applicant who fails to appear for a scheduled examination must:

(1) forfeit fees and that opportunity for examination; and

(2) submit another application and testing service fee.[;]

[(3) submit another Application for Licensure and fee, except in the case of hardship as defined in Section 231.1 of this title (relating to definitions).]

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

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

TRD-200206206
Terrie Hairston, RN, CHE
Executive Director
Board of Vocational Nurse Examiners
Earliest possible date of adoption: November 10, 2002
For further information, please call: (512) 305-7653

22 TAC §235.17

(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 Board of Vocational Nurse Examiners or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The Board of Vocational Nurse Examiners proposes the repeal of 22 TAC §235.17 temporary permits. This rule will be proposed with new language.

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

Mrs. Hairston has also determined that for each year of the first five years the rules are in effect the public benefit anticipated as a result of enforcing the rules will be consistency in the rules. There will be no effect on small businesses. There is no anticipated economic costs to persons who are required to comply with the rules as proposed.

Comments may be submitted to Terrie L. Hairston, Executive Director, Board of Vocational Nurse Examiners, 333 Guadalupe, Suite 3-400, Austin, Texas 78701.

The amendment is proposed under Chapter 302, Texas Occupations Code, Subchapter D, Section 302.151(b), which provides the Board of Vocational Nurse Examiners with the authority to make such rules and regulations as may be necessary to carry in effect the purpose of the law.

No other statute, article or code will be affected by this proposal

§235.17. Temporary Permits.

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

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

TRD-200206202
Terrie Hairston, RN, CHE
Executive Director
Board of Vocational Nurse Examiners
Earliest possible date of adoption: November 10, 2002
For further information, please call: (512) 305-7653

22 TAC §235.17

The Board of Vocational Nurse Examiners proposes new §235.17 relating to Temporary Permits. The proposed new language will reorganize the rule for clarity and to include a specific time frame for temporary permits for examination candidates not previously included since implementation of computerized testing.

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

Mrs. Hairston has also determined that for each year of the first five years the rules are in effect the public benefit anticipated as a result of enforcing the rules will be consistency in the rules. There will be no effect on small businesses. There is no anticipated economic costs to persons who are required to comply with the rules as proposed.

Comments may be submitted to Terrie L. Hairston, Executive Director, Board of Vocational Nurse Examiners, 333 Guadalupe, Suite 3-400, Austin, Texas 78701.

The amendment is proposed under Chapter 302, Texas Occupations Code, Subchapter D, Section 302.151(b), which provides the Board of Vocational Nurse Examiners with the authority to make such rules and regulations as may be necessary to carry in effect the purpose of the law.

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

§235.17. Temporary Permits.

(a) Examination applicants - Temporary permits may be issued to:

(1) Graduates of approved vocational nursing programs in this state or another state;

(2) Undergraduates in approved professional nursing programs in this state or another state; and

(3) A mutually agreeable agent for distribution to students on behalf of the board.

(b) Endorsement applicants - Temporary permits may be issued to endorsement applicants who:

(1) Meet initial licensure requirements;

(2) Are approved by the Division of Education staff;

(3) Are educated in this state or another state;

(4) Hold a license to practice vocational/practical nursing in another state; and

(5) Present satisfactory sworn evidence of (b)(3) and (4).

(c) Temporary permits may be issued to individuals who do not meet licensure requirements in order to meet additional Board staff specified training, education, or examination requirements.

(d) Holders of temporary permits must practice under the direct supervision (relating to Rule 231.1(12) definitions) of a registered nurse, licensed vocational nurse, or a licensed physician.

(e) Expiration of temporary permits

(1) Examination applicants - temporary permits will expire in 90 days from date of issue; or on the applicant's receipt of a license; or on receipt of notification of examination failure, whichever occurs first.

(2) Endorsement applicants - temporary permits will expire in 90 days or on receipt of a license, whichever occurs first.

(3) Other applicants - temporary permits issued to individuals who do not meet licensure requirements, and must meet additional

board staff specified training, education, or examination requirements, will expire on the date indicated on the temporary permit.

(f) Temporary permits will not be issued to:

(1) an examination applicant who has previously failed an examination approved by the board or by another jurisdiction; nor

(2) an examination or endorsement applicant under investigation.

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

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

TRD-200206200
Terrie Hairston, RN, CHE
Executive Director
Board of Vocational Nurse Examiners
Earliest possible date of adoption: November 10, 2002
For further information, please call: (512) 305-7653

SUBCHAPTER D. ISSUANCE OF LICENSES

22 TAC §235.48

The Board of Vocational Nurse Examiners proposes amendment of §235.48 relating to reactivation of a license. The amendment will address four years is being used to restore rule as written prior to 1995 when the "five year rule" was implemented; to more closely align rule with licensure renewal cycles; and to allow facilitation of data migration with the BNE licensure system.

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

Ms. Hairston has also determined that for each year of the first five years the rules are in effect the public benefit anticipated as a result of enforcing the rules will be consistency in the rules. There will be no effect on small businesses. There is no anticipated economic costs to persons who are required to comply with the rules as proposed.

Comments may be submitted to Terrie L. Hairston, Executive Director, Board of Vocational Nurse Examiners, 333 Guadalupe, Suite 3-400, Austin, Texas 78701.

The amendment is proposed under Chapter 302, Texas Occupations Code, Subchapter D, Section 302.151(b), which provides the Board of Vocational Nurse Examiners with the authority to make such rules and regulations as may be necessary to carry in effect the purpose of the law.

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

§235.48. Reactivation of a License.

(a) A vocational nurse who has been on delinquent or inactive status for less than two years [one renewal period] must provide proof of 20 hours of continuing education prior to the renewal of a license.

(b) A vocational nurse who has been on inactive status or whose license has been delinquent for two years, [one full renewal period,] but less than four [five] years, shall meet the following criteria for licensure:

(1) (No change.)

(2) submit verification of employment as a licensed vocational nurse in another state or employment as a registered nurse in this state or another state within the past four [five] years immediately prior to renewal and proof of 20 hours of continuing education; or

(3) (No change.)

(c) A vocational nurse who has been on inactive status or whose license has been delinquent for four years, but less than ten years, shall meet the following criteria for licensure:

(1) Submit reactivation form and affidavits provided by the Board with required fees;

(2) submit verification of employment as a licensed vocational nurse in another state or employment as a registered nurse in this state or another state within the past four years immediately prior to renewal and proof of 20 hours of continuing education; or

(3) submit evidence of successful completion of a refresher course and an agreement to supervised employment with a copy of the job description, and verification of such submitted to the Board office prior to the issuance of a license.

(d) [(c)] a temporary permit is required to complete a refresher course or agreement to supervised employment, one will be issued upon receipt of the required documentation and fees in the Board office.

(e) [(d)] An individual whose license is in an inactive or delinquent status for ten years or longer will not be issued a renewed license. The licensee shall be required to repeat the vocational nursing program, and shall take and pass the national licensure examination, unless subsection (b) (2) of this section is met.

(f) [(e)] An individual whose license is in an inactive status or is delinquent for nonpayment of renewal fees, continues to be a licensee of the Board, and is subject to all provisions of Chapter 302, Texas Occupations Code and Board rules governing licensed vocational nurses, until such time as the license is suspended or revoked by the Board, or the license is not renewable as set out in subsection (e) [(d)] 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 23, 2002.

TRD-200206197
Terrie Hairston, RN, CHE
Executive Director
Board of Vocational Nurse Examiners
Earliest possible date of adoption: November 10, 2002
For further information, please call: (512) 305-7653

CHAPTER 237. CONTINUING EDUCATION

SUBCHAPTER B. CONTINUING EDUCATION

22 TAC §237.19

The Board of Vocational Nurse Examiners proposes amendment of §237.19 relating to relicensure process. The amendment will delete rule 237.19(4) and (5). This rule in the Continuing Education section mirrors Licensing rule 235.48, and is a redundancy.

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

Ms. Hairston has also determined that for each year of the first five years the rules are in effect the public benefit anticipated as a result of enforcing the rules will be consistency in the rules. There will be no effect on small businesses. There is no anticipated economic costs to persons who are required to comply with the rules as proposed.

Comments may be submitted to Terrie L. Hairston, Executive Director, Board of Vocational Nurse Examiners, 333 Guadalupe, Suite 3-400, Austin, Texas 78701.

The amendment is proposed under Chapter 302, Texas Occupations Code, Subchapter D, Section 302.151(b), which provides the Board of Vocational Nurse Examiners with the authority to make such rules and regulations as may be necessary to carry in effect the purpose of the law.

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

§237.19. Relicensure Process.

In addition to meeting all other Board requirements specified in Chapter 235 of this title (relating to Licensing), the following conditions for relicensure shall be met:

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

[~~(4) Reactivation of a License~~]

[~~(A) A vocational nurse whose license has been on delinquent or inactive status for less than one renewal period must provide proof of 20 hours of continuing education prior to the renewal of a license.~~]

[~~(B) A vocational nurse whose license has been on inactive or whose license has been delinquent for one full renewal period, but less than five years shall meet the following criteria for licensure:~~]

[~~*(i)* submit reactivation form and affidavits provided by the Board with required fees;~~]

[~~*(ii)* submit verification of employment as a licensed vocational nurse in another state or employment as a registered nurse in this state or another state within the past five years immediately prior to renewal and proof of 20 hours of continuing education; or~~]

[~~*(iii)* submit evidence of successful completion of a refresher course or an agreement to supervised employment with a copy of the job description, and verification of such submitted to the Board office prior to the issuance of a license.~~]

[~~(C) A nurse whose license has been delinquent or inactive for five years or longer will be required to repeat the vocational nursing program and shall take and pass the national licensure examination unless subparagraph (B) (ii) of this paragraph is met~~]

[~~(5) Reinstatement of a License~~]

[~~(A) A license that has been revoked, suspended or voluntarily surrendered may be reinstated if authorized by the Board.~~]

[~~(B) A nurse whose license has been suspended or revoked for more than five years shall be required to repeat the vocational nursing program and shall take and pass the national licensure examination prior to activation of their license or show evidence of practice as a licensed vocational nurse in another state or practice as a registered nurse in this state or another state within the past five years.~~]

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

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

TRD-200206196
Terrie Hairston, RN, CHE
Executive Director
Board of Vocational Nurse Examiners
Earliest possible date of adoption: November 10, 2002
For further information, please call: (512) 305-7653

♦ ♦ ♦

CHAPTER 239. CONTESTED CASE PROCEDURE

SUBCHAPTER D. INFORMAL DISPOSITIONS

22 TAC §239.41

The Board of Vocational Nurse Examiners proposes amendment of §239.41 relating to informal conference. The amendment will include new language to subsection (d), present language conflicts with §239.47 (a). The Board may enter a default order if Respondent/Applicant fails to attend an Informal Conference.

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

Ms. Hairston has also determined that for each year of the first five years the rules are in effect the public benefit anticipated as a result of enforcing the rules will be consistency in the rules. There will be no effect on small businesses. There is no anticipated economic costs to persons who are required to comply with the rules as proposed.

Comments may be submitted to Terrie L. Hairston, Executive Director, Board of Vocational Nurse Examiners, 333 Guadalupe, Suite 3-400, Austin, Texas 78701.

The amendment is proposed under Chapter 302, Texas Occupations Code, Subchapter D, Section 302.151(b), which provides the Board of Vocational Nurse Examiners with the authority to make such rules and regulations as may be necessary to carry in effect the purpose of the law.

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

§239.41. Informal Conference.

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

(d) Failure to attend an Informal Conference may result in a default order being taken against the Respondent/Applicant [~~Participation in an Informal Conference is not mandatory for either party~~].

(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.

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TRD-200206195

Terrie Hairston, RN, CHE
Executive Director
Board of Vocational Nurse Examiners
Earliest possible date of adoption: November 10, 2002
For further information, please call: (512) 305-7653

SUBCHAPTER E. REINSTATEMENT PROCESS

22 TAC §239.64

The Board of Vocational Nurse Examiners proposes amendment of §239.64 relating to board action possible upon reinstatement. The amendment will be consistent with section 235.48 - Reactivation of a License. And to coincide and agree with the proposed changes to section 235.48.

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

Ms. Hairston has also determined that for each year of the first five years the rules are in effect the public benefit anticipated as a result of enforcing the rules will be consistency in the rules. There will be no effect on small businesses. There is no anticipated economic costs to persons who are required to comply with the rules as proposed.

Comments may be submitted to Terrie L. Hairston, Executive Director, Board of Vocational Nurse Examiners, 333 Guadalupe, Suite 3-400, Austin, Texas 78701.

The amendment is proposed under Chapter 302, Texas Occupations Code, Subchapter D, Section 302.151(b), which provides the Board of Vocational Nurse Examiners with the authority to make such rules and regulations as may be necessary to carry in effect the purpose of the law.

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

§239.64. Board Action Possible Upon Reinstatement.

(a) (No change.)

(b) A nurse whose license has been suspended or revoked for more than ten [~~five~~] years shall be required to repeat the vocational nursing program and shall take and pass the national licensure examination prior to activation of his or her license or show evidence of practice as a licensed vocational nurse in another state or practice as a registered nurse in this state or another state within the past ten [~~five~~] years.

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

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Terrie Hairston, RN, CHE
Executive Director
Board of Vocational Nurse Examiners
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For further information, please call: (512) 305-7653

PART 22. TEXAS STATE BOARD OF PUBLIC ACCOUNTANCY

CHAPTER 501. RULES OF PROFESSIONAL CONDUCT

SUBCHAPTER D. RESPONSIBILITIES TO THE PUBLIC

22 TAC §501.83

The Texas State Board of Public Accountancy (Board) proposes an amendment to §501.83 concerning Firm Names.

The amendments to §501.83 are both in subsection (b)(8). The first change replaces "rules" with "statute". The second change deletes "professional" twice. Both of these changes are necessary to comply with the statutory language and will bring the Board's rule into compliance.

William Treacy, Executive Director of the Board, has determined that for the first five-year period the proposed amendment will be in effect:

A. the additional estimated cost to the state expected as a result of enforcing or administering the amendment will be zero because the amendment does not require anyone to do or not to do anything and only corrects rule language.

B. the estimated reduction in costs to the state and to local governments as a result of enforcing or administering the amendment will be zero because the amendment does not require anyone to do or not to do anything and only corrects rule language.

C. the estimated loss or increase in revenue to the state as a result of enforcing or administering the amendment will be zero because the amendment does not require anyone to do or not to do anything and only corrects rule language.

Mr. Treacy has determined that for the first five-year period the amendment is in effect the public benefits expected as a result of adoption of the proposed amendment will be that the rule contains the correct statutory language.

The probable economic cost to persons required to comply with the amendment will be zero because the amendment does not require anyone to do or not to do anything and only corrects rule language.

Mr. Treacy has determined that a Local Employment Impact Statement is not required because the proposed amendment will not affect a local economy.

Mr. Treacy has determined that the proposed amendment will not have an adverse economic effect on small businesses because the amendment does not require anyone to do or not to do anything and only corrects rule language.

The Board specifically invites comments from the public on the issues of whether or not the proposed amendment will have an adverse economic effect on small business; if the amendment is believed to have such an effect, then how may the Board legally and feasibly reduce that effect considering the purpose of the statute under which the amendment is to be adopted; and if the amendment is believed to have such an effect, how the cost of compliance for a small business compares with the cost of compliance for the largest business affected by the amendment under any of the following standards: (a) cost per employee; (b)

cost for each hour of labor; or (c) cost for each $100 of sales. See Texas Government Code, §2006.002(c).

The Board requests comments on the substance and effect of the proposed amendment from any interested person. Comments must be received at the Board no later than noon on Friday, October 25, 2002. Comments should be addressed to Amanda G. Birrell, General Counsel, Texas State Board of Public Accountancy, 333 Guadalupe, Tower III, Suite 900, Austin, Texas 78701 or faxed to her attention at (512) 305-7854.

The amendment is proposed under the Public Accountancy Act, Tex. Occupations Code, §901.151 (Vernon 2001) which authorizes the Board to adopt rules deemed necessary or advisable to effectuate the Act.

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

§501.83. Firm Names.

(a) A firm name may not include descriptive words relating to the quality of services offered or that is misleading about the legal form of the firm, or about the persons who are partners, officers, or shareholders of the firm, or about any other matter. However, names of one or more former partners or shareholders may be included in the name of a firm or its successor.

(b) A firm name is misleading if:

(1) it is not the lawful and registered name of the firm;

(2) the name contains a misrepresentation of facts;

(3) the name indicates character or grade of service which is not based upon verifiable facts;

(4) the name is likely to mislead or deceive because it fails to make full disclosure of relevant facts; the following are examples, but are not inclusive:

(A) the name indicates a geographic area of service which is not based on verifiable facts; or

(B) the firm name includes a non-owner firm employee or a non-CPA.

(5) the name is intended or likely to create false or unjustified expectations of favorable results;

(6) the name implies special expertise;

(7) the name implies educational or professional attainment or licensing recognition of the firm and/or of its owners, partners, or shareholders which are not supported in fact;

(8) the name of the firm that is incorporated does not include the words "corporation," "incorporated," "professional corporation," or "company," or an abbreviation thereof as a part of the firm name; the words "professional corporation," or "PC" are not included with the firm name each time it is used; and the name of a firm organized under the limited liability partnership statute [~~rules~~] does not include the words "[~~professional~~]limited liability company" or "[~~professional~~]limited liability partnership" as appropriate, or an abbreviation thereof as part of the firm name unless the entity was organized prior to September 1, 1993;

(9) the name includes the designation "and company," "company," "group," "associates" or "and associates" or abbreviations thereof or similar names implying more than one employed licensee in the firm unless there are at least two licensees involved full time in the practice;

(10) the name of a firm that is a partnership or professional corporation fails to contain the personal name or names of one or more individuals presently or previously a partner, officer, or shareholder thereof; except that an acronym may be used for a firm name if the acronym is composed exclusively of the first letters of the surnames of current or past partners or shareholders of the firm;

(11) the name of a firm that is a sole proprietorship fails to contain the name of the sole proprietor; or

(12) the name contains other representations or implications that in reasonable probability will cause a reasonably prudent person to misunderstand or be deceived.

(c) A partner surviving the death or withdrawal of all other partners may continue to practice under a partnership name for up to two years after becoming a sole practitioner.

(d) The name of any former partner or former shareholder may not be used in a registered firm name during the period when the former partner or former shareholder has been prohibited from practicing public accountancy or prohibited from using the title "CPA" or "PA."

This 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 26, 2002.

TRD-200206273
Amanda G. Birrell
General Counsel
Texas State Board of Public Accountancy
Earliest possible date of adoption: November 10, 2002
For further information, please call: (512) 305-7848

CHAPTER 523. CONTINUING PROFESSIONAL EDUCATION

SUBCHAPTER E. REGISTERED CONTINUING EDUCATION SPONSORS

22 TAC §523.71

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

The Texas State Board of Public Accountancy (Board) proposes the repeal of §523.71 concerning Application as a Sponsor.

The proposed repeal of §523.71 will make room for a completely re-written §523.71 to be adopted.

William Treacy, Executive Director of the Board, has determined that for the first five-year period the proposed repeal will be in effect:

A. the additional estimated cost to the state expected as a result of enforcing or administering the repeal will be zero because the repeal requires no action from anyone.

B. the estimated reductions in costs to the state and to local governments as a result of enforcing or administering the repeal will be zero because the repeal requires no action from anyone.

C. the estimated loss or increase in revenue to the state as a result of enforcing or administering the repeal will be zero because the repeal requires no action from anyone.

Mr. Treacy has determined that for the first five-year period the repeal is in effect the public benefits expected as a result of adoption of the proposed repeal will be that a re-written rule §523.71 will be in place.

The probable economic cost to persons required to comply with the repeal will be zero because the repeal requires no action from anyone.

Mr. Treacy has determined that a Local Employment Impact Statement is not required because the proposed repeal will not affect a local economy.

The Board requests comments on the substance and effect of the proposed repeal from any interested person. Comments must be received at the Board no later than noon on October 25, 2002. Comments should be addressed to Amanda G. Birrell, General Counsel, Texas State Board of Public Accountancy, 333 Guadalupe, Tower III, Suite 900, Austin, Texas 78701 or faxed to her attention at (512) 305-7854.

Mr. Treacy has determined that the proposed repeal will not have an adverse economic effect on small businesses because the repeal requires no action from anyone.

The Board specifically invites comments from the public on the issues of whether or not the proposed repeal will have an adverse economic effect on small business; if the repeal is believed to have such an effect, then how may the Board legally and feasibly reduce that effect considering the purpose of the statute under which the repeal is to be adopted; and if the repeal is believed to have such an effect, how the cost of compliance for a small business compares with the cost of compliance for the largest business affected by the repeal under any of the following standards: (a) cost per employee; (b) cost for each hour of labor; or (c) cost for each $100 of sales. See Texas Government Code, §2006.002(c).

The repeal is proposed under the Public Accountancy Act, Tex. Occupations Code, §901.151 (Vernon 2001) which provides the agency with the authority to amend, adopt and repeal rules deemed necessary or advisable to effectuate the Act.

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

§523.71. Application as a Sponsor.

This 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 26, 2002.

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Amanda G. Birrell
General Counsel
Texas State Board of Public Accountancy
Earliest possible date of adoption: November 10, 2002
For further information, please call: (512) 305-7848

22 TAC §523.71

The Texas State Board of Public Accountancy (Board) proposes new rule §523.71 concerning Board Contracted CPE Sponsors.

The new rule §523.71 will allow the Board to enter into contracts with approved CPE sponsors to present CPE courses.

William Treacy, Executive Director of the Board, has determined that for the first five-year period the proposed new rule will be in effect:

A. the additional estimated cost to the state expected as a result of enforcing or administering the new rule will be zero because the rule does not require any additional action from or by the state.

B. the estimated reduction in costs to the state and to local governments as a result of enforcing or administering the new rule will be zero because the rule does not require any additional action from or by the state or local governments.

C. the estimated loss or increase in revenue to the state as a result of enforcing or administering the new rule will be that the contract amounts will be approximately $348,000. Currently, there are approximately 2900 CPE sponsors and the Board assumes all 2900 will apply and pay the $120 contract amount.

Mr. Treacy has determined that for the first five-year period the new rule is in effect the public benefits expected as a result of adoption of the proposed new rule will be increased revenue from CPE sponsors that can be used to defray the costs of processing applications and renewals and the costs of periodic review of the Sponsor's CPE courses.

The probable economic cost to persons required to comply with the new rule will be $120 per sponsor entity.

Mr. Treacy has determined that a Local Employment Impact Statement is not required because the proposed new rule will not affect a local economy.

The Board requests comments on the substance and effect of the proposed new rule from any interested person. Comments must be received at the Board no later than noon on Friday, October 25, 2002. Comments should be addressed to Amanda G. Birrell, General Counsel, Texas State Board of Public Accountancy, 333 Guadalupe, Tower III, Suite 900, Austin, Texas 78701 or faxed to her attention at (512) 305-7854.

Mr. Treacy has determined that the proposed new rule will not have an adverse economic effect on small businesses because the annual cost of $120 is minimal and is used to obtain authorization to conduct business as a CPE sponsor.

The Board specifically invites comments from the public on the issues of whether or not the proposed new rule will have an adverse economic effect on small business; if the new rule is believed to have such an effect, then how may the Board legally and feasibly reduce that effect considering the purpose of the statute under which the amendment is to be adopted; and if the new rule is believed to have such an effect, how the cost of compliance for a small business compares with the cost of compliance for the largest business affected by the new rule under any of the following standards: (a) cost per employee; (b) cost for each hour of labor; or (c) cost for each $100 of sales. See Texas Government Code, §2006.002(c).

The new rule is proposed under the Public Accountancy Act, Tex. Occupations Code, §901.151 (Vernon 2001) which authorizes the Board to adopt rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by this proposed new rule.

§523.71. Board Contracted CPE Sponsors.

(a) The board may contract with any sponsor of continuing professional education (CPE) programs to become a board contracted CPE sponsor where the sponsor, in the opinion of the board, demonstrates that it will comply with its contractual obligations to the board and that its programs will conform to the board's standards as outlined in:

(1) §523.21 of this title (relating to Program Description Standards);

(2) §523.22 of this title (relating to Instructors);

(3) §523.23 of this title (relating to Program Sponsors Other Responsibilities);

(4) §523.24 of this title (relating to Learning Environment);

(5) §523.25 of this title (relating to Evaluation);

(6) §523.26 of this title (relating to Program Time Credit Measurement); and

(7) §523.32 of this title (relating to Board Rules and Ethics Course), (if applicable).

(b) The board will also require that each organization desiring to become a board contracted CPE sponsor shall agree that in the conduct of its business it will:

(1) Not commit fraud, deceit or engage in fiscal dishonesty of any kind;

(2) Not misrepresent facts or make false or misleading statements;

(3) Not make false statements to the Board or to the Board's agents; and

(4) Comply with the laws of the United States and the State of Texas.

(c) Each organization desiring to become a board contracted CPE sponsor must submit an application on contract forms provided by the board. The application must be complete in all respects and shall include the contract payment of $120 for each twelve month period of the contract.

(d) To implement the program initially, sponsors previously registered with the board will be assigned an initial contract term based on the month of their current registration. The board will not prorate the contract payment for an organization for less than one year. Upon renewal in the second and succeeding years, the contract amount may be increased to cover the costs of review of individual courses.

(e) Board staff will review each application and notify the applicant of its acceptance or rejection. Accepted applicants will be assigned a sponsor number and can represent that they are a board contracted CPE sponsor. An acceptance in any given year shall not bind the board to accept a sponsor in any future year.

(f) After the contract has been accepted, the board, in its sole and exclusive discretion, may determine that a contracted sponsor is not in compliance with the contract. The board will provide the contracted sponsor reasonable notice that it may make such a determination and shall provide the contracted sponsor a reasonable opportunity to respond to the facts which lead to the board determination. When the board has made a determination that a contracted sponsor is not in compliance with the contract, the board may request that the CPE sponsor make changes to meet board rules or the contract or the board may also terminate the contract. The contract amount shall not be prorated or refunded if the contract is terminated.

(g) All contracts with board contracted CPE sponsors may be renewable not less than annually by completion of a form provided by the board. At least 30 days before the expiration of the contract, the board will send notice of the impending expiration of the contract as a CPE sponsor.

This 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 26, 2002.

TRD-200206283
Amanda G. Birrell
General Counsel
Texas State Board of Public Accountancy
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For further information, please call: (512) 305-7848

TITLE 25. HEALTH SERVICES

PART 1. TEXAS DEPARTMENT OF HEALTH

CHAPTER 313. ATHLETIC TRAINERS

SUBCHAPTER A. GENERAL GUIDELINES AND REQUIREMENTS

25 TAC §313.7, §313.12

The Advisory Board of Athletic Trainers (board) proposes amendments to §313.7 and §313.12 concerning the licensure and regulation of athletic trainers. Specifically, the amendments are necessary to delete the requirement that an applicant must have a current standard first aid certification to qualify for licensure and to establish that a licensee must successfully complete a cardiopulmonary resuscitation (CPR) techniques course during each three-year continuing education reporting period.

Kathy Craft, Program Director, Advisory Board of Athletic Trainers, has determined that for each year of the first five years the sections are in effect, there will be no fiscal impact on state or local government.

Ms. Craft has also determined that for each year of the first five years the sections are in effect, the public benefit as a result of enforcing or administering the sections will be assurance that the regulation of athletic trainers continues to identify competent providers. There is no anticipated cost to micro-businesses or small businesses to comply with the sections as proposed because the requirements apply only to licensed individuals. There are no anticipated economic costs to persons who are required to comply with the sections as proposed. Licensees are currently required to obtain 30 hours of continuing education every three years. The sections as proposed will require CPR be included in the 30 hours, but does not increase the total number of hours. There is no anticipated impact on local employment.

Comments on the proposal may be submitted to Heather Muehr, Program Administrator, Advisory Board of Athletic Trainers, Texas Department of Health, 1100 West 49th Street, Austin, Texas, 78756, (512) 834-6615, or Heather.Muehr@tdh.state.tx.us. Comments will be accepted for 30 days following the date of publication of this proposal in the *Texas Register*.

The amendments are proposed under the Occupations Code, Chapter 451, §451.103, which authorizes the board to adopt rules necessary for the performance of its duties.

The amendments affect the Occupations Code, Chapter 451.

§313.7. Qualifications.

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

(d) Certification required. An applicant must have:

(1) a current [~~standard first aid and~~] adult cardiopulmonary resuscitation certificate; or

(2) (No change.)

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

§313.12. Continuing Education Requirements.

(a) (No change.)

(b) A licensee must complete 30 clock hours of continuing education during each three-year period. A licensee must successfully complete a cardiopulmonary resuscitation (CPR) techniques course during each three-year period. The three-year period begins on the first day following the issuance month and ends on the last day of each licensee's renewal month, except that the initial period shall begin with the date the board issues the license certificate and ends on the last day of the third renewal cycle.

(c)-(j) (No change.)

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

Filed with the Office of the Secretary of State on September 27, 2002.

TRD-200206307
Natalie Steadman
Chair
Texas Department of Health
Earliest possible date of adoption: November 10, 2002
For further information, please call: (512) 458-7236

TITLE 30. ENVIRONMENTAL QUALITY

PART 1. TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

CHAPTER 5. ADVISORY COMMITTEES AND GROUPS

SUBCHAPTER A. PURPOSE

30 TAC §5.13

The Texas Commission on Environmental Quality (commission) proposes an amendment to §5.13, Meetings.

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE PROPOSED RULE

Texas Water Code (TWC), §5.107, relating to Advisory Councils, authorizes the commission or the executive director to create and consult with advisory committees, work groups, or task forces, including committees, work groups, or task forces for the environment, public information, or any other matter that the commission or the executive director may consider appropriate.

Chapter 5 governs the procedures applicable to advisory committees created to advise the commission. Currently, §5.13 specifies that all committee and subcommittee meetings shall be open to the public. Some advisory committees assist in the development and review of licensing examination questions and related materials as a part of their advisory function. If committee deliberations involved in development of examination questions and related materials are open to the public, the examination questions can be compromised. This rulemaking proposes to amend §5.13 to allow advisory committees and subcommittees to meet in closed session for the purpose of reviewing and developing licensing examination questions and related materials. The proposal is consistent with the provisions of Texas Government Code, §551.088, which states, "This chapter does not require a governmental body to conduct an open meeting to deliberate a test item or information related to a test item if the governmental body believes that the test item may be included in a test that the governmental body administers to individuals who seek to obtain or renew a license or certificate that is necessary to engage in an activity."

SECTION DISCUSSION

The proposed amendment to §5.13 would add an exception that allows a committee or subcommittee to meet in closed session for the purpose of developing or reviewing licensing examination questions or related materials. The amendment would allow the commission to utilize the expertise in advisory committees to develop and review licensing examination questions and related materials without exposing the examination questions and related material to possible compromise in a meeting that is open to the public.

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 amendment is in effect, there will be no significant fiscal implications for units of state and local government due to administration and enforcement of the proposed amendment. The proposed amendment is intended to affect the operations of the commission. No other units of state or local government are anticipated to be affected.

This rulemaking is intended to allow a committee or subcommittee to meet in closed session to develop or review licensing examination questions or related materials in order to preclude compromise of the examination.

The proposed amendment is intended to affect the commission's operations and is not anticipated to result in fiscal implications for any other unit of state or local government. The amendment is procedural in nature and is only intended to implement procedures to allow a committee or subcommittee to meet in closed session for the purpose of developing or reviewing licensing examination questions or related materials.

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 the proposed amendment will be that the commission can use advisory committees and subcommittees in closed session to develop and review licensing examination questions and related materials, which would preclude compromise of the examinations.

The proposed amendment is intended to affect the commission's operations and is not anticipated to result in fiscal implications for any other unit of state or local government. The amendment is procedural in nature and is only intended to implement procedures to allow a committee or subcommittee to meet in closed session for the purpose of developing or reviewing licensing examination questions or related materials.

SMALL BUSINESS AND MICRO-BUSINESS ASSESSMENT

John Davis, Technical Specialist with Strategic Planning and Appropriations, has determined for the first five-year period the proposed amendment is in effect, there will be no significant fiscal implications for small and micro-businesses due to administration and enforcement of the proposed amendment. The proposed amendment is intended to affect the operations of the commission.

This rulemaking is intended to allow a committee or subcommittee to meet in closed session to develop or review licensing examination questions or related materials in order to preclude compromise of the examination.

The proposed amendment is intended to affect the commission's operations and is not anticipated to result in fiscal implications for any small and micro-businesses. The amendment is procedural in nature and is only intended to implement procedures to allow a committee or subcommittee to meet in closed session for the purpose of developing or reviewing licensing examination questions or related materials.

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 rule does not adversely affect a local economy in a material way for the first five years that the proposed rule is in effect.

DRAFT REGULATORY IMPACT ANALYSIS DETERMINATION

The commission has reviewed the proposed rulemaking in light of the regulatory impact analysis requirements of Texas Government Code, §2001.0225, and determined that the rulemaking is not subject to §2001.0225 because it does not meet the definition of a "major environmental rule" as defined in that statute. A "major environmental rule" means a rule, the specific intent of which, is to protect the environment or reduce risks to human health from environmental exposure and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment or the public health and safety of the state or a sector of the state. The proposed amendment is not specifically intended to protect the environment, or reduce risks from environmental exposure and is not anticipated to adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state because the proposed rule is intended to affect the commission's operations and is not anticipated to result in fiscal implications for any other unit of state or local government. The proposed amendment is procedural in nature and is only intended to implement procedures to allow a committee or subcommittee to meet in closed session for the purpose of developing or reviewing licensing examination questions or related materials. 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 proposal under Texas Government Code, §2007.043. The proposed amendment is procedural in nature and is only intended to implement procedures to allow a committee or subcommittee to meet in closed session for the purpose of developing or reviewing licensing examination questions or related materials. This will allow the committees to assist the commission in the development and review of licensing examination questions and related materials without compromising the licensing examinations.

Promulgation and enforcement of the proposed amendment would be neither a statutory nor a constitutional taking of private real property. Specifically, the proposed amendment does not affect a landowner's rights in private real property because this rulemaking does not burden (constitutionally), nor restrict or limit the owner's right to property and reduce its value by 25% or more beyond that which would exist in the absence of the regulations.

Because the proposed amendment affects only advisory entities, this action will not create a burden on private real property, and will not burden, restrict, or limit an owner's right to property and reduce its value by 25% or more.

No exceptions set out in Texas Government Code, §2007.003(b) apply to the proposed amendment.

CONSISTENCY WITH THE COASTAL MANAGEMENT PROGRAM

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

SUBMITTAL OF COMMENTS

Comments may be submitted to Patricia Durón, Office of Environmental Policy, Analysis, and Assessment, MC 205, P.O. Box 13087, Austin, Texas 78711-3087 or faxed to (512) 239-4808. Comments must be received by 5:00 p.m., November 12, 2002, and should reference Rule Log Number 2002-054-005-AD. For further information, please contact Debra Barber, Policy and Regulations Division at (512) 239-0412.

STATUTORY AUTHORITY

The amendment is proposed under TWC, §5.103, which provides the commission with the authority to adopt any rules necessary to carry out its powers and duties under this code and other laws of this state and to adopt rules repealing any statement of general applicability that interprets law or policy; §5.105, which authorizes the commission to establish and approve all general policy of the commission by rule; §5.107, which authorizes the commission or the executive director to create and consult with advisory committees, work groups, or task forces, including committees, work groups, or task forces for the environment, for public information, or for any other matter that the commission or the

executive director may consider appropriate; and Texas Government Code, Chapter 2110, which establishes requirements for the creation, composition, evaluation, and duration of advisory committees.

The proposed amendment implements TWC, §5.107, Advisory Committees, Work Groups, and Task Forces; and Texas Government Code, Chapter 2110, State Agency Advisory Committees.

§5.13. Meetings.

Advisory committees shall meet at the call of the presiding officer or the commission. All advisory committee and subcommittee meetings, except meetings for the purpose of developing or reviewing licensing examination questions or related materials, shall be open to the public. Meetings for the purpose of developing or reviewing licensing examination questions or related materials may be closed to the public to preclude compromise of the examination questions or related material.

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

Filed with the Office of the Secretary of State on September 30, 2002.

TRD-200206322
Stephanie Bergeron
Director, Environmental Law Division
Texas Commission on Environmental Quality
Earliest possible date of adoption: November 10, 2002
For further information, please call: (512) 239-6087

TITLE 37. PUBLIC SAFETY AND CORRECTIONS

PART 1. TEXAS DEPARTMENT OF PUBLIC SAFETY

CHAPTER 1. ORGANIZATION AND ADMINISTRATION

SUBCHAPTER B. BASIC DOCTRINE

37 TAC §1.11

The Texas Department of Public Safety proposes amendments to §1.11, concerning Basic Doctrines. Amendments to the section are proposed for "style" purposes only and are not legally mandated. The section is amended in order to adopt a consistent use of the term "department" rather than interchangeable use of the terms "department" and "department of public safety." The section is further amended to delete redundant statements and to use "third person" in rule language.

Tom Haas, Chief of Finance, has determined that for each year of the first five-year period the rule is in effect there will be no fiscal implications for state or local government, or local economies.

Mr. Haas also has determined that for each year of the first five-year period the rule is in effect the public benefit anticipated as a result of enforcing the rule will current and updated rules. There is no anticipated adverse economic effect on individuals, small businesses, or micro-businesses.

Comments on the proposal may be submitted to Mary Ann Courter, General Counsel, Texas Department of Public Safety, P.O. Box 4087, Austin, Texas 78773-0140, (512) 424-2890.

The amendment is proposed pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work.

Texas Government Code, §411.004(3) is affected by this proposal.

§1.11. Basic Doctrines.

(a) The department of public safety accepts its responsibilities as a public trust. It is our policy to discharge with dispatch any responsibility to the fullest extent with maximum benefit for the public.

(b) It is the policy of the department [~~of public safety~~] to afford maximum courtesy, service, and protection to all citizens and visitors in this state.

(c) The department recognizes that government exists for the benefit of the governed--the people. Enforcement and regulatory actions against persons are carried out for the benefit of society as a whole. The department does not act to adjudicate or rectify injustices, inequities, or wrongs between individuals, but acts only to maintain order for the preservation and protection of society as a whole.

(d) It is a solemn obligation of members of the department [~~of public safety~~] to uphold the constitutions of the United States and the State of Texas as well as to enforce the statutory enactments. Constitutional provisions take precedence over statutory enactments. In the enforcement of the provisions of a statute, personnel of the department of public safety will refrain from infringing upon any rights or privileges guaranteed by the constitutions. [~~The overriding responsibility of the department is to preserve, protect, and defend the constitutions of the United States and the State of Texas.~~]

(e) The department [~~of public safety~~] recognizes that the basic responsibility for the enforcement of the criminal laws rests with the local officers in their respective jurisdictions. It is the policy of the department to cooperate with and assist local officers fully in these matters but to leave the basic responsibility to them unless specifically assigned to do otherwise.

(f) It is the policy of the department [~~of public safety~~] to assume primary responsibility for traffic supervision on the rural highways of this state[~~; to cooperate with and officers when they do such work, but to accept full and primary responsibility for the discharge of this function~~], including the regulation of commercial traffic.

(g) The department [~~of public safety~~] will cooperate with all governmental agencies discharging [~~their~~] statutory duties when [~~our~~] assistance complies with state law and departmental policies and regulations.

(h) It is the policy of the department [~~of public safety~~] to assign available manpower in any field service to the areas of the state in proportion to the amount of the statewide problem of that service existing in any particular area so that the department may, as nearly as practicable, render to all citizens their equitable share of the service available.

This 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 25, 2002.

TRD-200206255
Thomas A. Davis, Jr.
Director
Texas Department of Public Safety
Earliest possible date of adoption: November 10, 2002
For further information, please call: (512) 424-2135

CHAPTER 13. CONTROLLED SUBSTANCES
SUBCHAPTER A. GENERAL PROVISIONS
37 TAC §13.2

The Texas Department of Public Safety proposes an amendment to §13.2, relating to Controlled Substances. Amendment to the section adds new subsection (d) which prohibits practitioners who have a practitioner's DEA number from using that number for a purpose other than that described by federal law or the Texas Controlled Substances Act.

Tom Haas, Chief of Finance, has determined that for each year of the first five-year period the rule is in effect there will be no fiscal implications for state or local government, or local economies.

Mr. Haas also has determined that for each year of the first five-year period the rule is in effect the public benefit anticipated as a result of enforcing the rule will be to provide assistance to mid-level practitioners in dealing with requests for information from insurance companies. There is no anticipated adverse economic effect on individuals, small businesses, or micro-businesses.

Comments on the proposal may be submitted to Linda Schaefer, Manager, Texas Prescription/Controlled Substances Registration Section, Texas Department of Public Safety, P.O. Box 4087, Austin, Texas 78773-0439, (512) 424-2458.

The amendment is proposed pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work; Texas Government Code, §411.006(4), which provides that the director of the department shall adopt rules, subject to commission approval, considered necessary for the control of the department; and Health and Safety Code, §481.003, which requires the director to adopt rules required by this section not later than January 1, 2003.

Texas Government Code, §411.004(3), and §411.006(3), and Health and Safety Code, §481.003(a) are affected by this proposal.

§13.2. Other State or Federal Laws, Rules, or Regulations.

(a) Construed. This chapter may not be construed as authorizing or allowing a person to act in violation of another state or federal law, rule, or regulation. Compliance with this chapter may not be construed as compliance with another state or federal law, rule, or regulation unless expressly provided by the law, rule, or regulation.

(b) Strictest standard. If a practitioner or other person whose conduct is covered by this chapter must comply with a standard contained within a state health regulatory agency rule, this chapter, or a federal regulation, the person must comply with the strictest standard.

(c) Cross-reference. By adopting an administrative rule or regulation of another state or federal agency by a cross-reference to that rule or regulation, the director does not surrender any authority or responsibility to make, administer, or enforce a DPS drug rule. If this chapter references a federal regulation or a rule adopted by another state agency, the director may enforce the regulation or rule:

(1) as a DPS drug rule that has been adopted by the director under the authority of the Act, §481.003; and

(2) as if a reference to:

(A) the DEA administrator or other federal or state official is a reference to the director;

(B) DEA or other agency is a reference to DPS;

(C) a DEA or other agency form is a reference to the analogous DPS form; and

(D) a licensed practical nurse is a reference to a licensed vocational nurse.

(d) A person may not use a practitioner's Federal DEA number for a purpose other than a purpose described by federal law or by the Texas Controlled Substances Act.

(1) In this subsection, the term "person" includes a person regulated by the Texas Department of Insurance under the Insurance Code or other insurance law of this state.

(2) The director will use the interpretation made by:

(A) DEA to determine whether the DEA number was used for a purpose other than a purpose described by federal law or rules; and

(B) the Texas Department of Insurance to determine whether the person is regulated or subject to regulation by that department under the Insurance Code or other insurance law of this state.

(3) A person who violates this subsection commits a Class C misdemeanor.

This 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 25, 2002.

TRD-200206256
Thomas A. Davis, Jr.
Director
Texas Department of Public Safety
Proposed date of adoption: January 1, 2003
For further information, please call: (512) 424-2135

PART 7. TEXAS COMMISSION ON LAW ENFORCEMENT OFFICER STANDARDS AND EDUCATION
CHAPTER 215. TRAINING AND EDUCATIONAL PROVIDERS AND RELATED MATTERS
37 TAC §215.15

The Texas Commission on Law Enforcement Officer Standards and Education (Commission) proposes an amendment to Title 37, Texas Administrative Code 215.15 concerning minimum standards for enrollment in a basic training program for licensure. Section 215.15 (a)(2)(A)(ii) would allow the Commission

to permit enrollment of an individual who has been on community supervision for a case involving a Class B misdemeanor at least five (5) years prior to enrollment if the presentation of documentation from an agency administrator sufficiently demonstrates that mitigating circumstances exist with the case and with the individual applying for enrollment, and that the public interest would be served by reducing the waiting period. Section 215.15 (a)(2)(C)(ii) would allow the Commission to permit enrollment of an individual who has been convicted of a Class B misdemeanor at least five (5) years prior to enrollment if the presentation of documentation from an agency administrator sufficiently demonstrates that mitigating circumstances exist with the case and with the individual applying for enrollment, and that the public interest would be served by reducing the waiting period. Section 215.15 (a)(2)(G) would prevent non-citizens from enrolling in a basic training course. The only other adopted change to this section is to the effective date in subsection (g).

The Commission has determined that, for each year of the first five years the section as proposed will be in effect, there will not be fiscal implications to state or local governments as a result of administering the section.

The Commission has determined that, for each year of the first five years the section as proposed will be in effect, there will be no anticipated economic cost to large, small, or micro businesses as a result of the proposed section.

The Commission has determined that, for each year of the first five years the section as proposed will be in effect, there may be a benefit to the public by allowing local administrators to enroll persons who may not be eligible for hire under the current rules. As a comparison, the statutory standard for Private Security license applicants in §1702.113 (a) Occupations Code, is that conviction of a Class A misdemeanor or higher is a bar unless a full pardon has been granted for wrongful conviction, or if it was a Class B within the last five (5) years. The Commission on Private Security (CPS) may deny an application for a license for Class B misdemeanor if it was less than five (5) years ago. Government Code Section 62.102 General Qualifications for Jury Service includes a qualification to be a juror, "(8) is not under indictment or other legal accusation of misdemeanor or felony theft or any other felony."

The Commission has determined that, for each year of the first five years subsection (g) of this section as proposed will be in effect, there may be a benefit to the public by excluding non-citizens because of the current critical nature of national security concerns. The rule proposal requires that an applicant be a U.S. citizen. This may provide for increased security by ensuring the ability to conduct valid background investigations by the hiring agency for applicants. The Commission defines what may be included as parts of some background investigations under §211.1 (a)(8). The Immigration and Naturalization Service (INS) requires a person to be in the country five (5) years to obtain citizenship. Most states require citizenship for peace officers by either statute or rule. Many local governments and agencies currently require citizenship. Many law enforcement professionals believe that, given the current national security concerns, U.S. citizenship should be a requirement for licensing for any occupation regulated by the Commission.

Comments may be submitted in writing to Dr. D.C. Jim Dozier, Executive Director, Texas Commission on Law Enforcement, 6330 U.S. Highway 290 East, Suite 200, Austin, TX 78723.

This section is proposed for amendment under Texas Occupations Code, Chapter 1701, §1701.151 General Powers which authorized the Commission to promulgate rules for the administration of this chapter.

The following statute affected by this proposed rule amendment: Texas Occupations Code, Chapter 1701, §1701.255 Enrollment Qualifications and §1701.312 Disqualification Felony Conviction or Placement on Community Supervision.

§215.15. Enrollment Standards and Training Credit.

(a) In order for a person to enroll in any law enforcement training program which provides instruction in defensive tactics, arrest procedures, firearms, or use of a motor vehicle for law enforcement purposes, the academy must have on file:

(1) written documentation that the person is currently licensed by the commission; or

(2) if the person is not licensed by the commission, documentation that the person:

(A) (Community supervision history; [~~has never been on court-ordered community supervision or probation for any criminal offense above the grade of a Class B misdemeanor or a Class B misdemeanor within the last ten years from the date of the court order;~~]

(i) has never been on court-ordered community supervision or probation for any criminal offense above the grade of a Class B misdemeanor or a Class B misdemeanor within the last ten years from the date of the court order; but

(ii) the commission may approve the application of a person who received probation or court-ordered community supervision for a Class B misdemeanor at least five (5) years prior to enrollment if an agency administrator sufficiently demonstrates in writing with supporting documentation that mitigating circumstances exist with the case and with the individual applying for licensure, and that the public interest would be served by reducing the waiting period;

(B) is not currently under indictment for any criminal offense;

(C) Conviction history; [~~has never been convicted of an offense above the grade of a Class B misdemeanor or a Class B misdemeanor within the last ten years;~~]

(i) has never been convicted of an offense above the grade of a Class B misdemeanor or a Class B misdemeanor within the last ten years; but

(ii) the commission may approve the application of a person who was convicted of a Class B misdemeanor at least five (5) years prior to enrollment if an agency administrator sufficiently demonstrates in writing with supporting documentation that mitigating circumstances exist with the case and with the individual applying for licensure, and that the public interest would be served by reducing the waiting period;

(D) has never been convicted of any family violence offense;

(E) is not prohibited by state or federal law from operating a motor vehicle;

(F) is not prohibited by state or federal law from possessing firearms or ammunition; and

(G) is a U.S. citizen.

(b) For the purposes of this section, the commission will construe any court-ordered community supervision, probation or conviction for a criminal offense to be its closest equivalent under the Texas Penal Code classification of offenses if the offense arose from:

(1) another penal provision of Texas law; or

(2) a penal provision of any other state, federal, military or foreign jurisdiction.

(c) A classification of an offense as a felony at the time of conviction will never be changed because Texas law has changed or because the offense would not be a felony under current Texas law.

(d) In order for a person to enroll in any basic peace officer training program which provides instruction in defensive tactics, arrest procedures, firearms, or use of a motor vehicle for law enforcement purposes, the academy must have on file:

(1) a high school diploma;

(2) a high school equivalency certificate and has completed at least 12 hours at an institution of higher education with at least a 2.0 grade point average on a 4.0 scale; or

(3) an honorable discharge from the armed forces of the United States after at least 24 months of active duty service;

(e) The commission will award training credit for any course conducted by a licensed academy as provided by commission rules unless:

(1) the course is not taught as required by commission rules and the advisory board;

(2) the training is not related to a commission license;

(3) the advisory board, the academy, the academy coordinator, the course coordinator, or the instructor substantially failed to discharge any responsibility required by commission rule; or

(4) the credit was claimed by deceitful means.

(f) The enrollment standards established in this section do not preclude the academy licensee from establishing additional requirements or standards for enrollment in law enforcement training programs.

(g) The effective date of this section is March 1, 2003.[~~March 1, 2002.~~]

This 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 27, 2002.

TRD-200206292
Edward T. Laine
Chief, Professional Standards and Administrative Operations
Texas Commission on Law Enforcement Officer Standards and Education
Proposed date of adoption: March 1, 2003
For further information, please call: (512) 936-7700

CHAPTER 217. LICENSING REQUIREMENTS

37 TAC §217.1

The Texas Commission on Law Enforcement Officer Standards and Education (Commission) proposes an amendment to Title 37, Texas Administrative Code 217.1 concerning minimum standards for initial licensure. In §217.1 subsection (a)(3) clarifies that national records are U.S. records. Section 217.1 (a)(4)(B) would allow the Commission to award a license to an individual who has been on community supervision for a case involving a Class B misdemeanor at least five (5) years prior to application if the presentation of written evidence from an agency administrator sufficiently demonstrates that mitigating circumstances exist with the case and with the individual applying for licensure, and that the public interest would be served by reducing the waiting period. Section 217.1 (a)(6)(B) would allow the Commission to award a license to an individual who has been convicted of a Class B misdemeanor at least five (5) years prior to application if the presentation of documentation from an agency administrator sufficiently demonstrates that mitigating circumstances exist with the case and with the individual applying for licensure, and that the public interest would be served by reducing the waiting period. There are some grammar changes in other parts of the rule that are non-substantive. In §217.1 subsection (a)(15) is added to clarify the language of (a)(14). In §217.1 subsection (a)(18) requires an applicant to be a U.S. citizen. Section 217.1 (g)(1)(C) clarifies that the peace officer sequence courses must be commission-approved. The only other proposed change to this section is to the effective date in subsection (o).

The Commission has determined that, for each year of the first five years the section as proposed will be in effect, there will not be fiscal implications to state or local governments as a result of administering the section.

The Commission has determined that, for each year of the first five years the section as proposed will be in effect, there will be no anticipated economic cost to large, small, or micro businesses as a result of the proposed section.

The Commission has determined that, for each year of the first five years the section as proposed will be in effect, there may be a benefit to the public by excluding non-citizens because of the current critical nature of national security concerns. The rule proposal requires that an applicant be a U.S. citizen. This may provide for increased security by ensuring the ability to conduct valid background investigations by the hiring agency for applicants. The Commission defines what may be included as parts of some background investigations under §211.1 (a)(8). The Immigration and Naturalization Service (INS) requires a person to be in the country five (5) years to obtain citizenship. Most states require citizenship for peace officers by either statute or rule. Many local governments and agencies currently require citizenship. Many law enforcement professionals believe that, given the current national security concerns, U.S. citizenship should be a requirement for licensing for any occupation regulated by the Commission.

The Commission has determined that, for each year of the first five years the section as proposed will be in effect, there may be a benefit to the public by allowing local administrators to hire persons who may not be eligible for hire under the current rules. As a comparison, the statutory standard for Private Security license applicants in §1702.113 (a) Occupations Code, is that conviction of a Class A misdemeanor or higher is a bar unless a full pardon has been granted for wrongful conviction, or if it was a Class B within the last five (5) years. The Commission on Private Security (CPS) may deny an application for a license for Class B misdemeanor if it was less than five (5) years ago. Government

Code section §62.102 General Qualifications for Jury Service, includes a qualification to be a juror, "(8) is not under indictment or other legal accusation of misdemeanor or felony theft or any other felony."

Comments may be submitted in writing to Dr. D.C. Jim Dozier, Executive Director, Texas Commission on Law Enforcement, 6330 U.S. Highway 290 East, Suite 200, Austin, TX 78723.

This section is proposed for amendment under Texas Occupations Code, Chapter 1701, §1701.151 General Powers which authorized the Commission to promulgate rules for the administration of this chapter.

The following statute is affected by this proposed rule amendment: Occupations Code 1701, §1701.312 Disqualification Felony Conviction or Placement on Community Supervision.

§217.1. Minimum Standards for Initial Licensure.

(a) The commission shall issue a peace officer, jailer, temporary jailer, or public security officer license to an applicant who meets the following standards:

(1) minimum educational requirements:

(A) has [~~have~~] passed a general educational development (GED) test indicating high school graduation level;

(B) is [~~be~~] a high school graduate; or

(C) has [~~have~~] 12 semester hours credit from an accredited college or university.

(2) for peace officers and armed public security officers, is [~~be~~] 21 years of age, or 18 years of age if the applicant has received an associate's degree or 60 semester hours of credit from an accredited college or university or has received an honorable discharge from the armed forces of the United States after at least two years of active service; for jailers is[~~be~~] 18 years of age;

(3) is [~~be~~] fingerprinted and is [~~be~~] subjected to a search of local, state and U.S. national records and fingerprint files to disclose any criminal record;

(4) community supervision history: [~~has not ever have been on court-ordered community supervision or probation for any criminal offense above the grade of Class B misdemeanor or a Class B misdemeanor within the last ten years from the date of the court order;~~]

(A) has not ever have been on court-ordered community supervision or probation for any criminal offense above the grade of Class B misdemeanor or a Class B misdemeanor within the last ten years from the date of the court order; but

(B) the commission may approve the application of a person who received probation or court-ordered community supervision for a Class B misdemeanor at least five (5) years prior to application if an agency administrator sufficiently demonstrates in writing with supporting documentation that mitigating circumstances exist with the case and with the individual applying for licensure, and that the public interest would be served by reducing the waiting period;

(5) is not currently under indictment for any criminal offense;

(6) convictions history: [~~not ever have been convicted of an offense above the grade of a Class B misdemeanor or a Class B misdemeanor within the last ten years;~~]

(A) has not ever been convicted of an offense above the grade of a Class B misdemeanor or a Class B misdemeanor within the last ten years; but

(B) the commission may approve the application of a person who was convicted for a Class B misdemeanor at least five (5) years prior to application if an agency administrator sufficiently demonstrates in writing with supporting documentation that mitigating circumstances exist with the case and with the individual applying for licensure, and that the public interest would be served by reducing the waiting period;

(7) has never [~~have~~] been convicted of any family violence offense;

(8) is not prohibited by state or federal law from operating a motor vehicle;

(9) is not prohibited by state or federal law from possessing firearms or ammunition;

(10) has been [~~be~~] subjected to a background investigation and has been [~~be~~] interviewed prior to appointment by representatives of the appointing authority;

(11) has been [~~be~~] examined by a physician, selected by the appointing or employing agency, who is licensed by the Texas State Board of Medical Examiners. The physician must be familiar with the duties appropriate to the type of license sought and appointment to be made. The appointee must be declared in writing by that professional within 180 days before the date of appointment by the agency to be:

(A) physically sound and free from any defect which may adversely affect the performance of duty appropriate to the type of license sought; and

(B) show no trace of drug dependency or illegal drug use after a physical examination, blood test, or other medical test;

(12) has been [~~be~~] examined by a psychologist, selected by the appointing or employing agency, who is licensed by the Texas State Board of Examiners of Psychologists. The psychologist must be familiar with the duties appropriate to the type of license sought and appointment to be made. This examination may also be conducted by a psychiatrist. The appointee must be declared in writing by that professional to be in satisfactory psychological and emotional health to serve as the type of officer for which the license is sought within 180 days before the date of appointment by the agency. The examination must be conducted pursuant to professionally recognized standards and methods:

(A) the commission may allow for exceptional circumstances where a licensed physician performs the evaluation of psychological and emotional health. This requires the appointing agency to request in writing and receive approval from the commission, prior to the evaluation being completed; and

(B) the examination may be conducted by a qualified psychologist exempt from licensure by the Psychologist Certification and Licensing Act, Section 22, who is recognized under exceptional circumstances;

(13) has been [~~not have been~~] discharged from any military service under less than honorable conditions including, specifically;

(A) under other than honorable conditions;

(B) bad conduct;

(C) dishonorable; or

(D) any other characterization of service indicating bad character;

(14) has not have had a commission license denied by final order or revoked, [currently on suspension for a criminal violation, or have does not have a voluntary surrender of license currently in effect;]

(15) is not currently on suspension, or does not have a voluntary surrender of license currently in effect;

(16) [(15)] meets [meet] the minimum training standards and passes [pass] the commission licensing examination for each license sought;

(17) [(16)] has not violated [violate] any commission rule or provision of Occupations Code, Chapter 1701; and[.]

(18) is a U.S. citizen.

(b) A person who fails to comply with the standards set forth in this section shall not accept the issuance of a license and shall not accept any appointment. If an application for licensure is found to be false or untrue, it is subject to cancellation or recall.

(c) For the purposes of this section, the commission will construe any court-ordered community supervision, probation or conviction for a criminal offense to be its closest equivalent under the Texas Penal Code classification of offenses if the offense arose from:

(1) another penal provision of Texas law; or

(2) a penal provision of any other state, federal, military or foreign jurisdiction.

(d) A classification of an offense as a felony at the time of conviction will never be changed because Texas law has changed or because the offense would not be a felony under current Texas laws.

(e) An agency must retain records required under this section for a minimum of five years after the licensee's termination date with that agency. These records must be maintained in a format readily accessible to the commission.

(f) An agency must report to the commission any failure to appoint an individual in the reported capacity within 30 days of the reported date of appointment. Such report must be made in the currently prescribed commission format for termination.

(g) A person must successfully complete the minimum training required for the license sought:

(1) training for the peace officer license consists of:

(A) the current basic peace officer course; or

(B) successful completion of a commission recognized, POST developed, basic law enforcement training course, to include:

(i) out of state licensure or certification; and

(ii) submission of the current eligibility application and fee; or

(C) as an alternative to the current basic peace officer course taken at a licensed academy, the commission may approve an academic alternative program that is part of a degree plan program and consists of the commission-approved transfer curriculum, the commission-approved peace officer sequence courses, and after September 1, 2003, at least an associate's degree;

(2) training for the jailer license consists of the current basic county corrections course(s);

(3) training for the public security officer license consists of the current basic peace officer course;

(4) passing [have passed] any examination required for the license sought, within two years of commission receipt of the licensing application; and

(5) the licensing application must be submitted to the commission by a law enforcement or other appointing agency in [on] the completed application format currently prescribed by the commission for the license sought.

(h) The commission shall issue a peace officer or jailer license to any person who is otherwise qualified for that license, even if that person is not subject to the licensing law or rules by virtue of election or appointment to office under the Texas Constitution.

(i) A sheriff who first took office on or after January 1, 1994, must be licensed by the commission not later than two years after taking office.

(j) A constable who first took office on or after January 1, 1985, must be licensed by the commission not later than two years after taking office. A constable taking office after August 30, 1999, must be licensed by the commission not later than 270 days after taking office.

(k) The commission may issue a provisional license, consistent with Occupations Code 1701.311, to an agency for a person to be appointed by that agency. An agency must submit all required applications currently prescribed by the commission and all required fees before the individual is appointed. Upon the approval of the application, the commission will issue a provisional license.

(l) A provisional license is issued in the name of the applicant; however, it is issued to and shall remain in the possession of the agency. Such a license may neither be transferred by the applicant to another agency, nor transferred by the agency to another applicant.

(m) A provisional license may not be reissued and expires:

(1) 12 months from the original appointment date;

(2) on leaving the appointing agency;

(3) on the date the holder fails the peace officer licensing examination for the third time; or

(4) on failure to comply with the terms stipulated in the provisional license approval.

(n) A temporary jailer license may not be reissued and expires:

(1) 12 months from the original appointment date;

(2) on completion of training and passing of the jailer licensing examination; or

(3) on the date the holder fails the jailer licensing examination for the third time.

(o) The effective date of this section is March 1, 2003 [2002].

This 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 27, 2002.

TRD-200206293

Edward T. Laine
Chief, Professional Standards and Administrative Operations
Texas Commission on Law Enforcement Officer Standards and Education
Proposed date of adoption: March 1, 2003
For further information, please call: (512) 936-7700

37 TAC §217.17

The Texas Commission on Law Enforcement Officer Standards and Education (Commission) proposes an amendment to Title 37, Texas Administrative Code 217.1 concerning minimum standards for initial licensure. Section 217.17 (b) would clarify that pending notices of non-compliance are only sent to those who are currently appointed or elected. The only other adopted change to this section is to the effective date in subsection (e).

The Commission has determined that, for each year of the first five years the section as proposed will be in effect, there will not be fiscal implications to state or local governments as a result of administering the section.

The Commission has determined that, for each year of the first five years the section as proposed will be in effect, there will be no anticipated economic cost to large, small, or micro businesses as a result of the proposed section.

The Commission has determined that, for each year of the first five years the section as proposed will be in effect, there may be a benefit to the public by clarifying that notices of pending non-compliance are sent to working licensees and not to individuals who are no longer working in the field.

Comments may be submitted in writing to Dr. D.C. Jim Dozier, Executive Director, Texas Commission on Law Enforcement, 6330 U.S. Highway 290 East, Suite 200, Austin, TX 78723.

This section is proposed for amendment under Texas Occupations Code, Chapter 1701, §1701.151 General Powers which authorized the Commission to promulgate rules for the administration of this chapter.

§217.17. Active License Renewal.

(a) Active licensees who have met the current legislatively required continuing education will have their license(s) automatically renewed on the last day of the training cycle.

(b) The executive director shall notify in writing each appointed or elected [~~active~~] licensee who is in non-compliance with the current legislatively required continuing education at least 90 days prior to expiration. The notice shall be mailed to the licensee and to the licensee's last appointing agency [~~, if any~~]. The notice shall inform the licensee that the license will expire if the licensee does not meet the current legislatively required continuing education by the expiration date. The notice shall also inform the licensee of his or her opportunity to have the license reinstated.

(c) In order for an expired license to be reinstated, the licensee must meet the reinstatement requirements.

(d) The time between expiration and reinstatement of a license is not eligible to be used to meet any requirements for proficiency certification or service time.

(e) The effective date of this section is March 1, 2003 [~~2002~~].

This 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 27, 2002.

TRD-200206294
Edward T. Laine
Chief, Professional Standards and Administrative Operations
Texas Commission on Law Enforcement Officer Standards and Education
Proposed date of adoption: March 1, 2003
For further information, please call: (512) 936-7700

CHAPTER 219. PRELICENSING AND REACTIVATION COURSES, TESTS, AND ENDORSEMENTS OF ELIGIBILITY

37 TAC §219.1

The Texas Commission on Law Enforcement Officer Standards and Education (Commission) proposes an amendment to Title 37, Texas Administrative Code 219.1 concerning minimum standards for eligibility to take an examination. Section 219.1 rewrites the rule to explain the process for obtaining a test endorsement in logical order. The amended rule allows approved training providers to issue 2nd and 3rd endorsements for those failing the examination. The amended rule also explains that only the Commission issues endorsements when endorsements have expired, and that there is a fee attached. The only other proposed change to this section is to the effective date in subsection (j).

The Commission has determined that, for each year of the first five years the section as proposed will be in effect, there will not be fiscal implications to state or local governments as a result of administering the section.

The Commission has determined that, for each year of the first five years the section as proposed will be in effect, there will be no anticipated economic cost to large, small or micro businesses as a result of the proposed section.

The Commission has determined that, for each year of the first five years the section as proposed will be in effect, there may be a benefit to the public by more clearly describing the process for taking licensing examinations.

Comments may be submitted in writing to Dr. D.C. Jim Dozier, Executive Director, Texas Commission on Law Enforcement, 6330 U.S. Highway 290 East, Suite 200, Austin, TX 78723.

This section is proposed for amendment under Texas Occupations Code, Chapter 1701, §1701.151 General Powers which authorized the Commission to promulgate rules for the administration of this chapter.

The following statute is affected by this proposed rule amendment: §1701.304 Examinations.

§219.1. Eligibility to Take State Examinations.

(a) To be eligible to take a state licensing examination, a student must have a valid endorsement of eligibility.

(b) A valid endorsement of eligibility shall: [~~An endorsement of eligibility to take an examination is issued by an academy coordinator, the executive director of the commission, or a person authorized by the executive director. An endorsement of eligibility based on training~~

that was completed more than two years before the date of issue may be issued only by the executive director of the commission.]

(1) be in the approved commission format;

(2) be a completed original document bearing all required signatures,

(3) state that the examinee has met the current minimum training standards appropriate to the license sought; and

(4) include a date of issue.

(c) For an endorsement of eligibility to be or remain valid: [Duplicate, out-of-state, second, and third endorsements may be issued only by the executive director of the commission.]

(1) it must not be issued in error or based on false or incorrect information; specifically, the applicant must meet the current enrollment standards; or if previously licensed, have met the enrollment standards at initial licensure; and

(2) it must be presented before two years from the date of issue.

(d) An endorsement of eligibility to take an examination is issued by an academy coordinator, the executive director of the commission, or a person authorized by the executive director. [In order to issue the endorsement of eligibility, the person issuing such an endorsement must have on file for the person to whom it is issued, written documentation of successful completion of the basic licensing course for license sought; and]

[(1) written documentation that the person to whom it is issued is currently licensed by the commission, or]

[(2) if the person is not currently licensed by the commission, written documentation that the applicant meets the current enrollment standards.]

(e) An endorsement of eligibility based on: [A valid endorsement of eligibility shall:]

(1) a previously completed basic licensing course; [be in the current commission format,]

(2) an expired examination result; [be a completed original document bearing all required signatures,]

(3) out-of-state training; or [state that the examinee has met the current minimum training standards appropriate to the license sought; and]

(4) a duplicate endorsement may only be issued by the executive director of the commission. [include a date of issue.]

(f) In order to issue the endorsement of eligibility, the person issuing such an endorsement, other than a commission employee, must have on file for the person to whom it is issued, written documentation of successful completion of the basic licensing course for the license sought; and [For an endorsement of eligibility to be or remain valid:]

(1) written documentation that the person to whom it is issued was previously licensed by the commission, or [it must not be issued in error or based on false or incorrect information; specifically, the applicant must meet the current enrollment standards; and]

(2) if the person is not currently licensed by the commission, written documentation that the applicant meets the current enrollment standards. [it must be presented before two years from the date of issue.]

(g) In order to receive an endorsement of eligibility from the commission, individuals must meet all current requirements, to include submitting any required application currently prescribed by the commission, requested documentation, and any required fee. [An examination may not be taken by an individual who already holds any license or certificate to be awarded upon passing that examination.]

(h) An examination may not be taken by an individual who already holds an active license or certificate to be awarded upon passing that examination. [Once an initial endorsement of eligibility is issued, an examinee will be allowed three opportunities to pass the examination. After three failures, the examinee must requalify by repeating the entire training course for the license sought. If an attempt is invalidated for any reason, that attempt will count as one of the three opportunities.]

(i) Once an initial endorsement of eligibility is issued, an examinee will be allowed three opportunities to pass the examination. After three failures, the examinee must requalify by repeating the entire training course for the license sought. If an attempt is invalidated for any reason, except for a commission error, that attempt will count as one of the three opportunities.[The effective date of this section is August 1, 2001.]

(j) The effective date of this section is March 1, 2003.

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

Filed with the Office of the Secretary of State on September 27, 2002.

TRD-200206295
Edward T. Laine
Chief, Professional Standards and Administrative Operations
Texas Commission on Law Enforcement Officer Standards and Education
Proposed date of adoption: March 1, 2003
For further information, please call: (512) 936-7700

37 TAC §219.7

The Texas Commission on Law Enforcement Officer Standards and Education (Commission) adopts an amendment to Title 37, Texas Administrative Code 219.7 concerning scoring standards for licensing examinations. Section 219.7 (d) adds the clarification that an examination score's validity expires two years from the date of entry. This follows agency practice from the beginning of licensing examinations. The only other adopted change to this section is to the effective date in subsection (h).

The Commission has determined that, for each year of the first five years the section as proposed will be in effect, there will not be fiscal implications to state or local governments as a result of administering the section.

The Commission has determined that, for each year of the first five years the section as proposed will be in effect, there will be no anticipated economic cost to large, small, or micro businesses as a result of the proposed section.

The Commission has determined that, for each year of the first five years the section as proposed will be in effect, there may be a benefit to the public by more clearly describing the process for taking licensing examinations.

Comments may be submitted in writing to Dr. D.C. Jim Dozier, Executive Director, Texas Commission on Law Enforcement, 6330 U.S. Highway 290 East, Suite 200, Austin, TX 78723.

This section is proposed for amendment under Texas Occupations Code, Chapter 1701, §1701.151 General Powers which authorized the Commission to promulgate rules for the administration of this chapter.

The following statute is affected by this proposed rule amendment: Texas Occupations Code, Chapter 1701, §1701.305 Examination Results.

§219.7. Scoring of Examinations.

(a) All official grading and notification shall come from the Austin office of the commission. A notice containing the results will be mailed to the examinee or faxed to the training coordinator or chief administrator, upon request, as soon as possible. If there is a delay, the commission will notify the examinee [~~,~~] (the training coordinator or chief administrator, if known), electronically or in writing of the reasons for the delay.

(b) The examination results forwarded to training coordinators shall include analyses of the examinees' performances. [~~Upon failure, the results of the examination shall also include an analysis of the examinee's performance.~~]

(c) For a score to be or remain valid the examinee must:

(1) complete the answer sheet, or otherwise record the answers, as instructed; and

(2) continue to meet current enrollment standards.

(d) An examination score expires two years from the date of its entry into commission records.

(e) [~~(d)~~] The commission may deny, revoke, or suspend any license or certificate held by a person who violates or attempts to violate any provisions of this section.

(f) [~~(e)~~] If the commission invalidates an examination score for any reason, it may also, in the discretion of the executive director and for good cause shown, require a reexamination to obtain a substitute valid score.

(g) [~~(f)~~] Unless provided otherwise by rule, the minimum passing percentage on each examination shall be 70. The commission may, in its discretion, invalidate any question.

(h) [~~(g)~~] The effective date of this section is March 1, 2003. [~~2001.~~]

This 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 27, 2002.

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Edward T. Laine
Chief, Professional Standards and Administrative Operations
Texas Commission on Law Enforcement Officer Standards and Education
Proposed date of adoption: March 1, 2003
For further information, please call: (512) 936-7700

TITLE 43. TRANSPORTATION

PART 1. TEXAS DEPARTMENT OF TRANSPORTATION

CHAPTER 2. ENVIRONMENTAL POLICY
SUBCHAPTER C. ENVIRONMENTAL REVIEW AND PUBLIC INVOLVEMENT FOR TRANSPORTATION PROJECTS

43 TAC §§2.40, 2.41, 2.43

The Texas Department of Transportation (department) proposes amendments to §§2.40, 2.41, and 2.43, concerning environmental review and public involvement for transportation projects.

EXPLANATION OF PROPOSED AMENDMENTS

Transportation Code, §201.604, provides that the Texas Transportation Commission (commission) shall prescribe rules providing for the environmental review of transportation projects that are not governed by the National Environmental Policy Act, 42 USC §4321 et seq. The commission has therefore previously adopted §§2.40-2.51 to specify the process for environmental review of transportation projects.

Sections 2.40, 2.41, and 2.43 are amended to provide that this subchapter also applies to the environmental review of turnpike projects. Transportation Code, §361.103, requires the Texas Turnpike Authority Division (TTA) of the department to provide by rule for the environmental review of turnpike projects. Senate Bill 342, 77th Legislature, 2001, abolished the Board of Directors (board) of TTA. This abolishment allows for the more complete consolidation of TTA with the department. The board had previously adopted rules governing the award of contracts for the construction and maintenance of turnpike projects (Chapter 52, Subchapter A). The Chapter 52 rules are similar to the department's rules. By separate rulemaking action, the department is proposing the repeal of the TTA Chapter 52 rules.

Section 2.40 is amended to update the citation to the commission's authority to prescribe rules for non-tolled highway improvement projects and to add a citation to the commission's authority to prescribe rules for tolled highway improvement projects.

Section 2.41(11) is amended to add TTA to the definition of a district. This will place tolled state highway improvement projects on the same footing as non-tolled state highway improvement projects.

Section 2.41(17) is amended to update the citation to the commission's general authority to undertake highway construction projects for non-tolled highways and to add a citation to the commission's authority to undertake highway construction projects for tolled highways.

Section 2.43(c)(3) is amended to add subparagraphs (K) and (L) to the list of actions that are considered to be eligible from categorical exclusions in most instances. These items were previously incorporated in §52.5(c) as paragraphs (8) and (9). Their inclusion in Chapter 2 will ensure that turnpike projects continue to be evaluated in the same way as they have been evaluated previously.

FISCAL NOTE

James Bass, Director, Finance Division, has determined that for each of the first five years the amendments are in effect, there will be no fiscal implications for state or local governments as a

result of enforcing or administering the amendments. There are no anticipated economic costs for persons required to comply with the amendments as proposed.

Dianna F. Noble, P.E., Director, Environmental Affairs Division, has certified that there will be no significant impact on local economies or overall employment as a result of enforcing or administering the amendments.

PUBLIC BENEFIT

Ms. Noble has also determined that for each year of the first five years the amendments are in effect, the public benefit anticipated as a result of enforcing or administering the amendments will be the removal of duplicative and unnecessary rules. There will be no adverse economic effect on small businesses.

SUBMITTAL OF COMMENTS

Written comments on the proposed amendments may be submitted to Dianna F. Noble, P.E., Director, Environmental Affairs Division, 125 East 11th Street, Austin, Texas 78701-2483. The deadline for receipt of comments is 5:00 p.m. on November 12, 2002.

STATUTORY AUTHORITY

The amendments are proposed under Transportation Code, §201.101, which provides the commission with the authority to establish rules for the conduct of the work of the department, and Transportation Code, §361.042, which requires the commission to adopt rules for the regulation of its affairs and the conduct of its business under Transportation Code, Chapter 361.

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

§2.40. Purpose.

The sections under this subchapter prescribe the environmental review and public involvement procedures of the department for federal, state, local, and privately funded projects in all transportation modes for which the department has funding, construction, or maintenance responsibilities. They are provided in order to comply with the spirit of the National Environmental Policy Act, 42 United States Code §§4321 et seq., 23 United States Code §109(h), and Transportation Code, §201.604 and §361.103 [~~Texas Civil Statutes, Article 6673g~~]. These procedures are intended to ensure the adequate consideration of environmental impacts related to transportation systems development, and to ensure that environmental impacts are mitigated where feasible. It is the goal of the department to develop and construct projects which fulfill the transportation needs of the public while being environmentally sound.

§2.41. Definitions.

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

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

(11) District office--The Texas Turnpike Authority Division or one [~~One~~] of the 25 geographical districts into which the department is divided.

(12) - (16) (No change.)

(17) Highway construction project--A highway improvement project involving the construction or reconstruction of a segment of the state highway system, pursuant to Transportation Code, Chapter 201, 203, 221, 223, or 361. [~~Texas Civil Statutes, Article 6674a et.seq.~~]

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

§2.43. Highway Construction Projects-- State Funds.

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

(c) Categorical exclusions (CE).

(1) A state project will be classified as a categorical exclusion (CE) if it does not:

(A) involve significant environmental impacts;

(B) induce significant impacts to planned growth or land use of the state project area;

(C) require the relocation of significant numbers of people;

(D) have a significant impact on any natural, cultural, recreational, historic, or other resource;

(E) involve significant air, noise, or water quality impacts;

(F) significantly impact travel patterns; or

(G) either individually or cumulatively, have any significant environmental impacts.

(2) If a state project involves any of the following the department will conduct appropriate environmental studies to determine if the CE classification is proper:

(A) substantial environmental impacts; and/or

(B) substantial controversy on environmental grounds.

(3) The following actions are examples of state projects which meet the criteria of a CE as found in paragraph (1) of this subsection and will not in most cases require review or approval by the division:

(A) do not involve or lead directly to construction, such as planning and technical studies, grants or training and research programs, engineering feasibility studies that either define the elements of a proposed state project or identify alternatives so that social, economic, and environmental effects can be assessed for potential impact;

(B) approval of utility installations along or across a transportation facility;

(C) construction of bicycle and pedestrian lanes, paths, and facilities;

(D) landscaping;

(E) installation of fencing, signs, pavement markings, small passenger shelters, traffic signals, and railroad warning devices when no substantial land acquisition or traffic disruption will occur;

(F) emergency repairs as defined in 23 United States Code §125;

(G) acquisition of scenic easement;

(H) improvements to existing rest areas and truck weigh stations;

(I) ridesharing activities; [~~and~~]

(J) alterations to facilities or vehicles in order to make them accessible for elderly and handicapped persons;

(K) improvements, regular maintenance and emergency repairs to existing mechanical, electromechanical, hydraulic, electronic and manned toll collection facilities; and

(L) minor expansion of toll plazas and approach aprons.

(4) Any other actions meeting the criteria for a CE as found in paragraph (1) of this subsection will require division review and approval.

(A) Departmental approval will be based on the appropriate office submitting documentation in the form of a descriptive letter or brief environmental assessment which demonstrates that the specific conditions or criteria for classification of a CE as found in paragraph (1) of this subsection is satisfied and that significant environmental impacts will not result, including the results of any coordination effected with resource agencies.

(B) Examples may include, but are not limited to, the following:

(i) modernization of a highway by resurfacing, restoration, rehabilitation, reconstruction, adding shoulders, or adding auxiliary lanes such as parking, weaving, turning, climbing, and correcting substandard curves and intersections with only minor amounts of additional right-of-way required;

(ii) highway safety or traffic operation improvement projects including the installation of ramp metering control devices and lighting;

(iii) bridge rehabilitation, reconstruction, or replacement, or the construction of grade separation to replace existing at-grade railroad crossings (CE classification may not be applicable when the proposed project requires acquisition of more than minor amounts of right-of-way, since in such cases the preparation of an environmental assessment may be appropriate);

(iv) addition of travel lanes to rural roadways within existing right-of-way or with minimal right-of-way require

(v) transportation corridor fringe parking facilities;

(vi) construction of new truck weigh stations or rest areas;

(vii) approvals for changes in access control;

(viii) approvals for disposal of excess right-of-way or for joint or limited use of right-of-way, where the proposed use does not have significant adverse impacts; and

(ix) acquisition of land for hardship or protective purposes (hardship and protective buying will be permitted only for a particular parcel or a limited number of parcels; this type of right-of-way acquisition will qualify for a CE classification only when the acquisition will not limit the evaluation of alternatives, including shifts in alignment for planned construction projects; no project development on such land may proceed until the environmental review process has been completed).

(5) The department may classify other state projects as a CE if, from the documentation required to be submitted, a determination is made that the state project meets the CE classification.

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

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

Filed with the Office of the Secretary of State on September 27, 2002.

TRD-200206297

Richard D. Monroe
General Counsel
Texas Department of Transportation
Earliest possible date of adoption: November 10, 2002
For further information, please call: (512) 463-8630

CHAPTER 9. CONTRACT MANAGEMENT
SUBCHAPTER C. CONTRACTING FOR ARCHITECTURAL, ENGINEERING, AND SURVEYING SERVICES

43 TAC §§9.30, 9.31, 9.33, 9.34, 9.37 - 9.39, 9.41, 9.43

The Texas Department of Transportation (department) proposes amendments to §§9.30, 9.31, 9.33, 9.34, 9.37-9.39, 9.41, and 9.43, concerning contracting for architectural, engineering, and surveying services.

EXPLANATION OF PROPOSED AMENDMENTS

Senate Bill 342, 77th Legislature, 2001, abolished the Board of Directors (board) of the Texas Turnpike Authority Division (TTA) of the department. Senate Bill 342 further provided that rules of the board would continue in effect as rules of the Texas Transportation Commission (commission).

The commission promulgates rules governing the operations of the department, codified in Title 43, Part 1 (Chapters 1-31). The board was responsible for promulgating rules governing the operations of TTA, codified in Title 43, Part 2 (Chapters 50-54). With the abolition of the board, the commission is responsible for promulgating rules governing TTA operations.

The board previously adopted §§53.20-53.30, prescribing the policies and procedures governing TTA contracting for architectural and engineering services. With the abolition of the board, these rules are no longer needed because the department has rules, found at §§9.30-9.43, that govern department contracting for architectural, engineering, and surveying services. The Chapter 9 rules and the Chapter 53 rules are similar in most respects. Section 9.30 is amended to provide that §§9.30-9.43 apply to contracts for architectural, engineering, and surveying services related to TTA turnpike projects. Additional amendments have also been made to apply specific rule provisions to TTA turnpike projects. By separate action, §§53.20-53.30 are being proposed for repeal.

The proposed amendments are also needed to streamline procedures for selection, negotiation, management, and evaluation of contracts with architects, engineers, and surveyors, to provide the department more flexibility with respect to negotiating contracts with selected providers, to ensure the department complies with applicable state law requiring consideration of the competence and qualifications of providers of architectural, engineering, and surveying services, and to recognize that licensed state land surveyors may provide surveying services to the department under applicable law.

Section 9.30 is amended to add a citation to the department's authority to contract for architectural, engineering, and surveying services related to turnpike projects. This section is also amended to improve grammar and to distinguish between registered professional land surveyors and licensed state land surveyors, either of which may provide surveying services to the department under applicable law.

Section 9.31 is amended to add a definition for licensed state land surveyor.

Section 9.33 is amended to provide that the director of the Design Division, rather than the chair of the Consultants Review Committee (CRC) or designee may approve exceptions to minimum and maximum page requirements for letters of interest. The department has designated the director of the Design Division as the chair of the CRC. The amendment clarifies who has been designated to make this decision. Section 9.33 is also amended to provide that the prime provider's project manager may not be replaced during the selection and award process by anyone other than another person proposed for the prime provider's team. The director of the Design Division must approve the proposed replacement project manager. Limiting who may be designated as the prime provider's project manager ensures that the department complies with applicable state law requiring consideration of the competence and qualifications of providers of architectural, engineering, and surveying services. The amendment also provides the department more flexibility in the selection process by not requiring the disqualification of qualified providers. This section is also amended to distinguish between registered professional land surveyors and licensed state land surveyors, either of which may provide surveying services to the department under applicable law.

Section 9.34 is amended to provide that the director of the Design Division, rather than the chair of the Consultants Review Committee (CRC) or designee may approve additional criteria for evaluating interested providers. The amendment clarifies who has been designated to make this decision.

Section 9.37 is amended to provide that the director of the Design Division, rather than the chair of the Consultants Review Committee (CRC) or designee, may approve discretionary extensions of the period of time in which contracts must be negotiated with selected providers and increases the length of such extensions, and provides that the director of the Design Division may approve unique negotiating schedules for multiple contract selections. Section 9.37 is also amended to authorize the executive director of the department or designee to grant additional extensions if the managing officer submits sufficient justification establishing that additional time to conduct negotiations is necessary due to the uniqueness or complexity of the project scope of services. These amendments clarify who has been designated to make these decisions, and provide the department with the flexibility to complete negotiations on contracts related to projects with a unique or complex scope, such as turnpike projects of a scale greater than that found in the typical traditional department project.

Section 9.38 is amended to provide that the director of the Design Division, rather than the chair of the Consultants Review Committee (CRC) or designee may approve exceptions to the amount of work that can be provided by a subprovider. The amendments clarify who has been designated to make this decision.

Section 9.39 is amended to apply limitations on the amount of contract work authorizations in indefinite delivery contracts to contracts related to TTA turnpike projects.

Section 9.41 is amended to distinguish between registered professional land surveyors and licensed state land surveyors in obtaining precertification, either of which may provide surveying services to the department under applicable law.

Section 9.43 is amended to provide that in order to be precertified in Category 15.5.1, relating to state land surveying, the firm must employ one licensed state land surveyor, rather than a registered professional land surveyor. Applicable state law requires a licensed state land surveyor to perform these services.

FISCAL NOTE

James Bass, Director, Finance Division, has determined that for each of the first five years the amendments are in effect, there will be no fiscal implications for state or local governments as a result of enforcing or administering the amendments. There are no anticipated economic costs for persons required to comply with the amendments as proposed.

Ken Bohuslav, P.E., Director, Design Division, has certified that there will be no significant impact on local economies or overall employment as a result of enforcing or administering the amendments.

PUBLIC BENEFIT

Mr. Bohuslav has also determined that for each year of the first five years the amendments are in effect, the public benefit anticipated as a result of enforcing or administering the amendments will be the streamlining of the process for procuring architectural, engineering, and surveying services, and the removal of duplicative and unnecessary rules. There will be no adverse economic effect on small businesses.

SUBMITTAL OF COMMENTS

Written comments on the proposed amendments may be submitted to Ken Bohuslav, P.E., Director, Design Division, 125 East 11th Street, Austin, Texas 78701-2483. The deadline for receipt of comments is 5:00 p.m. on November 12, 2002.

STATUTORY AUTHORITY

The amendments are proposed under Transportation Code, §201.101, which provides the commission with the authority to establish rules for the conduct of the work of the department, and Transportation Code, §361.042, which requires the commission to adopt rules for the regulation of its affairs and the conduct of its business under Transportation Code, Chapter 361.

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

§9.30. Purpose.

This subchapter establishes standard procedures for selection and contract management of architectural, professional engineering, and land surveying service providers in accordance with Government Code, Chapter 2254, Subchapter A, the Professional Services Procurement Act, and Transportation Code, §223.041 and §361.042. This subchapter only applies to a contract that [~~which~~] requires a professional engineer, registered architect, or registered or licensed professional land surveyor. Prime providers and subproviders shall be precertified for contracts which require architectural, engineering, or surveying services, except as described in §9.33(b)(3) of this title (relating to Notice and Letter of Interest).

§9.31. Definitions.

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

(1) AASHTO--American Association of State Highway and Transportation Officials.

(2) Administrative qualification--A department process conducted to determine if a prime provider or subprovider meets the requirements of 23 Code of Federal Regulations (CFR) 172.5(c) concerning the administration of engineering and design related service contracts.

(3) Available personnel--The total number of personnel employed by the provider proposed to be used on the advertised contract.

(4) Border district--One of the geographical areas of the department managed by a district engineer that is headquartered in El Paso, Laredo, or Pharr.

(5) Business opportunity programs section of the Construction Division (CSTB)--The department section that certifies DBEs and administers the DBE and HUB programs.

(6) CCIS--Consultant Certification Information System.

(7) Close out--The actions required to close out or complete the contract, including receipt and acceptance of deliverables, resolution of audit findings, receipt of outside approvals if applicable, resolution of other contract-related issues, and issuance of final payment.

(8) Constructability--The ability of a project to be accurately constructed from information presented in plans and specifications.

(9) Construction engineering--The interpretation of plans and specifications and formulation of engineering decisions during the period that the project is under construction.

(10) Construction inspection--Inspection of construction methods and materials by inspectors who report directly to the department's project manager.

(11) Construction management--Construction engineering performed by the professional engineer in responsible charge of the construction project to direct the contractor concerning changes, additions, or deletions to the project.

(12) Consultants review committee (CRC)--The department committee that oversees the provider review process.

(13) Consultant selection team (CST)--The department's managing office team that selects the long list and short list and evaluates proposals and interviews.

(14) Disadvantaged business enterprise (DBE)--Any business certified by the department in accordance with 49 CFR Part 26.

(15) DBE/HUB goal participation--The participation goal for DBE/HUB providers expressed as a percentage of the total cost of the contract.

(16) DBE/HUB special provision--A special provision to the provider contract that identifies DBE/HUB program requirements.

(17) Debarment certification--A certification that the provider and its principals are not debarred from participation and not under consideration for debarment anywhere, and are eligible to perform the contract.

(18) Department--The Texas Department of Transportation.

(19) Department project manager--The department employee designated in the contract as the official contact for all correspondence between the department and the provider.

(20) FHWA--The Federal Highway Administration.

(21) FONSI--Finding of No Significant Impact.

(22) Good faith effort--A provider must demonstrate to the department's satisfaction, that sufficient effort on its part was made to obtain DBE/HUB participation. Good faith effort is identified in the DBE/HUB Special Provision to the contract.

(23) Graduate engineer--An individual who meets the educational requirements for registration as provided in the Texas Engineering Practice Act.

(24) Historically underutilized business (HUB)--Any business so certified by the General Services Commission.

(25) IESNA--The Illuminating Engineering Society of North America.

(26) Indefinite delivery contract--A contract that contains a general scope of services, maximum contract amount, and contract termination date in which contract rates are negotiated prior to contract execution and work is authorized as needed.

(27) Interview and Contract Guide (ICG)--An instructional document furnished to providers on the short list when a Request for Proposals is not used.

(28) ITS--Intelligent Transportation System.

(29) Licensed state land surveyor--A professional land surveyor described in Texas Civil Statutes, Article 5282c, §2(4).

(30) [~~(29)~~] Long list--The list of qualified providers submitting a letter of interest for a contract.

(31) [~~(30)~~] Lower tier debarment certification (form 1734)--A debarment certification form that is completed by subproviders or other lower tier participants.

(32) [~~(31)~~] Lower tier participant--A subprovider or other participant in the contract, other than the state, that is not the prime provider.

(33) [~~(32)~~] Managing office--The division, office, or district with the responsibility for awarding and managing the contract.

(34) [~~(33)~~] Managing officer--The division director, office director, or district engineer of the managing office.

(35) [~~(34)~~] Metropolitan district-- One of the geographical areas of the department managed by a district engineer that is headquartered in Austin, Dallas, Fort Worth, Houston, or San Antonio.

(36) [~~(35)~~] Overhead guidelines--Instructions prepared by the department's Audit Office to assist the provider in administrative qualification.

(37) [~~(36)~~] Prime provider--The provider awarded a department provider contract.

(38) [~~(37)~~] Professional engineer--An individual licensed to practice engineering in the state or states that he or she performs professional services.

(39) [~~(38)~~] Professional services provider (provider)--An individual or entity that provides engineering, architectural, or surveying services.

(40) [~~(39)~~] Project specific contract--A contract that contains a specific scope of services, maximum contract amount, and contract termination date and authorizes the provider to perform the entire scope of work.

(41) [~~(40)~~] Registered architect--An individual licensed to practice architecture in the state or states that he or she performs professional services.

(42) [~~(41)~~] Registered professional land surveyor--An individual licensed to perform land surveying in the state or states that he or she performs professional services.

(43) [~~(42)~~] Request for proposal (RFP)--A request for submittal of a technical proposal from a provider that demonstrates competence and qualifications to perform the requested services, and shows an understanding of the specific contract.

(44) [~~(43)~~] Relative importance factor (RIF)--The numerical weight of each evaluation criterion as it relates to a particular contract.

(45) [~~(44)~~] Short List--The list of providers from the long list, selected by the CST, that best meet the requirements indicated by the letter of interest.

(46) [~~(45)~~] Short list meeting--A meeting held with the providers on the short list to answer questions regarding the contract and distribute the RFP prior to submittal of proposals or interviews.

(47) [~~(46)~~] Small business concern--A small business as defined in the Small Business Act, codified in 15 United States Code §632, and relevant regulations.

(48) [~~(47)~~] Subprovider--A provider proposing to perform work through a contractual agreement with the prime provider.

(49) [~~(48)~~] Team--The provider and all proposed subproviders who will be working on a particular contract.

(50) [~~(49)~~] Technical precertification--A review process conducted by the department to determine if a prime provider or subprovider meets the technical requirements to perform work identified in a work category.

§9.33. Notice and Letter of Interest.

(a) (No change.)

(b) Letter of interest (LOI).

(1) The provider shall send a letter of interest to the department notifying the department of the provider's interest in the contract not later than the deadline published in the notice.

(2) The letter of interest will consist of a minimum of three and a maximum of five pages plus attachments, unless otherwise approved by the director of the Design Division [~~CRC chair or designee not below an office director title~~]. The maximum page length will be stated in the notice. Attachments will be restricted to precertification information required in subsection (b)(3) of this section. The department will accept a letter of interest by electronic facsimile.

(3) To be considered:

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

(E) the proposed team must demonstrate that they have a professional engineer, architect, or surveyor registered or licensed in Texas who will sign and/or seal the work to be performed on the contract.

(4) The letter of interest shall include;

(A) the contract or RFP number;

(B) an organizational chart containing:

(i) names of the prime provider's and any subprovider's key personnel proposed for the team and their contract responsibilities by work category; and

(ii) the prime provider's project manager (who may [~~not~~] be replaced during the selection and award process only by another person proposed for the prime provider's team approved by the director of the Design Division [~~changed during the selection and the award process~~]);

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

§9.34. Determination of the Short List.

(a) Composition of the Consultant Selection Team. The CST shall be composed of:

(1) the managing office staff member designated by the managing officer to be the chair;

(2) the department project manager; and

(3) at least one other department employee designated by the managing officer.

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

(d) Criteria. The CST will consider the following criteria in its review of all interested providers:

(1) project understanding and approach;

(2) the project manager's experience with similar projects;

(3) similar project related experience of the task leaders responsible for the major work categories identified in the notice; and

(4) other criteria approved by the director of the Design Division [~~CRC chair or designee not below an office director title~~] and listed in the notice.

(e) - (g) (No change.)

§9.37. Selection.

(a) - (f) (No change.)

(g) Negotiations.

(1) Selected provider. The department will enter into negotiations with the selected provider. The provider shall submit the information required for the contract, including a work outline, work schedule, list of all suppliers and subproviders contacted relative to this project in accordance with §9.53(d)(5) of this title (relating to Disadvantaged Business Enterprise (DBE) Program), and cost proposal. Any information necessary to meet the administrative qualification requirements found in §9.42 of this title (relating to Administrative Qualification), that has not been submitted to the department prior to selection shall be submitted so that the department may determine the fairness and reasonableness of the contract price. State funded architectural contracts are based on percentage of construction cost as provided in the General Appropriations Act. Pursuant to 23 CFR §172.9, federally funded contracts are not based on percentage of construction cost.

(2) Contract execution. The provider shall sign the contract within 30 working days from the date of notification to the provider. An extension must be authorized before the expiration of the negotiation period or previous extension. Extensions or schedules will be used as provided in this paragraph.

(A) Automatic extensions. Automatic extensions for multiple contracts selected under one advertisement in which negotiations will be conducted at the same time are entitled to an automatic extension of the initial negotiating period. For each individual contract that has been awarded as part of a multiple contract package and that is anticipated to be valued at:

(i) $1 million or more each, the initial negotiating period is extended by five working days for each contract; or

(ii) less than $1 million each, the initial negotiating period is extended by five working days for every two contracts.

(B) Discretionary extensions. Discretionary extensions of the initial negotiating period may be granted to providers.

(i) Upon submission by the managing officer of sufficient written justification indicating that adequate progress is being made to conclude successful negotiations, the director of the Design Division [CRC chair] will grant an extension not to exceed 30 [10] working days.

(ii) Upon submission by the managing officer of sufficient written justification establishing that additional time to conduct negotiations is necessary due to the uniqueness or complexity of the project scope of services [indicating that adequate progress is being made to conclude successful negotiations], the executive director or the director's designee not below the level of assistant [deputy] executive director may [will] grant [an] additional extensions [extension not to exceed 10 working days].

[*(iii)* Upon submission by the managing officer of sufficient written justification indicating that adequate progress is being made to conclude successful negotiations in the case of multiple contracts selected under one advertisement, the executive director or the deputy executive director will grant a final extension not to exceed 5 working days per contract.]

(C) Unique negotiating schedules. The director of the Design Division [CRC chair] may approve a unique negotiating schedule submitted by the managing officer prior to the start of negotiations for multiple contract selections.

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

(h) (No change.)

§9.38. Contract Management.

(a) (No change.)

(b) Subcontracts.

(1) A prime provider shall perform at least 30% of the contracted work with its own work force. No subprovider may perform a higher percentage of the work than the prime provider, unless approved by the director of the Design Division [CRC chair] when the work is so specialized that the prime provider cannot perform at least 30% of the work.

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

(c) - (g) (No change.)

§9.39. Selection Types.

The department will perform four types of contract selections.

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

(3) Indefinite delivery contract selection. This contract may be for an individual contract or for multiple contracts. The typical type of work will be described in the notice. The total of the contract work authorizations shall not exceed $5,000,000 in a metropolitan district or border district of the department, or in contracts of the Texas Turnpike Authority Division of the department. The total of the contract work authorizations shall not exceed $2,000,000 in a district of the department other than a metropolitan or border district. The contract duration, in which initial work authorizations may be issued, may not be longer than two years. Supplemental agreements may be issued to extend the contract period beyond the two years, but only as necessary to complete work on an initial work authorization.

(4) (No change.)

§9.41. Precertification.

(a) Eligibility. To be eligible to perform work in the categories described in §9.43 of this title (relating to Qualification Requirements by Work Group), a prime provider and a subprovider must be precertified in accordance with this section unless:

(1) the anticipated work in an individual work category is less than 5.0% of the contract; or

(2) the department has waived the precertification requirements for a contract that is less than $250,000.

(b) Application.

(1) Registered architects, professional engineers, and registered or licensed professional surveyors or their related subproviders who desire to be precertified by the department to perform work on architectural, engineering, or surveying contracts shall submit a completed precertification questionnaire to the CRC for review and determination of precertification status.

(2) - (6) (No change.)

(c) - (i) (No change.)

§9.43. Qualification Requirements by Work Group.

(a) Requirements.

(1) Eligible employees. Prime providers and subproviders may be precertified in the technical groups and categories in accordance with subsection (b) of this section by providing the listed requirements. A firm may only use an individual who is employed by that firm at the time of submittal for precertification.

(2) Experience. The experience used to meet requirements may be either prior to or after licensure unless otherwise stated in a specific category. For the purpose of experience for precertification, the professional provider may be licensed to practice in any state for which that experience is recognized by the:

(A) Texas Board of Professional Engineers for engineers;

(B) Texas Board of Architectural Examiners for architects; or

(C) Texas Board of Professional Land Surveying for land surveyors.

(3) Contract execution. For the purposes of executing a contract and doing work in the state, the professional provider must be licensed by the:

(A) Texas Board of Professional Engineers for engineers;

(B) Texas Board of Architectural Examiners for architects; or

(C) Texas Board of Professional Land Surveying for land surveyors.

(b) Work Categories.

(1) - (13) (No change.)

(14) Group 15 - surveying and mapping.

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

(E) Category 15.5.1 - state land surveying. This category includes the performance of land surveying associated with "the location or relocation of original land grant boundaries and corners; the calculation of area and the preparation of field note descriptions of both surveyed and unsurveyed land or any land in which the state

or the public free school fund has an interest; the preparation of maps showing such survey results; and the field notes and/or maps of which are to be filed in the General Land Office," as quoted in the Surveyors Act. The firm must employ one licensed state [~~registered professional~~] land surveyor with demonstrated experience in state land surveying as defined in the category description.

(15) - (16) (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 27, 2002.

TRD-200206298
Richard D. Monroe
General Counsel
Texas Department of Transportation
Earliest possible date of adoption: November 10, 2002
For further information, please call: (512) 463-8630

CHAPTER 25. TRAFFIC OPERATIONS
SUBCHAPTER A. GENERAL

43 TAC §25.1

The Texas Department of Transportation (department) proposes amendments to §25.1, concerning the Texas Manual on Uniform Traffic Control Devices (Texas MUTCD).

EXPLANATION OF PROPOSED AMENDMENTS

The Texas MUTCD is amended periodically to maintain substantial conformance with the federal MUTCD to allow use of a single manual for both state-funded and federal-aid highway projects. These amendments incorporate the latest requirements of the federal MUTCD into the Texas MUTCD.

The federal MUTCD defines the standards used by road managers nationwide to install and maintain traffic control devices on all streets and highways. The federal MUTCD is published by the Federal Highway Administration (FHWA) under Title 23, Code of Federal Regulations, Part 655, Subpart F.

FHWA has recently completed a major revision and reformat of the federal MUTCD. All states are required to adopt the provisions of this new federal manual by January 17, 2003.

FISCAL NOTE

James Bass, Director, Finance Division, has determined that for each year of the first five years the amendments are in effect, there will be no significant fiscal implications to state or local government as a result of enforcing or administering the amendments.

Traffic control devices that are installed after the adoption of the new manual will be required to be in compliance with the standards of the new manual. Existing traffic control devices will be required to comply with the standards of the new manual only when the devices would normally have been changed during routine maintenance. There are no significant anticipated economic costs to persons required to comply with the amendments as proposed.

Carlos A. Lopez, P.E., Director, Traffic Operations Division, has certified that there will be no significant impact on local economies or overall employment as a result of enforcing or administering the proposed amendments.

PUBLIC BENEFIT

Mr. Lopez also has determined that for each year of the first five years the amendments are in effect, the public benefit anticipated as a result of enforcing the amendments will be a more uniform use of traffic control devices and increased highway safety. There will be no adverse economic effect on small businesses.

SUBMITTAL OF COMMENTS

Written comments on the proposed amendments may be submitted to Carlos A. Lopez, P.E., Director, Traffic Operations Division, 125 East 11th Street, Austin, Texas 78701-2483. The deadline for receipt of comments is 5:00 p.m. on November 12, 2002.

STATUTORY AUTHORITY

The amendments are proposed under Transportation Code, §201.101, which authorizes the Texas Transportation Commission (commission) to promulgate rules for the conduct of the work of the department, and more specifically, Transportation Code, §544.001, which requires the commission to adopt a manual and specifications for a uniform system of traffic control devices which conforms to the systems approved by the American Association of State Highways and Transportation Officials.

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

§25.1. Uniform Traffic Control Devices.

(a) The 2003 Texas Manual on Uniform Traffic Control Devices [~~for Streets and Highways, 1980 edition, as amended by Revision Number 7~~], which is filed with this section and hereby incorporated by reference, was prepared as required by law to govern standards and specifications for all such traffic control devices to be erected and maintained upon all highways within this state, including those under local jurisdiction. Copies of the manual may be obtained at the Texas Department of Transportation, 125 East 11th Street, Austin, Texas 78701, and are on file for public inspection with the Office of the Secretary of State, Texas Register Division, James Earl Rudder State Office Building, Room 245, Austin, Texas 78711.

(b) This manual will be periodically updated. In the intervals between updates, standards contained in "Official Rulings on Requests for Interpretations, Changes, and Experimentation" to the United States Department of Transportation's Manual on Uniform Traffic Control Devices for Streets and Highways will be inserted in this manual and may be used as interim standards.

(c) This manual is not intended to preclude the use of sound engineering judgment and experience in the application and installation of devices and particularly in those cases not specifically covered which must not conflict with the manual or other applicable state laws.

(d) This manual will be sold for a price based upon the then current cost to the department, except that certain public entities may be entitled to free copies.

(e) The manual will be available on the department's internet website at www.dot.state.tx.us.

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

Filed with the Office of the Secretary of State on September 27, 2002.

TRD-200206311
Richard D. Monroe
General Counsel
Texas Department of Transportation
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For further information, please call: (512) 463-8630

PART 2. TEXAS TURNPIKE AUTHORITY DIVISION OF THE TEXAS DEPARTMENT OF TRANSPORTATION

CHAPTER 52. PROJECT DEVELOPMENT

SUBCHAPTER A. ENVIRONMENTAL REVIEW AND PUBLIC INVOLVEMENT

43 TAC §§52.1 - 52.8

(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 Turnpike Authority Division of the Texas Department of Transportation or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The Texas Department of Transportation (department) proposes the repeal of §§52.1-52.8, concerning environmental review and public involvement.

EXPLANATION OF PROPOSED REPEALS

Senate Bill 342, 77th Legislature, 2001, abolished the Board of Directors (board) of the Texas Turnpike Authority Division (TTA) of the department, subject to approval by the voters of Senate Joint Resolution 16. The voters approved Senate Joint Resolution 16 on November 6, 2001. Senate Bill 342 further provided that rules of the board would continue in effect as rules of the Texas Transportation Commission (commission).

The commission promulgates rules governing the operations of the department, codified in Title 43, Part 1 (Chapters 1-31). The board was responsible for promulgating rules governing the operations of TTA, codified in Title 43, Part 2 (Chapters 50-54). With the abolition of the board, TTA is more completely consolidated with the department, and the commission is responsible for promulgating rules governing the operations of TTA.

Sections 52.1-52.8 prescribe the policies and procedures governing environmental review of and public involvement in turnpike projects. With the abolition of the board, these rules are no longer needed because the department has rules, found at §2.43, that govern environmental review of and public involvement in non-tolled state highway improvement projects. The Chapter 2 rules and the TTA Chapter 52 rules are very similar.

By separate commission action, Chapter 2, Subchapter C, concerning environmental review and public involvement for transportation projects, is being amended to apply those rules to turnpike projects in addition to non-tolled state highway improvement projects.

FISCAL NOTE

James Bass, Director, Finance Division, has determined that for each of the first five years the repeals are in effect, there will be no fiscal implications for state or local governments as a result of enforcing or administering the repeals. There are no anticipated economic costs for persons required to comply with the repeals as proposed.

Phillip E. Russell, P.E., Director, Texas Turnpike Authority Division, has certified that there will be no significant impact on local economies or overall employment as a result of enforcing or administering the repeals.

PUBLIC BENEFIT

Mr. Russell has also determined that for each year of the first five years the repeals are in effect, the public benefit anticipated as a result of enforcing or administering the repeals will be the removal of duplicative and unnecessary rules. There will be no adverse economic effect on small businesses.

SUBMITTAL OF COMMENTS

Written comments on the proposed repeals may be submitted to Dianna F. Noble, P.E., Director, Environmental Affairs Division, 125 East 11th Street, Austin, Texas 78701-2483. The deadline for receipt of comments is 5:00 p.m. on November 12, 2002.

STATUTORY AUTHORITY

The repeals are proposed under Transportation Code, §201.101, which provides the commission with the authority to establish rules for the conduct of the work of the department, and Transportation Code, §361.042, which requires the commission to adopt rules for the regulation of its affairs and the conduct of its business under Transportation Code, Chapter 361.

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

§52.1. Purpose.

§52.2. Definitions.

§52.3. Projects Requiring Environmental Reviews.

§52.4. Requirements for Federally-Funded Projects; Department-Funded Projects.

§52.5. Projects Excluded from Environmental Reviews.

§52.6. Early Coordination and Public Involvement.

§52.7. Environmental Assessment.

§52.8. Environmental Impact Statements (EIS).

This 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 27, 2002.

TRD-200206305
Richard D. Monroe
General Counsel
Texas Turnpike Authority Division of the Texas Department of Transportation
Earliest possible date of adoption: November 10, 2002
For further information, please call: (512) 463-8630

CHAPTER 53. CONTRACTING AND PROCUREMENT PROCEDURES

SUBCHAPTER B. CONTRACTING FOR ARCHITECTURAL AND ENGINEERING SERVICES

43 TAC §§53.20 - 53.30

(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 Turnpike Authority Division of the Texas Department of Transportation or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The Texas Department of Transportation (department) proposes the repeal of §§53.20-53.30, concerning contracting for architectural and engineering services.

EXPLANATION OF PROPOSED REPEALS

Senate Bill 342, 77th Legislature, 2001, abolished the Board of Directors (board) of the Texas Turnpike Authority Division (TTA) of the department, subject to approval by the voters of Senate Joint Resolution 16. The voters approved Senate Joint Resolution 16 on November 6, 2001. Senate Bill 342 further provided that rules of the board would continue in effect as rules of the Texas Transportation Commission (commission).

The commission promulgates rules governing the operations of the department, codified in Title 43, Part 1 (Chapters 1-31). The board was responsible for promulgating rules governing the operations of TTA, codified in Title 43, Part 2 (Chapters 50-54). With the abolition of the board, TTA is more completely consolidated with the department, and the commission is responsible for promulgating rules governing the operations of TTA.

Sections 53.20-53.30 prescribe the policies and procedures governing TTA contracting for architectural and engineering services. With the abolition of the board, these rules are no longer needed because the department has rules, found at §§9.30-9.43, that govern department contracting for architectural, engineering, and surveying services. The Chapter 9 rules and the TTA Chapter 53 rules are similar in most respects.

By separate action, amendments are being proposed to §§9.30, 9.31, 9.33, 9.34, 9.37-9.39, 9.41, and 9.43 to apply those rules to contracts for architectural, engineering, and surveying services related to TTA turnpike projects in addition to non-tolled state highway improvement projects.

FISCAL NOTE

James Bass, Director, Finance Division, has determined that for each of the first five years the repeals are in effect, there will be no fiscal implications for state or local governments as a result of enforcing or administering the repeals. There are no anticipated economic costs for persons required to comply with the repeals as proposed.

Phillip E. Russell, P.E., Director, Texas Turnpike Authority Division, has certified that there will be no significant impact on local economies or overall employment as a result of enforcing or administering the repeals.

PUBLIC BENEFIT

Mr. Russell has also determined that for each year of the first five years the repeals are in effect, the public benefit anticipated as a result of enforcing or administering the repeals will be the removal of duplicate and unnecessary rules. There will be no adverse economic effect on small businesses.

SUBMITTAL OF COMMENTS

Written comments on the proposed repeals may be submitted to Ken Bohuslav, P.E., Director, Design Division, 125 East 11th Street, Austin, Texas 78701-2483. The deadline for receipt of comments is 5:00 p.m. on November 12, 2002.

STATUTORY AUTHORITY

The repeals are proposed under Transportation Code, §201.101, which provides the commission with the authority to establish rules for the conduct of the work of the department, and Transportation Code, §361.042, which requires the commission to adopt rules for the regulation of its affairs and the conduct of its business under Transportation Code, Chapter 361.

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

§53.20. Purpose.

§53.21. Definitions.

§53.22. Notice of Intent and Letter of Request.

§53.23. Requests for Proposals and Responses.

§53.24. Consultant Selection Team.

§53.25. Proposal Evaluations and Determination of Short List.

§53.26. Interviews and Evaluation.

§53.27. Selection.

§53.28. Contract Management.

§53.29. Selection Types.

§53.30. Compliance with DBE/HUB 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 27, 2002.

TRD-200206306
Richard D. Monroe
General Counsel
Texas Turnpike Authority Division of the Texas Department of Transportation
Earliest possible date of adoption: November 10, 2002
For further information, please call: (512) 463-8630

WITHDRAWN RULES

Withdrawn Rules include proposed rules and emergency rules. A state agency may specify that a rule is withdrawn immediately or on a later date after filing the notice with the Texas Register. A proposed rule is withdrawn six months after the date of publication of the proposed rule in the Texas Register if a state agency has failed by that time to adopt, adopt as amended, or withdraw the proposed rule. Adopted rules may not be withdrawn. (Government Code, §2001.027)

TITLE 22. EXAMINING BOARDS

PART 22. TEXAS STATE BOARD OF PUBLIC ACCOUNTANCY

CHAPTER 523. CONTINUING PROFESSIONAL EDUCATION

SUBCHAPTER E. REGISTERED CONTINUING EDUCATION SPONSORS

22 TAC §523.71

The Texas State Board of Public Accountancy has withdrawn from consideration proposed amendment §523.71 which appeared in the August 9, 2002 issue of the *Texas Register* (27 TexReg 6946).

Filed with the Office of the Secretary of State on September 26, 2002.

TRD-200206281
Amanda G. Birrell
General Counsel
Texas State Board of Public Accountancy
Effective date: September 26, 2002
For further information, please call: (512) 305-7848

ADOPTED RULES

Adopted rules include new rules, amendments to existing rules, and repeals of existing rules. A rule adopted by a state agency takes effect 20 days after the date on which it is filed with the Secretary of State unless a later date is required by statute or specified in the the rule (Government Code, §2001.036). If a rule is adopted without change to the text as published in the proposed rule, then the *Texas Register* does not republish the rule text here. If a rule is adopted with change to the text of the proposed rule, then the final rule text is included here. The final rule text will appear in the Texas Administrative Code on the effective date.

TITLE 1. ADMINISTRATION

PART 4. OFFICE OF THE SECRETARY OF STATE

CHAPTER 81. ELECTIONS

SUBCHAPTER C. VOTING SYSTEMS

1 TAC §81.52

The Office of the Secretary of State, Elections Division, adopts an amendment to §81.52, concerning procedures for precinct ballot counters without changes to the proposed text as published in the August 9, 2002, issue of the *Texas Register* (27 TexReg 6924).

The amendment authorizes direct deposit of ballots to precinct ballot counters during early voting and adds subsection (h). The amendment reduces early voting ballot board time and costs by allowing direct deposit into precinct ballot counters. Currently, voters are not allowed to deposit ballots into precinct ballot counters during early voting by personal appearance, which requires the ballot board to spend a significant amount of its time on election day running ballots cast in person during the early voting period.

There were no public comments regarding the amendment.

The amendment is adopted under the Texas Election Code, Chapter 31, Subchapter A, §31.003, which provides the Secretary of State with authority to promulgate rules to obtain uniformity in the interpretation and application of the Texas Election Code, and under the Texas Election Code, Chapter 122, §122.001(c), which authorizes the Secretary of State to prescribe additional standards for voting systems.

The Texas Election Code, Chapter 122, is affected by this amendment.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on September 26, 2002.

TRD-200206266
Dave Roberts
General Counsel
Office of the Secretary of State
Effective date: October 16, 2002
Proposal publication date: August 9, 2002
For further information, please call: (512) 463-5562

SUBCHAPTER D. VOTING SYSTEMS CERTIFICATION

1 TAC §81.60

The Office of the Secretary of State, Elections Division, adopts an amendment to §81.60, concerning voting system examinations to shorten the amount of time examiners have to submit their reports and to change one of the examination dates. The amendment is adopted without changes to the proposed text as published in the August 9, 2002, issue of the *Texas Register* (27 TexReg 6925).

The amendment gives voting system vendors more time to review examination results and re-submit their systems with appropriate changes before the deadline of the next scheduled voting system exam.

There were no public comments regarding the amendment.

The amendment is adopted under the Texas Election Code, §31.003, 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.

Texas Election Code §122.001 is affected by 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 26, 2002.

TRD-200206267
Dave Roberts
General Counsel
Office of the Secretary of State
Effective date: October 16, 2002
Proposal publication date: August 9, 2002
For further information, please call: (512) 463-5562

PART 16. STATE COUNCIL ON COMPETITIVE GOVERNMENT

CHAPTER 401. ADMINISTRATION

SUBCHAPTER A. GENERAL RULES

1 TAC §401.2

The State Council on Competitive Government adopts an amendment to §401.2, concerning definitions, without changes

to the proposed text as published in the August 16, 2002, issue of the *Texas Register* (27 TexReg 7324).

This rule is amended to delete references to the General Services Commission (GSC) and to change the definition of "clerk" of the council from the Executive Director of the GSC to the director of the Council on Competitive Government.

No comments were received regarding adoption of the amendment.

This amendment is adopted under Government Code, §2162.101, which provides the council with the authority to adopt rules governing any aspect of the council's duties or responsibilities.

The amendment implements Government Code, §2152.002 and Chapter 2162.

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 26, 2002.

TRD-200206268
Martin Cherry
Deputy General Counsel for Taxation
State Council on Competitive Government
Effective date: October 16, 2002
Proposal publication date: August 16, 2002
For further information, please call: (512) 475-0387

SUBCHAPTER B. COUNCIL MEETING GUIDELINES AND REQUIREMENTS

1 TAC §401.21

The State Council on Competitive Government adopts an amendment to §401.21, concerning council officers, without changes to the proposed text as published in the August 16, 2002, issue of the *Texas Register* (27 TexReg 7325).

This rule is amended to delete references to the General Services Commission and to reflect the statutory transfer of the council staff from the General Services Commission to the Comptroller of Public Accounts.

No comments were received regarding adoption of the amendment.

This amendment is adopted under Government Code, §2162.101, which provides the council with the authority to adopt rules governing any aspect of the council's duties or responsibilities.

The amendment implements Government Code, §2152.002 and Chapter 2162.

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 26, 2002.

TRD-200206269
Martin Cherry
Deputy General Counsel for Taxation
State Council on Competitive Government
Effective date: October 16, 2002
Proposal publication date: August 16, 2002
For further information, please call: (512) 475-0387

SUBCHAPTER C. IDENTIFICATION AND REVIEW OF STATE SERVICES

1 TAC §401.47

The State Council on Competitive Government adopts an amendment to §401.47, concerning requirement that state agencies engage in a competitive process, without changes to the proposed text as published in the August 16, 2002, issue of the *Texas Register* (27 TexReg 7325).

This rule is amended to reflect the statutory transfer of the council staff from the General Services Commission to the Comptroller of Public Accounts.

No comments were received regarding adoption of the amendment.

This amendment is adopted under Government Code, §2162.101, which provides the council with the authority to adopt rules governing any aspect of the council's duties or responsibilities.

The amendment implements Government Code, §2152.002 and Chapter 2162.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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SUBCHAPTER D. EVALUATION OF PROPOSALS

1 TAC §401.61, §401.62

The State Council on Competitive Government adopts an amendment to §401.61 and §401.62, concerning minimum requirements for proposals and evaluation, respectively, without changes to the proposed text as published in the August 16, 2002, issue of the *Texas Register* (27 TexReg 7326).

These rules are amended to delete references to the General Services Commission and to reflect the statutory transfer of the council staff from the General Services Commission to the Comptroller of Public Accounts.

No comments were received regarding adoption of the amendment.

This amendment is adopted under Government Code, §2162.101, which provides the council with the authority to adopt rules governing any aspect of the council's duties or responsibilities.

The amendment implements Government Code, §2152.002 and Chapter 2162.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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For further information, please call: (512) 475-0387

SUBCHAPTER E. DUTIES OF AFFECTED AGENCIES

1 TAC §401.82

The State Council on Competitive Government adopts an amendment to §401.82, concerning disposal of surplus and salvage property, without changes to the proposed text as published in the August 16, 2002, issue of the *Texas Register* (27 TexReg 7328).

This rule is amended to reflect the change of the General Services Commission's agency name to the Texas Building and Procurement Commission.

No comments were received regarding adoption of the amendment.

This amendment is adopted under Government Code, §2162.101, which provides the council with the authority to adopt rules governing any aspect of the council's duties or responsibilities.

The amendment implements Government Code, §2152.002 and Chapter 2162.

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 26, 2002.

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Martin Cherry
Deputy General Counsel for Taxation
State Council on Competitive Government
Effective date: October 16, 2002
Proposal publication date: August 16, 2002
For further information, please call: (512) 475-0387

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TITLE 13. CULTURAL RESOURCES

PART 1. TEXAS STATE LIBRARY AND ARCHIVES COMMISSION

CHAPTER 2. GENERAL POLICIES AND PROCEDURES

SUBCHAPTER A. PRINCIPLES AND PROCEDURES OF THE COMMISSION

13 TAC §2.57

The Texas State Library and Archives Commission adopts new rule, §2.57 with changes to the text as published in the August 16, 2002 issue of the *Texas Register* (27 TexReg 7329). This section establishes the procedures for the submission, consideration, and disposition of petitions for the agency to adopt administrative rules. The section specifies the steps for any interested persons to invoke their rights of petition under Government Code §2001.021. A clarifying change was made in subsection (c)(4) to specify the date on which the 12 month period starts.

No comments were received.

The new rule is adopted under the authority of Government Code §2001.021. The new rule affects the Government Code §2001.021.

§2.57. Petition for the Adoption of a Rule

(a) Purpose. The purpose of this section is to delineate the procedures of the Texas State Library and Archives Commission (commission) for the submission, consideration, and disposition of a petition to adopt a rule.

(b) Submission of the petition.

(1) Any interested person may petition the commission to adopt a rule.

(2) The petition shall be in writing and shall cite the authority of Government Code 2001.021 or otherwise specify that the petition is made pursuant to the provisions of the Administrative Procedure Act. It must contain the petitioner's name, address, and organization, if any; and describe the rule and the reason for it. However, if the director and librarian determines that further information is necessary to assist the commission in reaching a decision, the director and librarian may require that the petitioner resubmit the petition and that it contain:

(A) a brief explanation of the proposed rule;

(B) the text of the proposed rule prepared in a manner to indicate the words to be added or deleted from the current text, if any;

(C) a statement of the statutory or other authority under which the rule is to be promulgated; and

(D) the public benefits anticipated as a result of adopting the rule or the anticipated injury or inequity which could result from the failure to adopt the proposed rule.

(3) A petition which does not contain the information in paragraph (2) of this subsection or the information in paragraph (2)(A)-(D) of this subsection, if the director and librarian requires the latter information, may be submitted to the Commission by the director and librarian with a recommendation to deny the petition.

(4) The petition shall be mailed or delivered to the Director and Librarian, Texas State Library and Archives Commission, Box 12927, Austin, Texas 78711-2927.

(c) Consideration and disposition of the petition.

(1) Except as otherwise provided in subsection (d) of this section, the director and librarian shall submit a petition to the commission for its consideration and disposition.

(2) Within 60 days after receipt of all required petition information, the commission shall deny the petition or institute rulemaking procedures in accordance with the Administrative Procedure Act, Government Code, Chapter 2001, Subchapter B. The commission may deny parts of the petition and/or institute rulemaking procedures on parts of the petition.

(3) If the commission denies the petition, the director and librarian shall give the petitioner written notice of the commission's denial, including the commission's reasons for the denial.

(4) If the commission initiates rulemaking procedures, the version of the rule which the commission proposes may differ from the version proposed by the petitioner.

(d) Subsequent petitions to adopt the same or similar rule. Initial petitions for the adoption of a rule shall be presented to and decided by the commission in accordance with the provisions of subsections (b) and (c) of this section. The director and librarian may refuse to forward to the commission for consideration any subsequent petition for the adoption of the same or a similar rule submitted within twelve months after the date of the commission's rejection of the initial petition.

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 24, 2002.

TRD-200206224
Edward Seidenberg
Assistant State Librarian
Texas State Library and Archives Commission
Effective date: October 14, 2002
Proposal publication date: August 16, 2002
For further information, please call: (512) 463-5459

TITLE 16. ECONOMIC REGULATION

PART 2. PUBLIC UTILITY COMMISSION OF TEXAS

CHAPTER 26. SUBSTANTIVE RULES APPLICABLE TO TELECOMMUNICATIONS SERVICE PROVIDERS

SUBCHAPTER B. CUSTOMER SERVICE AND PROTECTION

16 TAC §26.25

The Public Utility Commission of Texas (commission) adopts an amendment to §26.25, relating to Issuance and Format of Bills, with changes to the proposed text as published in the June 21, 2002 *Texas Register* (27 TexReg 5346). The amendment implements Senate Bill 1659 (SB 1659), 77th Legislature (2001 Texas General Laws 1931) and Public Utility Regulatory Act (PURA) §55.016, which requires the annual review of billing-format changes of certificated telecommunications utilities (CTUs) (companies that provide local telephone service). Also pursuant to PURA §55.016, the amendment provides somewhat greater flexibility to CTUs in clearly identifying all charges, surcharges, assessments, and taxes appearing on the CTUs' bills.

This amendment is adopted under Project Number 24524. Two additional projects will be established in which commission staff will annually review the billing-format changes implemented by CTUs for compliance with §26.25 requirements.

On July 22, 2002, seven parties filed comments on the proposed amendment. These parties were AT&T Communications of Texas, L.P. (AT&T), Consumers Union Southwest Regional Office (CUSW), MCI Telecommunications (MCI), Office of Public Utility Council (OPC), State of Texas (State), Southwestern Bell Telephone Company (SWBT), and Texas Statewide Telecommunications Cooperative, Inc. (TSTCI). On July 29, 2002, Southwest Competitive Telecommunications Association (SWCTA) submitted joint late-filed Comments with the Association of Communications Enterprises (ASCENT) and the Competitive Telecommunications Association (CompTel) (collectively the Associations).

Four parties filed reply comments in this project. MCI filed reply comments on August 2, 2002, the due date for replies. The State and AT&T filed reply comments on August 5th and 6th, respectively. SWBT filed reply comments on August 12, 2002.

§26.25(b), Purpose

MCI recommended a stylistic change to subsection (b), to read as follows: "Purpose. The purpose of this section is to specify the information that residential customer bills containing charges for local telephone service should include."

The commission finds that the wording in the published version of subsection (b) is just as clear as that in MCI's version. Therefore, the commission declines to make this change.

§26.25(d), Billing information

Additionally, MCI expressed approval of the commission's proposed change in subsection (d)(1)-(2), to allow CTUs the option of sending customer bills via a mail service other than the United States Postal Service.

§26.25(e), Bill content requirements

The State recommended changing the last sentence of the introductory paragraph in subsection (e) to clarify that the standards applying to paper bills will substantially apply to Internet bills as well: "Bills rendered via the Internet shall provide the information specified in this subsection in a manner substantially similar to that set out below in subsections (1)-(7)."

AT&T and MCI opposed the State's recommendation as needlessly restrictive. AT&T noted that there are no pages on an Internet bill, and the format is subject to the customer's desires. Moreover, AT&T opined, the State's suggested approach would stifle the very innovation that electronic billing allows. MCI expressed similar views and asserted that the language "in a readily discernible manner" adequately addresses the needed standards for Internet billing.

The commission agrees with MCI and AT&T regarding the innovation allowed by electronic billing and the adequacy of the phrase "in a readily discernible manner." Therefore, the commission declines to make the change to the introduction to subsection (e) proposed by the State.

Commenting on proposed §26.25(e)(1)(C), AT&T agreed that the requirement for notice of a change in the identity of a service provider on the first page of the customer's bill is consistent with the Federal Communications Commission's (FCC's) requirements at 47 C.F.R. §64.2001(a)(2)(ii). However, AT&T noted that the FCC's requirement is more flexible and allows the carrier to place this information wherever it chooses on the bill. AT&T requested that the commission either adopt the flexibility of the FCC standard or change this requirement to allow the placement of the provider information on *either* page one or page two of the bill.

As stated in 64 Fed. Reg. 56,177 (1999), §64.2001 was renumbered as §64.2401, effective October 18, 1999. Later, as part of an amendment effective July 13, 2000, §64.2401(a)(2)(ii) was modified and renumbered as §64.2401(a)(3) (65 Fed. Reg. 43,258 (2000)).

In its reply comments, MCI supported AT&T's position, asserting that placing the change-of- provider notification on the first page is no more helpful to end users than locating the information elsewhere in the bill.

The State, OPC, and the Associations supported keeping the change-of-provider notification on the first page of the bill. The State asserted that this requirement lessens the risk of customer confusion or abuse. OPC agreed, and claimed that a review of sample CTU bills indicates that there is adequate room on the first page to locate this information. OPC further maintained that such information is more important to consumers than advertisements and other information often included on the first page.

Although the Associations supported retaining the change-of-provider notification requirement on the bill's first page to benefit consumers, the Associations observed that many carriers do not bill and collect for other carriers, and opined that the change-of-provider notification requirement does not apply to such carriers. To support the latter contention, the Associations noted that the FCC in 2000 amended 47 C.F.R. §64.2401(a)(3) to limit the definition of *new service provider* to a provider that has a continuing relationship with the subscriber that will result in periodic charges on the subscriber's bill. Accordingly, the Associations proposed beginning subsection (e)(1)(C) with the following language: "where charges of two or more carriers appear on the same telephone bill, the bill must include…." This addition, the Associations stated, would resolve the issue for CTUs that have no billing and collection agreements with other carriers and would also conform to the FCC's Truth-in-Billing requirement in 47 C.F.R. §64.2401(a)(3). MCI agreed with the Associations' analysis and recommended remedy.

SWCTA actually referred to 47 C.F.R. §64.2001(a)(3). As stated in 64 Fed. Reg. 56,177 (1999), however, §64.2001 was renumbered as §64.2401, effective October 18, 1999. The key wording referred to by SWCTA appeared in §64.2401(a)(3), as part of an amendment effective July 13, 2000 (65 Fed. Reg. 43,258 (2000)).

SWBT expressed concern that the change-of-provider notification requirement could pose a problem for a carrier when a customer has authorized multiple service-provider changes in a short time. SWBT requested that the subsection be revised to allow a reasonable length of time for the CTU to reflect such changes, and suggested adding a provision permitting a billing cycle to implement this notice. In reply comments, MCI stated its agreement with SWBT's suggestion.

The State replied that it does not understand SWBT's concern regarding customers who authorize multiple service-provider changes in a short time. It opined that the current language should be adequate. In the State's view, nothing in the commission's proposed language requires out-of-billing-cycle notice; in cases in which multiple service-provider changes occur, the changes will just be shown on the CTU's next bill.

The commission declines to make the changes recommended by the various parties to §25.26(e)(1)(C). With respect to the Associations' proposal, the commission notes that although the FCC did amend 47 C.F.R. §64.2401(a) in the manner described by the Associations, the order adopting that amendment did not specifically address cases in which CTUs do not bill and collect on behalf of other service providers. Rather, the relevant parts of the order focus on the distinction between charges resulting from a continuing relationship with the subscriber and charges incurred on merely a per-transaction basis. For example, paragraph five of the order says that whereas "changes in a subscriber's presubscribed local and long- distance service providers clearly would be subject to the rule… our modified rule excludes services billed solely on a per transaction basis, such as dial-around interexchange access service, operator service, directory assistance, and non-recurring pay-per-call services." Moreover, the reference in 47 C.F.R. §64.2401(a)(3) to "periodic charges on the subscriber's bill" need not be interpreted as referring to only the bill sent by the CTU; it could be interpreted as referring to a bill sent by another service provider. The commission considers the notification by CTUs of changes in subscribers' ongoing service providers to be an important safeguard against slamming. Even if their CTU does not bill and collect on behalf of other service providers, subscribers may contact their CTU to identify or change or place a freeze on their presubscribed service provider(s). In light of these considerations and the lack of a clear prohibition in 47 C.F.R. §64.2401(a)(3), the commission finds that it is good public policy to continue to require CTUs without billing and collection contracts with other providers to provide notification of changes in their subscribers' service providers.

The commission declines to allow CTUs to omit any mention of service-provider changes from the bill's first page. As observed by the State, OPC, and the Associations, placing the change-of-provider notification on the first page serves to reduce slamming and confusion of customers. Moreover, the commission notes (as did MCI in its initial comments) that the proposed provision already affords flexibility to CTUs in stating that the "notification may be accomplished with a sentence that directs the customers to details of this change located elsewhere on the bill."

The commission agrees with the State that the published provision need not be modified to allow adequate time to CTUs to include change-of-provider notification on bills. CTUs should simply include notification of any service-provider changes on their customers' bills in the first practicable billing cycle. In addition, if a customer makes multiple provider changes during the same billing period, the CTU can detail those changes on later pages of the bill.

OPC expressed concern about removing the phrase "clearly and conspicuously displayed" from the beginning of subsection (e)(2). OPC thus suggested replacing the published introductory language with the following: "Each residential customer's bill

shall clearly and conspicuously provide sufficient information to understand the basis and source of the charges set out in the bill, including:".

AT&T, MCI, and SWBT opposed OPC's suggestion. AT&T opined that the commission's published language accurately reflects the statutory requirements and that the requirement to provide customers "sufficient information to understand the basis and source of the charges in the bill" should ensure that the information is readily discernible to customers.

The commission agrees to add the term "clear and conspicuous" to the introductory language of subsection (e)(2), so that it would read, "Each residential customer's bill shall include the following information in a clear and conspicuous manner that provides customers sufficient information to understand the basis and source of the charges in the bill: …." This addition may reduce the temptation for some CTUs to print such information in inappropriately small font or otherwise obscure it.

MCI stated its approval of the deletions from subsection (e)(2)(A)-(C) and the addition of related language at the start of subsection (e)(2). MCI also supported the other changes contained in subsection (e)(2)(A)-(F), regarding the specific charges a bill must identify and explain.

SWBT recommended adding in proposed subsection (e)(2)(A) and (B) a specific reference to subsection (e)(4), to clarify that charges for bundled-service packages need not be separately itemized according to their individual features. Such a reference, SWBT stated, would eliminate any possibility of an interpretation that the components of a flat-rated package would need to be broken out, with some features perhaps being associated with a zero rate.

The commission believes that subsection (e)(4) clearly conveys the message SWBT seeks. Accordingly, the commission finds that SWBT's suggestion is unnecessary and declines to adopt it.

CUSW criticized the published rule on the view that it increases the likelihood of customer confusion and reduces customers' ability to verify charges by permitting CTUs to hide the amounts of fees and surcharges. To correct this deficiency, CUSW recommended two related changes. First, CUSW proposed deleting subsection (e)(6), which allows CTUs the option of not including on the bill the amount and/or method of calculation of specific taxes, fees, and surcharges, and instead requiring customers to call a toll-free number to obtain such information. Subsection (e)(6) also states that if a federal law or regulation requires that a charge be separately stated, using a standardized label, the requirement may be met with an asterisk, a footnote, or a statement. Second, CUSW proposed modifying subsection (e)(2)(D) to read as follows: "applicable taxes, fees, and surcharges, showing the specific amount associated with each charge. If federal law or regulation requires that a charge be separately stated, using standardized labels, the CTU must also include the amount associated with each such charge."

AT&T opposed modifying subsection (e)(2)(D) in the manner recommended by CUSW. AT&T observed that, until now, when the Legislature has determined that separately stating a particular tax, fee, or surcharge was important, it has included that requirement in the statute imposing the tax, fee, or surcharge. The commission, in AT&T's view, should continue to allow existing state law to govern the treatment of such taxes, fees, and surcharges, while allowing CTUs the flexibility to simplify the presentation of their bills to the extent allowed by law. On the other hand, AT&T endorsed CUSW's call for the deletion of subsection (e)(6), stating that the provision addresses a potential federal matter that may or may not be implemented; if it is, that law or regulation may address the issues in question.

The commission agrees to the substance of CUSW's recommendation. Specifically, subsection (e)(2)(D) will be amended to read, "applicable taxes, fees, and surcharges, showing the specific amount associated with each charge;". The commission finds that requiring this itemization is in keeping with the requirement at the beginning of subsection (e)(2) that the bill provide the customer sufficient information to understand the basis and source of the charges on the bill. The commission finds that it is unnecessary to add the final sentence suggested by CUSW to subsection (e)(2)(D), however, as federally imposed charges are covered by the general language being added. The commission also accepts the recommendation of CUSW and AT&T to delete subsection (e)(6). Revised subsection (e)(2), including subsection (e)(2)(D), is flexible enough to accommodate a standardized label for a federally imposed charge. Note that with the deletion of published subsection (e)(6), what was published as subsection (e)(7) is now subsection (e)(6).

The State recommended modifying the first sentence of published subsection (e)(7) (now (e)(6)) to read as follows: "Bills shall provide, in a clear and conspicuous manner, a toll-free number that a customer can call to resolve disputes and obtain information from the CTU." Making the toll-free number stand out, the State claimed, is the most helpful means of assisting consumers who have questions or problems relating to their bills.

The commission accepts the State's suggestion. Such a toll-free number should be easily noticed by customers.

§26.25(f), Compliance review of bill formats

Several parties commented on subsection (f), which provides for compliance review of bill- format changes. After expressing support for the commission's effort to implement SB1659 in the amended rule, TSTCI opined that the proposed review processes are simple and not burdensome for small incumbent local exchange companies (ILECs). SWBT suggested that the commission add a phrase stating that commission approval of a format change shall be accompanied with a finding that the change meets the standards specified in PURA §55.016. SWBT expressed hope that the commission's finding could provide guidance as to what constitutes "sufficient information" and "clear identification," referenced in PURA §55.016(b) and (c). The State replied that requiring a specific finding of compliance with PURA §55.016 would be inappropriate in a rulemaking proceeding. In the State's view, such a finding would be appropriate only in an adjudicatory proceeding in which all interested or affected parties could participate. Accordingly, the sort of finding requested by SWBT would be appropriate only in a docketed proceeding, which under subsection (f) already is provided as a possibility following the commission staff's initial review.

OPC supported the commission's review of CTU billing formats but expressed concern regarding the deadlines included in this subsection. OPC contended that despite the commission's best efforts the deadlines may be difficult to meet. Therefore, OPC recommends that a new subsection (f)(3) be added, to read as follows: "Waiver of deadlines. The commission may waive the deadlines established above for good cause. Notice of the extension must be provided to the CTU on or before the deadline(s) for commission action on the CTU's filing."

AT&T, MCI, and SWBT recommended that the commission reject OPC's recommendation to add this waiver-of-deadline language. These parties noted that the commission's Substantive Rule §26.3 already allows such waivers for good cause.

The State recommended revising subsection (f) to clarify that Internet or other electronic billing-format changes will be reviewed. However, MCI and AT&T opposed this recommendation. Citing the first sentence of proposed subsection (f), MCI opined that the published language is broad enough to encompass the review of changes to Internet bills. AT&T gave a different reason for opposing the State's recommendation, noting that Internet billing allows customers to have greater control over their own billing format. AT&T stated that, if taken literally, the State's proposal could require the commission to approve any customer-requested format. This flexibility should not be restricted, AT&T contended.

The commission declines to make any of the suggested changes to subsection (f). The commission agrees with the State that requiring a specific finding of compliance with PURA §55.016 would be inappropriate in the staff's compliance review. With respect to adding a waiver provision, the commission agrees with AT&T, MCI, and SWBT that an adequate waiver provision already exists in §26.3 of this title (relating to Severability Clause). Regarding the State's suggestion to explicitly include Internet bill-format changes in the compliance review, the commission agrees that the current language is broad enough to allow staff discretion to investigate such changes when requested. A general requirement for reviewing such changes, however, is not desirable, as suggested by AT&T.

In adopting this section, the commission makes other minor modifications for the purpose of clarifying its intent.

This amendment is adopted under the Public Utility Regulatory Act, Texas Utilities Code Annotated §14.002 (Vernon 1998, Supplement 2002) (PURA) which provides the commission with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction; and specifically, §55.016, which requires the commission to conduct an annual review of bill-format changes made by certificated telecommunications utilities (CTUs).

Cross Reference to Statutes: Public Utility Regulatory Act §14.002 and §55.016.

§26.25. Issuance and Format of Bills.

(a) Application. The provisions of this section apply to residential-customer bills issued by all certificated telecommunications utilities (CTUs). CTUs shall comply with the changes required by this section within six months of the effective date of the section.

(b) Purpose. The purpose of this section is to specify the information that should be included in a user-friendly, simplified format for residential customer bills that include charges for local exchange telephone service.

(c) Frequency of bills and billing detail. Bills of CTUs shall be issued monthly for any amount unless the bill covers service that is for less than one month, or unless through mutual agreement between the company and the customer a less frequent or more frequent billing interval is established. Through mutual agreement with the CTU, a customer may request and receive a bill with more detailed or less detailed information than otherwise would be required by the provisions of this section if the CTU also will provide the customer with detailed information on request.

(d) Billing information.

(1) All residential customers shall receive their bills via the United States mail, or other mail service, unless the customer agrees with the CTU to receive a bill through different means, such as electronically via the Internet.

(2) Customer billing sent through the United States mail, or other mail service, shall be sent in an envelope or by any other method that ensures the confidentiality of the customer's telephone number and/or account number.

(3) A CTU shall maintain by billing cycle the billing records for each of its accounts for at least two years after the date the bill is mailed. The billing records shall contain sufficient data to reconstruct a customer's billing for a given month. A copy of a customer's billing records may be obtained by the customer on request.

(e) Bill content requirements. The following requirements apply to bills sent via the U.S. mail, or other mail service. Bills rendered via the Internet shall provide the information specified in this subsection in a readily discernible manner.

(1) The first page of each residential customer's bill containing charges for local exchange telephone service shall include the following information, clearly and conspicuously displayed:

(A) the grand total amount due for all services being billed;

(B) the payment due date; and

(C) a notification of any change in the identity of a service provider. The notification should describe the nature of the relationship with the customer, including the description of whether the new service provider is the presubscribed local exchange or interexchange carrier. For purposes of this subparagraph, "new service provider" means a service provider that did not bill the customer for services during the service provider's last billing cycle. This definition shall include only providers that have continuing relationships with the customer that will result in periodic charges on the customer's bill, unless the service is subsequently canceled. This notification may be accomplished with a sentence that directs the customers to details of this change located elsewhere on the bill.

(D) If possible, the first page of the bill shall list each applicable telephone number or account number for which charges are being summarized on the bill. If such inclusion is not possible, the first page shall show the main telephone number or account number, and subsequent pages shall clearly identify the additional numbers.

(2) Each residential customer's bill shall include the following information in a clear and conspicuous manner that provides customers sufficient information to understand the basis and source of the charges in the bill:

(A) the service descriptions and charges for local service provided by the billing CTU;

(B) the service descriptions and charges for non-local services provided by the billing CTU;

(C) the service description, service provider's name, and charges for any services provided by parties other than the billing CTU, with a separate line for each different provider;

(D) applicable taxes, fees and surcharges, showing the specific amount associated with each charge;

(E) the billing period or billing end date; and

(F) an identification of those charges for which nonpayment will not result in disconnection of basic local telecommunications service, along with an explicit statement that failure to pay these charges will not result in the loss of basic local service; or an identification of those charges that must be paid to retain basic local telecommunications service, along with an explicit statement that failure to pay these charges will result in the loss of basic local service.

(3) Charges must be accompanied by a brief, clear, non-misleading, plain-language description of the service being rendered. The description must be sufficiently clear in presentation and specific enough in content to enable customers to accurately assess the services for which they are being billed. Additionally, explanations shall be provided for any non-obvious abbreviations, symbols, or acronyms used to identify specific charges.

(4) Charges for bundled-service packages that include basic local telecommunications service are not required to be separately stated. However, a brief, clear, non-misleading, plain-language description of the services included in a bundled-service package is required to be provided either in the description or as a footnote.

(5) Each customer's bill shall include specific per-call detail for time-sensitive charges, itemized by service provider and by telephone or account number (if the customer's bill is for more than one such number). Each customer's bill shall include the rate and specific number of billing occurrences for per-use services, itemized by service provider and by telephone or account number. Additionally, time-sensitive charges and per-use charges may be displayed as subtotals in summary sections of the bill.

(6) Bills shall provide a clear and conspicuous toll-free number that a customer can call to resolve disputes and obtain information from the CTU. If the CTU is billing the customer for any services from another service provider, the bill shall identify the name of the service provider and provide a toll-free number that the customer can call to resolve disputes or obtain information from that service provider.

(f) Compliance review of bill formats. A CTU shall file for review a copy of any portion of its bill format that has not previously been reviewed and approved by the commission pursuant to this section. The CTU will be advised if the format does or does not comply with the requirements of this section. Two alternative projects will be established for such reviews. CTUs may submit new or altered bill formats in either of these projects as follows:

(1) Expedited review. The commission staff shall establish a project for expedited reviews. CTUs may submit proposed new bills or bill format changes prior to implementation in the expedited review project. A notice of sufficiency or a notice of deficiency will be issued to the CTU within 15 business days. The CTU may appeal a notice of deficiency by requesting its submission be docketed for further review or may respond with a revised submission that corrects the deficiency within ten business days of the deficiency notice. The CTU's revised submission will be reviewed and either a notice of sufficiency or a notice of deficiency will be issued within 15 business days. This process will be repeated until the CTU's submission has received a notice of sufficiency or the CTU has requested that its submission be docketed as a contested case. A contested case may also be requested by commission staff to resolve disputes regarding the CTU's submission.

(2) Annual review. The commission staff shall establish a project for annual reviews. CTUs may choose to file bill format changes in the annual review project. If the CTU's bill format change has already been approved pursuant to paragraph (1) of this subsection, the CTU does not need to file the same changes under the annual review process. Submissions for annual review must be made between September 1st and October 1st each year. All submissions shall be responded to with a notice of sufficiency or deficiency issued no later than November 15th of that year. A CTU may appeal a notice of deficiency by requesting its submission be docketed for further review or may respond with a revised submission that corrects the deficiency within ten business days of the deficiency notice. Revised submissions will be reviewed within 15 business days and a new notice of either sufficiency or deficiency will be issued. This process will be repeated until the CTU's submission has received a notice of sufficiency or the CTU has requested that its submission be docketed as a contested case. A contested case may also be requested by commission staff to resolve disputes regarding the CTU's submission.

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 27, 2002.

TRD-200206312
Rhonda G. Dempsey
Rules Coordinator
Public Utility Commission of Texas
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Proposal publication date: June 21, 2002
For further information, please call: (512) 936-7308

TITLE 19. EDUCATION

PART 2. TEXAS EDUCATION AGENCY

CHAPTER 109. BUDGETING, ACCOUNTING, AND AUDITING
SUBCHAPTER AA. COMMISSIONER'S RULES CONCERNING FINANCIAL ACCOUNTABILITY RATING SYSTEM

19 TAC §§109.1001 - 109.1005

The Texas Education Agency (TEA) adopts new §§109.1001-109.1005, concerning the financial accountability rating system, without changes to the proposed text as published in the August 2, 2002, issue of the *Texas Register* (27 TexReg 6792) and will not be republished. The adopted new sections detail the purpose, ratings, types of ratings, criteria, reporting, and sanctions for the financial accountability rating system.

Senate Bill (SB) 875, 76th Texas Legislature, 1999, added TEC, §39.201, requiring the commissioner of education in consultation with the comptroller of public accounts to develop proposals for a school district financial accountability rating system that was to be presented to the legislature no later than December 15, 2000. TEC, §39.201, expired September 1, 2001. Subsequently, SB 218, 77th Texas Legislature, 2001, added TEC, §§39.201-39.204, requiring the commissioner to adopt rules for the implementation and administration of the financial accountability rating system prescribed by TEC, Chapter 39, Subchapter I.

The adopted new 19 TAC Chapter 109, Budgeting, Accounting, and Auditing, Subchapter AA, Commissioner's Rules Concerning Financial Accountability Rating System, includes provisions

that detail the purpose, ratings, types of ratings, criteria, reporting, and sanctions for the financial accountability rating system, in accordance with SB 218, 77th Texas Legislature, 2001. The adopted new rules include the financial accountability rating form entitled "School FIRST- Rating Worksheet" that explains the indicators that the TEA will analyze to assign school district financial accountability ratings. This form specifies the minimum financial accountability rating information that a district is to report to parents and taxpayers in the district. School districts will have to prepare an annual financial management report and have a public meeting on the report.

The following comment was received regarding adoption of the new sections.

Comment. An individual asked if a different scale will be used to determine financial accountability for charter schools and if the language will be changed to public schools rather than school districts so that the rule applies to charter schools.

Agency Response. This financial rating system will not apply to charter schools. A separate financial rating system will be proposed at a later date to cover charter schools.

The new sections are adopted under the Texas Education Code, §§39.201-39.204, which authorizes the commissioner of education to adopt rules as necessary for the implementation and administration of a financial accountability rating system.

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 30, 2002.

TRD-200206320
Cristina De La Fuente-Valadez
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Texas Education Agency
Effective date: October 20, 2002
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For further information, please call: (512) 463-9701

TITLE 22. EXAMINING BOARDS

PART 22. TEXAS STATE BOARD OF PUBLIC ACCOUNTANCY

CHAPTER 501. RULES OF PROFESSIONAL CONDUCT

SUBCHAPTER E. RESPONSIBILITIES TO THE BOARD/PROFESSION

22 TAC §501.90

The Texas State Board of Public Accountancy (Board) adopts an amendment to §501.90 concerning Discreditable Acts without changes to the proposed text as published in the August 9, 2002 issue of the *Texas Register* (27 TexReg 6939).

The amendment allows the board to include criminal punishment of community service as a discreditable act.

The amendment will function by allowing the board to consider and take appropriate action against licensees who are sentenced to community service.

No comments were received regarding adoption of the rule.

The amendment is adopted under the Public Accountancy Act, Tex. Occupations Code, §901.151 (Vernon 2001) which provides the agency with the authority to amend, adopt and repeal rules deemed necessary or advisable to effectuate the Act and §901.502 which authorizes the board to take disciplinary action for certain reasons.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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TRD-200206274
Amanda G. Birrell
General Counsel
Texas State Board of Public Accountancy
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Proposal publication date: August 9, 2002
For further information, please call: (512) 305-7848

22 TAC §501.93

The Texas State Board of Public Accountancy (Board) adopts an amendment to §501.93 concerning Responses without changes to the proposed text as published in the August 9, 2002 issue of the *Texas Register* (27 TexReg 6940).

The amendment will require Respondents in investigations to provide complete copies of requested documents at their expense or provide originals for the board to photocopy at the board's expense within 30 days of receipt of a request for documents.

The amendment will function by requiring and informing Respondents that within 30 days of receipt of a request for documents, the Respondent will need to either photocopy documents at their expense or provide originals to the board to photocopy at its expense.

The Board received an oral comment in the form of a question. The commenter wanted to know if the proposal represented a change in the Board's practice. Until the last six months the Board has not been charged or attempted to be charged for copies of records requested from its licensees under Rule 501.93. In the last six months, two licensees have undertaken to charge for copies provided to the Board under this rule. In one instance a licensee refused to permit the Board to copy the files at its expense on the Board's equipment. The Board proposed this amendment to make its policy clearer to the public to prevent these misunderstandings in the future. In most cases the amount of records requested and provided is minimal. Where the records may not be minimal, the Board usually arranges for its experts to review records first, and then requests copies only of the portions needed. The commenter was satisfied with this explanation.

The amendment is adopted under the Public Accountancy Act, Tex. Occupations Code, §901.151 (Vernon 2001) which provides the agency with the authority to amend, adopt and repeal rules deemed necessary or advisable to effectuate the Act.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Amanda G. Birrell
General Counsel
Texas State Board of Public Accountancy
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For further information, please call: (512) 305-7848

CHAPTER 521. FEE SCHEDULE

22 TAC §521.2

The Texas State Board of Public Accountancy adopts an amendment to §521.2 concerning Examination Fees without changes to the proposed text as published in the August 9, 2002 issue of the *Texas Register* (27 TexReg 6941).

The amendment allows the board to pass on to examination applicants the $5.00 increase in the examination grading fee that is imposed by the examination preparer and grader, the American Institute of Certified Public Accountants.

The amendment will function by passing on the examination grading fee increase to those persons who cause or incur the fee.

No comments were received regarding adoption of the rule.

The amendment is adopted under the Public Accountancy Act, Tex. Occupations Code, §901.151 (Vernon 2001) which provides the agency with the authority to amend, adopt and repeal rules deemed necessary or advisable to effectuate the Act and §901.304 which authorizes the board to establish an examination fee by board 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.

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Amanda G. Birrell
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For further information, please call: (512) 305-7848

22 TAC §521.10

The Texas State Board of Public Accountancy adopts an amendment to §521.10. concerning Out-of-State Proctoring Fee without changes to the proposed text as published in the August 9, 2002 issue of the *Texas Register* (27 TexReg 6942).

The amendment allows the board to pass on to examination applicants the $5.00 increase in the examination grading fee that is imposed by the examination preparer and grader, the American Institute of Certified Public Accountants.

The amendment will function by passing on the examination grading fee increase to those persons who cause or incur the fee.

No comments were received regarding adoption of the rule.

The amendment is adopted under the Public Accountancy Act, Tex. Occupations Code, §901.151 (Vernon 2001) which provides the agency with the authority to amend, adopt and repeal rules deemed necessary or advisable to effectuate the Act and §901.304 which authorizes the board to establish an examination fee by board 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.

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CHAPTER 523. CONTINUING PROFESSIONAL EDUCATION

SUBCHAPTER B. CONTINUING PROFESSIONAL EDUCATION STANDARDS

22 TAC §523.34

The Texas State Board of Public Accountancy adopts new rule §523.34 concerning Course Content and Board Approval after September 1, 2003 with changes to the proposed text as published in the August 9, 2002 issue of the *Texas Register* (27 TexReg 6943). The first change is in subsection (a)(3) where the words "in addition to" were added and "rather than mere" were deleted. The change clarifies that the board prefers both technical compliance and spirit and intent. The second change is at the end of subsection (b)(1) where the words "within the last" were added and "at least every" were deleted. The changes are not substantive changes.

The new rule will address the content of the Ethics Course starting September 1, 2003.

The new rule will function by addressing the content of the Ethics Course starting September 1, 2003 and making the content of the Ethics Course more relevant and geared toward the board's goals.

Two comments were received regarding adoption of the rule. The commenters suggested a change in (a)(3) to clarify that technical compliance was not preferred to spirit and intent. The Board agreed and made the changes that were suggested.

The new rule is adopted under the Public Accountancy Act, Tex. Occupations Code, Sections 901.151 (Vernon 2001) which provides the agency with the authority to amend, adopt and repeal rules deemed necessary or advisable to effectuate the Act and §901.411 which authorizes the board to require continuing professional education.

§523.34. Course Content and Board Approval after September 1, 2003.

(a) Effective September 1, 2003 the content of an ethics course must be submitted to and approved by the continuing professional education (CPE) committee of the board for initial approval and every three years thereafter. Course content shall be approved only after the developer of the course demonstrates, either in a live instructor format or a computer-based interactive format, as defined in §523.1(b)(5) of this title (relating to Continuing Professional Education Purpose and Definitions), that the course meets the following objectives:

(1) the course shall be designed to teach CPAs to achieve and maintain the highest standards of ethical conduct;

(2) the course shall be designed to teach the core values of the profession, integrity, objectivity and independence, as ethical principles in addition to rules of conduct;

(3) the course shall be designed to teach compliance with the spirit and intent of the Rules of Professional Conduct, in addition to technical compliance with the Rules; and

(4) the course shall address ethical considerations and the application of the Rules of Professional Conduct to all aspects of the professional accounting work whether performed by CPAs in client practice or CPAs who are not in client practice.

(b) The ethics course must be taught only by instructors approved by and under contract to the board. The board will contract with any instructor wishing to offer this course who can demonstrate that:

(1) the instructor is a certified public accountant licensed in Texas or that the instructor is team teaching with a certified public accountant licensed in Texas and that both have completed the board's ethics training program within the last three years or as required by the board;

(2) the instructor's certificate or license has never been suspended or revoked for violation of the Rules of Professional Conduct; and

(3) the instructor is qualified to teach ethical reasoning because he or she has:

(A) experience in the study and teaching of ethical reasoning; and

(B) formal training in organizational or ethical behavior instruction.

(c) A sponsor of an approved ethics course shall comply with the board rules concerning sponsors of CPE and shall provide its advertising materials to the board's CPE committee for approval. Such advertisements shall:

(1) avoid commercial exploitation;

(2) identify the primary focus of the course; and

(3) be professionally presented and consistent with the intent of §501.82 of this title (relating to Advertising).

(d) Board Rules and Ethics courses will be reevaluated every three years or as required by the board.

(e) As part of each course, the sponsor shall administer a test to determine whether the program participants have obtained a basic understanding of the course content, including the need for a high level of ethical standards in the accounting profession.

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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Amanda G. Birrell
General Counsel
Texas State Board of Public Accountancy
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For further information, please call: (512) 305-7848

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SUBCHAPTER D. MANDATORY CONTINUING PROFESSIONAL EDUCATION (CPE) PROGRAM

22 TAC §523.63

The Texas State Board of Public Accountancy (Board) adopts an amendment to §523.63 concerning Mandatory Continuing Professional Education Attendance with a change to the proposed text as published in the August 9, 2002 issue of the *Texas Register* (27 TexReg 6944). The change is in the second sentence of the rule, where "For all CPE completed after January 31, 2003," was added. The change is not substantive. The change clarifies when the proposed rule amendment is intended to take effect.

The amendment clarifies that continuing professional education (CPE) courses may only be taught by board approved instructors.

The amendment will function by clarifying that CPE courses may only be taught by board approved instructors. The rule's clarification will assist CPAs and potential CPE course sponsors to determine that the CPE is acceptable to the board.

No comments were received regarding adoption of the rule.

The amendment is adopted under the Public Accountancy Act, Tex. Occupations Code, §901.151 (Vernon 2001) which provides the agency with the authority to amend, adopt and repeal rules deemed necessary or advisable to effectuate the Act and §901.411 which authorizes the board to enact rules regarding CPE.

§523.63. Mandatory Continuing Professional Education Attendance.

A licensee shall complete at least 120 hours of continuing professional education (CPE) in each three-year period, and a minimum of 20 hours in each one-year period. For all CPE completed after January 31, 2003, except as provided by board rule, this CPE shall be offered by board

contracted CPE sponsors. The exception to this requirement is an initial licensee, one who has been certified or registered for less than 12 months.

(1) The exception to the 120 continuing professional education requirement is an initial licensee, one who is paying the license fee for the first time.

(A) To be issued a license that is less than twelve months from the date of certification or registration, the licensee does not have a continuing professional education hour requirement. The first twelve-month period begins on the date of certification and ends with the last day of the licensee's birth month.

(B) To be issued a license for the first full twelve-month license period, the licensee does not have a continuing professional education accrual requirement and can report zero hours.

(C) To be issued a license for the second full twelve-month period, the licensee must report a minimum of 20 continuing professional education hours. The hours must be accrued in the 12 months preceding the license period.

(D) To be issued a license for the third full twelve-month license period, the licensee must report a total of at least 60 continuing professional education hours that were accrued in the 24 months preceding the license period. At least 20 hours of the requirement must be accrued in the 12 months preceding the license period.

(E) To be issued a license for the fourth full twelve-month period, the licensee must report 100 continuing professional education hours that were accrued in the 36 months preceding the license period. At least 20 hours of the requirement must be accrued in the 12 months preceding the license period.

(F) To be issued a license for the fifth and subsequent license periods, the licensee must report a total of at least 120 continuing professional education hours that were accrued in the 36 months preceding the license period, and at least 20 hours of the requirement must be accrued in the 12 months preceding the license period.

(2) A former licensee whose certificate or registration has been revoked for failure to pay the license fee and who makes application for reinstatement, must pay the required fees and penalties and must accrue the minimum continuing professional education credit hours missed.

(3) The board may consider granting an exemption from the continuing professional education requirement on a case-by-case basis if:

(A) a licensee completes and forwards to the board a sworn affidavit indicating that the licensee will not be employed during the period for which the exemption is requested. A licensee who has been granted this exemption and who re-enters the work force shall be required to report continuing professional education hours missed as a result of the exemption subject to a maximum of 200 hours. Such continuing professional education hours shall be accrued from the technical area as described in §523.2 and §523.32 of this title (relating to Standards for Continuing Professional Education Program Development and Ethics Course);

(B) a licensee completes and forwards to the board a sworn affidavit indicating no association with accounting work. The affidavit shall include, as a minimum, a brief description of the duties performed, job title, and verification by the licensee's immediate supervisor;

(i) For purposes of this section, the term "association with accounting work" shall include the following:

(I) working or supervising work performed in the areas of financial accounting and reporting; tax compliance, planning or advice; management advisory services; data processing; treasury, finance, or audit; or

(II) representing to the public, including an employer, that the licensee is a CPA or public accountant in connection with the sale of any services or products, including such designation on a business card, letterhead, promotional brochure, advertisement, or office; or

(III) offering testimony in a court of law purporting to have expertise in accounting and reporting, auditing, tax, or management services; or

(IV) for purposes of making a determination as to whether the licensee fits one of the categories listed in this subclause and subclauses (I)-(III) of this clause, the questions shall be resolved in favor of inclusion of the work as "association with accounting work."

(ii) A licensee who has been granted this exemption and who loses the exemption shall accrue continuing professional education hours missed as a result of the exemption subject to a maximum of 200 hours. Such continuing professional education hours shall be earned in the technical area as described in §523.2 and §523.32 of this title (relating to Standards for Continuing Professional Education Program Development and Ethics Course).

(C) a licensee not residing in Texas, who submits a sworn statement to the board that the licensee does not serve Texas clients from out of state;

(D) a licensee shows reasons of health, certified by a medical doctor, that prevent compliance with the CPE requirement. A licensee must petition the board for the exemption and provide documentation that clearly establishes the period of disability and the resulting physical limitations;

(E) a licensee is on extended active military duty during the period for which the exemption is requested, and files a copy of orders to active military duty with the board; or

(F) a licensee shows reason which prevents compliance, that is acceptable to the board.

(4) A licensee who has been granted the retired or disabled status under Section 515.8 of this title (relating to Retirement Status or Permanent Disability) is not required to report any continuing professional education hours.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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TRD-200206279
Amanda G. Birrell
General Counsel
Texas State Board of Public Accountancy
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For further information, please call: (512) 305-7848

22 TAC §523.66

The Texas State Board of Public Accountancy adopts new rule §523.66 concerning Continuing Professional Education for non-CPA Owners without changes to the proposed text as published in the August 9, 2002 issue of the *Texas Register* (27 TexReg 6946).

The new rule extends the board's Continuing Professional Education (CPE) requirements to non-CPA owners of CPA firms.

The new rule will function by extending the board's CPE requirements to non-CPA owners of CPA firms. Non-CPA owners of CPA firms will be required to complete CPE courses to improve or maintain their professional competency.

No comments were received regarding adoption of the rule.

The new rule is adopted under the Public Accountancy Act, Tex. Occupations Code, §901.151 (Vernon 2001) which provides the agency with the authority to amend, adopt and repeal rules deemed necessary or advisable to effectuate the Act and §901.411 which authorizes the board to enact rules regarding CPE.

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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Amanda G. Birrell
General Counsel
Texas State Board of Public Accountancy
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For further information, please call: (512) 305-7848

SUBCHAPTER E. REGISTERED CONTINUING EDUCATION SPONSORS

22 TAC §523.72

The Texas State Board of Public Accountancy (Board) adopts the repeal of Section 523.72 concerning Renewal Application without changes to the proposed text as published in the August 9, 2002 issue of the*Texas Register* (27 TexReg 6947).

The repeal removes an unnecessary rule from the board's rules because this rule will move to §523.71.

The repeal will function by eliminating a duplicate rule from the board's rules.

No comments were received regarding adoption of the repeal.

The repeal is adopted under the Public Accountancy Act, Tex. Occupations Code, §901.151 (Vernon 2001) which provides the agency with the authority to amend, adopt and repeal rules deemed necessary or advisable to effectuate the Act.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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General Counsel
Texas State Board of Public Accountancy
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For further information, please call: (512) 305-7848

22 TAC §523.73

The Texas State Board of Public Accountancy (Board) adopts an amendment to §523.73, concerning Obligations of the Sponsor without changes to the proposed text as published in the August 9, 2002, issue of the *Texas Register* (27 TexReg 6948). The text of the rule will not be republished.

The amendment makes some minor non-substantive changes and will require Sponsors to cooperate with board inquiries and promptly provide all requested documents.

The amendment will function by requiring Continuing Professional Education (CPE) Sponsors to cooperate with board inquiries and provide copies of documents.

No comments were received regarding adoption of the rule.

The amendment is adopted under the Public Accountancy Act, Tex. Occupations Code, §901.151 (Vernon 2001) which provides the agency with the authority to amend, adopt and repeal rules deemed necessary or advisable to effectuate the Act and §901.411 which authorizes the board to enact rules regarding CPE.

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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Amanda G. Birrell
General Counsel
Texas State Board of Public Accountancy
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For further information, please call: (512) 305-7848

22 TAC §523.75

The Texas State Board of Public Accountancy (Board) adopts new §523.75, concerning Sponsor Review Oversight Program with changes to the proposed text as published in the August 9, 2002, issue of the *Texas Register* (27 TexReg 6949). The changes are in subsections (b)(3) and (c)(4). The change in (b)(3) further limited the prohibition from any state board of accountancy to only the Texas State Board of Public Accountancy. This is not a substantive change. The change in (c)(4) replaces a description of some situations wherein a report to the CPE committee is required to simply as required and leaves it to the CPE

committee and the SROB to work out these details. This is not a substantive change.

The new rule will establish the Sponsor Review Oversight Program and the Sponsor Review Oversight Board.

The new rule will function by establishing the Sponsor Review Oversight Program and the Sponsor Review Oversight Board. The Sponsor Review Oversight Board will be monitoring Continuing Professional Education (CPE) sponsors, conducting inquiries of CPE Sponsors and their courses and making appropriate recommendations to the CPE Committee.

No comments were received regarding adoption of the rule.

The new rule is adopted under the Public Accountancy Act, Tex. Occupations Code, §901.151 (Vernon 2001) which provides the agency with the authority to amend, adopt and repeal rules deemed necessary or advisable to effectuate the Act and §901.411 which authorizes the board to enact rules regarding continuing professional education.

§523.75. Sponsor Review Oversight Program.

(a) A sponsor review oversight program is hereby established for the purpose of monitoring the compliance by board contracted continuing professional education (CPE) sponsors and the courses they offer with board contracts, standards and board rules. The program shall emphasize high quality education and compliance with professional standards. In the event a sponsor does not comply with board rules, or instruction or materials are inadequate, the board shall take appropriate action.

(b) The board shall contract with a sponsor review oversight board (SROB) composed of five (5) persons designated by the CPE Committee. The board shall set compensation of SROB members from revenue received from sponsors requesting review.

(1) Each member of the SROB must be CPA in good standing with the board.

(2) An SROB member must recuse himself or herself from service if the member has an interest in the sponsoring organization under review or if the member believes he/she cannot be impartial or objective.

(3) An SROB member may not concurrently serve as a member of the Texas State Board of Public Accountancy or its committees, or of any CPA society's ethics committee or CPE committee.

(c) The SROB shall:

(1) monitor board-contracted sponsors of continuing professional education to provide reasonable assurance that quality continuing professional education is being offered in accordance with board contracts, standards and rules;

(2) review the policies and procedures of board-contracted CPE sponsors as to their conformity with the rules;

(3) when necessary, prescribe actions designed to assure correction of the deficiencies in the curriculum or CPE;

(4) report to the CPE committee as required;

(5) communicate to the CPE committee on a recurring basis:

(A) problems experienced with sponsor compliance;

(B) problems experienced in the implementation of the review program; and

(C) a summary of the historical results of the SROB.

(d) The procedures used by the SROB in monitoring of sponsors of continuing professional education may include, but not be limited to:

(1) random visits of sponsors as deemed appropriate, and review of course materials;

(2) meetings with the sponsor to review educational materials and other record keeping documents;

(3) reviewing the sponsor's educational philosophy;

(4) reviewing, on the basis of a random selection, the course evaluations from licensees to determine whether the materials have received adverse comments;

(5) expanding the review of records if significant deficiencies, problems, or inconsistencies are encountered during the review of the materials;

(6) reviewing the applications submitted by the board-contracted CPE sponsors to determine that they will provide reasonable assurance of conforming to the minimum standards for offering high quality CPE; and

(7) determining that courses offered by board-contracted CPE sponsors provide that:

(A) education meets the needs of the licensees;

(B) course material is up-to-date and relevant; and

(C) adequate record keeping procedures are in place and specified occurrences requiring consultation are outlined.

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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Amanda G. Birrell
General Counsel
Texas State Board of Public Accountancy
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For further information, please call: (512) 305-7848

CHAPTER 527. QUALITY REVIEW

22 TAC §§527.1 - 527.11

The Texas State Board of Public Accountancy (Board) adopts the repeal of §§527.1 - 527.11, concerning Quality Review without changes to the proposal as published in the August 9, 2002, issue of the *Texas Register* (27 TexReg 6950). The text of the rules will not be published.

The repeals facilitate the incorporation of new terminology and substantive changes to peer review rules in a less cumbersome manner than amending the rules.

The repeals will function by incorporating new terminology and substantive changes to peer review rules in a less cumbersome manner than amending the rules.

No comments were received regarding adoption of these repeals.

These repeals are adopted under the Public Accountancy Act, Tex. Occupations Code, §901.151 (Vernon 2001) which provides the agency with the authority to amend, adopt and repeal rules deemed necessary or advisable to effectuate the Act and §901.159 which authorizes the board to adopt rules regarding the peer review program.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Amanda G. Birrell
General Counsel
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For further information, please call: (512) 305-7848

CHAPTER 527. PEER REVIEW

22 TAC §§527.1 - 527.11

The Texas State Board of Public Accountancy adopts new §§527.1 - 527.11, concerning Peer Review. Sections 527.4 and 527.5 are being adopted with very minor changes to the proposed text as published in the August 9, 2002, issue of the *Texas Register* (27 TexReg 6951). The first change is in §527.4 in which the word "other" was deleted in the first sentence of subsection (a). The second change is in §527.5 subsection (a)(1) where the word "on" was changed to the word "or". These are not substantive changes. Sections 527.1-527.3, 527.6-527.11 are adopted without changes and will not be republished.

The new rules incorporate new terminology and procedures arising from amendments to the Public Accountancy Act.

The new rules will function by providing proper administration of peer review provisions of the amendments to the Public Accountancy Act.

The Board received one oral comment on §527.5, Effect of Successive Substandard Reviews. The commenter asked whether the Board had considered creating a committee that could offer technical assistance to individuals who were at risk of losing their attest practice under the rule. The creation of such a committee is not required by the rule and has not been considered by the Board. The commenter requested that the Board consider such a committee, and said that he thought the rule should be adopted even if such a committee were not formed.

The new rules are adopted under the Public Accountancy Act, Tex. Occupations Code, Sections 901.151 (Vernon 2001) which provides the agency with the authority to amend, adopt and repeal rules deemed necessary or advisable to effectuate the Act and §901.159 which authorizes the board to adopt rules regarding the peer review program.

§527.4. Enrollment and Participation.

(a) Participation in the program is required of each firm licensed or registered with the board that performs any attest service or any accounting and/or auditing engagements, including, audits, reviews, compilations, forecasts, projections, or special reports. A firm which issues only compilations where no report is required under the Statements on Standards for Accounting and Review Services is required to participate in the program.

(b) A firm which does not perform services as set out in §527.4(a) shall annually submit a request for the exemption in writing to the board with an explanation of the services offered by the firm. A firm which begins providing services as set out in §527.4(a) shall notify the board of the change in status within 30 days and provide the board with enrollment information within 12 months of the date the services were first provided and have a review within 18 months of the date the services were first provided.

(c) Each firm required to participate under §527.4(a) shall enroll in the program of an approved sponsoring organization within one year from its initial licensing date or the performance of services that require a review. The firm shall adopt the review due date assigned by the sponsoring organization, and must notify the board of the date within 30 days of its assignment. In addition, the firm shall schedule and begin an additional review within three years of the previous review's due date, or earlier as may be required by the sponsoring organization. It is the responsibility of the firm to anticipate its needs for review services in sufficient time to enable the reviewer to complete the review by the assigned review due date.

(d) In the event that a firm is merged, otherwise combined, dissolved, or separated, the sponsoring organization shall determine which firm is considered the succeeding firm. The succeeding firm shall retain its peer review status and the review due date.

(e) The board will accept extensions granted by the sponsoring organization to complete a review, provided the board is notified by the firm within 20 days of the date that an extension is granted.

(f) A firm that has been rejected by a sponsoring organization for whatever reason must make an application to the board and receive authorization to enroll in a program of another sponsoring organization.

(g) A firm choosing to change to another sponsoring organization may do so provided that the firm authorizes the previous sponsoring organization to communicate to the succeeding sponsoring organization any outstanding corrective actions related to the firm's most recent review. Any outstanding actions must be cleared and outstanding fees paid prior to transfer between sponsoring organizations.

§527.5. Effect of Successive Substandard Reviews.

(a) A firm, including a succeeding firm, which receives two consecutive:

(1) modified and/or adverse system or engagement reviews;

(2) report reviews with significant issues, or

(3) any combination thereof shall have an accelerated review within eighteen months of the firm's last review.

(b) If that accelerated review results in a modified, or adverse report or a report review with significant issues:

(1) the firm may complete attest engagements for which field work has already begun only if:

(A) Prior to issuance of any report, the engagement is reviewed and approved before it is issued by a third party reviewer acceptable to the chairman of the Technical Standards Review Committee; and

(B) the engagement is completed within thirty days of the acceptance of the peer review report, letter of comments (LOC), and letter of response (LOR) by the sponsoring organization; and

(2) the firm shall not perform any other attest service including any accounting and/or auditing engagements, including, audits, reviews, compilations (as well as compilations where no report is required), forecasts, projections, or other special reports for a period of three years or until given permission by the board, whichever is sooner.

(c) A firm may petition the board for a waiver from the provisions of this rule.

(d) The board in its discretion may refer a firm which has received an adverse review or a report review with significant issues for discipline under the Act.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on September 26, 2002.

TRD-200206288
Amanda G. Birrell
General Counsel
Texas State Board of Public Accountancy
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For further information, please call: (512) 305-7848

TITLE 28. INSURANCE

PART 1. TEXAS DEPARTMENT OF INSURANCE

CHAPTER 1. GENERAL ADMINISTRATION

SUBCHAPTER L. RULES OF PRACTICE AND PROCEDURE FOR INDUSTRY-WIDE RATE CASES

28 TAC §§1.1301 - 1.1317

The Commissioner of Insurance adopts the repeal of §§1.1301 - 1.1317 concerning the rules of practice and procedure for industry-wide rate cases. The repeal is adopted without changes to the proposal as published in the July 19, 2002 issue of the *Texas Register* (27 TexReg 6488).

The repeal is necessary because the procedures contained in these sections are inconsistent with the provisions of House Bills 2102, 1162, and 2159 enacted by the 77th Legislature. House Bill (HB) 2102 amends Insurance Code Article 5.101 §3(d) by changing the procedure for promulgating state-wide benchmark rates and amends Insurance Code Article 21.81 by changing the procedure for determining rates for the Texas Automobile Insurance Plan Association. HB 1162 amends Insurance Code Article 21.49 by changing the procedure for determining rates for personal risks written by the Texas Windstorm Insurance Association (formerly known as the Texas Catastrophe Insurance Pool). HB 2159 amends Insurance Code Article 3.53 by changing the procedure for determining the presumptive rates for credit life and credit accident and health insurance.

The purpose and objective of this repeal is to eliminate the obsolete sections so that they can be replaced with new sections that are compatible with the statutory amendments to Insurance Code Articles 3.53, 5.101, 21.49 and 21.81.

No comments were received regarding adoption of the repeal.

Repeal of §§1.1301 - 1.1317 is adopted pursuant to Insurance Code Articles 5.101 §3(d), 21.81, 21.49, and 3.53, and §§36.001, 37.001, and 40.061. Article 5.101 §3(d), as amended by HB 2102, changes the procedure for promulgating industry-wide benchmark rates from contested case proceedings to rulemaking proceedings. Article 21.81, as amended by HB 2102, changes the procedure for promulgating rates for the Texas Automobile Insurance Plan Association from a contested case proceeding to a manual rate filing to be approved, disapproved or modified by the Commissioner. Article 21.49, as amended by HB 1162, changes the procedure for determining rates for personal risks written by the Texas Windstorm Insurance Association from a contested case proceeding conducted as part of the residential property benchmark rate case to a manual rate filing to be approved, disapproved or modified by the Commissioner. Article 3.53, as amended by HB 2159, changes the procedure for determining the presumptive rates for credit life and credit accident and health insurance from a contested case proceeding to a rulemaking proceeding. Section 36.001 provides that the Commissioner of Insurance may adopt rules and regulations to execute the duties and functions of the Texas Department of Insurance only as authorized by statute. Section 37.001 requires the Commissioner to adopt rules governing proceedings necessary to approve or promulgate rates under the Insurance Code and any other insurance law of this state. Section 40.061 provides that all hearings for benchmark rates for all lines subject to Article 5.101 are conducted as provided by section 3(d) of that article.

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 27, 2002.

TRD-200206314
Gene C. Jarmon
Acting General Counsel and Chief Clerk
Texas Department of Insurance
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Proposal publication date: July 19, 2002
For further information, please call: (512) 463-6327

SUBCHAPTER L. RULES OF PRACTICE AND PROCEDURE FOR INDUSTRY-WIDE BENCHMARK RATE PROCEEDINGS

28 TAC §§1.1301- 1.1306

The Commissioner of Insurance adopts new §§1.1301 - 1.1306 concerning procedures for industry-wide benchmark rate proceedings for automobile and residential property insurance. Sections 1.1302 - 1.1306 are adopted with changes to the proposed text as published in the July 19, 2002 issue of the *Texas Register* (27 TexReg 6489). Section 1.1301 is adopted without changes and it will not be republished.

The new sections are necessary to provide rules of practice and procedure to promulgate the benchmark rates for automobile and residential property under Insurance Code Article 5.101 §3(d), as amended by the 77th Legislature in House Bill (HB) 2102. The purpose of HB 2102, in pertinent part, was to streamline the rate-setting process so that rates would better reflect market conditions at the time they are established. The amendments in HB 2102 also change the proceedings to promulgate the benchmark rates from contested case to rule-making proceedings. It is necessary to set forth the procedures for these rulemaking proceedings in rules because neither of the two rulemaking procedures under which the department promulgates rules applies to the benchmark rate proceedings and because Insurance Code §37.001 requires that the department adopt rules governing proceedings to promulgate rates.

The sections 1.1302 - 1.1306 are adopted with the following changes. In response to issues raised in comments, the department amended §1.1302(6) to use the term "hearing participant," to add the phrase "who would be affected by or have an interest in" to the definition of "hearing participant," and to include both persons submitting recommendations with supporting actuarial analyses as well as persons submitting recommendations or supporting actuarial analyses. Section 1.1302(8) is amended to change the reference to "hearing participant" to comport with the change in §1.1302(6) and to include §1.1304 in the reference to the procedural sections in the subchapter.

Based on comments, the department amended §1.1303(a) to refer to the document to be published evidencing the department's proposal as the "proposed rule;" to clarify that the publication of the notice on the department's internet site is not mandatory; to correct the reference to "interested persons;" and to add a date requirement by which recommendations for rate changes must be submitted unless specified in the notice. Subsections 1.1303(b) and (c) are amended to change the references to "hearing participant" to comport with the change in §1.1302(6).

Further, in response to issues raised in comments, the title of §1.1304 and §1.1304(a) and (b) are amended to refer to the document to be published as the "proposed rule." Section 1.1304(b) is amended to clarify that the publication of the proposed rule on the department's internet site is not mandatory.

In addition, based on comments, §1.1305 is amended by adding a new subsection "(a)" and changing the remaining subsection letters accordingly. Section 1.1305(c) is amended to clarify that the commissioner may limit the amount of time a hearing participant may use to ask relevant questions. Subsections 1.1305(b) - (d) are amended to change the references to "hearing participant" to comport with the change in §1.1302(6).

Finally, the department amended §1.1306(c) to clarify that the rule the commissioner promulgates includes the changes to the benchmark rates.

The new sections will function as follows. Section 1.1301 sets forth the scope of the subchapter, while §1.1302 defines certain key words and terms to be used in the subchapter. Section 1.1303 provides the procedure for the prehearing phase in which the commissioner will solicit recommendations for changes to the benchmark rates and may convene an informal conference with hearing participants. Section 1.1304 provides the process under which the department's proposal for a change to the benchmark rates is published for public comment and for the maintenance of all documents submitted to the department. Section 1.1305 sets forth procedures for the actual hearing on the department's proposed rule for a change in the benchmark rates. Section 1.1306 describes the process for the adoption of a rule establishing the benchmark rates.

Comment: One commenter supported the adoption of the sections.

Agency Response: The department appreciates the support.

Comment: One commenter suggested changing the term "interested participant" to "hearing participant" in §1.1302(6) to avoid confusion and distinguish those who have submitted rate recommendations. The commenter also recommended changing the references from "interested participants" to "hearing participants" in §§1.1302(8), 1.1303(b) - (c), and 1.1305(b) - (d) so that they would be consistent with this change.

Agency Response: The department agrees that the term should be changed to "hearing participant" to avoid confusion, but not to distinguish those who have submitted rate recommendations. The department believes that the term "hearing participant" should include all persons allowed by statute to participate in the hearing and has defined the term to include both those who have submitted rate change recommendations with supporting actuarial analyses and those who have submitted either rate change recommendations or supporting actuarial analyses. The department also agrees with changing the references in §§1.1302(8), 1.1303(b) - (c), and 1.1305(b) - (d) so that they are consistent with this change.

Comment: One commenter suggested amending the definition of "hearing participant" in §1.1302(6) by adding the phrase "who would be affected by or have an interest in" to further specify those entities to be included in the definition.

Agency Response: The department agrees with this addition and has made the modification to the subsection accordingly.

Comment: One commenter suggested amending the definition of "hearing participant" in §1.1302(6) to include the phrase "and has submitted changes to the benchmark rates which included supporting actuarial analyses." The commenter asserted that its proposed addition is consistent with the intent of HB 2102 and consistent with Texas law regarding standing.

Agency Response: The department disagrees with this addition because it believes that the addition is inconsistent with a reference to potential hearing participants in Article 5.101 §3(d) where the statute allows persons submitting recommendations or supporting actuarial analysis to participate in the hearing by asking relevant questions. The department believes that the commenter's suggested language excluding such persons from the definition would be contrary to this statutory language. Consequently the department amended the definition of "hearing participants" to include both persons submitting recommendations with supporting actuarial analyses as well as persons submitting recommendations or supporting actuarial analyses.

Comment: One commenter suggested amending the definition of "recommendations" in §1.1302(8) to include "§1.1304" in the reference to the procedural sections in the subchapter.

Agency Response: The department agrees with this change and has made the modification to the subsection accordingly.

Comment: One commenter suggested amending §1.1303(a) by adding a specific date by which the department must publish a notice of request for recommendations annually.

Agency Response: The department disagrees with this addition because the statute does not set a specific date, leaving the date up to the discretion of the department. The department has not made a change based on this comment.

Comment: One commenter suggested replacing the term "petition" with "proposed rule" in §1.1303(a) in reference to the document to be published by the department evidencing its proposal to amend existing benchmark rates.

Agency Response: The department agrees with this amendment because the term "proposed rule" more accurately describes the document to be published, and has made the modification accordingly.

Comment: One commenter suggested amending §1.1303(a) and §1.1304(b) by deleting the references to the department's internet site. The commenter asserted that since there is no statutory requirement to publish the notice of request for recommendations, the proposed rule and the notice of hearing on the department's website, including this reference may confuse persons into thinking that publication on the department's internet site is a prerequisite to going forward with the process.

Agency Response: While the department agrees that publication in the department's internet site is not a prerequisite to going forward, the department supports publishing the notices and the proposed rule on the internet as a convenience to the public. Consequently, the department has amended the subsections to include a sentence that says that the department may also publish the notices or the proposed rule on the department's internet site.

Comment: One commenter suggested amending §1.1303(a) by replacing the reference from "interested participants" to "interested persons" to more accurately describe the status of the persons at this point in the process.

Agency Response: The department agrees with this change and has made the modification accordingly.

Comment: One commenter suggested amending §1.1303(a) to refer to "commissioner" rather than "department" as the entity developing the proposed rule. Agency Response: The department disagrees because the proper entity to propose the rule is the department rather than the commissioner. While the commissioner will decide whether to adopt the proposed rule, the department staff will propose the rule to the commissioner. The department has not made a change based on this comment.

Comment: One commenter suggested amending §1.1303(a) to require that recommendations for rate changes be made not later than 45 days after the notice for requesting recommendations is published.

Agency Response: The department agrees with this addition but also recognizes that the rule allows the department to set a shorter deadline for the recommendations in the notice of request for recommendations. The department has made the modification accordingly.

Comment: One commenter suggested changing the reference from "petition" in the title of §1.1304, and in §1.1304(a) and (b), to "notice" because it asserted that "notice" is the correct term to use when referring to the document to be published under rulemaking procedures under the Gov't. Code §2001.051 et seq. It also asserted that the term "petition" is appropriate under an Article 5.96 proceeding, but not under the rulemaking proceeding contemplated in this rule.

Agency Response: The department agrees that the term "petition" is not the appropriate term, but disagrees that is should be replaced by "notice." Instead the department has changed the term to "proposed rule" because the proposed rule is the document to be published along with a notice of hearing, as indicated in the rule. In addition, the department disagrees that the procedure in this rule is subject to the provisions of the Gov't. Code §2001.051 et seq., which relates to contested case proceedings. Article 5.101 §3(d) describes the procedure promulgating the benchmark rates to be rulemaking rather than contested case.

Comment: One commenter suggested amending §1.1304(c) to require that any workpapers, exhibits or supporting actuarial analyses used by the department staff in preparing any proposed changes be made available to any interested person. The commenter asserted that this suggestion is consistent with past practice and would allow hearing participants to understand the differences between the notice and submissions.

Agency Response: The department believes that this suggested amendment is unnecessary because all submissions including any documents submitted by the department staff to the chief clerk are available for public inspection and to all hearing participants without the addition of the suggested amendment. In addition, the department disagrees that this suggested amendment would make the procedure consistent with past procedure. The past procedure required all parties to provide each other with any workpapers, exhibits or supporting actuarial analyses underlying their testimony. The department as a party to those contested cases was subject to the same requirements as other parties, including making their workpapers, exhibits or supporting actuarial analyses available to the other parties. However, in this rulemaking procedure it is likely that the department staff will not be a hearing participant and may therefore not submit any workpapers, exhibits or supporting actuarial analyses to make available to the interested persons. If the commenter's suggestion was intended to make available whatever workpapers, exhibits or supporting actuarial analyses the department staff may use to advise the commissioner on the final adoption of rates, those workpapers, exhibits or supporting actuarial analyses, if they existed, were not previously provided to the parties in the rate cases. Consequently the department did not make a change in the subsection based on this comment.

Comment: One commenter suggested amending §1.1305 by adding a new subsection "(a)" to specify that hearing participants that submitted recommendations are allowed to make a presentation at the hearing, to require that the order of presentation be determined by level of overall rate change recommended by each hearing participant, and to provide that testimony from other persons would follow the presentations of the hearing participants. The commenter also suggested amending the subsection letters from "(a)," "(b)," and "(c)" to "(b)," "(c)," and "(d)," respectively to accommodate the addition of the new subsection "(a)."

Agency Response: The department agrees to include a provision allowing hearing participants to make a presentation of their respective recommendations. However, the department does not agree that the order of presentation should be set out in these rules and also believes that the proposed method to determine the order of presentation is confusing. Consequently, the department added the language allowing the hearing participants to make a presentation of their recommendations, but left the order of presentation up to the discretion of the commissioner.

The department also agrees with amending the subsection letters and has made those changes.

Comment: One commenter suggested amending §1.1305(c) to clarify that the commissioner may limit both the amount of time a hearing participant may speak as well as the amount of time a hearing participant may use to ask relevant questions. Agency Response: The department agrees with this change and has amended to the subsection accordingly.

Comment: One commenter suggested amending §1.1306(a) to require the commissioner to adopt a rule within 30 days following the hearing.

Agency Response: The department disagrees with the addition of this deadline because the suggested timeframe is probably not sufficient time for the department to finalize promulgation of a rule and no deadline is required by statute. Consequently the department did not modify this subsection.

Comment: One commenter suggested amending §1.1306 by adding a new subsection (e) to limit the effective date of the order promulgating the rule to be no sooner than 30 days after it is provided to interested participants and mailed to insurers.

Agency Response: The department believes that this additional subsection is unnecessary because Insurance Code Article 5.101 §3(d) allows the insurers ample time to comply with any order promulgating changes in the rates without adding this additional time limitation. Under Article 5.101 §3(d), an insurer has 30 days either before or after the effective date of the benchmark rates to file its individual rates and it may set the effective date for its individual rates up to 60 days from the date the individual insurer files its rates. In addition, the department disagrees with adding the time limitation as suggested by the commenter because the date proposed to begin the additional time limitation, which is the date the written order is provided to interested participants and mailed to insurers, may not be easily determined in certain situations. For example, if any interested participants were provided copies of the written order or any insurers were mailed copies of the order on more than one date, it would not be clear as to when the time limitation would begin to run. Consequently, the department disagrees with the addition of subsection (e) and did not make this change.

For: Office of Public Insurance Counsel

For with changes: Insurance Council of Texas

The new sections are adopted under Insurance Code Articles 5.101 §§3(b), 3(d) and 5, and §§37.001, 40.061, and 36.001. Article 5.101 §3(b) and (d) authorizes the Commissioner of Insurance to promulgate industry-wide benchmark rates through rulemaking proceedings, rather than through contested case proceedings. Article 5.101 §5 states that Chapter 2001 of the Texas Government Code does not apply to benchmark rate hearings conducted under Article 5.101 §3(d). Section 40.061 provides that all hearings for benchmark rates for all lines subject to Article 5.101 are conducted as provided by Article 5.101 §3(d) rather than as provided by Insurance Code §§40.051 - 40.060. Section 37.001 requires the Commissioner to adopt rules governing proceedings necessary to approve or promulgate rates under the Insurance Code or any other insurance law of this state. Section 36.001 provides that the Commissioner may adopt rules to execute the duties and functions of the Texas Department of Insurance as authorized by statute.

§1.1302. Definitions.

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

(1) Commissioner -- The Texas Commissioner of Insurance.

(2) Department -- The Texas Department of Insurance.

(3) Chief Clerk -- The Office of the Chief Clerk of the department.

(4) Benchmark rates -- Industry-wide benchmark rates for automobile or residential property insurance adopted by the commissioner pursuant to Texas Insurance Code Article 5.101 §3(d).

(5) Benchmark rate proceedings -- Proceedings for the promulgation of industry-wide benchmark rates for automobile or residential property insurance held under Texas Insurance Code Article 5.101 §3(d).

(6) Hearing participant -- Any interested person, including an insurer, a trade association, the Public Insurance Counsel, or any other person or entity who would be affected by or have an interest in an industry-wide automobile or residential property rate proceeding and:

(A) has submitted a recommendation for a change to benchmark rates with supporting actuarial analyses; or

(B) has submitted a recommendation for a change to benchmark rates or supporting actuarial analyses.

(7) Supporting actuarial analyses -- Analyses of relevant data relating to all or a portion of existing benchmark rates for which changes are recommended. These include all exhibits and workpapers supporting the analyses.

(8) Recommendations -- Suggestions for changes in all or part of existing benchmark rates submitted by a hearing participant pursuant to the procedures in §§1.1303-1304 of this subchapter.

§1.1303. Recommendations for Benchmark Rate Changes.

(a) Prior to publishing a proposed rule to amend existing benchmark rates, the department shall publish a notice of request for recommendations in the Texas Register. The department may also publish the notice on the department´s internet site. The notice shall include a date by which interested persons must file their recommendations with the chief clerk in order to be considered by the department in developing a proposed rule to amend the existing benchmark rates. Recommendations shall be made not later than 45 days after the date the notice is published in the Texas Register or the date specified in the notice. The notice shall also indicate the availability of any relevant statistical data collected by the department and how such data may be obtained.

(b) Any hearing participant submitting recommendations must also submit supporting actuarial analyses, as specified in the notice.

(c) The department may convene an informal conference or consultation to obtain clarification or advice from hearing participants.

(d) The department shall consider all timely filed recommendations but the department´s proposed rule to be filed under §1.1304 of this subchapter (relating to Proposed Rule to Change the Benchmark Rates) is not limited by or required to reflect any of the recommendations.

§1.1304. Proposed Rule to Change the Benchmark Rates.

(a) Following review of the recommendations, the department shall publish a proposed rule to amend the existing benchmark rates and a notice of hearing concerning the proposed rule in the Texas Register.

If the department proposes no change in the benchmark rates, it shall publish a notice indicating that it proposes no change and a notice of hearing concerning the proposal in the Texas Register. The department may also publish the proposed rule or the notice on the department´s internet site.

(b) Comments on the proposed rule may be submitted to the chief clerk.

(c) The chief clerk shall maintain a record of all documents filed in the benchmark rate proceeding. All documents submitted shall be open to public inspection.

§1.1305. Procedures for Hearing on the Department´s Proposed Rule.

(a) The Commissioner shall convene the hearing at the appointed time and shall allow hearing participants to make a presentation of their respective recommendations. The order of presentation will be determined by the Commissioner.

(b) Any hearing participant that has submitted recommendations or supporting actuarial analyses may ask relevant questions of any other person speaking at the hearing.

(c) The commissioner and the department´s staff may also ask relevant questions of any hearing participant as well as any other person speaking at the hearing.

(d) The commissioner may limit the amount of time each hearing participant or other person may speak or the time each hearing participant may ask relevant questions at the hearing, and may accept written comments in addition to the oral presentation of any hearing participant or other person.

§1.1306. Adoption of Benchmark Rates.

(a) Subsequent to the hearing, the commissioner shall adopt a rule promulgating the benchmark rates.

(b) The commissioner shall file a notice of the adoption of the rule promulgating the changes to the benchmark rates for publication in the adopted rule section of the Texas Register.

(c) The adopted rule promulgating the changes to the benchmark rates will set out the effective date of the benchmark rates adopted therein.

(d) Prior to the effective date of the benchmark rates, the department shall cause a notice of the adopted rule to be mailed to all insurers writing the affected line of insurance in this state and to all persons who submitted recommendations or comments concerning the benchmark rates to the department.

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 27, 2002.

TRD-200206313
Gene C. Jarmon
Acting General Counsel and Chief Clerk
Texas Department of Insurance
Effective date: October 17, 2002
Proposal publication date: July 19, 2002
For further information, please call: (512) 463-6327

CHAPTER 5. PROPERTY AND CASUALTY INSURANCE
SUBCHAPTER E. TEXAS WINDSTORM INSURANCE ASSOCIATION

The Commissioner of Insurance adopts amendments to §5.4001, the plan of operation of the Texas Windstorm Insurance Association (Association or TWIA), and §5.4501 concerning the adoption by reference of the Manual of the Texas Windstorm Insurance Association (Manual) which is the rule manual governing the writing of windstorm and hail insurance coverage by the Association. The amendment to §5.4001 is adopted without changes and the amendment to §5.4501 is adopted with one change to the proposed text published in the August 9, 2002, issue of the *Texas Register* (27 TexReg 7038) and will not be republished.

The adoption of the amendment to §5.4001 (TWIA Plan of Operation) that amends the exception regarding the binding of new or increased coverage when a hurricane is in the Gulf of Mexico or within the boundaries of 80 degrees west longitude and 20 degrees north latitude (80/20 zone) was requested by the Association in a petition filed with the department on January 2, 2002. The Commissioner held a public hearing on the amendments on September 17, 2002, under Docket no. 2526, at the William P. Hobby Jr., State Office Building, 333 Guadalupe Street in Austin, Texas.

Subsection (d)(1)(E)(ii) of §5.4001 outlines the procedures regarding the binding of new or increased coverage including an exception when a hurricane is in the Gulf of Mexico or the 80/20 zone. The language in subsection (d)(1)(E)(ii) specifies that, if a hurricane is not imminent, the date an application for new or increased coverage will be accepted by TWIA includes both the date the application is received by the Association and the date that the application is mailed if sent by registered, certified, or United States Postal Service Express Mail, or if sent by regular mail that is hand canceled by the United States Postal Service. However, in this subsection there is an exception to this general rule, regarding the binding of new or increased coverage when a hurricane is imminent. In its petition the Association recommended changes to the existing exception because it was not date or time specific regarding when TWIA would no longer accept applications for new or increased coverage when a hurricane is imminent. To remedy the lack of date and time specificity of the existing exception, the new language specifies that no new or increased coverage applications will be accepted by TWIA on the day (beginning at 12:01 a.m.) or after a hurricane designated by the United States Weather Bureau is in the Gulf of Mexico or within the boundaries of 80 degrees west longitude and 20 degrees north latitude, until the General Manager of TWIA determines that the storm no longer threatens property in the designated catastrophe area. The exception does not apply to an application delivered in person to the TWIA's Austin office during its normal business hours prior to a hurricane being in the Gulf of Mexico or within the boundaries of 80 degrees west longitude and 20 degrees north latitude or to an application that is mailed by registered mail, certified mail, United States Postal Service Express Mail, or regular mail that has been hand canceled by the United States Postal Service prior to the first day when a windstorm that has been designated a hurricane by the United States Weather Bureau is in the Gulf of Mexico or the 80/20 zone. Such hand delivered or mailed applications become

effective on the date they are delivered in person or the date they are mailed or a later date if stipulated on the application.

The amendment to §5.4501 (Manual for the Texas Windstorm Insurance Association) adopts by reference a rule revision to the manual that is necessary to conform General Rule I, (New or Increased Coverage and Renewal Applications) to the adopted changes to the plan of operation. General Rule I contains the same language as the plan of operation concerning the exception to binding new or increased coverage when a storm is imminent. Any changes to the language in the plan of operation regarding the exception to binding coverage when a storm is imminent were also required to be reflected in General Rule I. The effective date of the section as published in the proposal was October 1, 2002; the effective date of the section has been changed to October 15, 2002.

Subsection (d)(1)(E)(ii) of §5.4001 (the TWIA Plan of Operation) specifies the general requirements for the binding of new or increased windstorm and hail coverage through TWIA. This subsection also includes an exception to the general requirements for binding new or increased coverage that has been amended to clarify the date and time that TWIA will no longer accept applications for new or increased coverage when a hurricane is in the Gulf of Mexico or the 80/20 zone. The purpose of §5.4501 is to adopt by reference the Manual of the Texas Windstorm Insurance Association. The purpose of the Manual is to provide policy writing rules, rating rules, and other information that is necessary for the Association to write the different coverages that it offers. The adopted amendment to §5.4501 adopts by reference the updated Manual pages containing the language that conforms to the amended exception.

No comments were received on the sections.

DIVISION 1. PLAN OF OPERATION

28 TAC §5.4001

The amendments are adopted pursuant to the Insurance Code Article 21.49 and §36.001. Article 21.49 §5(c) of the Insurance Code provides that the Commissioner of Insurance by rule shall adopt the TWIA plan of operation with the advice of the TWIA board of directors. Section 5(f) of Article 21.49 provides that any interested person may petition the Commissioner to modify the plan of operation in accordance with the Administrative Procedure Act. Article 21.49 §8 authorizes the Commissioner of Insurance to approve, modify, or disapprove every manual of classification, rules, rates, rating plans, and every modification of any of the foregoing used by the Association. Insurance Code §36.001 authorizes the Commissioner of Insurance to adopt rules which must be for general and uniform application, for the conduct and execution of 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 25, 2002.

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Gene C. Jarmon
Acting General Counsel and Chief Clerk
Texas Department of Insurance
Effective date: October 15, 2002
Proposal publication date: August 9, 2002
For further information, please call: (512) 463-6327

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DIVISION 6. MANUAL

28 TAC 5.4501

The amendments are adopted pursuant to the Insurance Code Article 21.49 and §36.001. Article 21.49 §5(c) of the Insurance Code provides that the Commissioner of Insurance by rule shall adopt the TWIA plan of operation with the advice of the TWIA board of directors. Section 5(f) of Article 21.49 provides that any interested person may petition the Commissioner to modify the plan of operation in accordance with the Administrative Procedure Act. Article 21.49 §8 authorizes the Commissioner of Insurance to approve, modify, or disapprove every manual of classification, rules, rates, rating plans, and every modification of any of the foregoing used by the Association. Insurance Code §36.001 authorizes the Commissioner of Insurance to adopt rules which must be for general and uniform application, for the conduct and execution of the duties and functions of the Texas Department of Insurance only as authorized by statute.

§5.4501. Rules for the Texas Windstorm Insurance Association.

The Texas Department of Insurance adopts by reference a rules manual for the Texas Windstorm Insurance Association as amended effective, June 15, 1999. The Texas Department of Insurance adopts by reference amendments effective May 1, 2001, and October 15, 2002, to the rules manual. Copies of the rules manual may be obtained by contacting the Automobile and Homeowners Division, Mail Code 104-5A, Texas Department of Insurance, 333 Guadalupe Street, P.O. Box 149104, Austin, Texas 78714-9104.

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 25, 2002.

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Gene C. Jarmon
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Texas Department of Insurance
Effective date: October 15, 2002
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For further information, please call: (512) 463-6327

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CHAPTER 11. HEALTH MAINTENANCE ORGANIZATIONS

SUBCHAPTER AA. DELEGATED ENTITIES

28 TAC §§11.2601 - 11.2612

The Commissioner of Insurance adopts new Subchapter AA, §§11.2601-11.2612, relating to delegation agreements entered into by Health Maintenance Organizations (HMOs) with certain delegated entities. Sections 11.2604 and 11.2612 are adopted

with changes to the proposed text as published in the March 22, 2002 issue of the *Texas Register* (27 TexReg 2182). Sections 11.2601 - 11.1603 and 11.2605 - 11.2611 are adopted without changes and will not be republished.

This adoption is necessary to implement provisions of Insurance Code Article 20A.18C, which was reenacted and amended by HB 2828 in the 77th Texas Legislative Session. HB 2828 amends the definition of "delegated entity" in the Texas HMO Act, Texas Insurance Code, Article 20A.02(ee) and adds definitions for "delegated network," "delegated third party" and "limited provider network." HB 2828 clarifies the requirements in the statute that must be met in order for an HMO to delegate certain functions to delegated entities. The statute defines a "delegated entity" as any non-HMO entity to which an HMO delegates the responsibility to arrange for or to provide medical care or health care to an enrollee in exchange for a predetermined payment on a prospective basis and that accepts responsibility to perform on behalf of the HMO any function regulated by the Texas HMO Act. The statute requires that delegation contracts between HMOs and delegated entities, as well as contracts between delegated entities and other third parties involved in the delegation chain, contain clauses that require the delegated entity to provide sufficient information to the HMO to allow the HMO to monitor the solvency of the delegated entity and the ability of the delegated entity and any delegated third parties to perform the functions delegated by the HMO in the contract.

These contracts must also allow the department to conduct on-site examinations of the delegated entity and any delegated third parties to obtain information that the department believes is relevant to the issue of the delegated entity or the delegated third party's solvency or ability to carry out any function delegated by the HMO. These examinations may be conducted based on information received from the HMO as a result of its monitoring or upon the department's own initiative if the department believes that circumstances so warrant. The statute also sets out specific solvency requirements that must be met by a delegated network taking on full financial responsibility for the provision of more than one category of services on behalf of the HMO.

Article 20A.18C provides that an HMO remains ultimately responsible for ensuring that any function delegated under Art. 20A.18C, including claims payment, is performed in compliance with the statutes and rules governing that function. This does not mean that the HMO would be responsible for directing the day to day management and operations of a delegated entity or its delegated third parties. However, the HMO must develop and maintain a monitoring plan that enables the HMO to determine that all delegated functions are being performed appropriately and that all delegated entities and/or third parties performing delegated functions have the financial ability to continue to perform the delegated functions. If an HMO cannot determine this through its monitoring plan, the HMO should either end the agreement or, if it chooses, reach an agreement with a delegated entity that includes an effective monitoring plan. If the HMO does not or cannot comply with its responsibilities under the subchapter, the statute clarifies that the commissioner is authorized to take any action necessary, including the ability to order an HMO to resume any delegated function, up to and including the payment of claims that a delegated entity has failed to pay. HB 2828 did not make available to the commissioner new enforcement authority. However, upon requesting corrective action by a delegated entity, the commissioner is authorized to enter an order requiring an HMO to take action that will ensure the HMO's compliance with the HMO Act.

Section 11.2601 explains the purpose and scope of the subchapter. Section 11.2602 defines terms within the subchapter. Section 11.2603 describes the requirements for an HMO that delegates any function pursuant to Art. 20A.18C of the Texas Insurance Code. Section 11.2604 describes the requirements that must be included in any delegation agreement entered into by an HMO as well as the information that must be provided to the HMO by the entity with which the HMO has entered into a delegation agreement. Section 11.2604 has been changed from the proposed language in response to a comment to clarify that a delegated entity must report IBNR reserves to an HMO with which it contracts. Section 11.2605 describes the information that an HMO must provide to an entity with which the HMO has entered into a delegation agreement. Section 11.2606 sets forth the actions an HMO must take if, as a result of its monitoring of the delegated entity or for any other reason, the HMO becomes aware that the delegated entity is not operating in accordance with the delegation agreement or is operating in a condition that may impair its ability to perform its duties under the agreement. Section 11.2607 sets forth the manner in which the department performs examinations of delegated entities or delegated third parties pursuant to this subchapter and has been changed to clarify that complaints filed with the department may also trigger an examination, as described in the statute. Section 11.2608 describes the types of actions the department may take to ensure that: (1) delegated functions are being performed in compliance with the department's statutory and regulatory requirements; (2) the delegating HMO is performing in compliance with statutory and regulatory requirements that relate to the matters delegated by an HMO; and (3) delegated functions are being performed by an entity with the solvency to carry out those functions. Section 11.2609 sets forth the reserve requirements for delegated networks as defined by HB 2828. Section 11.2610 sets forth penalties for non-compliance with the subchapter. Section 11.2611 relates to the filing of delegation agreements entered into by an HMO. Section 11.2612 establishes a compliance date for the subchapter. Section 11.2612 has been changed from the proposed language to include only contracts that are entered into or renewed on or after the effective date of this rule. The phrase "or amended" has been removed.

General: Some commenters support adoption of the rule. One commenter remarks that the rule simply restates the statute.

Agency Response: The department appreciates the support. As to the second comment, many of the sections actually restate the statutory requirements in terms that clarify the department's interpretation of the statute rather than repeat verbatim the language of the statute. Some provisions in the statute are included in the rule to allow the reader to more easily understand how the requirements of the statute relate to the requirements established by the rule.

General: A commenter believes that the statute requires inclusion of a provision stating that HMOs retain responsibility to pay physicians in all circumstances in which the delegated entity fails to pay as required. The commenter believes this interpretation is mandatory in order to give meaning to Art. 20A.18C(a)(4), which states that delegation agreements may not be construed to limit an HMO's responsibility, including financial responsibility, to comply with all statutory and regulatory requirements. Another commenter recommends clarifying the rule to make it clear that HMOs have financial responsibility for payment to physicians

so that HMOs will better communicate with delegated entities in order to avoid double payment.

Agency Response: The department disagrees that such a provision is necessary or that the section requires clarification. The department interprets claims payment to physicians and providers to be the ultimate responsibility of the HMO in instances in which physicians and providers have not been paid, except where an HMO can prove fraud by the physician or provider or other compelling circumstances to the contrary. Article 20A.18C clearly requires delegating HMOs to continue to comply with all applicable statutes and regulations. Delegation does not relieve an HMO of the duty of compliance. If a delegated entity is not complying with applicable statutes and regulations, §11.2603(g) deems the HMO itself in violation. Sections 11.2603(f) and (g) reflect the department's long-standing interpretation of Article 20A.18C that an HMO may not contract away the ultimate responsibility for compliance with all applicable statutes and regulations. Nor does the department concur with the commenter's interpretation of the term "financial responsibility" in Article 20A.18C(a)(4). The 76th Texas Legislature added this provision as part of SB 890. Article 20A.18C(l) was added by HB 2828 during the 77th Legislative session. The department believes the phrase "including financial responsibility" in SB 890 clarifies that the regulatory requirements with which the HMO must comply include all applicable financial solvency requirements. This interpretation recognizes that the quoted term was added before the enactment of Article 20A.18C(l). Communication between delegated entities and HMOs is addressed in the rule through the exchange of information in the monitoring plan. A lack of monitoring by the HMO is a factor the Commissioner may consider in exercising the discretion to order a necessary corrective action by the HMO.

General: A commenter believes there are consumer-oriented provisions in the statute that are not contained in the rule.

Agency Response: The department disagrees. While there are some aspects of the statute that are not included in the rules, these provisions deal with limited provider networks which are not within the scope of the rules. The department believes that the statutory provisions pertaining to limited provider networks are sufficiently prescriptive in nature and do not need clarification. As noted in the preamble to the proposed rules, the purpose of the rule is to clarify the responsibilities and accountability that an HMO retains for all delegated functions, thereby ensuring the quality of health care provided to consumers. For example, §11.2603(d) requires a delegating HMO to have a written contingency plan to maintain quality and continuity of care for enrollees.

General: A commenter suggests that the delegated entity be required to obtain an actuarial certification of the IBNR estimates, at least annually, to assist the HMO in validating the estimates of outstanding liabilities.

Agency Response: The department disagrees that an actuarial certification of the IBNR estimates would be necessary in all instances. The rule is designed to provide flexibility for HMOs and delegated entities and sets a minimum level of information to be exchanged between the parties. If an HMO desires additional information, the parties may include additional standards, such as an actuarial certification of IBNR estimates, in the delegation agreement.

§11.2601: A commenter recommends adding a provision stating that this subchapter does not apply to delegated entity contracts that do not undertake to arrange for or to provide medical care or health care services to an enrollee in exchange for a determined payment on a prospective basis, such as delegation of credentialing to HMOs.

Agency Response: The department disagrees this is necessary. The applicability provision states that the subchapter applies only to delegation agreements entered into pursuant to Article 20A.18C. The definition of delegated entity in both the statute and the rule indicates that a delegated entity does not include HMOs and only includes entities that undertake to arrange for or to provide medical care or health care services to an enrollee in exchange for a predetermined payment on a prospective basis and that accept responsibility to perform on behalf of the HMO a function regulated by the HMO Act. The department would need to review an individual fact pattern to determine whether an entity may be considered a delegated entity.

§11.2601(a)(3): A commenter suggested that the language in this paragraph would more clearly reflect legislative intent if it indicated that the HMO was ultimately responsible for delegated functions and compliance with applicable rules and statutes.

Agency Response: The department disagrees. The language in §11.2601(a)(3) addresses the scope of the rule. Section 11.2603(f) addresses responsibilities retained by an HMO in language substantially similar to the commenter's proposal.

§11.2602: A commenter requested clarification that the assumption of risk by an IPA for outpatient radiology services does not result in the IPA being a delegated entity.

Agency Response: The department disagrees that this clarification is needed. The rule contains a specific definition of "delegated entity" in §11.2602(2). The department would need to review an individual fact pattern to determine whether an entity may be considered a delegated entity.

§11.2603: A commenter requested that the term "delegated entity" in this section be replaced with the term "delegated network." The commenter believes that use of the term "delegated entity" may encompass a scope beyond what the statute contemplates.

Agency Response: The department disagrees. This section reflects legislative intent, per the definition of "delegated entity," that HMOs remain responsible for any and all delegated functions. Use of the term "delegated network" in place of "delegated entity" would render this section inapplicable to delegation agreements that are not a total transfer of risk for more than one category of health care services.

§11.2603: A commenter noted that although HMOs can monitor delegated entities and conduct audits and oversight activities, HMOs cannot be expected to guarantee, and have no authority to require, compliance by the delegated entity.

Agency Response: The department disagrees. The statute makes clear that an HMO retains its responsibility for regulatory compliance, even when it has delegated a function. The statute also requires contracts between an HMO and a delegated entity to include a provision requiring the delegated entity to comply with all applicable statutes and regulations. Further, the statute requires the HMO to monitor the delegated entity's compliance.

§11.2603(c): A commenter believes that by requiring the HMO to evaluate the "projected financial effects of the agreement upon the delegated entity" the rule imposes a higher standard than

is required in statute and one that is impossible for the HMO to attain. The commenter believes the rule tasks the HMO with responsibility for financial oversight of delegated entities above those required by statute. The commenter also believes that the rule should require audited financial statements because, unless the statements are audited, the HMO cannot accept any higher level of responsibility.

Agency Response: The department disagrees. Both the statute and the rule require an HMO to make some determination that the entity to which it delegates has the ability and solvency to perform the delegated functions. A preliminary evaluation of a delegated entity's ability to perform under the contract is the first aspect of this determination. Further, an HMO must develop and maintain a monitoring plan that enables the HMO to determine that all delegated entities and/or third parties performing delegated functions are performing appropriately and are sufficiently solvent to be able to continue to do so. If an HMO cannot adequately determine that the delegated entity can do so through its monitoring plan, the HMO should either end its agreement with the delegated entity or, if it chooses, reach an agreement with a delegated entity that includes an effective monitoring plan. Finally, although the rule does not require that an agreement contain a provision that the delegated entity supply audited financial statements, nothing prohibits an HMO from requiring that the financial statements be audited or refusing to enter into a delegation agreement with an entity that will not agree to submit audited financial statements.

§11.2603(g): A commenter recommends deletion of the provision that a violation of the HMO Act or rules by a delegated entity constitutes a violation by the HMO, on the grounds that an HMO has no prior control over what the delegated entity does.

Agency Response: The department disagrees. Article 20A.18C requires delegating HMOs to continue to comply with all applicable statutes and regulations. Section 11.2603(g) reflects the department's long-standing interpretation of Article 20A.18C that an HMO may not contract away the ultimate responsibility for compliance with all applicable statutes and regulations. As to the HMO's lack of control over a delegated entity, the HMO's agreement with a delegated entity must allow the HMO to monitor whether and in what degree delegated functions are performed. If the HMO cannot do so, or if monitoring indicates that the delegated entity is not complying with the applicable statute or rules, the HMO is responsible for correcting the arrangement. This provision is intended to prevent an HMO from using a delegation agreement as a means of disavowing its responsibility to comply with all statutes and regulations governing the HMO as a condition of its licensure by the department as an HMO.

§11.2603(i): A commenter suggested requiring a more definite time frame for the reporting of penalties assessed by an HMO for the delegated entity's failure to provide information as required in §11.2604(b)(4). The commenter suggested replacing "within a reasonable time" with "no less than quarterly."

Agency Response: The department disagrees. The rule provides flexibility in reporting penalties assessed to encourage more expeditious handling of breaches of greater severity. In more serious situations, quarterly reporting may not be adequate.

§11.2603(j): A commenter believes that requiring an HMO to resume delegated functions in the event that the HMO cannot ensure compliance by the delegated entity is unreasonable and could result in unnecessary disruptions to members.

Agency Response: The department disagrees. The statute makes clear that an HMO may cancel delegation in order to ensure full compliance with all applicable statutes and regulations. The rule requires an HMO to resume delegated functions in the event that the HMO cannot ensure compliance by the delegated entity. Where appropriate, an HMO should follow the procedure in §11.2606 to determine whether the delegated entity is in compliance. The HMO is always ultimately responsible for compliance and the HMO's efforts at making such a determination should reflect this. As to the point concerning disruption to members, §11.2603(d) requires an HMO to have in place a written contingency plan that will minimize disruption in the event that the delegation agreement is terminated.

§11.2604: A commenter believes that since Article 20A.18G requires a limited provider network or delegated entity to comply with all statutory and regulatory requirements relating to any function, duty, responsibility, or delegation assumed by or carried out by the limited provider network or delegated entity, there is no need for a rule requiring an HMO to monitor a delegated entity's ability to maintain the solvency required to perform delegated functions.

Agency Response: The department disagrees. Article 20A.18C requires an HMO to develop and maintain a monitoring plan that enables the HMO to determine that all delegated functions are being performed appropriately and that all delegated entities and/or third parties performing delegated functions have the financial ability to continue to perform the delegated functions. Article 20A.18C(r) provides the department with specific authority to adopt rules to enforce Art. 20A.18C.

§11.2604(b): A commenter believes the rule exceeds statutory authority by requiring a delegated entity to provide the same financial information for each function being delegated without regard for the particular risk being assumed.

Agency Response: The department disagrees. The rule is designed to ensure that whatever functions a delegated entity may take on, the delegated entity or any subsequent delegated third party actually performing the function must have and maintain financial resources to ensure that it can perform each delegated function adequately. The rule requires an HMO to obtain, at a minimum, basic information relating to an entity's financial viability, such as cash flow records and balance sheets. In order to appropriately monitor delegation of complex financially-based transactions, such as claims payment, an HMO will likely need to obtain more detailed information such as an entity's cash reserves and outstanding financial obligations than the HMO would need to determine if an entity can perform, for example, credentialling. The statute specifically requires monitoring of a delegated entity's ability to perform the delegated functions. The rule simply clarifies the minimum information necessary for an HMO to adequately monitor a delegated entity. Parties may contract for the exchange of further information where appropriate.

§11.2604(b)(2)(A): A commenter requested that the rule require monthly unaudited financial statements with a quarterly lag following the fiscal year. Additionally, the commenter believes that annual financial statements required by the rule should be audited financial statements.

Agency Response: The department disagrees. The rule is designed to provide flexibility for HMOs and delegated entities and sets a minimum level of information to be exchanged between the parties. If an HMO desires additional information, such as

audited financial statements, the parties are free to contract for such an exchange.

§11.2604(b)(3): A commenter suggested that the requirement of periodic signed statements from an officer designated by the HMO and by the chief financial officer of the HMO acknowledging review of the monitoring plan information would be impossible to comply with due to the busy schedule of these individuals.

Agency Response: The department disagrees. The statute requires an HMO to monitor the delegated entity by making use of the required monitoring plan. The requirement of a signature is a reasonable method of ensuring accountability. In order to comply with the rule, the officer must actually review the monitoring information. The addition of a signature upon completing the review does not unreasonably add to this requirement.

§11.2604(b)(3)(A) and (B): Two commenters suggested the rule should specify the frequency with which an HMO's chief financial officer must review a delegated entity's financial statements, as required in the monitoring plan. The commenter suggested that "quarterly" be used in place of "periodic" as used in the proposal. Another commenter recommended that the department clarify the frequency with which the department expects signed statements to be made indicating that the information submitted by the delegated entity has been reviewed by the HMO.

Agency Response: The department declines to make the suggested changes. The choice of "periodic" instead of a more definite term recognizes the variety of functions a delegation agreement may include. Quarterly reviews may not be necessary in every delegation context. Signed statements are required to ensure that an HMO has assigned the responsibility for monitoring the actions of the delegated entity to a specific individual and continues to monitor the performance of the delegated function throughout the time in which the agreement is in place. The HMO must maintain the signed statements as evidence that it is conducting ongoing monitoring.

§§11.2604(b)(8) and 11.2608(b)(1): A commenter believes these subsections exceed the scope of the statute in that they would allow the Commissioner to order double payment in situations where the HMO has made full capitation payment to a delegated entity.

Agency Response: The department disagrees. Article 20A.18C has always contained a provision stating that a delegation agreement may not be construed to limit an HMO's responsibility to comply with any and all applicable statutes and regulations. Where circumstances exist that would require restitution to physicians and providers for services provided to HMO enrollees, the Insurance Code has always recognized that the department may impose such a remedy. In circumstances in which reassuming delegated claims payment, as well as other actions, are necessary to ensure that an HMO is continuing to comply with applicable statutes, §11.2608(b) and the statute permit the commissioner to order the HMO to take steps to achieve ongoing compliance with the HMO Act. The commissioner's decision to enter such an order includes the discretion to order claims payment by the HMO for services previously rendered to enrollees under the delegation agreement. Whether this is necessary and appropriate will depend upon individual circumstances, including the HMO's attempts to appropriately monitor the actions of the delegated entity.

§11.2604(b)(9): A commenter inquires whether permitting the HMO to terminate delegation prior to determining the reason for noncompliance with applicable statutes, rules or monitoring standards provides due process.

Agency Response: Section 11.2606 requires, in the event of a potential breach or hazardous situation, an HMO to notify the delegated entity of its concern and request a written explanation. The rule also recognizes, however, that in some situations an HMO may need to exercise its authority under §11.2604(b)(9), which requires that the agreement allow the HMO to terminate delegation in the event of failure by the delegated entity to comply with applicable statutes and rules or monitoring standards. This is a statutory requirement and the language must be in the delegation agreement. Moreover, in such instances delaying the HMO's action could disrupt services, hinder the quality of care, and result in other harms to consumers. The department thus declines to change the rule. Consistent with these rules, the department notes that the parties to the agreement may include provisions related to the HMO providing notice or other analogous provisions prior to termination not for cause.

§§11.2604(b)(15) and 11.2611: A commenter recommends the term "executed" be deleted and requests clarification as to when agreements must be filed.

Agency Response: The department disagrees with the suggested change. An HMO must file executed contracts in order to allow the department to ascertain the terms governing the delegation of functions. An HMO must file executed copies of all subsequent amendments to the agreement as well as subsequent delegation of any function to a third party. The burden is on the HMO to negotiate and file contracts that comply with the rule.

§11.2604(b)(19): A commenter recommends that the department clarify that the HMO may seek information concerning financial arrangements, but cannot seek information concerning actual payments to physicians and providers. The commenter believes that, where a risk sharing arrangement between the delegated entity and its providers includes financial incentives, the section as drafted will prohibit the HMO from obtaining information concerning the risk sharing arrangements.

Agency Response: The department disagrees this change is necessary. Both the statute, at Article 20A.18C(a)(13)(A)(i) and (ii), and the rule, at §11.2604(b)(20)(A)(i) and (ii), require that only a summary description of this information be provided to the HMO.

§11.2604(b)(20)(B): A commenter believes the term "health care services" should be used in place of the term "health care." The commenter also believes that this provision requires an HMO to ensure that the delegated entity remains solvent, a task that is impossible without full financial information from the delegated entity, including the financial arrangements between delegated entities and providers. The commenter believes the provisions hold the HMO responsible for ensuring a delegated entity remains solvent.

Agency Response: The department believes that the term "health care" as used in HB 2828 is intended to refer to the term "health care services" as defined in the HMO Act. The rule defines health care, for purposes of Art. 20A.18C and this subchapter, to have the same meaning as "health care services" as defined at Art. 20A.02(m): "Any services, including the furnishing to any individual of pharmaceutical services, medical, chiropractic, or dental care, or hospitalization or incident to the furnishing of such services, care, or hospitalization, as well as the furnishing to any person of any and all other services for

the purpose of preventing, alleviating, curing or healing human illness or injury." Therefore, the reference in the rule to "health care" is correct. In regard to solvency, the department does not agree that this provision requires an HMO to ensure the delegated entity's solvency. Instead, the HMO must develop and maintain a monitoring plan that enables the HMO to determine that all delegated functions are being performed appropriately and that all delegated entities and/or third parties performing delegated functions are solvent enough to be able to continue to perform the delegated functions. If an HMO cannot determine this through its monitoring plan, the HMO should either end its agreement with the delegated entity or, if it chooses, reach an agreement with a delegated entity that includes an effective monitoring plan.

§11.2604(b)(20)(C): A commenter requests clarification as to whether the provision applies only to processed and unpaid claims or to an IBNR estimate that includes estimates of IBNR claims.

Agency Response: The department notes that the intent of §11.2604(b)(20)(C) is to require the transmission of aggregate information about all unpaid obligations owed to any physician and provider, which would include IBNR estimates. In response to the comment, the department has clarified §11.2604(b)(20)(C) to read as follows: "(C) the aggregate dollar amount of claims and other obligations for health care owed by the delegated entity to any physician and provider, including estimates for incurred but not reported obligations."

§11.2604(b)(24): A commenter requests that additional language be added to provide that if the parties cannot reach an agreement as to cost-bearing in the contract, each party shall bear its own expenses.

Agency Response: The department disagrees that the proposed additional language is necessary. The statute directs the parties to determine which party shall bear the expense of compliance and examinations. Therefore, both the statute and the rules require the parties to reach an agreement on this issue.

§11.2605(a)(3) & (4): A commenter requests the addition of the dates of service to these paragraphs.

Agency Response: The department notes that §11.2605(a)(3) & (4) contemplate the exchange of nonproprietary information, which would include dates of service. While the department declines to require the parties to include particular nonproprietary information, such as dates of service, the parties should negotiate for the exchange of information appropriate to each delegation agreement.

§11.2608: A commenter believes the language of this section calls for an immediate solution that may not allow for correction of perceived non-compliance.

Agency Response: The department disagrees. This section is intended to allow the department to order an immediate solution when the Commissioner deems immediate action necessary to protect the interest of enrollees. Sections 11.2606 & 11.2607 allow for a less immediate solution under less urgent circumstances.

§11.2609: A commenter believes that Article 20A.18D eliminates the need for the HMO to monitor a delegated network's compliance with this section as it requires the delegated network to comply with the solvency requirement set forth in the statute.

Agency Response: The department disagrees. Although Article 20A.18D sets forth specific reserve requirements for delegated networks, this does not eliminate the need for HMO oversight as required by Article 20A.18C.

§11.2611: A commenter suggests deletion of the requirement that the agreement contain a table of contents, in favor of a standard checklist to submit with the filings. The commenter inquires about the term "certified copies."

Agency Response: The department disagrees, as it believes that the table of contents will facilitate review of agreements by the department and help the HMO verify that the agreement includes all of the applicable statutory and regulatory requirements. The department currently posts a checklist on its website based on the requirements of Article 20A.18C. The department will revise this checklist to correspond to the rule and will facilitate an HMO's creation of the table of contents required by this section. Section 11.2611 does not require certified copies; however, an HMO must file a copy of executed delegation agreements.

§11.2611(c): A commenter inquired as to whether the department will be developing a template for the required table of contents.

Agency Response: Because the department has not mandated a specific format for delegation agreements, development of a template for the table of contents of such an agreement is not necessary. As previously noted, a checklist of applicable requirements is available on the website.

§11.2612: A commenter recommends removal of the phrase "or amended," as it is not referenced in the statute.

Agency Response: The department agrees that the phrase "or amended" is not included in the statute and has deleted this phrase. However, the department believes that HB 2828 was intended to clarify the requirements for any delegation involving risk transfer, and will construe the term "renewal" to include any change to an agreement that has the effect of creating a new agreement. For example, if an agreement were changed to add or delete the delegation of a particular function, or if an agreement was altered to change the nature of the risk being transferred, or if the terms of the compensation are altered so as to fundamentally change the risk being transferred, these would be considered to constitute a renewal and the agreement would need to comply with the rule. Minor changes such as addition or deletion of contact persons for each party, on the other hand, would not constitute a "renewal."

§11.2612: A commenter suggested that "all renewal language should be addressed by the department as a relationship renewal date." The commenter defines this as a single date on which all delegation agreements between the two parties would be considered to be renewed.

Agency Response: The department disagrees. HB 2828 states that it applies to every contract that is entered into or renewed on or after January 1, 2002. The department reminds affected parties that the changes in law provided by HB 2828 cannot be avoided by restricting the concept of renewals to renewals of relationships that may be indefinite in duration.

For: Office of Public Insurance Counsel, Renaissance Physicians Organization.

For with changes: Aetna US Healthcare, AmCare Health Plans, Inc., Community First Health Care Plans, Inc., Dallas County

Medical Society, Texas Association of Health Plans, Texas Hospital Association, Texas Medical Association.

Neither For nor Against: Consumers Union.

The sections are adopted under the Insurance Code Article 20A.18C and Section 36.001. Article 20A.18C provides that the commissioner shall adopt reasonable rules to implement this article as it relates to the delegation of certain functions by an HMO. 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.

§11.2604. Delegation Agreements - General Requirements and Information to be Provided to HMO.

(a) An HMO that delegates to a delegated entity any function required by the Act shall execute a written agreement with that delegated entity.

(b) Written agreements shall include the following:

(1) a provision that the delegated entity and any delegated third parties must agree to comply with all statutes and rules applicable to the functions being delegated by the HMO;

(2) a provision that the HMO shall monitor the acts of the delegated entity through a monitoring plan. The monitoring plan shall be set forth in the delegation agreement, and must contain, at a minimum:

(A) provisions for the review of the delegated entity's solvency status and financial operations. This shall include, at a minimum, review of the delegated entity's financial statements, consisting of at least a balance sheet, income statement, and statement of cash flows for the current and preceding year;

(B) provisions for the review of the delegated entity's compliance with the terms of the delegation agreement as well as with all applicable statutes and rules affecting the functions delegated by the HMO under the delegation agreement;

(C) a description of the delegated entity's financial practices in sufficient detail that will ensure that the delegated entity tracks and timely reports to the HMO liabilities including incurred but not reported obligations;

(D) a method by which the delegated entity shall report monthly a summary of the total amount paid by the delegated entity to physicians and providers under the delegation agreement; and

(E) a monthly log, maintained by the delegated entity, of oral and written complaints from physicians, providers, and enrollees regarding any delay in payment of claims or nonpayment of claims pertaining to the delegated function, including the status of each complaint;

(3) a statement that the HMO shall utilize the monitoring plan on an ongoing basis. Compliance with this requirement shall be documented by the HMO maintaining, at a minimum:

(A) periodic signed statements from the individual identified by the HMO in paragraph (23) of this subsection that the HMO has reviewed the information required in the monitoring plan; and

(B) periodic signed statements from the chief financial officer of the HMO acknowledging that the most recent financial statements of the delegated entity have been reviewed.

(4) a provision establishing the penalties to be paid by the delegated entity for failure to provide information required by this subchapter;

(5) a provision requiring quarterly assessment and payment of penalties under the agreement, if applicable;

(6) a provision that the agreement cannot be terminated without cause by the delegated entity or the HMO without written notice provided to the other party and the department before the 90th day preceding the termination date, provided that the commissioner may order the HMO to terminate the agreement under §11.2608 of this subchapter (relating to Department May Order Corrective Action);

(7) a provision that requires the delegated entity, and any entity or physician or provider with which it has contracted to perform a function of the HMO, to hold harmless an enrollee under any circumstance, including the insolvency of the HMO or delegated entity, for payments for covered services other than copayments and deductibles authorized under the evidence of coverage;

(8) a provision that the delegation agreement may not be construed to limit in any way the HMO's responsibility, including financial responsibility, to comply with all statutory and regulatory requirements;

(9) a provision that any failure by the delegated entity to comply with applicable statutes and rules or monitoring standards shall allow the HMO to terminate delegation of any or all delegated functions;

(10) a provision that the delegated entity must permit the commissioner to examine at any time any information the department reasonably considers is relevant to:

(A) the financial solvency of the delegated entity; or

(B) the ability of the delegated entity to meet the entity's responsibilities in connection with any function delegated to the entity by the HMO;

(11) a provision that the delegated entity, in contracting with a delegated third party directly or through a third party, shall require the delegated third party to comply with the requirements of paragraph (10) of this subsection;

(12) a provision that the delegated entity shall provide the license number of any delegated third party performing any function that requires a license as a third party administrator under Texas Insurance Code Art. 21.07-6, or a license as a utilization review agent under Texas Insurance Code Art. 21.58A, or that requires any other license under the Texas Insurance Code or another insurance law of this state;

(13) if utilization review is delegated, a provision stating that:

(A) enrollees will receive notification at the time of enrollment identifying the entity that will be performing utilization review;

(B) the delegated entity or delegated third party performing utilization review shall do so in accordance with Texas Insurance Code Art. 21.58A and related rules; and

(C) utilization review decisions made by the delegated entity or a delegated third party shall be forwarded to the HMO on a monthly basis;

(14) a provision that any agreement in which the delegated entity directly or indirectly delegates to a delegated third party any function delegated to the delegated entity by the HMO pursuant to

Texas Insurance Code Art. 20A.18C, including any handling of funds, shall be in writing;

(15) a provision that upon any subsequent delegation of a function by a delegated entity to a delegated third party, the executed updated agreements shall be filed with the department and enrollees shall be notified of the change of any party performing a function for which notification of an enrollee is required by this chapter or the Act;

(16) an acknowledgment and agreement by the delegated entity that the HMO is not precluded from requiring that the delegated entity provide any and all evidence requested by the HMO or the department relating to the delegated entity's or delegated third party's financial viability;

(17) a provision acknowledging that any delegated third party with which the delegated entity subcontracts will be limited to performing only those functions set forth and delegated in the agreement, using standards approved by the HMO and that are in compliance with applicable statutes and rules;

(18) a provision that any delegated third party is subject to the HMO's oversight and monitoring of the delegated entity's performance and financial condition under the delegation agreement;

(19) a provision that requires the delegated entity to make available to the HMO samples of each type of contract the delegated entity executes or has executed with physicians and providers to ensure compliance with the contractual requirements described by paragraphs (6) and (7) of this subsection, except that the agreement may not require that the delegated entity make available to the HMO contractual provisions relating to financial arrangements with the delegated entity's physicians and providers;

(20) a provision that requires the delegated entity to provide information to the HMO on a quarterly basis and in a format determined by the HMO to permit an audit of the delegated entity and to ensure compliance with the department's reporting requirements with respect to any functions delegated by the HMO to the delegated entity and to ensure that the delegated entity remains solvent to perform the delegated functions, including:

(A) a summary:

(i) describing any payment methods, including capitation or fee-for-services, that the delegated entity uses to pay its physicians and providers and any other third party performing a function delegated by the HMO; and

(ii) of the breakdown of the percentage of physicians and providers and any other third party paid by each payment method listed in clause (i) of this subparagraph;

(B) the period of time that claims and any other obligations for health care filed with the delegated entity, under this and any other delegation agreements to which the delegated entity is a party, have been pending but remain unpaid, divided into categories of 0-45 days, 46-90 days, and 91 or more days. The summary shall include aggregate information for all delegation agreements entered into by the delegated entity and information for the specific delegation agreement entered into between the parties;

(C) the aggregate dollar amount of claims and other obligations for health care owed by the delegated entity to any physician or provider, including estimates for incurred but not reported obligations;

(D) information that the HMO requires in order to file claims for reinsurance, coordination of benefits, and subrogation; and

(E) documentation, except for information, documents, and deliberations related to peer review that are confidential or privileged under Subchapter A, Chapter 160, Occupations Code, that relates to:

(i) any regulatory agency's inquiry or investigation of the delegated entity or of an individual physician or provider with whom the delegated entity contracts that relates to an enrollee of the HMO; and

(ii) the final resolution of any regulatory agency's inquiry or investigation;

(21) a provision relating to enrollee complaints that requires the delegated entity to ensure that upon receipt of a complaint, as defined in the Act, a copy of the complaint shall be sent to the HMO within two business days, except that in a case in which a complaint involves emergency care, as defined in the Act, the delegated entity shall forward the complaint immediately to the HMO, and provided that nothing in this paragraph prohibits the delegated entity from attempting to resolve a complaint;

(22) a provision that the HMO, the delegated entity and any delegated third party shall comply with the provisions of Chapter 22 of this title;

(23) a provision identifying an officer of the HMO as the representative of the HMO for all matters related to the delegation agreement; and

(24) a provision identifying which party to the agreement shall bear the expense of compliance with each requirement set forth in this subsection, including the cost of any examinations performed pursuant to this subchapter.

§11.2612. Applicability.

This subchapter applies to all contracts entered into or renewed on and after the effective date of these rules.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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

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Lynda Nesenholtz
General Counsel and Chief Clerk
Texas Department of Insurance
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Proposal publication date: March 22, 2002
For further information, please call: (512) 463-6327

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TITLE 30. ENVIRONMENTAL QUALITY

PART 1. TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

CHAPTER 101. GENERAL AIR QUALITY RULES

SUBCHAPTER A. GENERAL RULES

30 TAC §101.24, §101.27

The Texas Commission on Environmental Quality (TCEQ or commission) adopts the amendments to §101.24, Inspection Fees, and §101.27, Emissions Fees *with changes* to the proposed text as published in the July 12, 2002 issue of the *Texas Register* (27 TexReg 6187).

The amendments will be submitted to the United States Environmental Protection Agency (EPA) as revisions to the state implementation plan (SIP).

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE ADOPTED RULES

The commission collects annual inspection fees to cover a portion of the cost of air programs as required by Texas Health and Safety Code (THSC), Texas Clean Air Act, (TCAA), §382.062, Application, Permit, and Inspection Fees. The commission also collects annual fees from sources that are subject to the permitting requirements of Title IV or V of the Federal Clean Air Act Amendments of 1990 (Federal Clean Air Act (FCAA), Titles IV and V, hereinafter referred to as "Title V") as required by TCAA, §382.0621, Operating Permit Fee. The existing rule language in §101.24 and §101.27 structures the inspection fees and the emissions fees to be self-paid by the affected accounts. To maintain consistency with other commission fee programs and in response to the Sunset Advisory Commission recommendations, the commission will convert the inspection fees and emissions fees to a billed system.

The commission will adjust inspection fees for inflation and the emissions fees to meet the EPA presumptive minimum for the commission's Title V program. Additionally, the commission will assess a new fee on new permit by rule (PBR) registrations received on or after November 1, 2002 in a concurrent 30 TAC Chapter 106 rulemaking as well as increase air permit, air permit renewal, and air permit amendment fees in a concurrent 30 TAC Chapter 116 rulemaking published in this issue of the *Texas Register*.

The Clean Air Fund 151 (Fund 151) is the source of funding for essentially all air program related activities of the commission. This fund supports a wide range of activities including permitting, inspections, enforcement, air quality planning, mobile source program, emissions inventory, and monitoring in addition to agency functions which support these activities. Revenues deposited to the fund are from several different fees collected from point sources and mobile sources as well as the general public. Over the last several years, the fund has carried a balance in the account which has allowed the agency to collect revenues below the annual budgeted expenditures. However, the fund balance is close to being depleted. Additionally, due to decreases in emissions, the revenue from fees which are assessed based upon emission levels has declined by an average of approximately 3% per year in recent years. The revenue estimates for Fund 151 reveal that there are insufficient funds to support the fiscal year (FY) 2003 appropriated level.

As part of its air program activities, the commission implements an approved Title V program. As part of that approval, the commission was required to demonstrate that the fees collected from Title V sources are sufficient to support the Title V program. Currently under state law, this fee must be dedicated for use only on Title V activities. This fee is commonly referred to as the air emissions fee and is currently set at $26 per ton. However, the fee demonstration submitted to EPA in August 2001 showed that the fee would need to be increased beginning in FY 2003 to provide sufficient support for the Title V program.

Activities which are not considered to be Title V activities must be supported through the remaining fees that are to be used to safeguard the air resources of the state. Essentially, these fees generally include permit, renewal, and amendment fees; inspection fees; and a portion of the motor vehicle safety inspection fee (as set by statute, THSC, §382.0622).

Given the declining availability of funds in Fund 151, the commission reviewed the air fees which it has the authority to change. Most of the air permit, renewal, and amendment fees have not been increased since the early 1990s. The air emissions fee has not been increased since FY 1995 and the air inspection fee since FY 1992. The vehicle inspection maintenance fee has been set recently to cover the cost of that program. Several other funding sources are dedicated for specific uses. In an effort to match fee revenue collections more closely with related expenditures, the commission also reviewed potential sources for new fees. After a review of the commission's existing air program related activity fees, the commission will adopt revisions to the emissions fee, inspection fee, permit, renewal, and amendment fees, as well as assess a new fee for review of registrations for PBR.

The commission previously instructed agency staff to initiate a study of the use of Fund 151 fees, including their use for the Title V program. This study is ongoing and is expected to result in a report to the commission in January 2003. In addition, projections involving the revenues and expenditures of Fund 151 have changed since proposal of the air fee increases based upon additional information. The revised projections currently indicate that the proposed fee increases are insufficient to cover projected expenditures through fiscal year 2005. For these reasons, the commission intends to review the air fee increases adopted in this package next year to determine the appropriate levels for each of the air fees.

SECTION BY SECTION DISCUSSION

There are several revisions which change the agency name from Texas Natural Resource Conservation Commission (TNRCC) to reflect the new name of TCEQ.

Section 101.24

Section 101.24(a), concerning applicability, will improve the readability of this subsection and correct an improper cross-reference. References to account numbers will be changed to identification numbers to reflect the commission's new Central Registry system.

Section 101.24(b), concerning self-report/billed information, will state that emissions/inspection fee information packets will be mailed to each affected account owner or operator. The emissions/inspection fee basis form will be required to be remitted within 60 days of the date on the emissions/inspection fee packet. All subsequent subsections will be relettered accordingly. This adopted amendment will also specifically state that the completed emissions/inspection fee basis form shall include, at least, the company name, mailing address, site name, all TCEQ identification numbers, the applicable Standard Industrial Classification (SIC) category, and the name and telephone number of a contact person. In the event that more than one SIC category is applicable at the account, the form should specify the applicable SIC category with the highest fee rate. The new language will also include a requirement to include additional information necessary to assess the fee. For example, this will include information such as relative plant size when necessary to determine which fee rate will apply within

the SIC category. The intent of this adopted amendment is to allow the review of the self-reported information prior to issuing a statement of the fee assessment to the account.

Section 101.24(b) is adopted with change to the proposed text to require that when the applicable SIC category is reported on the form, the SIC category shall be the one that has the highest associated fee as required in §101.24(a).

Section 101.24(c), concerning requesting a fee information packet, will provide a procedure for those account owners or operators who do not receive the fee information packet described in adopted subsection (b). It will set a date by which every account owner or operator should have received the packet and it requires notification to the commission by those account owners or operators which have not received the packet. The language also includes a provision for new account owners or operators who begin operation sometime during the FY. Those accounts will be required to request a packet within 30 days of beginning operation.

Section 101.24(c) is adopted with change to the proposed text to provide earlier dates for account owners or operators who do not receive the fee information to notify the commission. The changes acknowledge that the timing of the effective date of this rule will occur after October 1, and therefore alternative dates have been provided for FY 2003. Additionally, the commission has moved the notification date for all other years from the proposed October 1 to July 1. This additional time will allow commission staff to have adequate time to prepare a packet and billing statement for these entities. The earlier date should still provide ample time for notification since the packets should be mailed in April.

Section 101.24(d), concerning payment, will be relettered from subsection (b) and currently states that the fee payment shall accompany a completed fee return form. The adopted amendment will add the payment options of certified check and electronic funds transfer. Additionally, this adopted amendment will change the collection of the inspection fee from a self report/self pay system to a self report/billed system. The completed fee basis form is discussed in adopted subsection (b); therefore, the reference to the completed fee return form in this subsection was deleted.

Section 101.24(e), concerning due date, will be relettered from §101.24(c) and currently states that the fee payment must be received or postmarked no later than November 1 of the FY in which the fee is assessed. This adopted amendment will state that the payment of the inspection fee is due within 30 days of the date the agency sends a statement of the assessment to the facility owner or operator. The intent of this adopted amendment is to change the due date to be consistent with a billed system.

Section 101.24(f), concerning inspection fee schedule, will be relettered from subsection (d). Currently, the inspection fee rate has been unchanged since FY 1992. The adopted amendment will reformat the inspection fee schedule and include a step increase in the inspection fees to adjust for inflation. The initial increase raises the fee approximately 33.8%. For FYs following 2003, the adopted amendment will provide a mechanism to annually adjust the fee for inflation in accordance with the consumer price index (CPI) (as published by the United States Bureau of Labor Statistics, CPI - All Urban Consumers, Not Seasonally Adjusted, base period 1982 - 84 = 100). The intent of this adopted amendment is to generate revenue to help fund, at appropriated levels, the commission's air program related activities.

Section 101.24(f) is adopted with change to the proposed text to more clearly explain the basis for the CPI adjustment each year.

Section 101.24(g), concerning nonpayment of fees, will be relettered from subsection (e) and currently states that the failure to remit the full inspection fee by the due date will result in an enforcement action. The adopted amendment will state that each inspection fee payment must be paid at the time and in the manner and amount provided in the section. The intent of this amendment is to establish language consistent with other program fees collected within the agency. This subsection has also been amended to reflect the correct citation for enforcement for failure to pay fees. The enforcement provisions previously cited have been consolidated with other enforcement requirements into Texas Water Code (TWC), Chapter 7.

Section 101.24(h), concerning late payments, will be relettered from subsection (f) and currently states that the owner or operator of an account failing to make payment of inspection fees when due are assessed late payment penalties and interest. The adopted amendment will state that the agency shall impose interest and penalties on owners or operators of an account who fail to make payment of inspection fees when due in accordance with 30 TAC Chapter 12, Payment of Fees. The intent of this amendment is to establish language consistent with other program fees collected within the agency.

Section 101.27

Section 101.27(a), concerning applicability, will correct the relettering of subsections which are being referenced. This adopted amendment will also state that the account will trigger the emissions fee if it emits or if it has the potential to emit over the specified levels of air contaminants. The intent of this adopted amendment is to improve the readability of this subsection. References to account numbers will be changed to identification numbers to reflect the commission's new Central Registry system.

Section 101.27(b), concerning self-reported/billed information, will state that emissions/inspection fee information packets will be mailed to each affected account owner or operator. The emissions/inspection fee basis form will be required to be remitted within 60 days of the date on the emissions/inspection fee packet. All subsequent subsections will be relettered accordingly. This adopted amendment will also specifically state that the completed emissions/inspection fee basis form shall include, at least, the company name, mailing address, site name, all TCEQ identification numbers, the applicable SIC category, the emissions of all regulated air pollutants at the account for the reporting period and the name and telephone number of a contact person. The new language will also include a requirement to include additional information necessary to assess the fee. For example, this will include information such as capacity when necessary to determine which fee rate will apply within the SIC category. The intent of this adopted amendment is to allow the review of the self-reported information prior to issuing a statement of the fee assessment to the account.

Section 101.27(b) is adopted with change to the proposed text to clarify that when the applicable SIC category is reported on the form, the SIC category shall be the one that has the highest associated fee as required in §101.24(a).

Section 101.27(c), concerning requesting a fee information packet, will provide a procedure for those accounts which do not receive the fee information packet described in adopted subsection (b). It will set a date by which every account owner or operator should have received the packet and it requires

notification to the commission by those account owners or operators which have not received the packet. The language also includes a provision for new account owners or operators which begin operation sometime during the FY. Those account owners or operators will be required to request a packet within 30 days of beginning operation.

Section 101.27(c) is adopted with change to the proposed text to provide more reasonable dates for account owners or operators who do not receive the fee information to notify the commission. The changes acknowledge that the timing of the effective date of this rule will occur after October 1, and therefore alternative dates have been provided for FY 2003. Additionally, the commission has moved the notification date for all other years from the proposed October 1 to July 1. This additional time will allow commission staff to have adequate time to prepare a packet and billing statement for these entities. The earlier date should still provide ample time for notification since the packets should be mailed in April.

Section 101.27(d), concerning payment, will be relettered from subsection (b) and currently states that the fee payment shall accompany a completed fee return form. The adopted amendment will add the payment option of certified check. The completed fee basis form is discussed in adopted subsection (b); therefore, the reference to the completed fee return form in this subsection was deleted. The intent of this adopted amendment is to change the collection of the emissions fee from a self-report/self-pay system to a self-report/billed system.

Section 101.27(e), concerning due date, currently states that the fee payment must be received or postmarked no later than November 1 of the FY in which the fee is assessed. This adopted amendment will state the payment of the emissions fee is due within 30 days of the date the agency sends a statement of the assessment to the facility owner or operator. The intent of this revision is to change the due date to be consistent with a billed system. In addition, the adopted amendment specifies that emissions fee will be due prior to commencement or resumption of operations if an account commences or resumes operation during the fiscal year in which the fee is assessed. Due to the relettering of the subsections, existing subsection (d) was deleted.

Section 101.27(f), concerning basis for fees, will increase the current per ton emissions fee from $26 to a level equivalent with the EPA presumptive minimum for the commission's Title V program. The emissions fee rate will be adjusted each year by the CPI (as published by the United States Bureau of Labor Statistics, CPI - All Urban Consumers, Not Seasonally Adjusted, base period 1982 - 84 = 100). This increase is necessary to collect sufficient funding for the commission's Title V programs. Setting the per- ton emissions fee at the EPA presumptive minimum provides the presumption that the fee rate meets the EPA's funding adequacy requirements. In addition, subsection (f) will be relettered from subsection (c). Subsection (f)(1) will be relettered from subsection (c)(1). Subsection (c)(2) is obsolete and will be deleted. Subsection(c)(3) will be relettered to subsection (f)(2). Subsection (c)(4) will be relettered to subsection (f)(3).

Section 101.27(f)(1) is adopted with change to the proposed text to reflect new terminology recently adopted by the commission in a separate rulemaking. The intent of this amended language is to include every type of emission in the basis for the emissions fee.

Section 101.27(g), concerning nonpayment of fees, will be relettered from subsection (c) and currently states that the failure to remit the full emissions fee by the due date will result in an enforcement action. The adopted amendment will state that each emissions fee payment must be paid at the time and in the manner and amount provided in the section. The intent of this amendment is to establish language consistent with other program fees collected within the agency. This subsection has also been amended to reflect the correct citation for enforcement for failure to pay fees. The enforcement provisions previously cited have been consolidated with other enforcement requirements into TWC, Chapter 7.

Section 101.27(h), concerning late payments, will be relettered from subsection (f) and currently states that the owner or operator of an account failing to make payment of emissions fees when due shall be assessed late payment penalties and interest. This adopted amendment will state that the agency shall impose interest and penalties on owners or operators of an account who fail to make payment of emissions fees when due in accordance with Chapter 12. The intent of this adopted amendment is to establish language consistent with other program fees within the agency.

FINAL REGULATORY IMPACT ANALYSIS DETERMINATION

The commission reviewed the rulemaking in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and determined that the 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 101 are not, themselves, intended to protect the environment or reduce risks to human health from environmental exposure to air pollutants. Therefore, the commission finds that they are not major "environmental" rules. Additionally, the fees collected under the adopted revisions to Chapter 101 generally should not 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. These revisions will be spread through most sectors of the economies of the state as they generally apply to most stationary sources of air pollution. When viewed in conjunction with the amounts of revenues flowing through the sectors, the incremental fee increase is not material.

As defined in the Texas Government Code, §2001.0225 only applies to a major environmental rule, the result of which is to: exceed a standard set by federal law, unless the rule is specifically required by state law; exceed an express requirement of state law, unless the rule is specifically required by federal law; exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program, or; adopt a rule solely under the general powers of the agency instead of under a specific state law. This rulemaking does not meet any of these four applicability requirements of a "major environmental rule." Specifically, the emissions fee, and to some extent inspection fee are required under federal law to be sufficient to support the permit program under Titles IV and V of the FCAA (42 United States Code (USC), §§7651 *et seq*. and §§7661 *et seq*.). The emissions fees are also required by state law, THSC, TCAA, §382.0621 and §382.0622, to be sufficient to support the

Titles IV and V programs. The inspection fee is required by state law to be sufficient to support a portion of commission activities related to the overall air quality program (TCAA, §382.062). This rulemaking does not exceed an express requirement of federal or state law. The rulemaking does not exceed a requirement of a delegation agreement, but revision to the emissions fee is specifically required by EPA's approval of the Title IV and V programs to the commission. The rulemaking was not developed solely under the general powers of the agency, but was specifically developed and authorized under TCAA, §§382.011, 382.017, 382.062, 382.0621, and 382.0622, and generally under TCAA, §§382.001 *et seq*.

Written comments on the draft regulatory impact analysis determination were solicited. No comments were received on the draft regulatory impact analysis determination.

TAKINGS IMPACT ASSESSMENT

The commission conducted a takings impact evaluation for these rules in accordance with Texas Government Code, §2007.043. The specific purpose of the rulemaking is to raise the emissions and inspection fees to maintain funding, at appropriated levels, sufficient to support the Titles IV and V programs and a portion of the overall air quality program.

Promulgation and enforcement of the rules will not burden private, real property because they are fee rules which support air quality programs of the commission. Although the rule revisions do not directly prevent a nuisance or prevent an immediate threat to life or property, the increase in emissions fee does fulfill a federal mandate under 42 USC, §§7651 *et seq*. and §§7661 *et seq*. The emissions fee is also required by state law, THSC, TCAA, §382.0621 and §382.0622, to be sufficient to support the Titles IV and V programs. The inspection fee is required by state law to be sufficient to support a portion of commission activities related to the overall air quality program (TCAA, §382.062). Consequently, the exemption which applies to these rules is that of an action reasonably taken to fulfill an obligation mandated by federal and state law. Therefore, this rulemaking action will not constitute a takings under Texas Government Code, Chapter 2007.

CONSISTENCY WITH THE COASTAL MANAGEMENT PROGRAM

The commission reviewed the rulemaking and found it is a rulemaking identified in the Coastal Coordination Act Implementation Rules, 31 TAC §505.11(b)(2), relating to Actions and Rules Subject to the Coastal Management Program or will affect an action/authorization identified in §505.11(a)(6), and will, therefore, require that goals and policies of the Texas Coastal Management Program (CMP) be considered during the rulemaking process.

The commission reviewed this rulemaking for consistency with the CMP goals and policies in accordance with the regulations of the Coastal Coordination Council and determined that the amendments are consistent with CMP goals and policies because the rulemaking is a fee rule which is a procedural mechanism for paying for commission programs; will not have direct or significant adverse effect on any coastal natural resource areas; will not have a substantive effect on commission actions subject to the CMP; and promulgation and enforcement of the amendments will not violate (exceed) any standards identified in the applicable CMP goals and policies.

Written comments on the consistency of this rulemaking with the CMP were solicited. No comments were received on the consistency of this rulemaking with the CMP.

PUBLIC COMMENT

A public hearing was held on August 12, 2002, in Austin. The comment period closed on August 12, 2002. The commission received comments from Alliance for a Clean Texas (ACT); American Electric Power (AEP); Associated General Contractors of Texas (AGC); Austin Energy (AE); City Public Service of San Antonio (CPSSA); EPA, Region 6; Gull Industries Incorporated (GII); Harwood Industries, Inc. (HII); High Tech Finishing (HTF); Houston Sierra Club (HSC); Lubbock Power and Light (LP&L); Schumacher Company, Inc. (SCI); Texas Association of Business (TAB); Texas Chemical Council (TCC); Texas Independent Automobile Dealers Association (TIADA); Texas Oil and Gas Association (TxOGA); Texas Poultry Federation (TPF); TXU Business Services (TXU); Xcel Energy (XCEL) and two individuals. Oral comments were received from ACT at the hearing. Of the 21 commenters for Chapter 101, two were generally in favor of fee increases while the remainder were generally and/or specifically against fee increases.

RESPONSE TO COMMENTS

Prior to September 1, 2002, the TCEQ was the TNRCC. Since the comments were received before September 1, 2002, the agency is sometimes referred to as the TNRCC.

General

ACT commented that it fully supports the need for the commission to have increased revenue in order to pay for the programs funded through the Clean Air Account.

RESPONSE

The commission agrees that it is necessary to increase fees to pay for Clean Air Account programs and appreciates the comment.

TxOGA commented that it commits to its ongoing efforts to ensure that the commission is adequately funded and retains delegation of vital environmental programs.

RESPONSE

The commission appreciates TxOGA's support of the commission's delegation of environmental programs. The commission is also committed to ensure that it is adequately funded and retains all program delegations.

AEP, TXU, and XCEL stated that they strongly support maintaining the delegation by EPA of the Title V permitting program to the TNRCC and recognized the statutory mandate that the TNRCC's Title V permitting program be adequately funded by revenues from Title V emissions fees.

RESPONSE

The commission appreciates the support expressed for maintaining the delegation of the Title V program and the recognition that emissions fee revenue must be sufficient to adequately fund the commission's Title V program.

TCC commented that it recognizes that the commission may be facing a shortfall in funding associated with the air permitting and inspection programs.

RESPONSE

The commission appreciates TCC's recognition of the difficult funding issues faced by the commission.

HSC commented that it supports the billing process and the fee increases for inspection and emissions fees.

RESPONSE

The commission appreciates HSC's support.

ACT generally supported basing fees on emissions to reward companies for pollution prevention.

RESPONSE

The commission appreciates the comment. However, the purpose of the rulemaking is to increase fees to enable the commission to recover a portion of its operating costs and collect sufficient revenue to support appropriated funding levels, not necessarily to create incentives for pollution prevention.

TIADA suggested designing new incentive programs, such as rebates, to encourage pollution control and compliance rather than more fees.

RESPONSE

As a result of the 77th Legislature, the commission will be promoting compliance in new ways, by granting regulatory incentives for approved Environmental Management Systems, and using an entity's compliance history in order to make regulatory decisions about that entity. While financial incentives are difficult to grant, there is an existing program that approves pollution control equipment for property tax exemptions. The commission is seeking to encourage compliance using innovative and positive means. However, these incentive programs neither reduce air program workload nor generate funding for the air programs. Therefore, the commission finds that these fee increases are necessary to cover its operating costs.

TIADA commented that it opposes any more fees and stated that their industry is over-regulated, citing examples of auto inspections, lawsuit costs regarding the constitutionality of a particular fee, the motor vehicle finance license, and Internal Revenue Service regulation of accounting methodology.

RESPONSE

The commission acknowledges that many industries are subject to multiple fees and regulations from various governmental agencies. However, the commission cannot control regulations placed on the industry by other sources. The fee increases are necessary to provide sufficient funding for the commission's air programs.

HSC does not believe the commission is doing all that it can to cover all its expenses.

RESPONSE

The commission strives to balance its need for adequate program funding with the costs its fees represent for the regulated community. The commission estimates that the increases will provide sufficient revenue to fund air program activities through FY 2003. The commission intends to review the air fee increases adopted in this package next year to ensure that Fund 151 has adequate funding in subsequent fiscal years. The commission determined that it is taking sufficient action to cover its expenses and to ensure that Fund 151 has adequate funds through FY 2003.

SCI stated that the large fee increases do not demonstrate sound fiscal responsibility or sound management of budgetary resources.

RESPONSE

The commission strives to manage its fiscal resources in a sound and efficient manner. The commission has operated its air programs without increasing most of the fees since the early 1990's. The fee increases are not large when due consideration is given to the length of time in which fees were not increased.

TPF suggested that the commission should not have as large of an ending balance. CPSSA, AE, and LP&L state that TNRCC has not explained why it needs an additional $12 million in FY 2003.

RESPONSE

The commission revised its proposal since the receipt of these comments during the stakeholder process. The commission is not projecting a $12 million balance in any FY from 2003 to 2005 under the revised proposal. The adopted fees are expected to result in a fund balance of $3.7 million in FY 03, and a negative fund balance in FY 04 and FY 05. The commission determined that some level of fund balance is necessary for effective operation of the air programs and to cover recurring monthly costs such as payroll. Since the revised version of the proposal accommodates these requests, no further changes to the rules were made in response to these comments.

TPF suggested that fee notices should be staggered so that there is continuous funding without needing the huge increase as proposed.

RESPONSE

The commission revised its proposal since the receipt of this comment. The commission is not projecting a $12 million balance in any FY from 2003 to 2005 under the revised proposal. However, the commission notes that a small funding balance is necessary to ensure that sufficient funds are collected to fund the commission's air programs and to meet recurring monthly expenses of the programs, such as payroll. Staggering fee notices will neither alleviate the need to maintain a small funding balance nor to collect sufficient fee revenue to adequately fund the commission's air programs. No further changes to the rule were made in response to this comment.

AGC commented that the proposed fees will represent a significant and increased financial burden and that an increase in air fees or the creation of new fees is not justified. SCI commented that it is not convinced that the air related fees are justified.

RESPONSE

The commission does not agree with these comments. The commission relies on fees for the majority of its funding. Many of the fees that support the commission's air programs have not been increased since the early 1990's. In the last several years, Fund 151 has carried a balance that has allowed the commission to collect revenues below the annual budgeted expenditures and appropriations. However, the revenue estimates for Fund 151 reveal that there are insufficient funds to support the FY 2003 appropriated levels at current fee rates. Consequently, fee increases are necessary to provide sufficient funding for the commission's air programs.

TIADA commented that the fee increases would be passed along to consumers and would especially impact the poor. XCEL noted that the burden of the emissions and inspection fees are passed along to the customers of industry.

RESPONSE

The commission acknowledges that businesses typically pass along their costs when setting prices. However, the commission finds that these costs are necessary to adequately fund the air programs and to protect air quality.

Considering the significant portion of air fees paid by its members, TCC urged the commission to continue to consider means to adequately fund the water program.

RESPONSE

Addressing issues related to funding for water programs is beyond the scope of this rulemaking. The commission notes that the legislature determines the appropriations for all agency programs each biennium. No changes to the rule were made in response to this comment.

AEP and TXU requested that the commission revise the proposed emissions fee rule to defer the applicability of the increase until FY 2004 to allow fee payers to adequately budget for these higher fees.

RESPONSE

The commission projects that Fund 151 will incur a negative balance in FY 2003 unless the fee increases take effect in 2003, therefore delaying the fee increase until 2004 would not provide adequate funding for the Title V program. No changes to the rule were made in response to this comment.

TAB commented that the emissions fee rulemaking should be delayed to gather and provide more information.

RESPONSE

The commission disagrees that the rulemaking should be delayed to gather and provide more information. Because the revenue estimates for Fund 151 reveal that there are insufficient funds to support the FY 2003 appropriated levels at current fee rates, the fee increase cannot be delayed. The commission provided stakeholders as well as the public a variety of information regarding program costs and funding via stakeholder meetings, the web page, and upon request. Agency staff members have been directed to conduct a comprehensive study of the fee structure and will report back to the commission in January 2003.

ACT commented that the EPA presumptive minimum does not guarantee that the Title V program is adequately funded which should be the underlying goal. ACT commented that EPA has identified various deficiencies in the TNRCC Title V program that must be fixed and ACT stated that the current emissions fee proposal is not sufficient for the staff to meet that requirement. EPA found that, regardless of whether the proposed emissions rate is equivalent to the presumptive minimum, it is sufficient to meet the commitment made in the 2001 Texas fee demonstration.

RESPONSE

The commission agrees that the EPA presumptive minimum does not guarantee that the Title V program will be adequately funded, however, at the present time the amount collected under the presumptive minimum provides a sufficient amount of funding needed, based upon the commission's estimates, for Title V direct and indirect costs through 2005. The commission considered all of the costs of the program, including those associated with maintaining federal approval of the program. The commission appreciates the EPA's comment that the emissions fee increase is consistent with the most recent fee demonstration. No changes to the rule were made in response to this comment.

TxOGA contended that the proposed fee increases are "steep."

RESPONSE

The commission disagrees that the fee increases are "steep." The commission has operated its air programs without increasing most of the fees since the early 1990's. The fee increases are not large when due consideration is given to the length of time in which fees were not increased.

ACT commented that it supports the proposed increase in the per-ton fee for air emissions, but stated that the emissions fee should be a flat $32/ton and could be adjusted for inflation beginning in FY 2004. ACT commented that the commission has proposed to keep the current $26 level and adjust it for inflation and stated the resulting fee of $29.11 for FY 2003 is too low.

RESPONSE

The commission disagrees that the adopted emissions fee rate is too low. The commission's proposal relies on an EPA formula to calculate an emissions fee rate that is intended to provide sufficient funding for the Title V program. In a letter dated August 12, 2002, the EPA commented that it "supports the State's efforts to increase rates annually by a percentage equal to the CPI" and that the emissions fee rates will provide "adequate funds to support its specified programs."

The commission disagrees with the characterization that the new rate is based on the existing rate of $26. In fact, the proposed rate is based only upon the EPA presumptive minimum as adjusted for Texas, and has no connection to the current $26 fee. No changes to the rule were made in response to this comment.

ACT suggested that $32/ton emissions fee would likely generate a small positive balance which could remain in the account for the future as emissions continue to drop and for tight budget situations.

RESPONSE

The commission strives to balance its need for adequate program funding with the costs its fees represent for the regulated community. The increases are estimated to provide sufficient revenue to fund Title V activities though the FY 2004 - 2005 biennium at current appropriated levels. No benefit would accrue to the commission or the regulated community by generating a larger fund balance than is needed to properly administer the Title V program. No changes to the rule were made in response to this comment.

CPSSA, AE, and LP&L requested a distinct breakdown of each program's projected cost increase in order to justify the proposed increase in emissions fees. TAB commented that it has made multiple requests for information regarding funding and fee issues and that without such information it cannot provide meaningful comments on the rulemaking. TAB commented that it has not seen documentation that supports the TNRCC's position that there will be a shortfall in Fund 151 or the Title V program, especially not an immediate shortfall.

RESPONSE

The agency staff responded to stakeholder requests for information by providing the documentation requested, including program costs, revenues, and fund balances. Agency staff members have been directed to conduct a comprehensive study of the fee structure and will report back to the commission in January 2003.

TxOGA commented that by raising emissions fees, the TNRCC is penalizing companies' environmental successes for reducing emissions. CPSSA, AE, and LP&L commented that the commission should consider implementing a strategy to develop some means other than emissions-based fees to maintain their budget to avoid discouraging emission reductions.

RESPONSE

The commission acknowledges that decreasing emissions will pose a greater challenge in funding the Title V program as time passes. However, as noted by these commenters in their comment letters, the commission is currently bound by statutory provisions to support the Title V program with emission-based fees and has no legal authority to implement a strategy to develop another means of funding the program. The increase in the emissions fee is intended to generate sufficient revenue to support the Title V program, not to penalize companies that reduce emissions levels.

ACT commented that achieving better funding and equity for the Title V program will require a legislative change in the fee structure which raises or eliminates the 4,000 ton-per-pollutant emissions fee cap as well as the $75,000 permit and permit amendment fee caps.

RESPONSE

The commission is currently bound by the statutory fee caps, however, if the legislature acts to change those caps, the commission would likely review the fee rules to determine whether changes are appropriate.

CPSSA, AE, and LP&L commented that the commission should consider allowing companies to distribute the additional emissions fees locally in the county where the permitted facility resides, citing examples of paying for monitoring stations, lawn mowing programs, energy conservation, and public education campaigns. If necessary, CPSSA, AE, and LP&L requested that the commission consider asking the legislature next year to allow companies to provide some of the extra fee money back to the local area to pay for local air quality management programs, pollution buy-back programs, and ambient monitoring stations.

RESPONSE

The commission generally supports programs which ensure that a local area benefits from funding paid by local companies. However, in this case, local programs such as those listed by the commenters would not further the implementation of the Title V program and therefore would not reduce the amount of funding needed to support that program. As such, additional emissions fees would have to be collected to maintain federal approval of the Title V program. The commission opposes this option to the extent it would increase emissions fees more than necessary. As noted by the commenter, a legislative change would be necessary to allow emissions fees to be used for non-Title V activities. No changes to the rule were made in response to this comment.

TCC suggested that language relating to an owner/operators's responsibility to notify the commission of fee applicability be removed and that this issue be handled instead through guidance.

RESPONSE

This requirement is necessary to provide the commission notification if the emissions/inspection fee package is not received by an affected company. Having this requirement in a rule instead of a guidance document will allow the commission to initiate enforcement action against entities that do not comply. The requirement also gives the commission the ability to identify new accounts, verify the successful mailing of the fee packages to existing customers, and recognize which companies are delinquent in returning the completed forms. To insure the correct contact and fee basis information prior to invoicing, this clause must be added. No changes to the rule were made in response to this comment.

Small and Medium-Sized Businesses

ACT stated that all of the proposed fees should be recalculated so that every entity in the regulated community pays its fair share and the current proposal puts too much of the financial burden on the small and medium-sized companies while both larger companies and grandfathered facilities have relatively low fees. HII and two individuals commented that they are opposed to any increases in air-related fees. HII stated the current fees are already excessive and burdensome for small businesses.

RESPONSE

The commission does not agree that the fees put too much of the financial burden on small and medium-sized businesses. Total fee amounts are generally reflective of emissions levels and project capital costs, and therefore larger businesses tend to be assessed larger fees overall. The commission regards the fee amounts as reasonable. No changes were made to the rule in response to this comment.

SCI commented that, as of April 2002, there had not been any meaningful participation from small businesses in the decision-making process.

RESPONSE

The commission disagrees with this comment. The commission developed a balanced stakeholder list that included representatives from small businesses prior to initiating this rule project. All stakeholders were notified in March of 2002 of an April 2002 meeting. The commission solicited input from all stakeholders, including small business stakeholders, at this meeting. The commission notes that the stakeholder meeting was the first of several opportunities to participate in this rulemaking process.

SCI questioned how the proposed fee increases would improve the environment as they threaten the viability of small businesses.

RESPONSE

The environment will benefit significantly from an adequately funded air quality program. The commission disagrees that the fees will threaten the viability of small businesses. The commission operated its air programs without increasing most of the fees since the early 1990's. The fee increases are not large when due consideration is given to the length of time in which fees were not increased. Most small businesses will not be subject to the emissions fees due to their lower emissions, and therefore, may only be subject to the inspection fees in Chapter 101. The commission regards the fee amounts as reasonable for small businesses.

Disincentive

GII, HTF, and SCI commented that the proposed fees will create a disincentive for businesses to comply with the commission's rules and to turn to the TNRCC for answers. TSC commented that an increase could be counterproductive and requested that the commission refrain from raising the fees for air permits.

RESPONSE

The commission disagrees with GII's, HTF's, and SCI's comments that the fees will create a disincentive for businesses to comply with the commission's regulations. Regulated entities must be responsible for their own decisions to either comply with or disregard the law based upon a fee associated with compliance. The commission cannot control businesses' decisions to comply or not comply with regulations, but only can enforce regulations and provide disincentives for noncompliance through the assessment of penalties. The commission will not refrain from assessing a fee solely because some regulated entities may disregard their obligation to comply with the law. The commission will continue to offer answers to any business that requests our assistance. No changes were made to the rule in response to these comments.

GII, HTF, and SCI commented that fee increases would create an incentive to relocate outside Texas and would increase pollution elsewhere.

RESPONSE

The commission disagrees with GII's, HTF's, and SCI's comments that the fees will create an incentive for businesses to relocate. The commission cannot control businesses' decisions to relocate outside of Texas. Further, increased pollution in areas outside the State of Texas is not in the scope of this rulemaking. No changes were made to the rule in response to this comment.

Streamlining

SCI commented that the TNRCC needs to streamline its permit and registration review process to reduce the fees. TxOGA stated that streamlining and reducing program costs should be done before increasing fees. TPF suggested that the commission should cut costs.

RESPONSE

The commission is always seeking methods to streamline the permitting process and reduce operating costs. However, the revenue estimates for Fund 151 reveal that there are insufficient funds to support the FY 2003 appropriated levels at current fee rates. Consequently, fee increases are necessary to provide sufficient funding for the commission's air programs.

Billing Process/Timing

TCC commented that it wanted to insure that fees paid to the commission's budget actually pay for the targeted programs.

RESPONSE

The commission uses dedicated fees to fund the intended programs in compliance with statutory requirements. No changes to the rule were made in response to this comment.

TCC proposed that the commission add any fees for PBRs to the annual fee statement and allow an entity to write one check versus multiple checks during the year. TCC recommended that the commission bill on an annual basis for all fees incurred during the previous year for permits, renewals, and amendments as well as emissions and inspection fees.

RESPONSE

The commission currently does not process air permits, amendments, or renewals until payment is received and adopts a similar process for PBRs. Because a change in this process would require substantial operational changes and involves many issues for which comments were not solicited, the commission determined that this issue could not be adequately and appropriately addressed in this rulemaking. However, agency staff members will continue to discuss this issue to determine if such a change would be appropriate in a future rulemaking. No changes to the rule were made in response to this comment.

TCC appreciated the added alternative method of payment, but strongly encouraged the commission to add the ability to process credit cards.

RESPONSE

The commission entered into a pilot program with Texas Online to accept credit card payments for two (non-air) fees, but the pilot program was terminated due to operational issues. Consequently, acceptance of credit cards may become an option in future years, but it is not something that can be made operational quickly. The commission notes that it can accept payment electronically by wire or automated clearing house, and suggests that payees contact the commission for instructions. No changes to the rule were made in response to this comment.

TCC proposed that the commission codify fixed emissions and inspection rates for the next four years based on the CPI and then hold fees constant until a future budget evaluation suggests that additional income is truly necessary.

RESPONSE

The commission will monitor projected revenue and expenditures to ensure that fee rates generate a sufficient and appropriate amount of revenue. If the new fee structure begins to collect more fees than are necessary, the commission can end the automatic CPI increase through rulemaking. The commission also notes that annually increasing the emissions fee by the CPI is a methodology used by many other states and one supported by the EPA. In a letter dated August 12, 2002, the EPA commented that it "supports the State's efforts to increase rates annually by a percentage equal to the CPI" and that the emissions fee rates will provide "adequate funds to support its specified programs." No changes to the rule were made in response to this comment.

XCEL requested the commission provide information regarding the per-ton rate at least six months prior to the due date of the fee in order for fee payers to anticipate and prepare for these budgetary outlays. TXU commented that the CPI for a particular year will not be known until after the budgeting process has occurred, and therefore requested that the CPI not be used to calculate fees until the next FY.

RESPONSE

The commission notes that this request is not possible to fulfill. The commission is required by THSC, §382.0621(c), to use the average of the monthly CPI figures for the 12 months prior to the start of each FY. Consequently, the commission cannot know the final rate for a given FY until September 15th of the FY, at the earliest. The commission suggests that regulated entities consult the information available from the Bureau of Labor Statistics web site when preparing budgets.

XCEL commented that the timing of due dates for the inspection and emissions fees (30 days after filling date) is unrealistic due to the unpredictability of the due date, the final per-ton fee, total fee, and the corporate mail system. XCEL urged the commission to retain a predictable due date of November 1 of the FY in which the fees are due. AEP and TXU requested that the commission retain the annual due date of November 1, as it currently exists in the rules, because a 30-day billing period is too short. TCC requested that the 30-day billing cycle be increased to 45 days.

RESPONSE

The commission cannot extend the billing period beyond 30 days. 30 TAC Chapter 12 requires all payments to be made within 30 days. The 30-day billing period is the result of moving from a self-report/self-pay system to a self-report/billed system for the annual air fees as recommended by the Sunset Advisory Commission in its last review of the agency fee systems. The billing for FY 2003 is expected to occur no earlier than November 1 due to the time line of the current rulemaking. This would result in the annual air fees being due by the end of November. In subsequent years, the 30-day billing period should start around the first of October. This would result in the annual air fees being due toward the end of October or generally in the same time frame as it is currently. No changes to the rule were made in response to this comment.

Inspection Fees

ACT generally supported the proposed inspection fee.

RESPONSE

The commission appreciates ACT's support.

CPI and Presumptive Minimum - Emissions Fees

During the stakeholder process, CPSSA, AE, and LP&L commented that the fees should be gradually increased over several years. Subsequently, CPSSA noted the incorporation of stakeholder comments of this suggestion.

RESPONSE

The commission considered the comments raised during the stakeholder process about the emissions fee increase. The commission subsequently proposed a fee that provides for the gradual increase of emissions and inspection fees based upon the CPI.

The EPA stated it supports the State's efforts to increase rates annually by a percentage equal to the CPI.

RESPONSE

The commission appreciates the EPA's support.

The EPA stated that it presumes that Texas uses 1995 as the base year for the CPI factor in calculating the emissions fees, and therefore it is not equivalent to the EPA presumptive minimum which is based on the year 1989.

RESPONSE

The EPA was contacted to clarify that the value of 122.15 is the calculated average monthly CPI for the 12 months preceding September 1989 (FY 1989) which is the basis for the CPI adjustment of the Texas emissions fee. The calculation of the EPA presumptive minimum as of September 2001 using this basis is $35.99 as opposed to the EPA's published number of $36.03. Agency staff members spoke with the EPA staff members who indicated that the annual change in their presumptive minimum is calculated by using the percentage change in the CPI for that year. This differs slightly from the commission's calculation only because of the round off from year to year, and it is not substantively different from calculating directly back to September 1989. The EPA indicated that the method used by Texas is an acceptable method for calculating the presumptive minimum. Their acceptance also included reducing the presumptive minimum for Texas to account for the commission collecting fees on carbon monoxide which is not a part of the EPA presumption. The formula for calculating the Texas presumptive minimum includes a reduction factor based on the percent of carbon monoxide emissions reported in the previous year's total fee basis. The presumptive minimum for Texas is $28.63 for FY 2003. No changes were made to the rule in response to this comment.

TxOGA commented that automatically increasing the fee each year without evidence that an increase is needed is neither necessary or good public policy.

RESPONSE

Annually increasing the emissions fee by the CPI is a methodology used by many other states and one supported by the EPA. In a letter dated August 12, 2002, the EPA commented that it "supports the State's efforts to increase rates annually by a percentage equal to the CPI" and that the emissions fee rates will provide "adequate funds to support its specified programs." Moreover, fee increases are necessary because the commission estimates that insufficient funding will exist to support its air program activities, including Title V, unless current fee rates are increased. Based upon revenue and cost projections, the presumptive minimum will provide the appropriate level of funding through FY 05. However, if the new fee structure begins to collect more fees than are necessary, the commission can end the automatic CPI increase through rulemaking. No changes to the rule were made in response to this comment.

CPSSA stated that it disagrees with using the CPI because it is not reflective of actual financial needs of the commission. CPSSA stated that TNRCC has stated that it needs $35 million for the Title V program in 2002 and that can be collected at $26/ton, therefore a CPI increase is not needed.

RESPONSE

Due to decreasing emissions levels, in future years the current fee of $26/ton will not generate the same amount of revenue as in the past or in an amount sufficient to fund the Title V program. Absent the increase, emissions fee revenue is projected to total $34.2 million in FY 03 and to decline in each subsequent FY. Annually increasing the emissions fee by the CPI is a methodology used by many other states and one supported by the EPA. In a letter dated August 12, 2002, the EPA commented that it "supports the State's efforts to increase rates annually by a percentage equal to the CPI" and that the emissions fee rates will provide "adequate funds to support its specified programs." No changes to the rule were made in response to this comment.

CPSSA expressed concern that an annual increase in the fee could created excess funds that could be used for non-Title V purposes.

RESPONSE

The commission does not project that increasing emissions fees using the CPI will result in substantial excess funds. A small fund balance is necessary to ensure that sufficient funds are collected to fund the Title V program and to meet recurring monthly expenses of the program, such as payroll. However, if the new fee structure begins to collect more fees than are necessary, the commission can end the automatic CPI increase through rulemaking. The commission uses dedicated fees to fund the intended programs in compliance with statutory requirements.

Title V Costs and the Commission's Accounting Process/System

CPSSA commented that the Title V program is already well established so the budget should be stable.

RESPONSE

The commission's Title V budget is relatively stable; it is neither increasing nor decreasing dramatically. Due to decreasing emissions levels, however, fee increases are needed to generate equivalent levels of revenue as collected in prior years.

TAB noted that 75% of the Title V permits have already been issued, and therefore program costs should decline.

RESPONSE

Initial issuance of Title V permits is only one component of the state's Title V program. Administration of a Title V program also involves monitoring, inspections, and other activities. In addition, Title V permits are renewed every five years and will likely require permit revisions over the life of the permit. Therefore, the commission determined that Title V costs will not necessarily decline once all Title V permits have been issued.

AEP and TXU noted that a report by the United States Office of the Inspector General entitled "EPA and State Progress in Issuing Title V Permits" dated March 29, 2002 indicates that Florida has a comparable number of Title V sources to Texas but that Texas spent 4-1/2 times as much on its Title V program in 2000. This report also indicated that Texas expenditures were 119% to 6% more than all other states in the report which indicated to AEP and TXU that Texas is using emissions fees for non-Title V activities. TAB commented that TNRCC is currently spending $35 million annually, more than any other state recently surveyed by the EPA.

RESPONSE

The commission notes that the states recently surveyed in the EPA Inspector General report only total six: Colorado, Florida, Massachusetts, Missouri, Pennsylvania, and Wisconsin. Texas has a larger Title V program than the six states surveyed, in part, because Texas has substantially more numerous and complex Title V sites than the other states. Further, Florida's Title V program differs substantially from the Texas program. For example, Florida does not have any nonattainment areas, which means a less complicated regulatory system, as well as the absence of any SIP activities. Therefore, comparing the number of Florida's sources is not an appropriate comparison. Agency staff members conducted a review of 38 states and found that emissions fee rates ranged from $6.10/ton to $81.20/ton, with most comparable states averaging approximately $31/ton. The commission determined that the adopted emissions fee rate is appropriate.

CPSSA commented that it opposed the emissions fee increase. CPSSA stated that the Title V program is adequately funded. TxOGA opposed increasing the Title V emissions fees at this time because it stated that the Title V program has not been shown to have an inadequate funding base. TxOGA commented that the emissions fees should be raised only if the Title V program lacks funding. AEP and TXU commented that the commission should not adopt the proposed Title V emissions fees rate increase because the commission has not demonstrated that an increase is justified. AEP and TXU commented that the emissions fees should be raised only if the TNRCC is using the revenues only to cover reasonably the costs of the Title V program and if there are not enough revenues to cover such costs without the increase.

RESPONSE

Fee increases are necessary because the commission estimates that insufficient funding will be generated in future years to support its Title V program unless emissions fee rates are increased. The commission currently estimates that the Title V program will cost approximately $35.3 million annually for FY 03 through FY 05. Due to decreasing emissions levels, in future years the current fee of $26/ton will not generate the same amount of revenue as in the past or in an amount sufficient to fund the Title V program. Absent the increase, emissions fee revenue is projected to total $34.2 million in FY 03 and to decline in each subsequent FY. The adopted emissions fee rate is projected to generate $37.7 million in revenue in FY 03, $36.6 million in FY 04, and $35.8 million in FY 05. This level of funding is necessary to ensure that sufficient funds are collected to fund the Title V program and to meet recurring monthly expenses of the program, such as payroll. Moreover, failure to collect sufficient revenue to support the Title V program could result in the EPA withdrawing its delegation of the program to the state. No changes to the rule were made in response to this comment.

TAB stated that if the amount of Title V emissions fee funding for administrative services were more in line with funding from other sources that there would be more funding available for strictly Title V expenses and, hence, no need for an increase in the emissions fee. TAB has not seen any support for the administrative expenditure of 29.62% for the Title V program found in the independent audit report and noted that the independent auditor suggested a 15% benchmark for commission administrative services. AEP and TXU comment that the independent auditor found that a disproportionate share of Title V emissions fees were used to fund TNRCC administrative costs and that using an appropriate portion would free up $4.9 million of the Title V emissions fee revenue, enough to cover any projected shortfall.

RESPONSE

The commission disagrees with the independent auditor's finding that the Fund 151 indirect administrative costs totaled 28% (the commission notes that the independent auditor found the Fund 151 indirect cost to be 28%, not 29.62% as suggested by the commenter). The commission estimates its indirect cost rate for Fund 151 to be 24.5%. Agency staff members have been directed to conduct a comprehensive study of the fee structure and will report back to the commission in January, 2003.

AEP and TXU requested that the commission establish and consistently follow an accounting system that is adequate to appropriately account for how it spends Title V emissions fee revenues on direct and indirect costs and that without such a system the TNRCC cannot demonstrate compliance with TCAA, §382.0622(c) and FCAA, §502(b)(3)(C)(iii). AEP and TXU commented that TNRCC does not use a financial system that is adequate to ensure fiscal integrity because it commingles the emissions fees with other fee revenues in Fund 151. CPSSA, AE, and LP&L commented that TNRCC provided a document at the stakeholder meeting that described many types of non-Title V activities funded from Fund 151 which is funded in part by emissions fees. AEP and TXU expressed concern that without an adequate accounting system, Fund 151 could become a slush fund used to fund various non-Title V TNRCC activities. AEP and TXU commented that they believe an appropriate accounting system would demonstrate that TNRCC currently spends Title V emissions fees on non-Title V activities. TAB stated that the commission lacks adequate documentation for its Title V program expenditures citing the state auditor and the independent audit report. TAB strongly encouraged the commission to significantly improve documentation in the Title V program. TCC stated that it wants to insure that fees paid to the commission's budget actually pay for the targeted programs.

RESPONSE

The commission tracks its Title V program expenditures to the full capability of its existing accounting system and resources. Accounting for program activity with even greater accuracy would require substantial monetary investment for upgrades to or replacement of the existing accounting system and additional resources, which would necessitate further fee increases. The commission uses dedicated fees to fund the intended programs in compliance with statutory requirements.

Title V Legal Limitations

CPSSA, AE, and LP&L commented that the commission is restricted by law as to how much it can charge for emissions fees because it can only be the amount that is necessary for the Title V program, citing the FCAA, §502(b)(3)(C)(i). TxOGA stated that both the state and federal statutes clearly state that the emissions fee is to be used solely for Title IV and V program, and therefore, collecting more than is needed for these program would effectively create an illegal tax. AEP and TXU contended that there is effectively a statutory limit on the amount of Title V emissions fees the TNRCC may collect, citing TCAA, §382.0622(c); FCAA, §502(b)(3)(C)(iii); and 40 Code of Federal Regulations (CFR) §70.9(a) and (d). AEP and TXU argued that since TCAA, §382.0622(c) specifically prohibits any excess Title V emissions fees from being used to cover any other TNRCC costs, there is no need to collect more Title V emissions fees than it needs to cover the costs of the Title V program. AEP and TXU argued that collecting more than is needed for the programs would effectively create an illegal tax. AEP and TXU commented that given these legal limits, the emissions fees are not to be used for any other air quality or other media program and should not be viewed as penalty on sites with the highest emissions. ACT fully supported the regulated community's attempt to ensure that emissions fees are used only to cover costs of the Title V program and not for other air program or non-commission related programs. ACT noted that EPA Title V guidance does not limit a state's discretion to collect fees beyond the amount required for Title V.

RESPONSE

The commission disagrees with several of the legal conclusions contained in these comments. The federal law cited by CPSSA, AE, LP&L, AEP, and TXU, and alluded to by TxOGA does not apply to the use of *all* emissions fees collected by a state but rather it applies to all emissions fees collected which are "required to develop and administer the permit program requirements" of the Titles IV and V programs, specifically including the Small Business Stationary Source Technical and Environmental Compliance Assistance Program (FCAA, §502(b)(3)). The commission agrees with ACT that federal law does not limit the state's discretion to collect fees beyond those required by Title V as long as the Title V program is sufficiently funded and notes that the EPA clarified this point in the preamble to the adoption of the Federal Operating Permit Program rules (57 FR 32250, 32291 (July 21, 1992)). To the extent that the fees collected are over and above the funding required to support the Title V program, there are no federal restrictions on those additional fees. However, this rulemaking is not intended to collect emissions fees in excess of those required to operate the Title V program. It is intended to cover reasonably necessary, direct and indirect costs associated with the Title V program. The basis for the fee is, of necessity, based on estimated expenses and emission activity. The goal, however, is to ensure that sufficient funds are collected to fund the Title V program and to meet recurring monthly expenses of the program, such as payroll.

The commission also disagrees with the comment that federal law legally restricts the use of state money. While federal law does detail whether a state is meeting the requirements to maintain federal approval of the Title V program, that federal law does not apply directly to bind state moneys. In other words, the EPA cannot legally require that fees collected be used a certain way, but it can take action to withdraw its approval of the Title V program if the state is not meeting the federal program requirements, including funding requirements.

Regarding state authority, it is important to note that this rulemaking does not address the use of the fees collected; that is governed by other law. While the commission does not agree with the interpretation of state law put forth by TXU and AEP, the commission does agree that the use of emissions fees is limited by state statute in TCAA, §382.0622(c), as it is read in conjunction with general funding provisions in TWC, Chapter 5, and in the General Appropriations Act. In particular, the General Appropriations Act provides a ceiling on the amount of emissions fees which may be spent by the commission during each FY and may also contain additional provisions regarding the use of the fees.

The commission disagrees with the comments that the commission is legally restricted by state law from collecting more fees than are necessary to fund the Title V program. The controlling state law regarding the collection of fees is TCAA, §382.0621, which states that the emissions fee "shall be *at least* sufficient to cover all reasonably necessary direct and indirect costs of developing and administering" those programs (emphasis added). While the use is restricted as noted earlier in this response, the collection of the fees is legally restricted only by setting a minimum, not a maximum. The commission disagrees with the comments that the use restrictions create an effective limitation on the authority to collect or that any excess fees collected would be a "tax." Excess fees would not be a tax because they would eventually be used for environmental programs which are reasonably related to the activity which is the basis of the fee. The commission notes, however, that it does not intend by this adoption to collect more than is anticipated to be required for the direct and indirect costs of the Titles V program.

AEP and TXU disagreed with TNRCC staff statements indicating that minor new source review (NSR) permitting can be funded by Title V emissions fees because minor NSR is an applicable requirement of the Title V program, citing TCAA, §382.0621(b) and §382.0622(c). AEP and TXU contended that only the incremental costs associated with incorporating NSR into the Title V program can be funded by emissions fees, not the substantive review and processing of the NSR permit applications.

RESPONSE

Minor NSR permitting is an applicable requirement of the Title V program. The EPA made clear through rulemaking, 40 CFR §70.9(b)(ii) that Title V fees must be sufficient to cover the costs of "the development of an applicable requirement as part of the processing of a permit, or permit revision or renewal." The EPA clarified further in a memo dated August 4, 1993 regarding "Reissuance of Guidance on Agency Review of State Fee Schedules for Operating Permits Programs Under Title V," that "Title V fees must cover the costs of implementing and enforcing not only Title V permits but of any other permits required under the Act, regardless of when issued." Therefore, the implementation of the Texas minor NSR program is required to be funded through emissions fees.

Miscellaneous

The EPA commented that the TNRCC should clarify in its final rulemaking whether it intends to include §101.24 and §116.1050 in its SIP submittal as those sections have not previously been submitted to the EPA.

RESPONSE

The commission appreciates the EPA's comment and wishes to maintain consistency with prior SIP submittals. The commission did submit §101.24 to the EPA in the fall of 1985, with a most recent revision in November of 1997. Therefore the commission does intend to submit §101.24 of this package as a SIP revision. However, the EPA is correct that §116.1050 has not previously been submitted, so the commission is not now submitting that portion of the rulemaking as a SIP submittal.

The EPA commented that §101.27(a) provides that for 40 CFR Part 70 sources, the fugitive emissions shall be considered toward applicability only for those source categories listed in 40 CFR §51.166(b)(1)(iii) which is part of the definition for major source for purposes of prevention of significant deterioration and the EPA suggested changing the reference from 40 CFR §51.166(b)(1)(iii) to 40 CFR §70.2 or 30 TAC §122.10(14)(C).

RESPONSE

The commission reviewed all three of the references and does not find there to be a significant difference between them. Given this finding, the commission does not find a need to make the change suggested in this comment. However, the commission will continue to discuss this issue with the EPA and could consider proposing this change in a future rulemaking.

The EPA commented that §101.27(a) does not appear to include all the sources covered by 30 TAC §122.10(14) and that TNRCC should, if the difference is not intentional, revise §101.27(a)(1) to simply refer to "major sources" as the term is defined in 30 TAC §122.10(14).

RESPONSE

The change suggested in this comment would not likely impact the amount of fees collected under this rule by a significant amount, however, it could expand the applicability of §101.27(a) to cover new sources, and as such, the change would have to be proposed in a rulemaking to allow comment by all affected parties. Since this change was not included in the proposal for this rulemaking, it cannot now be adopted. The commission may consider proposing this change in a future rulemaking.

STATUTORY AUTHORITY

The amendments are adopted under TWC, §5.103, which authorizes the commission to adopt rules necessary to carry out its powers and duties under the TWC; and under THSC, 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; §382.062, concerning Application, Permit, and Inspection Fees, which requires the commission to collect fees for inspections, applications for permit, permit amendment, and renewal, and authorizes the commission to collect fees for permits by rule; §382.0621, concerning Operating Permit Fee, which requires the commission to collect fees for sources subject to Titles IV or V of the FCAA; §382.0622, concerning Clean Air Act Fees, which restricts the use of Clean Air Act fees; and the entire TCAA (§§382.001 *et seq.*), which provides authority for all of the air quality programs which the fees are necessary to support.

§101.24. Inspection Fees.

(a) Applicability. The owner or operator of each account to which this rule applies shall remit to the commission an inspection fee each fiscal year. A fiscal year is defined as the period from September 1 through August 31. A fiscal year, having the same number as the next calendar year, begins on the September 1 prior to that calendar year. An account subject to both an inspection fee and emissions fee, under §101.27 of this title (relating to Emissions Fees), is required to pay only the greater of the two fees. Each account will be assessed a separate inspection fee. The inspection fee shall apply to each account which contains one or more of the types of plants, facilities, and/or processes described in subsection (f) of this section, including permitted and non-permitted facilities. References for the industrial categories used are provided in the *Standard Industrial Classification (SIC) Manual* (Executive Office of the President, Office of Management and Budget, 1987). If more than one SIC category can apply to an account, the fee assessed shall be the highest fee listed for the applicable classifications in the fee schedule. Provisions of this section apply to all accounts, including accounts which have not been assigned specific commission identification numbers. The owner or operator of an account subject to an inspection fee is responsible for contacting the commission to obtain an identification number. The commission will not initiate the combination or separation of accounts solely for fee assessment purposes. If an account is operated at any time during the fiscal year for which the fee is assessed, a full inspection fee is due. If the commission is notified in writing that the account is not and will not be in operation during that fiscal year, a fee will not be due.

(b) Self report/billed information. Emissions/inspection fee information packets will be mailed to each affected account prior to the fiscal year for which the fee is due. The completed emissions/inspection fee basis form shall be returned to the address specified on the emissions/inspection fees basis form within 60 days of the date the agency sends the emissions/inspection fee information packet. The completed emissions/inspection fee basis form shall include, at least, the company name, mailing address, site name, all Texas Commission on Environmental Quality (TCEQ) identification numbers, the applicable SIC category, any additional information necessary to assess the fee, and the name and telephone number of the person to contact in case questions arise regarding the emissions/inspection fee basis form. If more than one SIC category can apply to an account, the category reported shall be that one with the highest associated fee. Subsequent to a review of the information submitted, a billing statement of the fee assessment will be sent to the account during the fiscal year in which the fee is due.

(c) Requesting fee information packet.

(1) For fiscal year 2003, if an account which is subject to the inspection fee in this section has not received the information packet described in subsection (b) of this section by November 1, 2002, the owner or operator of the account shall notify the commission by December 1, 2002. For accounts which begin operation after November 1, the owner or operator of the account shall request an information packet within 30 days of commencing operation.

(2) For subsequent fiscal years, if an account which is subject to the inspection fee in this section has not received the information packet described in subsection (b) of this section by June 1 prior to the fiscal year in which the fee is due, the owner or operator of the account shall notify the commission by July 1 prior to the fiscal year in which the fee is due. For accounts which begin operation after September 1, the owner or operator of the account shall request an information packet within 30 days of commencing operation.

(d) Payment. Fees must be remitted by check, certified check, electronic funds transfer, or money order made payable to the TCEQ and sent to the TCEQ address printed on the billing statement.

(e) Due date. Payment of the inspection fee is due within 30 days of the date the agency sends a statement of the assessment to the facility owner or operator. If an account commences or resumes operation during the fiscal year in which the fee is assessed, the full inspection fee will be due prior to commencement or resumption of operations.

(f) Inspection fee schedule. The inspection fee schedule is as follows. For fiscal years after 2003, the fiscal year 2003 fee schedule shall apply as adjusted for inflation using the Consumer Price Index (CPI). The CPI adjustment factor shall be the average of the CPI for the 12 months preceding the fiscal year for which the fee is assessed as compared to the same calculation of the CPI for the previous fiscal year (as published by the United States Bureau of Labor Statistics, CPI - All Urban Consumers, Not Seasonally Adjusted, base period 1982 - 84 = 100).
Figure: 30 TAC §101.24(f)

(g) Nonpayment of fees. Each inspection fee payment must be paid at the time and in the manner and amount provided by this subchapter. Failure to remit the full inspection fee by the due date shall result in enforcement action under Texas Water Code, §7.178. The provisions of this section, as first adopted and as amended thereafter, are and shall remain in effect for purposes of any unpaid fee assessments, and the fees assessed in accordance with such provisions as adopted or as amended remain a continuing obligation.

(h) Late payments. The agency shall impose interest and penalties on owners or operators of accounts who fail to make payment of the inspection fees when due in accordance with Chapter 12 of this title (relating to Payment of Fees).

§101.27. Emissions Fees.

(a) Applicability. The owner or operator of each account to which this rule applies shall remit to the commission an emissions fee each fiscal year. A fiscal year is defined as the period from September 1 through August 31. A fiscal year, having the same number as the next calendar year, begins on the September 1 prior to that calendar year. An account subject to both an emissions fee and an inspection fee, under §101.24 of this title (relating to Inspection Fees), is required to pay only the greater of the two fees. Each account will be assessed a separate emissions fee. Provisions of this section apply to all accounts, including accounts which have not been assigned specific commission identification numbers. The owner or operator of an account subject to an emissions fee requirement is responsible for contacting the commission to obtain an identification number. The commission will not initiate the combination or separation of accounts solely for fee assessment purposes. If an account is operated at any time during the fiscal year for which the fee is assessed, a full emissions fee is due. If the commission is notified in writing that the account is not and will not be in operation during that fiscal year, a fee will not be due. All regulated air pollutants, as defined in subsection (f)(3) of this section, including, but not limited to, those emissions from point and fugitive sources during normal operations with the exception of (for applicability purposes only) hydrogen, oxygen, carbon dioxide, water, nitrogen, methane, and ethane, are used to determine applicability of this section. In accordance with rules promulgated by EPA in 40 Code of Federal Regulations (CFR) Part 70, concerning the use of fugitive emissions in major source determinations, fugitive emissions shall be considered toward applicability of this section only for those source categories listed in 40 CFR §51.166(b)(1)(iii). For purposes of this section, an affected account shall have met one or more of the following conditions:

(1) the account emits or has the potential to emit, at maximum operational or design capacity, 100 tons per year (tpy) or more of any single air pollutant;

(2) the account emits or has the potential to emit, at maximum operational or design capacity, 50 tpy or more of volatile organic compounds (VOC) or nitrogen oxides (NO_x) and is located in any serious ozone nonattainment area listed in §101.1 of this title (relating to Definitions);

(3) the account emits or has the potential to emit, at maximum operational or design capacity, 25 tpy or more of VOC or NO_x and is located in any severe ozone nonattainment area listed in §101.1 of this title;

(4) the account emits ten tpy or more of a single hazardous air pollutant, as defined in FCAA, §112;

(5) the account emits an aggregate of 25 tpy or more of hazardous air pollutants, as defined in FCAA, §112;

(6) the account is subject to the National Emission Standards for Hazardous Air Pollutants (40 CFR Part 61) that apply to nontransitory sources;

(7) the account is subject to the control requirements or emissions limitations for New Source Performance Standards (40 CFR Part 60);

(8) the account is subject to the Prevention of Significant Deterioration (40 CFR Part 52) requirements; or

(9) the account is subject to the Acid Deposition provisions in the FCAA Amendments of 1990, Title IV.

(b) Self reported/billed information. Emissions/inspection fees information packets will be mailed to each affected account owner or operator prior to the fiscal year for which the fee is due. The completed emissions/inspection fees basis form shall be returned to the address specified on the emissions/inspection fees basis form within 60 days of the date the agency sends the emissions fees information packet. The completed emissions/inspection fees basis form shall include, at least, the company name, mailing address, site name, all Texas Commission on Environmental Quality (TCEQ) identification numbers, applicable Standard Industrial Classification (SIC) category, the emissions of all regulated air pollutants at the account for the reporting period, and the name and telephone number of the person to contact in case questions arise regarding the fee payment. If more than one SIC category can apply to an account, the category reported shall be that one with the highest associated fee as listed in §101.24 of this title. Subsequent to a review of the information submitted, a billing statement of the fee assessment will be sent to the account owner or operator.

(c) Requesting fee information packet.

(1) For fiscal year 2003, if an account which is subject to the emissions fee in this section has not received the information packet described in subsection (b) of this section by November 1, 2002, the owner or operator of the account shall notify the commission by December 1, 2002. For accounts which begin operation after November 1, the owner or operator of the account shall request an information packet within 30 days of commencing operation.

(2) For subsequent fiscal years, if an account which is subject to the emissions fee in this section has not received the information packet described in subsection (b) of this section by June 1 prior to the fiscal year in which the fee is due, the owner or operator of the account shall notify the commission by July 1 prior to the fiscal year in which the fee is due. For accounts which begin operation after September 1,

the owner or operator of the account shall request an information packet within 30 days of commencing operation.

(d) Payment. Fees must be remitted by check, certified check, electronic funds transfer, or money order made payable to the TCEQ and sent to the TCEQ address printed on the billing statement.

(e) Due date. Payment of the emissions fee is due within 30 days of the date the agency sends a statement of the assessment to the facility owner or operator. If an account commences or resumes operation during the fiscal year in which the fee is assessed, the full emissions fee will be due prior to commencement or resumption of operations.

(f) Basis for fees.

(1) The fee shall be based on allowable levels and/or actual emissions at the account during the last full calendar year preceding the beginning of the fiscal year for which the fee is assessed. For purposes of this section, the term "allowable levels" are those limits as specified in an enforceable document such as a permit or Commission Order which are in effect on the date the fee is due. Under no circumstances shall the fee basis be less than the actual emissions at the account. The fee applies to the regulated pollutant emissions at the account, including those emissions from point and fugitive sources. The fee basis shall include emissions during all operational conditions. The basis for calculating fees for emissions from upset events and scheduled or unscheduled maintenance, startup, or shutdown activities shall include all such events and all quantities of emissions, whether reportable or recordable under rule in Chapter 101, Subchapter F of this title. Although certain fugitive emissions are excluded for applicability determination purposes under subsection (a) of this section, all fugitive emissions must be considered for fee calculations after applicability of the fee has been established. A maximum of 4,000 tons of each regulated pollutant will be used for fee calculations. The fee for each fiscal year is set at the following rates.
Figure: 30 TAC §101.27(f)(1)

(2) The emissions tonnage for the account for fee calculation purposes will be the sum of those allowable levels and/or actual emissions for individual emission points or process units at the account rounded up to the nearest whole number, as follows.

(A) Where there is an enforceable document, such as a permit or Commission Order, establishing allowable levels, actual emissions may be used only if a completed Emissions Inventory Questionnaire for the account is submitted with the fee payment. For stacks or vents, the inventory must include verifiable data based on continuous emission monitor measurements, other continuously monitored values, such as fuel usage and fuel analysis, or stack testing performed during normal operations using EPA-approved methods and quality-assured by the executive director. All measurements, monitored values, or testing must have been performed during the basis year as defined in paragraph (1) of this subsection or if not performed during the basis year, must be representative of the basis year as defined in paragraph (1) of this subsection. Actual emission rates may be based upon calculations for fugitive sources, flares, and storage tanks. Actual production, throughput, and measurement records must be submitted, along with complete documentation of calculation methods. Thorough justification is required for all assumptions made and factors used in such calculations. If the actual emission rate submitted for fee purposes is less than 60% of the allowable emission rate, an explanation of the discrepancy must be submitted. Where inadequate or incomplete documentation is submitted, the executive director may direct that the fee be based on allowable levels. Where a complete and verifiable inventory is not submitted, allowable levels shall be used.

(B) Where there is not an enforceable document, such as a permit or a Commission Order, establishing allowable levels actual emissions shall be used. Actual production, throughput, or measurement records must be submitted along with complete documentation of calculation methods. Thorough justification is required for all assumptions made and factors used in such calculations.

(3) For purposes of this section, the term "regulated pollutant" shall include any VOC, any pollutant subject to FCAA, §111, any pollutant listed as a hazardous air pollutant under FCAA, §112, each pollutant for which a national primary ambient air quality standard has been promulgated (including carbon monoxide), and any other air pollutant subject to requirements under commission rules, regulations, permits, orders of the commission, or court orders.

(g) Nonpayment of fees. Each emissions fee payment must be paid at the time and in the manner and amount provided by this subchapter. Failure to remit the full emissions fee by the due date shall result in enforcement action under Texas Water Code, §7.178. The provisions of this section, as first adopted and amended thereafter, are and shall remain in effect for purposes of any unpaid fee assessments, and the fees assessed in accordance with such provisions as adopted or as amended remain a continuing obligation.

(h) Late payments. The agency shall impose interest and penalties on owners or operators of accounts who fail to make payment of emissions fees when due in accordance with Chapter 12 of this title (relating to Payment of Fees).

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on September 30, 2002.

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CHAPTER 106. PERMITS BY RULE
SUBCHAPTER B. REGISTRATION FEES FOR NEW PERMITS BY RULE

30 TAC §106.50

The Texas Commission on Environmental Quality (TCEQ or commission) adopts new §106.50, Registration Fees for Permits by Rule *with change* to the proposed text as published in the July 12, 2002 issue of the *Texas Register* (27 TexReg 6194).

The new section will be submitted to the United States Environmental Protection Agency (EPA) as a revision to the state implementation plan.

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE ADOPTED RULE

The commission reviews and processes approximately 6,000 air permit applications and registrations of various types annually. Of the total amount, approximately 3,700 - 4,000 are permit by rule (PBR) registrations, with the remainder comprised of new, renewal, or amendment applications. Prior to this rulemaking,

the commission had not assessed a fee for review of a PBR registration.

The commission will assess a fee on PBR registrations received on or after November 1, 2002 to recover some of its registration review costs and fund the commission's air programs. Additionally, the commission will increase emissions fees and inspection fees in a concurrent 30 TAC Chapter 101 rulemaking as well as increase air permit, air permit renewal, and air permit amendment fees in a concurrent 30 TAC Chapter 116 rulemaking in this issue of the *Texas Register*.

The Clean Air Fund 151 (Fund 151) is the source of funding for essentially all air program related activities of the commission. This fund supports a wide range of activities including permitting, inspections, enforcement, air quality planning, mobile source program, emissions inventory, and monitoring in addition to agency functions which support these activities. Revenues deposited to the fund are from several different fees collected from point sources and mobile sources as well as the general public. Over the last several years, the fund has carried a balance in the account which has allowed the agency to collect revenues below the annual budgeted expenditures. However, the fund balance is close to being depleted. Additionally, due to decreases in emissions, the revenue from fees which are assessed based upon emission levels has declined by an average of approximately 3% per year in recent years. The revenue estimates for Fund 151 reveal that there are insufficient funds to support the fiscal year (FY) 2003 appropriated level.

As part of its air program activities, the commission implements an approved federal operating permit program (Federal Clean Air Act, Titles IV and V, hereinafter referred to as "Title V"). As part of that approval, the commission was required to demonstrate that the fees collected from Title V sources are sufficient to support the Title V program. Currently under state law, this fee must be dedicated for use only on Title V activities. This fee is commonly referred to as the air emissions fee and is currently set at $26 per ton. However, the fee demonstration submitted to EPA in August 2001 showed that the fee would need to be increased beginning in FY 2003 to provide sufficient support for the Title V program.

Activities which are not considered to be Title V activities must be supported through the remaining fees that are to be used to safeguard the air resources of the state. Essentially, these fees generally include permit, renewal, and amendment fees; inspection fees; and a portion of the motor vehicle safety inspection fee (as set by statute, Texas Health and Safety Code (THSC), §382.0622).

Given the declining availability of funds in Fund 151, the commission reviewed the air fees which it has the authority to change. Most of the air permit, renewal, and amendment fees have not been increased since the early 1990s. The air emissions fee has not been increased since 1995 and the air inspection fee since 1992. The vehicle inspection maintenance fee has been set recently to cover the cost of that program. Several other funding sources are dedicated for specific uses. In an effort to match fee revenue collections more closely with related expenditures, the commission also reviewed potential sources for new fees. After a review of the commission's existing air program related activity fees, the commission will adopt revisions to the emissions fee, inspection fee, permit, renewal, and amendment fees, as well as assess a new fee for review of registrations for PBR.

The commission previously instructed agency staff to initiate a study of the use of Fund 151 fees, including their use for the Title V program. This study is ongoing and is expected to result in a report to the commission in January 2003. In addition, projections involving the revenues and expenditures of Fund 151 have changed since proposal of the air fee increases based upon additional information. The revised projections currently indicate that the proposed fee increases are insufficient to cover projected expenditures through fiscal year 2005. For these reasons, the commission intends to review the air fee increases adopted in this package next year to determine the appropriate levels for each of the air fees.

SECTION DISCUSSION

Subchapter B, Registration Fees for New Permits by Rule

Adopted new §106.50, concerning registration fees for new PBR registrations, will establish a fee for persons claiming PBRs who file PBR registrations with the commission. The fee applies to those PBR registrations that require the submission of a registration form, and to those registrations that are voluntarily submitted for commission review. This PBR fee is for registrations received on or after November 1, 2002. No fee will be assessed on previously submitted PBR registrations. No fee will be assessed on PI-7 registrations submitted solely for the purpose of establishing a federally enforceable emissions limit or remediation projects conducted which are reimbursable by the commission. One fee will be assessed for each registration form submitted, regardless of the number of facilities at an account which are identified on the registration form. The adopted PBR fee is a two-tiered fee; small businesses as well as municipalities, counties, and independent school districts with populations or districts of 10,000 or fewer residents will be assessed $100 and all other entities will be assessed $450. A small business is a legal entity, including a corporation, partnership, or sole proprietorship, that is formed for the purpose of making a profit, is independently owned and operated, and has fewer than 100 employees or less than $1 million in annual gross receipts. The intent of this amendment is to recover some of the registration review costs.

Section 106.50(a)(1)(B) is adopted with change to the proposed text to decrease the fee for municipalities, counties, and independent school districts with populations or districts of 10,000 or fewer residents. In response to comments, the commission determined that smaller governmental entities should be afforded the same fee reduction as small businesses.

Section 106.50(b)(2) is adopted with change to the proposed text to exempt remediation projects conducted which are reimbursable by the commission. Since these projects are funded by the commission, there is no need to collect a fee for the registration review.

Section 106.50(d) is adopted with change to the proposed text to correct a typographical error in the mailing address for payment of fees submitted.

The commission recognizes that many types of businesses which relocate frequently may be subject to a fee with each relocation. The commission requested comments on ways to mitigate the costs to businesses which relocate frequently. No comments were received on ways to mitigate costs to businesses which relocate frequently.

FINAL REGULATORY IMPACT ANALYSIS DETERMINATION

The commission reviewed the rulemaking in light of the regulatory analysis requirements of Texas Government Code,

§2001.0225, and determined that the 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 amendment to Chapter 106 is not, itself, intended to protect the environment or reduce risks to human health from environmental exposure to air pollutants. Therefore, the commission finds that it is not a major "environmental" rule. The PBR fee collected under the adopted revision to Chapter 106 will impose a one-time fee of $450 for most persons claiming a PBR, and a lesser amount for those persons claiming a PBR which are small businesses and smaller governmental entities. The new rule will not impact existing businesses which are currently operating under a PBR or standard exemption. Therefore, the rule should not affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state.

As defined in Texas Government Code, §2001.0225 only applies to a major environmental rule, the result of which is to: exceed a standard set by federal law, unless the rule is specifically required by state law; exceed an express requirement of state law, unless the rule is specifically required by federal law; exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or adopt a rule solely under the general powers of the agency instead of under a specific state law. This rulemaking does not meet any of these four applicability requirements of a "major environmental rule." This rulemaking does not exceed an express requirement of federal or state law. The rulemaking does not exceed a requirement of a delegation agreement. The rulemaking was not developed solely under the general powers of the agency, but was specifically developed and authorized under THSC, Texas Clean Air Act (TCAA), §§382.011, 382.017, 382.062, and 382.0622, and generally under TCAA, §§382.001 *et seq*.

Written comments on the draft regulatory impact analysis determination were solicited. No comments were received on the draft regulatory impact analysis determination.

TAKINGS IMPACT ASSESSMENT

The commission conducted a takings impact evaluation for this rule in accordance with Texas Government Code, §2007.043. The specific purpose of the rulemaking is to create a PBR fee to maintain funding, at appropriated levels, sufficient to support a portion of the overall air quality program.

Promulgation and enforcement of the rule will not burden private, real property because it is a fee rule which supports air quality programs of the commission.

CONSISTENCY WITH THE COASTAL MANAGEMENT PROGRAM

The commission reviewed the rulemaking and found that it is identified in the Coastal Coordination Act Implementation Rules, 31 TAC §505.11(b)(2), relating to Actions and Rules Subject to the Coastal Management Program or will affect an action/authorization identified in §505.11(a)(6), and will, therefore, require that goals and policies of the Texas Coastal Management Program (CMP) be considered during the rulemaking process.

The commission reviewed this rulemaking for consistency with the CMP goals and policies in accordance with the regulations of the Coastal Coordination Council and determined that the new rule is consistent with CMP goals and policies because the rulemaking is a fee rule which is a procedural mechanism for paying for commission programs; will not have direct or significant adverse effect on any coastal natural resource areas; will not have a substantive effect on commission actions subject to the CMP; and promulgation and enforcement of the rule will not violate (exceed) any standards identified in the applicable CMP goals and policies.

Written comments on the consistency of this rulemaking with the CMP were solicited. No comments were received on the consistency of this rulemaking with the CMP.

PUBLIC COMMENT

A public hearing was held on August 12, 2002, in Austin. The comment period closed on August 12, 2002. The commission received comments from Alliance for a Clean Texas (ACT); Associated General Contractors of Texas (AGC); AZZ Incorporated (AZZ); Texas Compliance Advisory Panel (CAP); City of Lubbock (COL); City of Victoria (COV); Dallas Small Business Advisory Committee (DSBAC); Fort Worth Small Business Advisory Committee (FWSBAC); Greater Houston Cleaners & Laundries Association (GHCLA); Golden Triangle Small Business Advisory Committee (GTSBAC); Gull Industries Incorporated (GII); Harwood Industries, Inc. (HII); High Tech Finishing (HTF); Houston Sierra Club (HSC); Printing and Imagining Association Mid-America (PIA); Schumacher Company, Inc. (SCI); Texas Automobile Dealers Association (TADA); Texas Chemical Council (TCC); Texas Cotton Ginners' Association (TCGA); Texas Independent Automobile Dealers Association (TIADA); Texas Municipal League (TML); Texas Oil and Gas Association (TxOGA); Texas Poultry Federation (TPF); Tyler Steel Company (TSC); and two individuals. Oral comments were received from ACT at the hearing. Of the 26 commenters for Chapter 106, two were generally in favor of fee increases while the remainder were generally and/or specifically against fee increases.

RESPONSE TO COMMENTS

Prior to September 1, 2002, the TCEQ was the Texas Natural Resource Conservation Commission (TNRCC). Since the comments were received before September 1, 2002, the agency is sometimes referred to as the TNRCC.

General

ACT commented that it fully supports the need for the commission to have increased revenue in order to pay for the programs funded through the Clean Air Account.

RESPONSE

The commission agrees that it is necessary to increase fees to pay for Clean Air Account programs and appreciates the comment.

TxOGA commented that it commits to its ongoing efforts to ensure that the commission is adequately funded and retains delegation of vital environmental programs.

RESPONSE

The commission appreciates TxOGA's support of the commission's delegation of environmental programs. The commission is also committed to ensure that it is adequately funded and retains all program delegations.

TCC commented that it recognizes that the commission may be facing a shortfall in funding associated with the air permitting and inspection programs.

RESPONSE

The commission appreciates TCC's recognition of the difficult funding issues faced by the commission.

HSC commented that it supports the fee increases for permits by rule.

RESPONSE

The commission appreciates HSC's support.

ACT generally supported basing fees on emissions to reward companies for pollution prevention.

RESPONSE

The commission appreciates the comment. However, the purpose of this rulemaking is to enable the commission to recover a portion of its operating costs, and collect sufficient revenue to support appropriated funding levels, not necessarily to create incentives for pollution prevention.

TIADA suggested designing new incentive programs, such as rebates, to encourage pollution control and compliance rather than more fees.

RESPONSE

As a result of the 77th Legislature, the commission will be promoting compliance in new ways, by granting regulatory incentives for approved Environmental Management Systems (EMSs), and using an entity's compliance history in order to make regulatory decisions about that entity. While financial incentives are difficult to grant, there is an existing program that approves pollution control equipment for property tax exemptions. The commission is seeking to encourage compliance using innovative and positive means. However, these incentive programs neither reduce air program workload nor generate funding for the air programs. Therefore, the commission finds that this new fee is necessary to cover its operating costs.

TIADA commented that it opposes any more fees and stated that its industry is over-regulated, citing examples of auto inspections, lawsuit costs regarding the constitutionality of a particular fee, the motor vehicle finance license, and Internal Revenue Service regulation of accounting methodology.

RESPONSE

The commission acknowledges that many industries are subject to multiple fees and regulations from various governmental agencies. However, the commission cannot control regulations placed on the industry by other sources. The new fee is necessary to help provide sufficient funding for the commission's air programs.

HSC does not believe the commission is doing all that it can to cover all its expenses.

RESPONSE

The commission strives to balance its need for adequate program funding with the costs its fees represent for the regulated community. The commission estimates that the increases will provide sufficient revenue to fund air program activities through FY 2003. The commission intends to review the air fee increases adopted in this package next year to ensure that Fund 151 has adequate funding in subsequent fiscal years. The commission determined that it is taking sufficient action to cover its expenses and to ensure that Fund 151 has adequate funds through FY 2003.

SCI stated that the large fee increases do not demonstrate sound fiscal responsibility or sound management of budgetary resources.

RESPONSE

The commission strives to manage its fiscal resources in a sound and efficient manner. The commission has operated its air programs without increasing fees since the early 1990's. The fee increases are not large when due consideration is given to the length of time in which fees were not increased.

TPF suggested that the commission should not have as large of an ending balance.

RESPONSE

The commission revised its proposal since the receipt of these comments during the stakeholder process. The commission is not projecting a $12 million balance in any FY from 2003 to 2005 under the revised proposal. The adopted fees are expected to result in a fund balance of $3.7 million in FY 03, and a negative fund balance in FY 04 and FY 05. The commission determined that some level of fund balance is necessary for effective operation of the air programs and to cover recurring monthly costs such as payroll. Since the revised version of the proposal accommodates these requests, no further changes to the rules were made in response to these comments.

AGC commented that the proposed fees will represent a significant and increased financial burden and that the creation of new fees is not justified. SCI commented that it is not convinced that the air related fees are justified. SCI commented that it objects to the proposed PBR fee. PIA and GHCLA suggested not charging a PBR fee.

RESPONSE

The commission does not agree with these comments. The commission relies on fees for the majority of its funding. Many of the fees that support the commission's air programs have not been increased since the early 1990's. In the last several years, Fund 151 has carried a balance that has allowed the commission to collect revenues below the annual budgeted expenditures and appropriations. However, the revenue estimates for Fund 151 reveal that there are insufficient funds to support the FY 2003 appropriated levels at current fee rates. Consequently, fee increases are necessary to provide sufficient funding for the commission's air programs. Although the new PBR fee results in an increased financial obligation, the commission does not consider the financial obligation to be overburdensome. The fee for PBR registrations is a one-time fee of $450 or $100. Registrations are valid for the entire length of time the facility operates under the conditions of the registration and does not require renewal. In addition, the justification of the new fee is to enable the commission to recover a portion of its costs to review the approximately 3,700 - 4,000 PBR registrations received per year. Recovering PBR registration review costs will help ensure that Fund 151 has sufficient funds. No changes were made to the rule in response to these comments.

TIADA commented that the fee increases would be passed along to consumers and would especially impact the poor.

RESPONSE

The commission acknowledges that businesses typically pass along their costs when setting prices. However, the commission finds that these costs are necessary to adequately fund the air programs and to protect air quality.

Considering the significant portion of air fees paid by its members, TCC urged the commission to continue to consider means to adequately fund the water program.

RESPONSE

Addressing issues related to funding for water programs is beyond the scope of this rulemaking. The commission notes that the legislature determines the appropriations for all agency programs each biennium. No changes to the rule were made in response to this comment.

CAP commented that fees should be targeted to those activities with the greatest environmental impact.

RESPONSE

The commission notes that fees are generally targeted to those activities with the greatest environmental impact. Because facilities permitted by rule are less significant sources of air contaminants and the registration review is typically less complex, thus requiring fewer resources, the PBR fee was set much lower than the minimum permit fees. No changes have been made to the rule in response to this comment.

CAP suggested reviewing each PBR which currently requires registration to determine whether that requirement could be deleted.

RESPONSE

The commission may, in the future, reevaluate the PBRs and determine if it will continue requiring registration for all PBRs currently requiring registration, but such action would be independent of this rulemaking. The commission directed staff members to review current registration requirements for PBRs to determine whether registration is needed.

COV commented that city government and local businesses are already burdened and a PBR fee would not be productive at this time. COV also commented that a PBR fee would not be an adequate return from the investment it would make by paying the fee.

RESPONSE

The commission acknowledges that many city governments and local business are subject to multiple fees and regulations from various governmental agencies. However, the commission cannot control regulations placed on them by other sources. The new fee is necessary to help provide sufficient funding for the commission's air programs. In recognition of the burden on smaller governmental entities, the commission modifies the proposed rule by treating municipalities, counties, and independent school districts with populations or districts of 10,000 or fewer residents the same as small businesses, and therefore, subject to the $100 PBR fee instead of the $450 PBR fee.

TADA suggested that PBRs remain exempt from permitting fees because they, by nature, apply only to insignificant sources of air pollution and TADA suggested eliminating registration for all PBRs. TADA commented that the PBR fee is too high, especially for small businesses and particularly in comparison to the grandfather permit fee and the cost per ton scheme for most air permitting. TxOGA questioned the need for a steep PBR fee because those facilities have historically been considered to make insignificant contributions of air contaminants to the atmosphere. TxOGA commented that PBRs meet best available control technology (BACT) requirements, hence technical review is redundant. TxOGA stated that the commission is devoting too many people to the PBR permitting process instead of real air quality concerns and on facilities where significant emissions reductions can be achieved.

RESPONSE

The commission disagrees with these comments. The purpose of the registration fee is to help the commission recover a portion of the registration review costs and is independent from the determination of whether or not registration is required for a PBR. As the commission adopts PBRs, a determination is made regarding the necessity of registration or site approval based on air quality concerns. Although facilities permitted by rule will not make a significant contribution of air contaminants to the atmosphere, the executive director determined that a review is required to ensure that facilities are in compliance with the PBR. The technical review is not required to ensure that a facility meets BACT, but to ensure that a facility meets the construction and operational requirements of the PBR. No changes were made to the rule in response to these comments.

HSC commented that there should not be an exemption for PI-7 registrations submitted to establish a federally enforceable emissions limit.

RESPONSE

The commission excluded PI-7 registrants establishing a federally enforceable emissions limit from paying a fee. These registrations serve a different purpose than other PI-7 registrations used to obtain preconstruction authorizations for facilities. The fee exempt PI-7 registrations are used only to establish a federally enforceable emissions limitation, and are not used to seek authorization for new emissions. The registrations serve as a commitment from facilities to emit below the emission levels specified in Chapter 106 and are used by the commission staff members to enforce those emission limits. Hence, the commission does not believe it is appropriate to assess a fee. No changes were made to the rule in response to this comment.

Small and Medium-Sized Businesses

ACT stated that all of the proposed fees should be recalculated so that every entity in the regulated community pays its fair share and the current proposal puts too much of the financial burden on the small and medium-sized companies while both larger companies and grandfathered facilities have relatively low fees. HII and two individuals commented that they are opposed to any increases in air-related fees. HII stated the current fees are already excessive and burdensome for small businesses. PIA commented that the PBR fee is a harmful burden for small printing businesses.

RESPONSE

The commission considered stakeholders' comments regarding the air program fee increases. While the commission generally disagrees that the proposed air-related fees put too much financial burden on small and medium-sized businesses, the commission considered the comments raised during the stakeholder process about a $225 PBR fee for small businesses and instead proposed a $100 PBR fee for small businesses. Additionally, in recognition of the burden on smaller governmental entities, the commission modifies the proposed rule by treating municipalities, counties, and independent school districts with populations

or districts of 10,000 or fewer residents the same as small businesses, and therefore, subject to the $100 PBR fee instead of the $450 PBR fee. The commission anticipates that small businesses will typically pay the minimum fee rates. The commission regards the permit fee amounts as reasonable.

SCI commented that, as of April 2002, there had not been any meaningful participation from small businesses in the decision-making process.

RESPONSE

The commission disagrees with this comment. The commission developed a balanced stakeholder list that included representatives from small businesses prior to initiating this rule project. All stakeholders were notified in March of 2002 of an April 2002 meeting. The commission solicited input from all stakeholders, including small business stakeholders, at this meeting. The commission notes that the stakeholder meeting was the first of several opportunities to participate in this rulemaking process.

SCI questioned how the proposed fee increases would improve the environment as they threaten the viability of small businesses.

RESPONSE

The environment will benefit significantly from an adequately funded air quality program. The commission disagrees that the fees will threaten the viability of small businesses. Small businesses will pay $100 for submission of a PBR registration. The commission regards the fee amount as reasonable for small businesses.

TCGA commented that creating the PBR fee would create a significant burden on the cotton gin industry. TCGA opposes any fees for PBRs.

RESPONSE

The commission considered the impact on all business and determined that the PBR fees would be reasonable. The commission also considered the financial burden on small and micro-businesses, resulting in the lower proposed and adopted fee assessment of $100 for those entities. No further changes were made to the rule in response to this comment.

CAP commented that small businesses create over 85% of new jobs and 90% of new growth in exporting, and therefore this PBR fee increase would be detrimental to the economy.

RESPONSE

The commission acknowledges the importance of small businesses to the economy. Therefore, in order to mitigate the burden of the PBR fee, the commission proposed and now adopts a lower fee of $100 for small business PBR registrations. No further changes were made to the rule in response to this comment.

FWSBAC commented that TNRCC should avoid any negative affect on small business' entry and participation in the environmental management systems of the State. FWBAC suggested that the commission emphasize the benefits of PBRs through public awareness to encourage small businesses.

RESPONSE

The commission encourages small businesses to develop and implement EMSs. To assist small businesses, the commission's Small Business and Environmental Assistance (SBEA) Division provides a small business model and technical assistance. The SBEA Division also conducts technical and compliance outreach on PBRs through its Small Business and Local Government Assistance (SBLGA) Section. No changes were made to the rule in response to this comment.

SCI suggested that waiving the PBR fee for those small businesses who are working with the Small Business Assistance Division of the TNRCC would encourage compliance.

RESPONSE

The commission appreciates and encourages small businesses to continue to work with the SBEA Division's SBLGA Section which conducts technical and compliance outreach on PBRs. Working with the SBLGA will benefit small businesses in many ways even without the incentive of an exemption from the PBR fee. However, the purpose of the rulemaking is to enable the commission to recover a portion of its operating costs and collect sufficient revenue to support appropriated funding levels. No changes were made to the rule in response to this comment.

TxOGA expressed concern about who will notify small businesses about the requirements of the PBRs.

RESPONSE

This rulemaking and the implementation of a PBR fee does not effect the applicability of the PBR requirements that already exist for small businesses. However, the commission's SBLGA Section of the SBEA Division currently conducts technical and compliance outreach on PBRs to assist small businesses.

AZZ commented, prior to proposal, that a $225 fee for PBRs appears excessive for small businesses that previously had no fees for these types of permits.

RESPONSE

The commission considered the comments raised during the stakeholder process about the $225 fee and instead proposed a $100 PBR fee for small businesses. No further changes have been made to the rule in response to this comment.

GTSBAC commented that it commends the action of the commissioners to lower the fee for PBRs from $225 as originally drafted to the proposed $100. GTSBAC was pleased that the commission took its comments under advisements during the decision making process and appreciated the opportunity to provide comments. TADA appreciated the commission's concern for small businesses as evidenced by the reduction of the PBR fee from $225 as originally drafted to the proposed $100.

RESPONSE

The commission appreciates the support from GTSBAC and TADA on the lowering of the PBR fee for small businesses.

Disincentive

GII, HTF, and SCI commented that the proposed fees will create a disincentive for businesses to comply with the commission's rules and to turn to the TNRCC for answers. TSC commented that an increase could be counterproductive and requested that the commission refrain from raising the fees for air permits. CAP commented that the proposed PBR fee increase would create a disincentive for small business to comply with TNRCC regulations. TADA noted that a PBR fee would provide a disincentive to registration. PIA commented that a PBR fee would provide a disincentive and punishment for compliance with TNRCC regulations and could cause many to ignore the requirements. TCGA and COV commented that the PBR fee would discourage compliance with commission rules. TxOGA stated the PBR fee will

have the unintended consequence of promoting noncompliance. FWSBAC contended that the costs to TNRCC associated with non-participation and noncompliance are much greater than the cost of administering the PBR program. SCI stated that the proposed fee could discourage the use of PBRs and compliance with the regulations. GHCLA commented that many small businesses will avoid claiming a PBR. DSBAC commented that a $225 PBR fee, in addition to the other expenses of compliance with environmental regulations, will exacerbate the reluctance of many small businesses to comply and lead to a decision of noncompliance. FWSBAC commented that a $225 PBR fee will have a negative effect on the efforts of many small businesses to comply.

RESPONSE

The commission does not agree with these comments. Regulated entities must be responsible for their own decisions to either comply with or disregard the law based upon a fee associated with compliance. The commission cannot control businesses' decisions to comply or not comply with regulations, but only can enforce regulations and provide disincentives for noncompliance through the assessment of penalties. The commission will not refrain from assessing a fee solely because some regulated entities may disregard their obligation to comply with the law. The commission will continue to offer answers to any business that requests our assistance.

The commission is assessing a new fee for submission of PBR registrations to recover a portion of its review costs. The commission considered the comments raised during the stakeholder process about the $225 fee and instead proposed and adopts a $100 PBR fee for small businesses.

No further changes to the rule were made in response to these comments.

GII, HTF, and SCI commented that fee increases would create an incentive to relocate outside Texas and would increase pollution elsewhere.

RESPONSE

The commission disagrees with GII's, HTF's, and SCI's comments that the fees will create an incentive for businesses to relocate. The amended rules will require a one-time registration fee of $450 or $100, which is not retroactive. The commission cannot control businesses' decisions to relocate outside of Texas. Further, increased pollution in areas outside the State of Texas is not in the scope of this rulemaking. No changes were made to the rule in response to this comment.

GHCLA commented that a PBR fee offers no incentive to reduce pollution.

RESPONSE

The purpose of the rulemaking is to enable the commission to recover a portion of its operating costs, and to collect sufficient revenue to support appropriated funding levels, not necessarily to create incentives for pollution prevention. No changes were made to the rule in response to this comment.

Streamlining

AGC stated that the Air Permits Division is experiencing an inability to process permit applications and authorizations in a timely or reasonable manner, which results in a permit backlog as well as contractor delays and increased construction costs. AGC suggested a sliding schedule for fees relative to the processing time for the permit or authorization which would be due upon issuance. AGC suggested if a permit were issued in 16 - 30 days then the fee would be 50%; if a permit were issued in 31 - 44 days then the fees would be 25%; or if the permit were issued in 45 days or more then there would be no fee.

RESPONSE

The commission does not agree with these comments. The purpose of the rulemaking is to ensure that sufficient funds are deposited to Fund 151. Collecting fees based on the processing time for a PBR registration could result in unstable funding levels and will not help ensure that sufficient funds will be collected. No changes were made to the rule in response to these comments.

SCI commented that the TNRCC needs to streamline its permit and registration review process to reduce the fees. TxOGA stated that streamlining and reducing program costs should be done before increasing fees. TPF suggested that the commission should cut costs. PIA suggested simplifying the PBR permitting process.

RESPONSE

The commission is always seeking methods to streamline the permitting process and reduce operating costs. Additionally, the commission directed staff members to review current registration requirements for PBRs to determine whether registration is needed. However, the revenue estimates for Fund 151 reveal that there are insufficient funds to support the FY 2003 appropriated levels at current fee rates. Consequently, fee increases are necessary to provide sufficient funding for the commission's air programs.

SCI commented that attaching fees on PBRs for small businesses is in conflict with the Sunset Bill, which required TNRCC to provide incentives for enhanced environmental performance.

RESPONSE

The commission does not agree with this comment. The purpose of this rulemaking is to ensure that Fund 151 contains sufficient funds. The commission is currently developing rules independent of this rulemaking to develop incentives for enhanced environmental performance in accordance with House Bill (HB) 2912. HB 2912 in no way prohibits charging a fee for PBR registrations. No changes to the rule were made in response to this comment.

Billing Process/Timing

TCC commented that it wanted to insure that fees paid to the commission's budget actually pay for the targeted programs.

RESPONSE

The commission uses dedicated fees to fund the intended programs in compliance with statutory requirements. No changes to the rule were made in response to this comment.

TCC proposed that the commission add any fees for PBRs to the annual fee statement and allow an entity to write one check versus multiple checks during the year. TCC recommended that the commission bill on an annual basis for all fees incurred during the previous year for permits, renewals, and amendments as well as emission and inspection fees.

RESPONSE

The commission currently does not process air permits, amendments, or renewals until payment is received and adopts a similar

process for PBRs. Because a change in this process would require substantial operational changes and involves many issues for which comments were not solicited, the commission determined that this issue could not be adequately and appropriately addressed in this rulemaking. However, agency staff members will continue to discuss this issue to determine if such a change would be appropriate in a future rulemaking. No changes to the rule were made in response to this comment.

TCC appreciated the added alternative method of payment, but strongly encouraged the commission to add the ability to process credit cards.

RESPONSE

The commission entered into a pilot program with Texas Online to accept credit card payments for two (non-air) fees, but the pilot program was terminated due to operational issues. Consequently, acceptance of credit cards may become an option in future years, but it is not something that can be made operational quickly. The commission notes that it can accept payment electronically by wire or automated clearing house, and suggests that payees contact the commission for instructions. No changes to the rule were made in response to this comment.

PBR Fee Structure or Specific Amount

TADA supports that the fee would not be retroactive to apply to current registrations.

RESPONSE

The commission appreciates TADA's support that the fee is not retroactive.

HSC suggested that the PBR fee be retroactive for year 2002.

RESPONSE

The commission disagrees with this suggestion. The commission determined that it would be unfair to assess a retroactive fee on registrations that were submitted with no fee requirements. Additionally, making PBR fees retroactive was not included in the proposal for this rulemaking, therefore it cannot now be adopted. No changes to the rule were made in response to this comment.

COV commented that a PBR fee would not be a fair means of collecting funds.

RESPONSE

The commission disagrees with this comment. The commission determined that a two- tiered fee of $100 for small businesses and $450 for other entities is a reasonable distribution of costs to businesses seeking a PBR and also helps ensure that sufficient funds are collected to help recover costs. No changes were made to the rule in response to this comment.

COV and SCI commented that it would be difficult to enforce and would discourage voluntary compliance.

RESPONSE

The commission notes that it is a regulatory requirement (not voluntary) for every facility to have authorization prior to construction. The commission developed PBRs as a streamlined methodology for businesses to comply with its requirements. The commission cannot control businesses' decisions to comply or not comply with regulations, but only can enforce regulations and provide disincentives for noncompliance through the assessment of penalties. No changes were made to the rule in response to this comment.

CAP recommended exempting small businesses from the PBR fee if that is the only air authorization held by the small business because these are less likely to have an environmental impact.

RESPONSE

The commission does not agree with this comment. Although facilities permitted by rule will not make a significant contribution of air contaminants to the atmosphere, the executive director determined that a review for certain types of facilities, even if the small business only has one air authorization, is required to ensure that facilities are in compliance with certain permits by rule. The purpose of the registration fee is to help the commission recover a portion of the registration review costs. No changes have been made to the rule in response to this comment.

TADA commented that changes in operations may require a new registration and note that some businesses require multiple PBRs and therefore $100 seems unduly high. TADA suggested consolidating certain permits by rule to lessen the regulatory burden and cost on both the commission and industry, citing the example of consolidating the eight PBRs related to the automotive repair industry to create one industry-specific PBR.

RESPONSE

The commission does not agree with this comment. Multiple PBRs for a site can be submitted on a single registration form and only one fee will be assessed. Therefore, it is not necessary to combine PBRs to mitigate registration costs. It is important to note, however, that multiple PBRs may be assessed one fee if those multiple PBRs are submitted at the same time on the same registration form and that multiple PBRs for facilities at different sites will be assessed more than one fee. No changes to the rule were made in response to this comment.

CAP recommended that the commission could base registration and fee requirements on emission- based thresholds to allow lower emitting facilities out of the fee and registration altogether. PIA suggested that there should be a distinction between small businesses operating with less than one ton per year of emissions and companies that emit much larger amounts.

RESPONSE

The commission does not agree with these comments. The commission determined that certain PBRs require registration based on factors that include, but are not limited to, the amount of emissions at a facility. A review needs to be conducted to ensure that a facility meets the construction and operational requirements of the PBR. Once a review is required, the amount of emissions does not significantly impact the review costs to the agency. Moreover, it is necessary to collect fees to allow the commission to recover a portion of the costs associated with the PBR registration review. No changes were made to the rule in response to this comment.

COV suggested charging a fee at the time of purchase of equipment that fell under the PBR criteria.

RESPONSE

The commission does not agree with this comment. The commission currently has no feasible mechanism to collect a fee at the time of equipment purchase. Additionally, since the purpose of the fee is to recover a portion of the costs of the review, collection of the fee should be relatively close in time to that review for planning and funding purposes. No changes have been made to the rule in response to this comment.

AZZ suggested a PBR fee of $50. CAP and HII expressed concern about a $225 fee for PBRs and suggested that if there is a fee, a PBR fee of $50 would be reasonable. DSBAC and FWBAC suggested a PBR fee of $50 or less. TADA stated that the $100 PBR fee seems arbitrary. TCC commented that a $100 fee for all entities seems more appropriate for PBR review. TPF commented that the PBR fee is too high for agricultural operations and suggest a level of $50. GHCLA suggested different fees for big businesses and small businesses. One individual suggested that the fees are too high and suggested a flat rate of $100.

RESPONSE

The commission considered the comments raised during the stakeholder process about the $225 fee and proposed the PBR fee as $100 for small entities. The commission determined a two-tiered fee of $100 for small businesses and $450 for large entities is a reasonable distribution of costs for PBR registrations and also helps ensure that sufficient funds are collected to help recover costs. Therefore, no further changes were made to the rule in response to these comments.

ACT stated that it supported the commission adopting a fee for PBR registrations but suggested the PBR rule be based on a $100 minimum fee plus a flat per-ton emissions fee with a maximum of $1,000 and suggested this should be based upon allowable or actual emissions.

RESPONSE

The commission disagrees with this comment. The commission determined that a $1,000 PBR registration fee would be too burdensome for small businesses. In addition, the commission does not agree that it is appropriate to assess a $1,000 fee for PBRs since that is more costly than the $900 minimum permit fee, which would require a more complex review. Moreover, based on the complexity of PBR registration and New Source Review permit reviews, the commission considers the $100 and $450 PBR fees to be appropriate and does not agree that a flat per-ton emissions fee should be added to a base PBR fee. No changes were made to the rule in response to this comment.

COL commented that not-for-profit tax-supported entities, local and other governmental agencies should not be charged the same PBR fees as large for-profit businesses. COL suggested that local and other governmental agencies be placed in the lowest PBR fee category or be exempted from the fee. TML commented that the PBR fee is too high for municipalities. TML suggested that cities be charged the same as small businesses stating that the fees will come from public money. TML also suggested a two- tiered PBR fee for cities based on population size of the cities, and provided examples of 5,000 and 10,000 as logical populations to separate large cities from small cities.

RESPONSE

The commission agrees in part with this comment and changes §106.50(a). In recognition of the burden on smaller governmental entities, the commission modifies the proposed rule by treating municipalities, counties, and independent school districts with populations or districts of 10,000 or fewer residents the same as small businesses, and therefore, subject to the $100 PBR fee instead of the $450 PBR fee. With this change, the commission regards the permit fee amounts as reasonable.

TxOGA notes that many oil and gas facilities register for PBRs although they are not required to do so and states that a fee on such a registration would hinder getting this useful information to the TNRCC. TADA supports a fee that would only be applied to PBRs requiring registration.

RESPONSE

The commission disagrees with these comments. Registrations that are voluntarily submitted to the commission still require a review by agency staff members. The purpose of the rulemaking is to enable the commission to recover a portion of its review costs. The commission assumes that many entities will continue to register voluntarily, even with a fee, to assure compliance with the PBR requirements.

STATUTORY AUTHORITY

The new section is adopted under Texas Water Code (TWC), §5.103, which authorizes the commission to adopt rules necessary to carry out its powers and duties under the TWC; and under THSC, TCAA, §382.017, concerning Rules, which authorizes the commission to adopt rules consistent with the policy and purposes of the TCAA. The new section is also adopted under TCAA, §382.011, concerning General Powers and Duties, which authorizes the commission to control the quality of the state's air; §382.062, concerning Application, Permit, and Inspection Fees, which requires the commission to collect fees for inspections, applications for permit, permit amendment, and renewal, and authorizes the commission to collect fees for permits by rule; §382.0622, concerning Clean Air Act Fees, which restricts the use of Clean Air Act fees; and the entire TCAA (§§382.001 *et seq*.), which provides authority for all of the air quality programs which the fees are necessary to support.

§106.50. Registration Fees for Permits by Rule.

(a) A registrant who submits a permit by rule (PBR) registration for review by the commission shall remit one of the following fees with the PI-7 registration form:

(1) $100 for:

(A) small businesses, as defined in Texas Government Code, §2006.001; and

(B) municipalities, counties, and independent school districts with populations or districts of 10,000 or fewer residents, according to the most recently published census; or

(2) $450 for all other entities.

(b) This fee does not apply to:

(1) a PI-7 registration submitted solely for the purpose of establishing a federally enforceable emissions limit under §106.6 of this title (relating to Registration of Emissions); or

(2) a remediation project conducted under §106.533 of this title (relating to Water and Soil Remediation) which is reimbursable by the commission.

(c) This fee is for PBR registrations that are received on or after November 1, 2002.

(d) All PBR fees will be remitted in the form of a check, certified check, electronic funds transfer, or money order made payable to the Texas Commission on Environmental Quality (TCEQ) and submitted concurrently with the registration to the TCEQ, P.O. Box 13088, MC 214, Austin, Texas 78711-3087. No fees will be refunded.

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 30, 2002.

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Stephanie Bergeron
Director, Environmental Law Division
Texas Commission on Environmental Quality
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For further information, please call: (512) 239-6087

CHAPTER 113. STANDARDS OF PERFORMANCE FOR HAZARDOUS AIR POLLUTANTS AND FOR DESIGNATED FACILITIES AND POLLUTANTS

SUBCHAPTER E. CONSOLIDATED FEDERAL AIR RULES (CAR): SYNTHETIC ORGANIC CHEMICAL MANUFACTURING INDUSTRY (SOCMI) {FCAA, §112, 40 CFR PART 65}

30 TAC §§113.3000, 113.3020, 113.3030, 113.3040, 113.3050, 113.3060

The Texas Commission on Environmental Quality (commission) adopts new Subchapter E, Consolidated Federal Air Rules (CAR): Synthetic Organic Chemical Manufacturing Industry (SOCMI) {FCAA, §112, 40 CFR Part 65}, §§113.3000, 113.3020, 113.3030, 113.3040, 113.3050, and 113.3060 *without change* to the proposed text as published in the May 10, 2002 issue of the *Texas Register* (27 TexReg 3937) and will not be republished.

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE ADOPTED RULES

In new Subchapter E, the commission adopts by reference, without any revisions, all six United States Environmental Protection Agency (EPA) requirements in 40 Code of Federal Regulations (CFR) Part 65 - Consolidated Federal Air Rule (CAR): Synthetic Organic Chemical Manufacturing Industry (SOCMI). In promulgating the CAR regulations, the EPA consolidated major portions of several new source performance standards (NSPS) and national emission standards for hazardous air pollutants (NESHAP) applicable to storage vessels, process vents, transfer operations, and equipment leaks within the SOCMI. The promulgated rule pulled together applicable federal SOCMI rules into one integrated set of rules in order to simplify, clarify, and improve implementation of the existing rules with which source owners or operators must comply. The CAR is an optional compliance alternative for a SOCMI source.

As other CAR standards continue to be promulgated, they will be reviewed for compatibility with current state regulations and policies. The commission will then incorporate them into Chapter 113 through formal rulemaking procedures.

SECTION BY SECTION DISCUSSION

Section 113.3000, General Provisions (40 CFR Part 65, Subpart A)

The commission adopts new §113.3000, which will adopt by reference and without revisions 40 CFR Part 65, Subpart A. On December 14, 2000, EPA issued the final rule for Subpart A. This new subpart addresses the administrative aspects of the regulation (for example, where to send reports, timing of periodic reports, definitions, or how to request an alternative means of emission limitation) and those provisions which are widely applicable to all sources (for example, prohibitions and operation/maintenance requirements).

Section 113.3020, Storage Vessels (40 CFR Part 65, Subpart C)

The commission adopts new §113.3020, which will adopt by reference and without revisions 40 CFR Part 65, Subpart C. On December 14, 2000, EPA issued the final rule for Subpart C. This new subpart addresses the compliance options for storage vessels.

Section 113.3030, Process Vents (40 CFR Part 65, Subpart D)

The commission adopts new §113.3030, which will adopt by reference and without revisions 40 CFR Part 65, Subpart D. On December 14, 2000, EPA issued the final rule for Subpart D. This new subpart addresses the compliance options for process vents.

Section 113.3040, Transfer Racks (40 CFR Part 65, Subpart E)

The commission adopts new §113.3040, which will adopt by reference and without revisions 40 CFR Part 65, Subpart E. On December 14, 2000, EPA issued the final rule for Subpart E. This new subpart addresses the compliance options for transfer racks.

Section 113.3050, Equipment Leaks (40 CFR Part 65, Subpart F)

The commission adopts new §113.3050, which will adopt by reference and without revisions 40 CFR Part 65, Subpart F. On December 14, 2000, EPA issued the final rule for Subpart F. This new subpart addresses the compliance options for equipment leaks.

Section 113.3060, Closed Vent Systems, Control Devices, and Routing to a Fuel Gas System or a Process (40 CFR Part 65, Subpart G)

The commission adopts a new §113.3060, which will adopt by reference and without revisions 40 CFR Part 65, Subpart G. On December 14, 2000, EPA issued the final rule for Subpart G. This new subpart contains the compliance options for closed-vent systems, control devices, and the routing of vent streams to fuel gas systems or process equipment, including testing, monitoring, data handling, reporting and recordkeeping, and chemical manufacturing process unit provisions.

EFFECT ON SITES SUBJECT TO THE FEDERAL OPERATING PERMITS PROGRAM

Since Chapter 113 is an applicable requirement under 30 TAC Chapter 122, *Federal Operating Permits,* owners or operators subject to the Federal Operating Permit Program must be consistent with the revision process in Chapter 122 and revise their operating permits to include the revised requirements for each emission unit affected by the revisions to Chapter 113 at their sites.

FINAL REGULATORY IMPACT ANALYSIS DETERMINATION

The commission reviewed the rulemaking in light of the regulatory analysis requirements of Texas Government Code,

§2001.0225, and determined that the rulemaking does not meet the definition of a "major environmental rule" as defined in that statute. A "major environmental rule" means a rule, with the specific intent of which, is to protect the environment or reduce risks to human health from environmental exposure and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. The specific intent of the adopted rules is to adopt EPA's optional CAR without addition or revision. Certain sources will be affected, but these sources are required to comply with the federal standards whether or not the commission adopts the standards or obtains delegation from EPA. The adopted rules are not anticipated to add any significant additional costs to affected individuals or businesses beyond the existing requirements to comply with the federal standards. The rules are intended to protect the environment but are not anticipated to have material adverse effects on the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state beyond what is already required by federal standards. In addition, §2001.0225 only applies to a major environmental rule, the result of which is to: 1) exceed a standard set by federal law, unless the rule is specifically required by state law; 2) exceed an express requirement of state law, unless the rule is specifically required by federal law; 3) exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or 4) adopt a rule solely under the general powers of the agency instead of under a specific state law.

This rulemaking does not meet any of these four applicability requirements of a "major environmental rule." Specifically, the standards in this rulemaking are federal standards that will be adopted by reference without modification or substitution, and therefore will not exceed any standard set by federal law. This rulemaking is not an express requirement of state law. It contains only regulations developed by the EPA. The adopted rules do not exceed a requirement of a delegation agreement or a contract between state and federal government. The rules were not developed solely under the general powers of the agency, but are adopted under the Texas Health and Safety Code (THSC) and the Texas Clean Air Act (TCAA), §382.011, which requires the commission to establish the level of quality to be maintained in the state's air; §382.012, which requires the commission to prepare and develop a general, comprehensive plan for the proper control of the state's air; and §382.051, which requires the commission to adopt rules as necessary to comply with revisions in federal law or regulations applicable to air permits.

TAKINGS IMPACT ASSESSMENT

The commission evaluated this rulemaking and determined the adopted rules are subject to Texas Government Code, Chapter 2007. The specific intent of the rules is to adopt EPA's optional CAR without addition or revision. Under federal law, the affected industries will have the option to implement CAR standards regardless of whether the commission or EPA is the agency responsible for administration of the standards. This rulemaking will not burden private real property. Therefore this rulemaking will not constitute a takings under Texas Government Code, Chapter 2007.

CONSISTENCY WITH THE COASTAL MANAGEMENT PROGRAM

The commission determined that the rulemaking relates is subject to the Texas Coastal Management Program (CMP) in accordance with the Coastal Coordination Act of 1991, as amended (Texas Natural Resources Code, §§33.201 *et seq.*), and the commission's rules in 30 TAC Chapter 281, Subchapter B, concerning Consistency with the Coastal Management Program. As required by 31 TAC §505.11(b)(2) relating to 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. This rulemaking is consistent with the goal expressed in 31 TAC §501.12(1) of protecting and preserving the quality and value of coastal natural resource areas. The CMP policy applicable to this rulemaking action is the policy that commission rules comply with regulations in 40 CFR to protect and enhance air quality in the coastal area (31 TAC §501.14(q)). This rulemaking adopts by reference all subparts presently adopted under 40 CFR Part 65 without revisions, and is therefore, consistent with this policy.

PUBLIC COMMENT

commission held a public hearing on the proposal in Austin on June 4, 2002 at 2:00 p.m. at the Commission complex, Building B, Room 201A, 12100 Park 35 Circle. The public comment period closed on June 10, 2002. No comments were received.

STATUTORY AUTHORITY

The new sections are adopted under THSC, TCAA, §382.011, which requires the commission to establish the level of quality to be maintained in the state's air; §382.012, which requires the commission to prepare and develop a general, comprehensive plan for the proper control of the state's air; §382.016, concerning monitoring requirements and examination of records; §382.017, which provides the commission with the authority to adopt rules consistent with the policy and purposes of the TCAA; and §382.051, which requires the commission to adopt rules as necessary to comply with revisions in federal law or regulations applicable to permits issued under the TCAA.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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

The Texas Commission on Environmental Quality (TCEQ or commission) adopts the amendments to §116.141, Determination of Fees; §116.143, Payment of Fees; §116.163, Prevention of Significant Deterioration Permit Fees; §116.313, Renewal Application Fees; §116.614, Standard Permit Fees; §116.750, Flexible Permit Fee; and §116.1050, Multiple Plant Permit Application Fee. The amendments to §§116.143, 116.313, 116.614, and 116.1050 are adopted *with changes* to the proposed text as published in the July 12, 2002 issue of the *Texas Register* (27 TexReg 6212). The amendments to §§116.141, 116.163, and 116.750 are adopted *without changes* to the proposed text and will not be republished.

The following sections will be submitted to the United States Environmental Protection Agency (EPA) as revisions to the state implementation plan: §§116.141, 116.143, 116.163, 116.313, 116.614, and 116.750.

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE ADOPTED RULES

The commission assesses fees when an owner or operator applies for an air permit, air permit renewal, or air permit amendment. Assessment of these fees is required under Texas Health and Safety Code (THSC), Texas Clean Air Act (TCAA), §382.062, Application, Permit, and Inspection Fees, to recover the commission's cost of review.

The commission will adopt an increase to the fee rates and the minimum fees to generate sufficient revenue to recover application review costs and fund the commission's air programs. Additionally, the commission will adopt an increase to emissions fees and inspection fees in a concurrent 30 TAC Chapter 101 rulemaking as well as will assess a new fee on new permit by rule (PBR) registrations received on or after November 1, 2002 in a concurrent 30 TAC Chapter 106 rulemaking published in this issue of the *Texas Register*.

The Clean Air Fund 151 (Fund 151) is the source of funding for essentially all air program related activities of the commission. This fund supports a wide range of activities including permitting, inspections, enforcement, air quality planning, mobile source program, emissions inventory, and monitoring in addition to agency functions which support these activities. Revenues deposited to the fund are from several different fees collected from point sources and mobile sources as well as the general public. Over the last several years, the fund has carried a balance in the account which has allowed the agency to collect revenues below the annual budgeted expenditures. However, the fund balance is close to being depleted. Additionally, due to decreases in emissions, the revenue from fees which are assessed based upon emission levels has declined by an average of approximately 3% per year in recent years. The revenue estimates for Fund 151 reveal that there are insufficient funds to support the fiscal year (FY) 2003 appropriated level.

As part of its air program activities, the commission implements an approved federal operating permit program (Federal Clean Air Act, Titles IV and V, hereinafter referred to as "Title V"). As part of that approval, the commission was required to demonstrate that the fees collected from Title V sources are sufficient to support the Title V program. Currently under state law, this fee must be dedicated for use only on Title V activities. This fee is commonly referred to as the air emissions fee and is currently set at $26 per ton. However, the fee demonstration submitted to EPA in August 2001 showed that the fee would need to be increased beginning in FY 2003 to provide sufficient support for the Title V program. Activities which are not considered to be Title V activities must be supported through the remaining fees that are to be used to safeguard the air resources of the state. Essentially, these fees generally include permit, renewal, and amendment fees; inspection fees; and a portion of the motor vehicle safety inspection fee (as set by statute, THSC, §382.0622).

Given the declining availability of funds in Fund 151, the commission reviewed the air fees which it has the authority to change. Most of the air permit, renewal, and amendment fees have not been increased since the early 1990s. The air emissions fee has not been increased since 1995 and the air inspection fee since 1992. The vehicle inspection maintenance fee has been set recently to cover the cost of that program. Several other funding sources are dedicated for specific uses. In an effort to match fee revenue collections more closely with related expenditures, the commission also reviewed potential sources for new fees. After a review of the commission's existing air program related activity fees, the commission will adopt revisions to the emissions fee, inspection fee, permit, renewal, and amendment fees, as well as assess a new fee for review of registrations for PBR.

The commission previously instructed agency staff to initiate a study of the use of Fund 151 fees, including their use for the Title V program. This study is ongoing and is expected to result in a report to the commission in January 2003. In addition, projections involving the revenues and expenditures of Fund 151 have changed since proposal of the air fee increases based upon additional information. The revised projections currently indicate that the proposed fee increases are insufficient to cover projected expenditures through fiscal year 2005. For these reasons, the commission intends to review the air fee increases adopted in this package next year to determine the appropriate levels for each of the air fees.

SECTION BY SECTION DISCUSSION

Section 116.141(b), concerning the fee schedule, will be revised to reflect the adopted increases to the minimum fee rate and to the capital cost assessment rate applied to projects that exceed the minimum capital cost threshold. The intent of this amendment is to increase the commission's revenue collection to recover application review costs and fund the commission's air programs.

Section 116.141(e), concerning applications for projects not involving capital expenditure, will be revised to reflect the increase in the minimum permit fee amount. The intent of this amendment is to ensure a consistent minimum fee for all permit or permit amendment applications under this section.

Section 116.143(a), concerning payment of fees, will be revised to reflect the new agency name and to provide the payment options of certified check and electronic funds transfer.

Section 116.143(a) is adopted with change to the proposed text to correct a typographical error in the mailing address for payment of fees submitted.

Section 116.163(a), concerning prevention of significant deterioration (PSD) permit fees, will be revised to increase the minimum fee. The intent of this amendment is to increase the commission's revenue collection to recover application review costs and fund the commission's air programs.

Section 116.163(b), concerning PSD permit fees, will be revised to reflect the increase in the capital cost assessment rate for projects that exceed the minimum. The intent of this amendment

is to increase the commission's revenue collection to recover application review costs and fund the commission's air programs.

Section 116.313(a), concerning renewal application fees, will be revised to increase the various base fee rates, the incremental fee rates, and the minimum fee. The intent of this amendment is to increase the commission's revenue collection to recover application review costs and fund the commission's air programs. The maximum fee will be effective at a lower allowable emission tonnage. Finally, the example fee calculation will change to be consistent with the change in fee rates and thresholds.

Section 116.313(a) is adopted with change to the proposed text to reduce the minimum permit renewal fee from the proposed $900 to $600. It also increases the base rates and the incremental fees for higher emissions levels at the second and third tier of the incremental per ton fee rates. The commission makes these changes to maintain more consistency between the fee increases adopted for renewals and those fee increases adopted for other permit fees.

Section 116.313(b), concerning renewal application fees, will be revised to reflect the new agency name and to provide the payment options of certified check and electronic funds transfer.

Section 116.313(b) is adopted with change to the proposed text to correct a typographical error in the mailing address for payment of fees submitted.

Section 116.614, concerning standard permit fees, will be revised to reflect the increase in the flat fee amount. The intent of this amendment is to increase the commission's revenue collection to recover application review costs, fund the commission's air programs, and match the minimum permit fee under §116.141. Additionally, the revisions will reflect the new agency name and provide the payment options of certified check and electronic funds transfer.

Section 116.614 is adopted with change to the proposed text to correct a typographical error in the mailing address for payment of fees submitted.

Section 116.750(b), concerning the flexible permit fee, will be revised to reflect increases to the fee rate on allowable emissions and to the minimum fee amount. The intent of this amendment is to increase the commission's revenue collection to recover application review costs and fund the commission's air programs.

Section 116.750(c), concerning the flexible permit fee, will be revised to reflect the new agency name and to provide the payment options of certified check and electronic funds transfer.

Section 116.1050, concerning the multiple plant permit application fee, will be revised to reflect the increase in the fee amount. The intent of this amendment is to increase the commission's revenue collection to recover application review costs and fund the commission's air programs.

Section 116.1050 is adopted with change to the proposed text to be consistent with a previous rulemaking.

FINAL REGULATORY IMPACT ANALYSIS DETERMINATION

The commission reviewed the rulemaking in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and determined that the 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 116 are not, themselves, intended to protect the environment or reduce risks to human health from environmental exposure to air pollutants. Therefore, the commission finds that they are not major "environmental" rules. The permit, amendment, and renewal fees collected under the revisions to Chapter 116 will raise significant amounts of revenue, but are generally a one-time cost that is insignificant based upon the capital costs of the project itself. Therefore, the amendments should not affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state.

As defined in Texas Government Code, §2001.0225 only applies to a major environmental rule, the result of which is to: exceed a standard set by federal law, unless the rule is specifically required by state law; exceed an express requirement of state law, unless the rule is specifically required by federal law; exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or adopt a rule solely under the general powers of the agency instead of under a specific state law. This rulemaking does not meet any of these four applicability requirements of a "major environmental rule." Specifically, the permit, amendment, and renewal fees are required by state law to be sufficient to support a portion of commission activities related to the overall air quality program (THSC, TCAA, §382.062). This rulemaking does not exceed an express requirement of federal or state law. The rulemaking does not exceed a requirement of a delegation agreement. The rulemaking was not developed solely under the general powers of the agency, but was specifically developed and authorized under TCAA, §§382.011, 382.017, 382.062, and 382.0622, and generally under TCAA, §§382.001 *et seq*.

Written comments on the draft regulatory impact analysis determination were solicited. No comments were received on the draft regulatory impact analysis determination.

TAKINGS IMPACT ASSESSMENT

The commission conducted a takings impact evaluation for these rules in accordance with Texas Government Code, §2007.043. The specific purpose of the rulemaking is to raise the permit, amendment, and renewal fees in order to maintain funding sufficient to support a portion of the overall air quality program.

Promulgation and enforcement of the rules will not burden private, real property because they are fee rules which support the commission's air quality programs. Although the rule revisions do not directly prevent a nuisance or prevent an immediate threat to life or property, the permit, amendment, and renewal fees are required by state law to be sufficient to support a portion of commission activities related to the overall air quality program (THSC, TCAA, §382.062). Consequently, the exemption which applies to these rules is that of an action reasonably taken to fulfill an obligation mandated by state law. Therefore, this rulemaking action will not constitute a takings under Texas Government Code, Chapter 2007.

CONSISTENCY WITH THE COASTAL MANAGEMENT PROGRAM

The commission reviewed the rulemaking and found that it is identified in the Coastal Coordination Act Implementation Rules,

31 TAC §505.11(b)(2), relating to Actions and Rules Subject to the Coastal Management Program or will affect an action/authorization identified in §505.11(a)(6), and will, therefore, require that goals and policies of the Texas Coastal Management Program (CMP) be considered during the rulemaking process.

The commission reviewed this rulemaking for consistency with the CMP goals and policies in accordance with the regulations of the Coastal Coordination Council and determined that the amendments are consistent with CMP goals and policies because the rulemaking is a fee rule which is a procedural mechanism for paying for commission programs; will not have direct or significant adverse effect on any coastal natural resource areas; will not have a substantive effect on commission actions subject to the CMP; and promulgation and enforcement of the amendments will not violate (exceed) any standards identified in the applicable CMP goals and policies.

Written comments on the consistency of this rulemaking with the CMP were solicited. No comments were received on the consistency of this rulemaking with the CMP.

PUBLIC COMMENT

A public hearing was held on August 12, 2002, in Austin. The comment period closed on August 12, 2002. The commission received comments from Alliance for a Clean Texas (ACT); Associated General Contractors of Texas (AGC); EPA, Region 6; Gull Industries Incorporated (GII); Harwood Industries, Inc. (HII); High Tech Finishing (HTF); Houston Sierra Club (HSC); Schumacher Company, Inc. (SCI); Texas Chemical Council (TCC); Texas Cotton Ginners' Association (TCGA); Texas Independent Automobile Dealers Association (TIADA); Texas Oil and Gas Association (TxOGA); Texas Poultry Federation (TPF); Tyler Steel Company (TSC); and two individuals. Oral comments were received from ACT at the hearing. Of the 16 commenters for Chapter 116, two were generally in favor of fee increases while the remainder were generally and/or specifically against fee increases.

RESPONSE TO COMMENTS

Prior to September 1, 2002, the TCEQ was the Texas Natural Resource Conservation Commission (TNRCC). Since the comments were received before September 1, 2002, the agency is sometimes referred to as the TNRCC.

General

ACT commented that it fully supports the need for the commission to have increased revenue in order to pay for the programs funded through the Clean Air Account.

RESPONSE

The commission agrees that it is necessary to increase fees to pay for Clean Air Account programs and appreciates the comment.

TxOGA commented that it commits to its ongoing efforts to ensure that the commission is adequately funded and retains delegation of vital environmental programs.

RESPONSE

The commission appreciates TxOGA's support of the commission's delegation of environmental programs. The commission is also committed to ensure that it is adequately funded and retains all program delegations.

TCC commented that it recognizes that the commission may be facing a shortfall in funding associated with the air permitting and inspection programs.

RESPONSE

The commission appreciates TCC's recognition of the difficult funding issues faced by the commission.

HSC commented that it supports the fee increases for all permits.

RESPONSE

The commission appreciates HSC's support.

ACT generally supported basing fees on emissions to reward companies for pollution prevention.

RESPONSE

The commission appreciates the comment. However, the purpose of this rulemaking is to increase fees to enable the commission to recover a portion of its operating costs, and collect sufficient revenue to support appropriated funding levels, not necessarily to create incentives for pollution prevention.

TIADA suggested designing new incentive programs, such as rebates, to encourage pollution control and compliance rather than more fees.

RESPONSE

As a result of the 77th Legislature, the commission will be promoting compliance in new ways, by granting regulatory incentives for approved Environmental Management Systems, and using an entity's compliance history in order to make regulatory decisions about that entity. While financial incentives are difficult to grant, there is an existing program that approves pollution control equipment for property tax exemptions. The commission is seeking to encourage compliance using innovative and positive means. However, these incentive programs neither reduce air program workload nor generate funding for the air programs. Therefore, the commission finds that these fee increases are necessary to cover its operating costs.

TIADA commented that it opposes any more fees and stated that its industry is over-regulated, citing examples of auto inspections, lawsuit costs regarding the constitutionality of a particular fee, the motor vehicle finance license, and Internal Revenue Service regulation of accounting methodology.

RESPONSE

The commission acknowledges that many industries are subject to multiple fees and regulations from various governmental agencies. However, the commission cannot control regulations placed on the industry by other sources. The fee increases are necessary to provide sufficient funding for the commission's air programs.

HSC does not believe the commission is doing all that it can to cover all its expenses.

RESPONSE

The commission strives to balance its need for adequate program funding with the costs its fees represent for the regulated community. The commission estimates that the increases will provide sufficient revenue to fund air program activities through FY 2003. The commission intends to review the air fee increases adopted in this package next year to ensure that Fund 151 has adequate funding in subsequent fiscal years. The commission determined that it is taking sufficient action to cover its expenses

and to ensure that Fund 151 has adequate funds through FY 2003.

SCI stated that the large fee increases do not demonstrate sound fiscal responsibility or sound management of budgetary resources.

RESPONSE

The commission strives to manage its fiscal resources in a sound and efficient manner. The commission has operated its air programs without increasing fees since the early 1990's. The fee increases are not large when due consideration is given to the length of time in which fees were not increased.

TPF suggested that the commission should not have as large of an ending balance.

RESPONSE

The commission revised its proposal since the receipt of this comment during the stakeholder process. The commission is not projecting a $12 million balance in any FY from 2003 to 2005 under the revised proposal. The adopted fees are expected to result in a fund balance of $3.7 million in FY 03, and a negative fund balance in FY 04 and FY 05. The commission determined that some level of fund balance is necessary for effective operation of the air programs and to cover recurring monthly costs such as payroll. Since the revised version of the proposal accommodates these requests, no further changes to the rules were made in response to this comment.

AGC commented that the proposed fees will represent a significant and increased financial burden and that an increase in air fees or the creation of new fees is not justified. SCI commented that it is not convinced that the air related fees are justified.

RESPONSE

The commission does not agree with these comments. The commission relies on fees for the majority of its funding. Many of the fees that support the commission's air programs have not been increased since the early 1990's. In the last several years, Fund 151 has carried a balance that has allowed the commission to collect revenues below the annual budgeted expenditures and appropriations. However, the revenue estimates for Fund 151 reveal that there are insufficient funds to support the FY 2003 appropriated levels at current fee rates. Consequently, fee increases are necessary to provide sufficient funding for the commission's air programs.

TIADA commented that the fee increases would be passed along to consumers and would especially impact the poor.

RESPONSE

The commission acknowledges that businesses typically pass along their costs when setting prices. However, the commission finds that these costs are necessary to adequately fund the air programs and to protect air quality.

Considering the significant portion of air fees paid by its members, TCC urged the commission to continue to consider means to adequately fund the water program.

RESPONSE

Addressing issues related to funding for water programs is beyond the scope of this rulemaking. The commission notes that the legislature determines the appropriations for all agency programs each biennium. No changes to the rule were made in response to this comment.

Small and Medium-Sized Businesses

ACT stated that all of the proposed fees should be recalculated so that every entity in the regulated community pays its fair share and the current proposal puts too much of the financial burden on the small and medium-sized companies while both larger companies and grandfathered facilities have relatively low fees. ACT stated that the increases in the air permits, air permit amendments, and air permit renewal fees may represent an undue burden for small and medium-sized businesses. HII and two individuals commented that they are opposed to any increases in air-related fees. HII stated that the current fees are already excessive and burdensome for small businesses. One individual suggested that the fees are too high.

RESPONSE

The commission considered stakeholders' comments regarding the air program fee increases. While the commission generally disagrees that the air-related fees as proposed put too much financial burden on small and medium-sized businesses, the commission modifies the proposed rules by reducing the minimum permit renewal fee from the proposed $900 to $600. Further, while the commission is increasing the base and incremental fees for permit renewals, it adopts greater increases to the incremental fees for high emissions levels than for lower emissions levels. Consequently, renewal fees for permitted facilities with lower emissions will generally not increase as much as renewal fees for permitted facilities with higher emissions levels. The commission anticipates that small businesses will typically pay the minimum fee rates. The commission regards the permit fee amounts as reasonable.

SCI commented that, as of April 2002, there had not been any meaningful participation from small businesses in the decision-making process.

RESPONSE

The commission disagrees with this comment. The commission developed a balanced stakeholder list that included representatives from small businesses prior to initiating this rule project. All stakeholders were notified in March of 2002 of an April 2002 meeting. The commission solicited input from all stakeholders, including small business stakeholders, at this meeting. The commission notes that the stakeholder meeting was the first of several opportunities to participate in this rulemaking process.

SCI questioned how the proposed fee increases would improve the environment as they threaten the viability of small businesses.

RESPONSE

The environment will benefit significantly from an adequately funded air quality program. The commission disagrees that the fees will threaten the viability of small businesses. The commission operated its air programs without increasing fees since the early 1990's. The fee increases are not large when due consideration is given to the length of time in which fees were not increased. Moreover, the commission anticipates that small businesses would pay the minimum fee rates of $900 for a New Source Review (NSR) permit or NSR permit amendment and $600 for an NSR permit renewal. The commission regards the fee amounts as reasonable for small businesses.

TCGA commented that raising the minimum fees would create a significant burden on the cotton gin industry. TCGA commented that although it understands the need for the commission to

maintain a fee structure that recovers reasonable costs, it stated that small businesses pay more per amount of capital spent. TCGA advocates lowering the minimum fee and project costs for amendments and construction permits. For example, if the minimum project costs were lowered to $50,000, with a minimum fee of $150, the same ratio would be achieved.

RESPONSE

The commission considered the impact on all businesses. When compared to the new $100 or $450 fees for PBR registrations, which require much less review, the commission determined that a $900 fee is appropriate for the level of review necessary for an NSR permit. No changes to the rule were made in response to these comments.

Disincentive

GII, HTF, and SCI commented that the proposed fees would create a disincentive for businesses to comply with the commission's rules and to turn to the TNRCC for answers. TSC commented that an increase could be counterproductive and requested that the commission refrain from raising the fees for air permits.

RESPONSE

The commission disagrees with GII's, HTF's, and SCI's comments that the fees will create a disincentive for businesses to comply with the commission's regulations. Regulated entities must be responsible for their own decisions to either comply with or disregard the law based upon a fee associated with compliance. The commission cannot control businesses' decisions to comply or not comply with regulations, but only can enforce regulations and provide disincentives for noncompliance through the assessment of penalties. The commission will not refrain from assessing a fee solely because some regulated entities may disregard their obligation to comply with the law. The commission will continue to offer answers to any business that requests our assistance. No changes were made to the rule in response to these comments.

GII, HTF, and SCI commented that fee increases would create an incentive to relocate outside Texas and would increase pollution elsewhere.

RESPONSE

The commission disagrees with GII's, HTF's, and SCI's comments that the fees will create an incentive for businesses to relocate. The commission cannot control businesses' decisions to relocate outside of Texas. Further, increased pollution in areas outside the State of Texas is not in the scope of this rulemaking. No changes were made to the rule in response to these comments.

Streamlining

AGC stated that the Air Permits Division is experiencing an inability to process permit applications and authorizations in a timely or reasonable manner, which results in a permit backlog as well as contractor delays and increased construction costs. AGC suggested a sliding schedule for fees relative to the processing time for the permit or authorization which would be due upon issuance. AGC suggested if a permit were issued in 16 - 30 days then the fee would be 50%; if a permit were issued in 31 - 44 days then the fees would be 25%; or if the permit were issued in 45 days or more then there would be no fee.

RESPONSE

The commission does not agree with this comment. The purpose of the rulemaking is to ensure that sufficient funds are deposited to Fund 151. Collecting fees based on the processing time for a permit could result in unstable funding levels and will not help ensure that sufficient funds will be collected. No changes were made to the rule in response to these comments.

SCI commented that the commission needs to streamline its permit and registration review process to reduce the fees. TxOGA stated that streamlining and reducing program costs should be done before increasing fees. TPF suggested that the commission should cut costs.

RESPONSE

The commission is always seeking methods to streamline the permitting process and reduce operating costs. However, the revenue estimates for the Fund reveal that there are insufficient funds to support the FY 2003 appropriated levels at current fee rates. Consequently, fee increases are necessary to provide sufficient funding for the commission's air programs.

Billing Process/Timing

TCC commented that it wanted to insure that fees paid to the commission's budget actually pay for the targeted programs.

RESPONSE

The commission uses dedicated fees to fund the intended programs in compliance with statutory requirements. No changes to the rule were made in response to this comment.

TCC proposed that the commission add any fees for PBRs to the annual fee statement and allow an entity to write one check versus multiple checks during the year. TCC recommended that the commission bill on an annual basis for all fees incurred during the previous year for permits, renewals, and amendments as well as emission and inspection fees.

RESPONSE

The commission currently does not process air permits, amendments, or renewals until payment is received and adopts a similar process for PBRs. Because a change in this process would require substantial operational changes and involves many issues for which comments were not solicited, the commission determined that this issue could not be adequately and appropriately addressed in this rulemaking. However, agency staff members will continue to discuss this issue to determine if such a change would be appropriate in a future rulemaking. No changes to the rule were made in response to this comment.

TCC appreciated the added alternative method of payment, but strongly encourages the commission to add the ability to process credit cards.

RESPONSE

The commission entered into a pilot program with Texas Online to accept credit card payments for two (non-air) fees, but the pilot program was terminated due to operational issues. Consequently, acceptance of credit cards may become an option in future years, but it is not something that can be made operational quickly. The commission notes that it can accept payment electronically by wire or automated clearing house, and suggests that payees contact the commission for instructions. No changes to the rule were made in response to this comment.

NSR Permit, Permit Amendment, and PSD Permit

ACT suggested using a capital assessment rate of .20% (.75% for PSD) to generate minimum fees of $600 for NSR permit and permit amendments and $2,250 for PSD actions. ACT further suggested that the revenue can be replaced by increasing the PBR and grandfather permit fees.

RESPONSE

The commission does not agree with the comment. The purpose of the rulemaking is to recover a portion of permit review costs and the commission determined that it is appropriate to roughly base fees on the complexity of the review. The commission determined that a capital assessment rate of .30% (1.0% for PSD) is necessary to generate sufficient revenue to help fund the commission's air programs. The commission determined that it is appropriate to have higher fees for NSR and PSD actions because these reviews are complex. Further, the commission does not agree that the revenue should be replaced with increased PBR fees, since those reviews are much simpler. The commission did not propose an increase for grandfather permit fees and, according to Texas administrative law, the commission cannot introduce new requirements at adoption. No changes to the rule were made in response to this comment.

NSR Renewal Permit

ACT suggested changing the permit renewal fee structure from incremental fees based on emissions level categories to a fee of $600 plus $15 or $20 per ton of emissions (to provide an incentive for pollution prevention). In conjunction, ACT suggests an increase to the fee cap from $10,000 to $25,000.

RESPONSE

The commission agrees in part with this comment. The commission revises the minimum renewal permit fee rate from the proposed $900 to $600. The commission does not incorporate the suggested flat per ton emissions rate, but rather revises the incremental per ton rates. While the commission is increasing the base and incremental fees for permit renewals, it adopts greater increases to the incremental fees for high emissions levels than for lower emissions levels. Consequently, renewal fees for permitted facilities with lower emissions will generally not increase as much as renewal fees for permitted facilities with higher emissions levels. Raising the fees for those sources at the cap was not included in the proposal for this rulemaking, therefore it cannot now be adopted.

Standard Permit, Multiple Plant Permit, and Flexible Permit

ACT suggested a $600 flat fee for standard permits and multiple plant permits instead of $900. ACT recommended setting the minimum fee for flexible permits at $600 instead of $900.

RESPONSE

The commission determined that $900 is an appropriate fee to help recover review costs associated with the issuance of these permits. These fees require a comparable dedication of resources as the minimum NSR permit, which is also increasing to $900. Reducing all Chapter 116 minimum fee increases as suggested would not ensure adequate funding to support appropriated funding levels. The commenter also suggested alternative funding methods to compensate for these reductions; however, the commission does not agree with these suggested funding methods as described in this rulemaking and the concurrent Chapter 101 and Chapter 106 rulemakings. No changes were made to the rule in response to these comments.

Grandfather Permit

ACT commented that the grandfather permit fee adopted by the commission May 22, 2002 is too low and the commission should reconsider its decision by making that fee equal to the flexible permit cost per ton rate, $32/ton with a $75,000 maximum because ACT stated that the flexible permit and the grandfather permit programs share many similarities. ACT expressed concern that the grandfather permit fee is too low to support the amount of work the reviews will require. ACT stated that the rationale for the commission originally setting the grandfather permit fees so low was that the program was voluntary and the commission wanted to encourage participation; however, now that the program is mandatory, ACT stated that the fees should be increased. ACT stated that the grandfather permitting fee as adopted in another rulemaking on May 22, 2002 is too low and suggests that the minimum fee be $600 plus a cost per ton similar to the flexible permit fee.

RESPONSE

The commission considered an increase to the grandfather permit fee during this rulemaking. Chapter 116 contained a Voluntary Emission Reduction Permit (VERP) fee of $100 for small businesses or $450 for other entities. For consistency with statutory changes, in June 2002, the commission adopted revisions to Chapter 116 that no longer offered VERP permitting, but instead specified permitting requirements for grandfathered facilities. After much consideration, the executive director did not recommend that the commission propose an increase to the fee since the review for a grandfather permit is similar to the review of a VERP. Therefore, the commission did not believe it was appropriate to assess a higher fee for existing facilities permits. According to Texas administrative law, the commission cannot introduce new requirements at adoption. Since the commission did not propose an increase for grandfather permit fees, it cannot increase the fee at adoption. No changes to the rule were made in response to this comment.

Miscellaneous

The EPA commented that the TNRCC should clarify in its final rulemaking whether it intends to include §101.24 and §116.1050 in its SIP submittal as those sections have not previously been submitted to the EPA.

RESPONSE

The commission appreciates the EPA's comment and wishes to maintain consistency with prior SIP submittals. The commission did submit §101.24 to the EPA in the fall of 1985, with a most recent revision in November of 1997. Therefore, the commission does intend to submit §101.24 of this package as a SIP revision. However, the EPA is correct that §116.1050 has not previously been submitted, so the commission is not now submitting that portion of the rulemaking as a SIP submittal.

TCC strongly disagreed with the proposal to double the permit amendment fee for amendments that do not involve capital expenditure and recommends leaving §116.141(e) as is. TxOGA stated that there is no reasonable justification for the proposal to double the permit amendment fee for amendments that do not involve capital expenditure and recommends leaving §116.141(e) as is.

RESPONSE

The commission determined that it is necessary to increase the amendment fee to recover a portion of the costs associated with processing permit amendments. While capital costs of a project could be indicative of the complexity of the review required, it

does not necessarily follow that projects with no capital cost will require less review than a permit which would pay the minimum fee. No changes to the rule were made in response to this comment.

SUBCHAPTER B. NEW SOURCE REVIEW PERMITS

DIVISION 4. PERMIT FEES

30 TAC §116.141, §116.143

STATUTORY AUTHORITY

The amendments are adopted under TWC, §5.103, which authorizes the commission to adopt rules necessary to carry out its powers and duties under the TWC; and under THSC, TCAA, §382.017, concerning Rules, which authorizes the commission to adopt rules consistent with the policy and purposes of the TCAA. The amendment is also adopted under TCAA, §382.011, concerning General Powers and Duties, which authorizes the commission to control the quality of the state's air; §382.062, concerning Application, Permit, and Inspection Fees, which requires the commission to collect fees for inspections, applications for permit, permit amendment, and renewal, and authorizes the commission to collect fees for permits by rule; §382.0622, concerning Clean Air Act Fees, which restricts the use of Clean Air Act fees; and the entire TCAA (§§382.001 *et seq.*), which provides authority for all of the air quality programs which the fees are necessary to support.

§116.143. Payment of Fees.

All permit fees will be remitted in the form of a check, certified check, electronic funds transfer, or money order made payable to the Texas Commission on Environmental Quality (TCEQ) or TCEQ and delivered with the application for permit or amendment to the TCEQ, P.O. Box 13088, MC 214, Austin, Texas 78711-3087. Required fees must be received before the agency will begin examination of the application.

(1) Single fee. The executive director shall charge only one fee for multiple permits issued for one project if it is determined that the following conditions are met:

(A) all the component or separate processes being permitted are integral or related to the overall project;

(B) the project is under continuous construction of the component parts;

(C) the permitted facilities are to be located on the same or contiguous property; and

(D) applications for all permits for the project must be submitted at the same time.

(2) Return of fees. Fees must be paid at the time an application for a permit or amendment is submitted. If no permit or amendment is issued by the agency or if the applicant withdraws the application prior to issuance of the permit or amendment, one-half of the fee will be refunded except that the entire fee will be refunded for any such application for which an exemption under Chapter 106 of this title (relating to Exemptions from Permitting) is allowed. No fees will be refunded after a deficient application has been voided or after a permit or amendment has been issued by the agency.

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 30, 2002.

TRD-200206326
Stephanie Bergeron
Director, Environmental Law Division
Texas Commission on Environmental Quality
Effective date: October 20, 2002
Proposal publication date: July 12, 2002
For further information, please call: (512) 239-6087

DIVISION 6. PREVENTION OF SIGNIFICANT DETERIORATION REVIEW

30 TAC §116.163

STATUTORY AUTHORITY

The amendment is adopted under TWC, §5.103, which authorizes the commission to adopt rules necessary to carry out its powers and duties under the TWC; and under THSC, TCAA, §382.017, concerning Rules, which authorizes the commission to adopt rules consistent with the policy and purposes of the TCAA. The amendment is also adopted under TCAA, §382.011, concerning General Powers and Duties, which authorizes the commission to control the quality of the state's air; §382.062, concerning Application, Permit, and Inspection Fees, which requires the commission to collect fees for inspections, applications for permit, permit amendment, and renewal, and authorizes the commission to collect fees for permits by rule; §382.0622, concerning Clean Air Act Fees, which restricts the use of Clean Air Act fees; and the entire TCAA (§§382.001 *et seq.*), which provides authority for all of the air quality programs which the fees are necessary to support.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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SUBCHAPTER D. PERMIT RENEWALS

30 TAC §116.313

STATUTORY AUTHORITY

The amendment is adopted under TWC, §5.103, which authorizes the commission to adopt rules necessary to carry out its powers and duties under TWC; and under THSC, TCAA, §382.017, concerning Rules, which authorizes the commission to adopt rules consistent with the policy and purposes of the TCAA. The amendment is also adopted under TCAA, §382.011, concerning General Powers and Duties, which authorizes the

commission to control the quality of the state's air; §382.062, concerning Application, Permit, and Inspection Fees, which requires the commission to collect fees for inspections, applications for permit, permit amendment, and renewal, and authorizes the commission to collect fees for permits by rule; §382.0622, concerning Clean Air Act Fees, which restricts the use of Clean Air Act fees; and the entire TCAA (§§382.001 *et seq.*), which provides authority for all of the air quality programs which the fees are necessary to support.

§116.313. Renewal Application Fees.

(a) The fee for renewal is based on the total annual allowable emissions from the permitted facility to be renewed, according to the following table.

Figure: 30 TAC §116.313(a)

(b) Fees are due and payable at the time the renewal application is filed. No fee will be accepted before the permit holder has been notified by the commission that the permit is scheduled for review. All permit review fees shall be remitted by check, certified check, electronic funds transfer, or money order payable to the Texas Commission on Environmental Quality (TCEQ) and mailed to the TCEQ, P.O. Box 13088, MC 214, Austin, Texas 78711-3087. Required fees must be received before the agency will consider an application to be complete.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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SUBCHAPTER F. STANDARD PERMITS

30 TAC §116.614

STATUTORY AUTHORITY

The amendment is adopted under TWC, §5.103, which authorizes the commission to adopt rules necessary to carry out its powers and duties under the TWC; and under THSC, TCAA, §382.017, concerning Rules, which authorizes the commission to adopt rules consistent with the policy and purposes of the TCAA. The amendment is also adopted under TCAA, §382.011, concerning General Powers and Duties, which authorizes the commission to control the quality of the state's air; §382.062, concerning Application, Permit, and Inspection Fees, which requires the commission to collect fees for inspections, applications for permit, permit amendment, and renewal, and authorizes the commission to collect fees for permits by rule; §382.0622, concerning Clean Air Act Fees, which restricts the use of Clean Air Act fees; and the entire TCAA (§§382.001 *et seq.*), which provides authority for all of the air quality programs which the fees are necessary to support.

§116.614. Standard Permit Fees.

Any person who registers to use a standard permit or an amended standard permit, or to renew a registration to use a standard permit shall remit, at the time of registration, a flat fee of $900 for each standard permit being registered, unless otherwise specified in a particular standard permit. No fee is required if a registration is automatically renewed by the commission. All standard permit fees will be remitted in the form of a check, certified check, electronic funds transfer, or money order made payable to the Texas Commission on Environmental Quality (TCEQ) and delivered with the permit registration to the TCEQ, P.O. Box 13088, MC 214, Austin, Texas 78711-3087. No fees will be refunded.

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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Stephanie Bergeron
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SUBCHAPTER G. FLEXIBLE PERMITS

30 TAC §116.750

STATUTORY AUTHORITY

The amendment is adopted under TWC, §5.103, which authorizes the commission to adopt rules necessary to carry out its powers and duties under the TWC; and under THSC, TCAA, §382.017, concerning Rules, which authorizes the commission to adopt rules consistent with the policy and purposes of the TCAA. The amendment is also adopted under TCAA, §382.011, concerning General Powers and Duties, which authorizes the commission to control the quality of the state's air; §382.062, concerning Application, Permit, and Inspection Fees, which requires the commission to collect fees for inspections, applications for permit, permit amendment, and renewal, and authorizes the commission to collect fees for permits by rule; §382.0622, concerning Clean Air Act Fees, which restricts the use of Clean Air Act fees; and the entire TCAA (§§382.001 *et seq.*), which provides authority for all of the air quality programs which the fees are necessary to support.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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SUBCHAPTER J. MULTIPLE PLANT PERMITS

30 TAC §116.1050

STATUTORY AUTHORITY

The amendment is adopted under TWC, §5.103, which authorizes the commission to adopt rules necessary to carry out its powers and duties under the TWC; and under THSC, TCAA, §382.017, concerning Rules, which authorizes the commission to adopt rules consistent with the policy and purposes of the TCAA. The amendment is also adopted under TCAA, §382.011, concerning General Powers and Duties, which authorizes the commission to control the quality of the state's air; §382.062, concerning Application, Permit, and Inspection Fees, which requires the commission to collect fees for inspections, applications for permit, permit amendment, and renewal, and authorizes the commission to collect fees for permits by rule; §382.0622, concerning Clean Air Act Fees, which restricts the use of Clean Air Act fees; and the entire TCAA (§§382.001 *et seq*.), which provides authority for all of the air quality programs which the fees are necessary to support.

§116.1050. Multiple Plant Permit Application Fee.

Any person who applies for a multiple plant permit (MPP) shall remit, at the time of application for such permit, a fee of $900.

(1) Fees will not be charged for MPP alterations, changes of ownership, or changes of location of permitted facilities.

(2) Fees must be paid at the time an application for a permit is submitted. No fees will be refunded after a deficient application has been voided.

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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Stephanie Bergeron
Director, Environmental Law Division
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TITLE 40. SOCIAL SERVICES AND ASSISTANCE

PART 2. TEXAS REHABILITATION COMMISSION

CHAPTER 103. VOCATIONAL REHABILITATION SERVICES PROGRAM

SUBCHAPTER A. PROVISION OF VOCATIONAL REHABILITATION SERVICES

40 TAC §103.7

The Texas Rehabilitation Commission (TRC) adopts the amendment to §103.7, Title 40, Chapter 103, Texas Administrative Code, concerning mental restoration services, with changes to the proposed text as published in the August 16, 2002, issue of the *Texas Register* (27 TexReg 7387).

The change is being adopted to clarify the nature of mental restoration services for which assistance may be provided.

The section is being adopted with a nonsubstantive change in subsection (d). The "or" before master social workers-advanced clinical practitioners is being replaced with a common.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Texas Human Resources Code, Title 7, Chapter 111, §111.018 and §111.023, which provides the Texas Rehabilitation Commission with the authority to promulgate rules consistent with Title 7, Texas Human Resources Code.

§103.7. Mental Restoration Services.

(a) The commission provides mental restoration services for mental conditions which are stable or slowly progressive.

(b) The commission provides psychiatric treatment as a limited service on a short-term basis only.

(c) The commission provides psychological counseling as a limited service only to support the completion or achievement of the vocational objective.

(d) The commission provides mental restoration services utilizing only physicians licensed by the state and skilled in the diagnosis and treatment of mental or emotional disorders, psychologists licensed or certified in accordance with state law, master social workers-advanced clinical practitioners who are licensed by the Texas State Board of Social Work Examiners or Licensed Professional Counselors who are licensed by the Texas State Board of Examiners of Professional Counselors .

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 30, 2002.

TRD-200206346
Sylvia F. Hardman
Deputy Commissioner for Legal Services
Texas Rehabilitation Commission
Effective date: October 20, 2002
Proposal publication date: August 16, 2002
For further information, please call: (512) 424-4050

CHAPTER 117. SPECIAL RULES AND POLICIES

40 TAC §117.7

The Texas Rehabilitation Commission (TRC) adopts the amendment to §117.7, Title 40, Chapter 117, Texas Administrative Code, concerning use of criminal history record information, without changes to the proposed text as published in the August 9, 2002, issue of the *Texas Register* (27 TexReg 7056).

The change is being adopted to update the standard being applied by TRC when making employment-related determinations pursuant to Human Resources Code §111.0581.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Texas Human Resources Code, Title 7, Chapter 111, §111.018 and §111.023, which provides the Texas Rehabilitation Commission with the authority to promulgate rules consistent with Title 7, Texas Human Resources Code.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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TRD-200206345
Sylvia F. Hardman
Deputy Commissioner for Legal Services
Texas Rehabilitation Commission
Effective date: October 20, 2002
Proposal publication date: August 9, 2002
For further information, please call: (512) 424-4050

PART 12. TEXAS BOARD OF OCCUPATIONAL THERAPY EXAMINERS

CHAPTER 364. REQUIREMENTS FOR LICENSURE

40 TAC §364.4

The Texas Board of Occupational Therapy Examiners adopts amendments to §364.4, concerning Licensure by Endorsement, with one change to the proposed text as published in the August 9, 2002, issue of *Texas Register* (27 TexReg 7057).

The section was amended to recognize US military for licensure requirements, add a category for provisional licensure and specify its duration.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Occupational Therapy Practice Act, Title 3, Subchapter H, Chapter 456, Occupations Code, which provides the Texas Board of Occupational Therapy Examiners with the authority to adopt rules consistent with this Act to carry out its duties in administering this Act.

Title 3, Subchapter H, Chapter 454 of the Occupations Code is affected by this amended section.

§364.4. Licensure by Endorsement.

(a) The board may issue a license by endorsement to applicants currently licensed in another state, District of Columbia or territory of the United States which has licensing requirements substantially equivalent to this state. Previous Texas licensees are not eligible for License by Endorsement. An Applicant seeking endorsement must:

(1) meet all provisions for §364.1 of this title (relating to Requirements for License);

(2) arrange to have NBCOT's Verification of Certification form sent directly to the board;

(3) submit verification of license in good standing from the state(s) in which the applicant is currently licensed. This must be an original verification sent directly by the licensing board in that state, or,

(4) submit, if applying from a non-licensing state or US military and not holding a current state license , a Verification of Employment form substantiating occupational therapy employment for at least 2 years immediately preceding application for a Texas license

(b) Provisional License:

(1) The Board may grant a Provisional License to an applicant who is applying for License by endorsement if there is an unwarranted delay in the submission of required documentation outside the applicant's control. All other requirements for licensure by endorsement must be met. The applicant must also submit the Provisional License fee as set by the Executive Council. The Board may not grant a provisional license to an applicant with disciplinary action in their license history, or to an applicant with pending disciplinary action. The Provisional License will have a duration of 180 days.

(2) The Board may grant a Provisional License to an applicant who has previously held a Texas license and does not meet the requirements for restoration of a license as outlined in Chapter 370 provided that such applicant has a current license in good standing in another state which has licensing requirements substantially equivalent to Texas. Upon receiving a passing score from NBCOT, a new regular license will be issued, as outlined in §364.2 of this chapter. A failing score will result in revocation of the Provisional License. The Provisional License will have a duration of 180 days. The applicant must:

(A) submit a new application as outlined in §364.1 and §364.2 of this title;

(B) submit verification of the current license in another state or US territory;

(C) submit the provisional license fee as set by the Executive Council;

(D) submit a copy of the confirmation of registration for NBCOT's national examination.

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 30, 2002.

TRD-200206337
John Maline
Executive Director
Texas Board of Occupational Therapy Examiners
Effective date: October 20, 2002
Proposal publication date: August 9, 2002
For further information, please call: (512) 305-3900

TITLE 43. TRANSPORTATION

PART 1. TEXAS DEPARTMENT OF TRANSPORTATION

CHAPTER 15. TRANSPORTATION PLANNING AND PROGRAMMING

SUBCHAPTER I. BORDER COLONIA ACCESS PROGRAM

43 TAC §§15.103 - 15.105

The Texas Department of Transportation (department) adopts §§15.103-15.105 concerning the Border Colonia Access Program (program). Section 15.105 is adopted with changes to the proposed text as published in the July 12, 2002, issue of the *Texas Register* (27 TexReg 6252). Sections 15.103 and 15.104 are adopted without changes to the proposed text as published in the July 12, 2002, issue of the *Texas Register* and will not be republished.

EXPLANATION OF ADOPTED AMENDMENTS

Senate Bill 1296, 77th Legislature, 2001, added Government Code, Chapter 1403, which requires the Texas Public Finance Authority, in accordance with requests from the Office of the Governor, to issue general obligation bonds and notes in an aggregate amount not to exceed $175 million, and as directed by the department, to distribute the proceeds to counties as financial assistance for colonia access roadway projects to serve border colonias. Senate Bill 1296 requires the Texas Transportation Commission (commission) to establish a program to administer the use of the proceeds of the bonds and notes. Rider 52 to the department's appropriations for Fiscal Years 2002-2003 requires the department to establish a transportation program to improve access to colonias. The commission adopted §§15.100-15.106 to implement the requirements of Senate Bill 1296 and Rider 52, set forth the procedures by which an eligible county may apply for assistance, and establish criteria by which the commission will select projects.

The department has issued its first program call for county funding applications, and the commission has approved $50 million in funding. This experience has resulted in the need to amend the application procedures, the criteria considered by the commission in selecting projects for funding, and the distribution and use of program funds. The amendments are intended to make the application process and the funding approval process more efficient, to help ensure that projects approved for funding serve the greatest number of colonia residents possible, and to ensure that at least a minimum amount of funding is provided for necessary projects in each eligible county.

Section 15.103 is amended to provide that an eligible county must prepare a separate application for each project. In the previous program call, applications were submitted that contained one project, multiple projects in one colonia, and multiple projects in multiple colonias. The amendment is necessary in order to provide a reasonable basis for comparing competing projects.

Section 15.104 previously provided that the commission, in considering projects for funding, would consider the population of the border colonia the project is to serve. This criterion is amended to provide that the commission will consider the number resulting from dividing the population of the border colonia the project is to serve by the total number of miles of roadway in the border colonia. A similar existing criterion that requires the consideration of the number resulting from dividing the population whose residences abut the project limits by the number of miles of roadway in the project is deleted. The amendment places greater emphasis on the population of the colonia. This will help ensure that projects approved for funding serve the greatest number of colonia residents possible. Generally, the higher the border colonia population, the more in need of goods and services that colonia will be.

In order to ensure that each eligible county is provided a minimum amount of funding so that each county may carry out the greatest number of needed projects possible, §15.105 is amended to provide that the maximum amount of funding that is available for each project is $200,000 per mile. It is estimated that a project can be built at a cost of about $80,000 to $100,000 per mile. The department doubled that estimate to allow the funding of associated costs such as engineering, right of way acquisition, and drainage. Additionally, each county will receive a minimum of $100,000 during each program call. The remaining funds will be distributed under the current method, with half distributed to each county in proportion to its colonia population, and the other half distributed on a project basis. In order to provide for the most efficient use of program funding and to better leverage county funding, a county may use funds distributed as part of its minimum allocation and funds distributed in proportion to its colonia population to pay project cost overruns if any of those funds remain after the county's projects are funded and other projects are funded on a competitive basis.

RESPONSE TO COMMENTS

A public hearing was held on July 23, 2002, in Austin and on August 1, 2002, in San Antonio. Oral and written comments were received and are responded to as follows. Comments in favor of the rules were received from Hector Uribe, representing Zapata County; Jerry C. Agan, Presidio County Judge; and Bill Dixon, Frontera Consulting Services. Comments against the rules were received from Juan Bernal, County Engineer for Cameron County; and Robert Rivera, El Paso County Road Engineer. General comments were received from Angel Garza, Zapata County Commissioner; Jamie Ortiz, Hidalgo County, and David Garza, Cameron County Commissioner and member of the Border Advisory Committee. One set of written comments was received from Judge Jose Eloy Pulido, Hidalgo County Judge and member of the Border Advisory Committee.

Comment: Concerning §15.103, two commenters support giving each county a minimum of $100,000 in funds, but asked if the county will need to submit an application in order to be eligible to receive the funds.

Response: The amendment to §15.103(a) states that each project must be submitted on a separate application.

Comment: Concerning §15.104, two commenters felt that the first program call gave too much weight to population, which had an adverse affect on smaller colonias competing for the same pool of funds.

Response: The department agrees with the comments. Proposed §15.104 de-emphasizes the weight given to population by reducing population related criteria from 40 points to 25 points out of a possible 100 points.

Comment: One commenter suggested that the criteria for project selection outlined in §15.104 should be changed to allow the commission to consider the number resulting from dividing the

population of the border colonia that the project is to serve by the total number of unpaved miles of roadway in the border colonia.

Response: The department disagrees with the comment. Since this program evaluates paving, re-paving, and drainage projects, the existing language in §15.104(a)(1) is sufficient.

Comment: Two commenters believe that it would be more efficient to submit a program application that contains multiple projects within a colonia/subdivision. If each project is submitted on one application form some of the roads will be approved and some will not, creating a discontinuous road system within the colonia.

Response: One project per application will allow the commission to evaluate applications more equitably. Under §15.104(a)(2), the commission may consider the condition of current roads. While it would ordinarily be preferable to pave roads connected to other paved roads, and not bring about a break in contiguity, such a situation cannot be ruled out absolutely.

Comment: Concerning §15.105, two commenters asked if the county minimum of $100,000 will be distributed from the allocation funds or the competitive funds.

Response: Section 15.105 states that $100,000 will be distributed prior to the allocation based on colonia population or competitively.

Comment: One commenter stated that projects should be rated as first-time paving or re-paving and should only compete against like projects with first-time paving projects being given a greater weight in project selection.

Response: The department disagrees with the comment. S.B. 1296 allows for paving, re-paving, and drainage projects. Accordingly, §15.105 does not rank different road projects separately. However, a greater weight is given for paving an unpaved road as opposed to a paving project or drainage project.

Comment: Concerning §15.105(7), several commenters stated that the maximum amount of funding of $200,000 per mile is too low because some projects will require curb, gutter, and an underground storm sewer system due to the position of the house to the street.

Response: The department believes that $200,000 per mile is adequate for most eligible projects; however, the department realizes that some projects have exceptional drainage needs. Therefore, §15.105(7) is adopted with changes to allow the executive director or designee not below the level of assistant executive director to grant a waiver for projects with exceptional drainage costs.

Comment: One commenter stated that any county that received a large proportion of the monies during the first call for projects, should be restricted from competing in the second program call until some of the smaller counties have been helped.

Response: The department disagrees with this comment. S.B. 1296 and Rider 52 do not contain any language to restrict the amount of funds an eligible county may receive. The program does allow for each eligible county to receive some funding from each program call.

Comment: One commenter would like to see the restriction on buying equipment with colonia program funds removed from the rules. It was suggested that if the counties could use some of the funds awarded to purchase equipment, the county could then perform the work itself at a lower cost.

Response: The purchase of equipment is not an eligible expenditure for reimbursement because any equipment purchased would not be used solely for colonia projects.

Comment: Two commenters suggested that once a project is completed, any remaining funds should be returned to the county to use on another commission-selected project in that county.

Response: The department agrees with the comment and has added paragraph (9) to §15.105 to allow a county to use unexpended funds from a project on any other commission-selected county colonia project.

Comment: Two commenters would like to see funds not distributed by the commission when not enough applications are submitted in a program call to be redistributed to the counties based upon their colonia population allocation.

Response: The department disagrees with this comment. Remaining funds from the county colonia population allocation portion of a program call should be made available for the competitive portion of a program call as per §15.105(3). If there are still funds in the program call not distributed by the commission after the $100,000 set-aside, the county colonia population allocation, and the competitive allocation, then those remaining funds will be made available in a future program call.

Comment: Several commenters are concerned that the definition of colonia is tied to the Texas Water Development Board's database and there are many colonias that are not listed with the Texas Water Development Board.

Response: The department, working with the Office of the Governor, the Secretary of State, Texas Water Development Board, and Texas A&M Center for Housing and Urban Development, have agreed that the Texas Water Development Board database is the most appropriate listing of eligible colonias.

Comment: Two commenters asked for clarification on the project eligibility on multiple program calls. Suppose a county submitted a project for the first program call and the project was awarded funding. Is the project eligible to receive additional funding in the second program call?

Response: Yes. A project that has been previously approved is eligible for future program calls.

Comment: One commenter pointed out that Government Code, §775.001 defines a "colonia" as a geographic area that is an economically distressed area as defined by §17.921 of the Water Code. Yet, in the Water Code, an economically distressed area means an area in which water supply or sewer services are inadequate to meet minimal needs of residential users as defined by Texas Water Development Board rules. Does this mean that if the minimal water supply and sewer services have been met that an area will no longer be considered a colonia for any other purpose?

Response: For the purpose of this program, §15.101(2) states that the department recognizes a border colonia to be a community, located in an eligible county, that is identified as a colonia in the Texas Water Development Board's colonia database.

Comment: Two commenters believe that roads leading into the colonia should be eligible for program funds.

Response: County roads leading into the colonia are eligible for program funds and the rules currently allow this.

Comment: One commenter favors using the population figures of residences abutting the project in the competitive project applications.

Response: The department disagrees with the comment. The proposed amendment to §15.104 removed this criterion because the population of abutting residences is too difficult to estimate and verify.

Comment: One commenter believes a procedure should be established for counties to use when a colonia is applying for designation.

Response: The department does not designate colonias. The Texas Water Development Board is the appropriate office for inquiring about designation procedures.

STATUTORY AUTHORITY

The amendments are adopted under Transportation Code, §201.101, which provides the commission with the authority to establish rules for the conduct of the work of the department, and more specifically, Government Code, §1403.002 and Rider 52 to the department's appropriations for Fiscal Years 2002-2003, which require the department to adopt rules for the administration of the program.

§15.105. Apportionment.

The department will apportion and distribute available funds in the manner described by this section.

(1) Each county will receive a minimum of $100,000 in funding during each program call.

(2) The first 50% of the remaining available funds will be distributed to a county in proportion to its border colonia population, based on the latest estimates from the Texas Water Development Board. The commission will fund the highest ranked projects as evaluated and scored under §15.104 of this subchapter.

(3) The remaining 50% of available funds will then be distributed to individual counties on a project by project basis. All projects submitted by the counties and not funded under paragraphs (1) and (2) of this section will be funded in descending rank order as determined under §15.104 of this subchapter as available funding permits.

(4) If a county did not submit sufficient eligible projects to expend funds available under paragraphs (1) and (2) of this section, the remaining funds will be distributed in accordance with paragraph (3) of this section. If the remaining funds are not distributed under paragraph (3) of this section because of insufficient eligible projects, the county may use those funds for project cost overruns.

(5) Funds available as a result of a county being prohibited from continued participation in the program under §15.106(e) of this subchapter or because of county reimbursements under §15.106(f) of this subchapter will be distributed in accordance with paragraph (3) of this section.

(6) Projects will be funded based on the project cost estimates provided by a county under §15.103 of this subchapter. Except as provided in paragraph (4) of this section, project costs above that estimate are the responsibility of the county. A county may seek additional funds for a project if the department issues subsequent program calls.

(7) The maximum amount of funding that is available for each project is $200,000 per mile, unless the executive director or designee not below the level of assistant executive director grants a waiver due to exceptional drainage costs.

(8) Projects partially funded under prior program calls are eligible for funding under this subchapter.

(9) A county may use unexpended funds from a project on any other commission-selected county colonia project.

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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Richard D. Monroe
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For further information, please call: (512) 463-8630

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CHAPTER 17. VEHICLE TITLES AND REGISTRATION
SUBCHAPTER D. SALVAGE VEHICLE DEALERS

43 TAC §17.61, §17.62

The Texas Department of Transportation (department) adopts amendments to §17.61 and §17.62, concerning salvage vehicle dealers. Sections 17.61 and 17.62 are adopted without changes to the proposed text as published in the July 12, 2002, issue of the *Texas Register* (27 TexReg 6255) and will not be republished.

EXPLANATION OF ADOPTED AMENDMENTS

These amendments specify record-keeping requirements for salvage vehicle dealers to assist law enforcement personnel in conducting investigations designed to prevent and uncover sales of stolen motor vehicles and parts. Additional non-substantive amendments are made to improve clarity and readability.

Section 17.61 is amended to enhance consistency, to improve clarity, and to eliminate unnecessary definitions. No substantive change is intended. In addition, the department has added a new definition for "component part" and "special accessory part" to conform the rules to the terminology used in Texas Civil Statutes, Article 6687-2.

Section 17.62 is amended to specify the form in which salvage vehicle dealer records must be kept. Non-substantive amendments are made to consolidate the establishment of fees into a single subsection, to establish that all licenses will be issued for a full 12 months, to correct grammar, to clarify potentially ambiguous language, and to improve consistency in the use of terms.

Section 17.62(e) is added to provide a single source establishing salvage vehicle dealer and agent fees. This will facilitate any future changes in the rules.

Renumbered §17.62(g)(1) is amended to establish that all licenses are issued for a 12-month period with staggered expiration dates. This replaces the previous system, under which all licenses expired on the same date, but license fees were prorated based on the number of months left in the year.

Renumbered §17.62(k) is amended to establish new record-keeping requirements. Records must now be kept in a bound book or electronically, and electronic copies must be backed up by paper copies. These requirements will assist law enforcement personnel in reviewing the records of salvage vehicle dealers.

COMMENTS

No comments were received on the proposed amendments.

STATUTORY AUTHORITY

The amendments are adopted under Transportation Code, §201.101, which provides the Texas Transportation Commission with the authority to establish rules for the conduct of the work of the department. They are also adopted under Transportation Code, §501.131, which requires the department to adopt rules implementing the laws governing the titling of motor vehicles, including salvage motor vehicles. More specifically, the amendments are adopted under Texas Civil Statutes, Article 6687-1a, §4.01(b), which requires the department to adopt rules governing the denial, suspension, or revocation of a salvage vehicle dealer license, and under Texas Civil Statutes, Article 6687-2(h), which requires the department to specify the form in which salvage vehicle dealer records are kept.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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CHAPTER 18. MOTOR CARRIERS

SUBCHAPTER A. GENERAL PROVISIONS

43 TAC §18.2

The Texas Department of Transportation (department) adopts amendments to §18.2, concerning definitions. Section 18.2 is adopted with changes to the proposed text as published in the July 12, 2002, issue of the *Texas Register* (27 TexReg 6261).

EXPLANATION OF ADOPTED AMENDMENTS

Section 18.2 is amended to clarify existing definitions, add new definitions, and ensure consistency with statute and department policies and procedures. Specifically, a definition for "conversion" has been added to clarify department policy with regards to organization conversions by motor carriers under Texas Business Corporations Act, Article 65.17. The definition of "insurer" is revised to clarify that the term also applies to Subchapter G concerning vehicle storage facilities. A definition of "replacement vehicle" has been included to add precision and remove ambiguity in the rules. The remaining changes are nonsubstantive and are made to improve clarity and readability.

COMMENTS

One written comment was received from the law offices of Angenend and Augustine on behalf of Allied Van Lines, Inc., Atlas Van Lines, Inc., Graebel of Texas, Inc., Mayflower Transit, L.L.C., North American Van Lines, Inc., and United Van Lines, L.L.C. The comment received contained two suggestions for change and are responded to as follows.

Comment: The commenter made a suggestion regarding definitions (46) and (47) relating to Type A and Type B household goods carriers. The commenter believes the word "motor" before the word "vehicle" would reflect more accurately the intent of the governing statute and be consistent with other definitions within §18.2.

Response: The department agrees to the suggested change. Making this change does not change the meaning of the definition, but adds clarification and consistency.

Comment: The commenter suggested adding a definition for "combination of vehicles" because this term is used in various other definitions in §18.2.

Response: The department cannot agree with this suggestion. The phrase "combination of vehicles" is used both in the Transportation Code and the department's rules, and in both instances is read in context and construed according to the rules of grammar and common usage as required by the Code Construction Act, Government Code, §311.011. The department chooses to retain the common usage meaning of "combination of vehicles" in order to remain as consistent as possible with relevant Transportation Code provisions.

STATUTORY AUTHORITY

The amendments are adopted under Transportation Code, §201.101, which provides the Texas Transportation Commission with the authority to establish rules for the conduct of the work of the department, and Texas Civil Statutes, Article 6687-9a, which requires the department to regulate vehicle storage facilities.

§18.2. Definitions.

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

(1) Approved association--A group of household goods carriers, its agents, or both, that has an approved collective ratemaking agreement on file with the department under §18.64 of this chapter.

(2) Binding proposal--A formal written offer stating the exact price for the transportation of specified household goods and any related services.

(3) Certificate of insurance--A certificate prescribed by and filed with the department in which an insurance carrier or surety company warrants that a motor carrier for whom the certificate is filed has the minimum coverage as required by §18.16 and §18.86 of this chapter.

(4) Certificate of registration--A certificate issued by the department to a motor carrier and containing a unique number.

(5) Certified scale--Any scale designed for weighing motor vehicles, including trailers or semitrailers not attached to a tractor, and certified by an authorized scale inspection and licensing authority. A certified scale may also be a platform-type or warehouse-type scale properly inspected and certified.

(6) Commercial motor vehicle--

(A) Includes:

(i) any motor vehicle or combination of vehicles with a gross weight, registered weight, or gross weight rating in excess of 26,000 pounds, that is designed or used for the transportation of cargo in furtherance of any commercial enterprise;

(ii) all tow trucks, regardless of the gross weight rating of the tow truck;

(iii) any vehicle, including buses, designed to transport more than 15 passengers, including the driver;

(iv) any vehicle used in the transportation of hazardous materials in a quantity requiring placarding under the regulations issued under the federal Hazardous Materials Transportation Act (49 USC, App. §§1801-1813); and

(v) a commercial motor vehicle, as defined by 49 CFR §390.5, owned or controlled by a person or entity that is domiciled in or a citizen of a country other than the United States.

(B) Does not include:

(i) a farm vehicle with a gross weight, registered weight, and gross weight rating of less than 48,000 pounds;

(ii) cotton vehicles registered under Transportation Code, §502.277;

(iii) a vehicle registered with the Railroad Commission under Texas Natural Resources Code, §113.131 and §116.072;

(iv) a vehicle transporting liquor under a private carrier permit issued in accordance with Alcoholic Beverage Code, Chapter 42;

(v) a motor vehicle used to transport passengers and operated by an entity whose primary function is not the transportation of passengers, such as a vehicle operated by a hotel, day-care center, public or private school, nursing home, or similar organization;

(vi) a motor vehicle registered under the Single State Registration System established under 49 USC §14504 when operating exclusively in interstate or international commerce; and

(vii) a vehicle operated by a governmental entity.

(7) Commission--The Texas Transportation Commission.

(8) Conspicuous--Written in a size, color, and contrast so as to be readily noticed and understood.

(9) Conversion--A change in an entity's organization that is implemented with a Certificate of Conversion issued by the Texas Secretary of State under Texas Business Corporation Act, Article 5.17.

(10) Department--Texas Department of Transportation.

(11) Director--The director of the Motor Carrier Division, Texas Department of Transportation.

(12) Division--The Motor Carrier Division.

(13) DOI--Texas Department of Insurance.

(14) Estimate--An informal oral calculation of the approximate price of transporting household goods.

(15) Farmer--A person who operates a farm or is directly involved in cultivating land or in raising crops or livestock that are owned by or are under the direct control of that person.

(16) Farm vehicle--Any vehicle or combination of vehicles controlled or operated by a farmer or rancher being used to transport agriculture products, farm machinery, and farm supplies to or from a farm or ranch.

(17) Gross weight rating--The maximum loaded weight of any combination of truck, tractor, and trailer equipment as specified by the manufacturer of the equipment. If the manufacturer's rating is unknown, the gross weight rating is the greater of:

(A) the actual weight of the equipment and its lading; or

(B) the maximum lawful weight of the equipment and its lading.

(18) Household goods--Personal property intended ultimately to be used in a dwelling when the transportation of that property is arranged and paid for by the householder or the householder's representative. The term does not include personal property to be used in a dwelling when the property is transported from a manufacturing, retail, or similar company to a dwelling if the transportation is arranged by a manufacturing, retail, or similar company.

(19) Household goods agent--A motor carrier who transports household goods on behalf of another motor carrier.

(20) Household goods carrier--A motor carrier who transports household goods for compensation or hire in furtherance of a commercial enterprise.

(21) Insurer--A person, including a surety, authorized in this state to write lines of insurance coverage required by Subchapter B and Subchapter G of this chapter.

(22) Inventory--A list of the items in a household goods shipment and the condition of the items.

(23) Leasing business--A person that leases vehicles requiring registration under Subchapter B of this chapter to a motor carrier that must be registered.

(24) Manager--The manager of the department's Motor Carrier Division, Compliance and Enforcement Section.

(25) Mediation--A non-adversarial form of alternative dispute resolution in which an impartial person, the mediator, facilitates communication between two parties to promote reconciliation, settlement, or understanding.

(26) Motor Carrier or carrier--A person that controls, operates, or directs the operation of one or more vehicles that transport persons or cargo over a public highway in this state.

(27) Motor transportation broker--A person who sells, offers for sale, or negotiates for the transportation of cargo by a motor carrier operated by another person or a person who aids and abets another person in selling, offering for sale, or negotiating for the transportation of cargo by a motor carrier operated by another person.

(28) Moving services contract--A contract between a household goods carrier and shipper, such as a bill of lading, receipt, order for service, or work order, that sets out the terms of the services to be provided.

(29) Multiple user--An individual or business who has a contract with a household goods carrier and who used the carrier's services more than 50 times within the preceding 12 months.

(30) Not-to-exceed proposal--A formal written offer stating the maximum price a shipper can be required to pay for the transportation of specified household goods and any related services. The offer may also state the non-binding approximate price. Any offer based on hourly rates must state the maximum number of hours required for the transportation and related services unless there is an acknowledgment from the shipper that the number of hours is not necessary.

(31) Principal place of business--A single location that serves as a motor carrier's headquarters and where it maintains its operational records or can make them available.

(32) Public highway--Any publicly owned and maintained street, road, or highway in this state.

(33) Reasonable dispatch--The performance of transportation, other than transportation provided under guaranteed service dates, during the period of time agreed on by the carrier and the shipper and shown on the shipment documentation. This definition does not affect the availability to the carrier of the defense of force majeure.

(34) Registration receipt--A receipt issued to the registrant by its registration state after the requirements of 49 CFR, Part 367 have been met.

(35) Registration state--A state where the registrant maintains a valid single state registration as defined in 49 CFR, Part 367.

(36) Replacement vehicle--A vehicle that takes the place of another vehicle that has been removed from service.

(37) Revocation--The withdrawal of registration and privileges by the department or a registration state.

(38) Shipper--The owner of household goods or the owner's representative.

(39) Short-term lease--A lease of 30 days or less.

(40) Single state registration system--The program established by 49 USC §14504.

(41) SOAH--The State Office of Administrative Hearings.

(42) State of travel--A state in which a motor carrier operates motor vehicles subject to the single state registration system.

(43) Substitute vehicle--A vehicle that is leased from a leasing business and that is used as a temporary replacement for a vehicle that has been taken out of service for maintenance, repair, or any other reason causing the temporary unavailability of the permanent vehicle.

(44) Suspension--Temporary removal of privileges granted to a registrant by the department or a registration state.

(45) Tow truck--A motor vehicle equipped with or used in combination with a mechanical device used to tow, winch, or otherwise move another vehicle. The following motor vehicles are not considered tow trucks:

(A) a motor vehicle owned and used exclusively by a governmental entity, including a public school district;

(B) a motor vehicle towing:

(i) a race car;

(ii) a motor vehicle for exhibition; or

(iii) an antique motor vehicle;

(C) a recreational vehicle towing another vehicle;

(D) a motor vehicle used in combination with a tow bar, tow dolly, or other mechanical device if the vehicle is not operated in the furtherance of a commercial enterprise; or

(E) a motor vehicle that is controlled or operated by a farmer or rancher and that is used for towing a farm vehicle.

(46) Type A household goods carrier--A household goods carrier that uses at least one motor vehicle or combination of vehicles with a gross weight, registered weight, or gross weight rating in excess of 26,000 pounds.

(47) Type B household goods carrier - A household goods carrier that does not use a motor vehicle or combination of vehicles with a gross weight, registered weight, or gross weight rating in excess of 26,000 pounds.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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SUBCHAPTER B. MOTOR CARRIER REGISTRATION

43 TAC §§18.13, 18.14, 18.16, 18.17, 18.19

The Texas Department of Transportation (department) adopts amendments to §§18.13, 18.14, 18.16, 18.17, and 18.19 concerning motor carrier registration. Sections 18.13, 18.14, 18.16, 18.17, and 18.19 are adopted without changes to the proposed text as published in the July 12, 2002, issue of the *Texas Register* (27 TexReg 6264) and will not be republished.

EXPLANATION OF ADOPTED AMENDMENTS

Transportation Code, Chapter 643, prescribes the methods by which the department registers motor carriers. Specific requirements for registering motor carriers are found in Chapter 645 regarding single state registration and Chapter 648 regarding foreign motor carriers. Pursuant to these statutes, the Texas Transportation Commission (commission) has previously adopted §§18.13, 18.14, 18.16, 18.17 and 18.19 to specify the processes by which the department will process motor carrier registration applications, the expiration and renewal of commercial motor vehicle registrations, insurance requirements, the single state registration system, and the substitution of short-term lease and substitute vehicles.

The amendments to §§18.13, 18.14, 18.16, 18.17, and 18.19 clarify existing language, including restructuring and renumbering of existing subsections and ensure that division policies and procedures comply with state and federal requirements, including Transportation Code, §643.003, which directs the department to develop rules to implement Transportation Code, Chapter 643.

Specifically, §18.13(a)(6) has been amended to comply with Transportation Code, §648.102 which requires the department to adopt rules that conform with 49 CFR Part 387 requiring motor carriers operating foreign commercial motor vehicles in this state to maintain financial responsibility.

Section 18.13(a)(11) is renumbered and amended to clarify procedures for the prorated application of pre-paid fees by motor carriers participating in the Single State Registration System.

Section 18.13(b) and (c) are revised to clarify the processing of incomplete motor carrier applications and the conditional acceptance of applications. The changes ensure compliance with Transportation Code, §643.055, describing the requirements for the conditional acceptance of motor carrier applications.

Section 18.13(d) has been revised to change the terminology used to refer to documents issued to motor carriers as evidence of showing which vehicles can be operated under the carrier's certificate of registration. Formerly this document was referred to as the registration listing. Using the term "insurance cab card" brings department terminology into compliance with Transportation Code, §643.059, current industry practice, and law enforcement procedures. Section 18.13(d)(1)(B)(vi) has been added to clarify that registration listings previously issued will remain valid until expiration, renewal, revocation, or suspension by the department.

Former subsection (d)(1)(A),(B) and (C) of §18.13 have been redesignated as subsection (e)(1), (2), and (3).

In §18.13, new subsection (f) has been added to clarify existing procedures for submitting supplemental applications for motor carrier registrations and the conditions under which supplemental applications will be accepted. Former subsection (d)(2)-(d)(5) is renumbered as subsection (f)(1)-(f)(4) with new subsection (f)(5) added to address organizational conversions under Texas Business Corporations Act, Article 5.17.

New subsection (f)(6) has been added to §18.13 to allow motor carriers whose certificate or registration number has been revoked, suspended, or expired to retain their prior certificate or registration number upon a showing that the condition causing the revocation, suspension, or expiration has been cured. Allowing motor carriers to retain and operate under a single certificate or registration number improves department record keeping by reducing the number of certificate or registration numbers associated with a motor carrier.

Section 18.13, new subsection (g), formerly subsection (d)(5), has been renumbered and clarified to better describe the circumstances when changes in ownership require a new motor carrier registration.

Section 18.13(i) is amended to clarify the language describing when a certificate of registration issued to a Type B household goods carrier may be revoked or suspended by the department. Subsection (i)(9) provides that Type B household goods carriers may voluntarily cancel their certificate of registration by submitting the appropriate documentation. These changes clarify current practice and are consistent with the rulemaking authority found in Transportation Code, §643.153.

In §18.14(a)(1), the registration chart has been revised to change the word "shall" to "must."

Section 18.14(a)(2) and (b) have been revised to change the amount of time a motor carrier has to renew a registration, better explain the process for submitting a renewal application after the motor carrier registration has expired, and allow the motor carrier to keep the same registration number when it renews an expired motor carrier registration. Subsection (b)(4) has been revised to change the phrase "registration listing" to "insurance cab card" in order to be consistent with §18.13 of this chapter, current industry practice, and law enforcement procedures. Subsection (b)(5) has been added to clarify the requirement that when renewing an expired registration, certain information, including insurance information, must be on file with or submitted to the department. These amendments are consistent with the provisions of Transportation Code, §643.058 and §643.103.

Section 18.16(a)(1) is amended to require that proof of commercial automobile liability insurance be submitted on a form acceptable to the Director of the Motor Carrier Division. These amendments also specify that only the required information is acceptable on each specific form and that any additional information provided on the form may result in the form being rejected. These changes are a direct result of a multi-faceted effort to evaluate and improve current division processes and procedures to make them more efficient and increase customer service.

Changes to the chart in §18.16(a)(1) amend sentence structure and grammatical errors only. No substantive changes are made.

Section 18.16(b)(1) has been revised to specify that a Type A household goods mover must file proof of financial responsibility for cargo with the department. This requirement is consistent with existing subsection (e)(1)(B) and has been added to clarify what documents must be provided to the department.

Amendments to §18.16(e)(1), (2), and (3) clarify department policy for accepting documents evidencing required levels of insurance. The amendments specify that the information must be submitted on a form acceptable to the Director of the Motor Carrier Division. Subsection (e)(1)(B) has also been revised to address both a Type A and B household goods carrier. Subsection (e)(1)(C) has been removed and is no longer necessary since both Type A and B household goods movers are now addressed under subsection (e)(1)(B). These changes are a direct result of a multi-faceted effort to evaluate and improve current division processes and procedures to make them more efficient and increase customer service.

Section 18.16(e)(2) has been revised to better comply with Transportation Code, §643.101, that requires registered motor carriers to maintain liability insurance. Subsection (e)(2)(B) has been added requiring a motor carrier's insurance company to submit proof of insurance on or before the cancellation date of the insurance policy. Subsection (e)(2)(G) has been added to clarify the requirement that an insurance company replacing an active policy must submit the new policy to the department. Both (e)(2)(B) and (e)(2)(G) also conform with proposed revisions to subsections (f) and (g) of §18.16 relating to cancellation of insurance policies. Subsection (e)(2)(D) has been added to comply with §18.13(f)(6), allowing motor carriers to retain a revoked certificate of registration.

Section 18.16(f) is amended to clarify that a motor carrier registration will be revoked for failure to maintain proof of current insurance. Revocation and suspension of registrations are addressed in §18.72(a)(1) which provides that failure to maintain insurance is a basis for revoking a carrier's registration. Former §18.16(f)(1) has been redesignated as subsection (h).

Section 18.16(g) has been added to clarify that new insurance filings that replace a current policy will be accepted. This section conforms with new subsection (e)(2)(G) which specifies how and when insurance filings must be made to the department.

Amendments to §18.17 are made to change references from the Federal Highway Administration to the Federal Motor Carrier Safety Administration.

Section 18.19(a)(1)(B) is amended to remove outdated information and incorrect formatting.

Section 18.19(b) is amended to clarify requirements for proving the existence of contingency liability insurance. Subsection (b)(3) has been revised to bring department terminology into compliance with current business practices.

COMMENTS

No comments were received on the proposed amendments.

STATUTORY AUTHORITY

The amendments are adopted under Transportation Code, §201.101, which provides the commission with the authority to establish rules for the conduct of the work of the department, and more specifically, Transportation Code, Chapter 643, which authorizes the department to carry out the provisions of those laws governing the issuance of Motor Carrier Registration and Chapter 648, which specifies certain information must be gathered from motor carriers operating foreign motor vehicles.

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 27, 2002.

TRD-200206302
Richard D. Monroe
General Counsel
Texas Department of Transportation
Effective date: October 17, 2002
Proposal publication date: July 12, 2002
For further information, please call: (512) 463-8630

SUBCHAPTER F. ENFORCEMENT

43 TAC §18.70, §18.72

The Texas Department of Transportation (department) adopts amendments to §18.70, concerning the purpose of Subchapter F, Enforcement, and §18.72, concerning suspension and revocation. Section 18.70 and §18.72 are adopted without changes to the proposed text as published in the July 12, 2002, issue of the *Texas Register* (27 TexReg 6276) and will not be republished.

EXPLANATION OF ADOPTED AMENDMENTS

Transportation Code, Chapter 643, provides that the department may adopt rules to regulate motor carriers. This authority includes the ability under Subchapter F of Chapter 18 to promulgate rules enforcing Transportation Code, §§643.151, 643.152, 643.153(a)-(f), and 643.155. The Texas Transportation Commission (commission) has previously adopted §18.72 describing department procedures for suspending or revoking motor carrier registrations. The amendments clarify and streamline existing procedures and better demonstrate department compliance with statutory requirements.

Section 18.70 is amended to updated the statutory reference.

Section 18.72(e)(1) is amended to establish consistent language relating to insurance cancellation in other parts of this chapter. Amendments to §18.72(e)(2) eliminate the 90-day grace period given when motor carriers or leasing businesses fail to file proof of insurance. Removing the 90-day grace period more fully complies with the requirement in Subchapter C and §18.16 that carriers must file proof of current insurance with the department. Noncompliance will result in revocation of the certificate of registration on the day of cancellation. The changes are a direct result of a multi-faceted effort to evaluate and improve current division processes and procedures to make them more efficient, improve customer service, and ensure compliance with Transportation Code, §643.252, Suspension and Revocation of Registration.

Senate Bill 700, 77th Legislature, 2001, amended Family Code, §232.003. The amendments to §232.003 provide for suspending a license, which includes motor carrier registration, when an order from the court is received stating that the licensee did not comply with the terms of a court order providing for the possession of or access to a child. Amendments to §18.72(f)(1) are made to comply with Senate Bill 700.

Various other changes to §18.72 are nonsubstantive and are made to improve sentence structure, clarity, and readability.

COMMENTS

No comments were received on the proposed amendments.

STATUTORY AUTHORITY

The amendments are adopted under Transportation Code, §201.101, which provides the commission with the authority to establish rules for the conduct of the work of the department and Transportation Code, §643.252, regarding the suspension and revocation of registration.

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 27, 2002.

TRD-200206303
Richard D. Monroe
General Counsel
Texas Department of Transportation
Effective date: October 17, 2002
Proposal publication date: July 12, 2002
For further information, please call: (512) 463-8630

SUBCHAPTER G. VEHICLE STORAGE FACILITIES

43 TAC §§18.82 - 18.84, 18.86, 18.87, 18.93, 18.95, 18.96

The Texas Department of Transportation (department) adopts amendments to §§18.82-18.84, 18.86, 18.87, 18.93, 18.95, and 18.96 concerning vehicle storage facilities (VSFs). Section 18.86 is adopted with one change to the proposed text as published in the July 12, 2002, issue of the *Texas Register* (27 TexReg 6277). Sections 18.82-18.84, 18.87, 18.93, 18.95, and 18.96 are adopted without changes and will not be republished.

EXPLANATION OF ADOPTED AMENDMENTS

Texas Civil Statutes, Article 6687-9a, the Vehicle Storage Facility Act (the VSF Act) directs the department to regulate VSFs and authorizes the department to promulgate rules to enforce

the VSF Act. Pursuant to that authority, the Texas Transportation Commission (commission) has previously adopted rules implementing the VSF Act.

The amendments to §§18.82-18.84, 18.86, 18.87, 18.93, 18.95, and 18.96 implement the requirements of House Bill 2243, 77th Legislature, 2001, which amended the VSF Act and clarified existing language, including renumbering and restructuring the sections involved.

Section 18.82 is amended to clarify existing definitions, add new definitions, and ensure consistency with statute and department policies and procedures. A definition for "Abandoned Nuisance Vehicle" and a revision to the existing definition of "Vehicle Owner", are made to comply with Texas Civil Statutes, Article 6687-9a, §2. A new definition for "Registered Owner" is added to clarify department policy and to avoid confusion on issues involving notice to owners. Currently, §18.87(b) requires notification be provided to the registered owners of towed vehicles. A vehicle owner, as that term is defined, includes persons whose ownership interest will not be included in the registration records of any state including those of Texas. By including the definition of registered owner, the department has removed the implication that VSFs holding registered vehicles are obligated to send notices to persons that cannot be identified through a motor vehicle registration inquiry.

Section 18.83 is amended by adding new subsections (b)-(g) and restructuring the section to incorporate former subsection (b) as current (e). Subsection (b) specifies the existing requirement that applications must be accompanied by a $100 application fee. This subsection also provides that these fees are to be paid and are non-refundable according to §18.85. Subsection (c) specifies that any applications not accompanied by all fees and proof of insurance will be returned to the applicant. Subsection (d) describes the department's procedures for conditionally accepting and processing incomplete applications that do include the fees and insurance documentation described in subsection (c). Subsection (f) describes department procedures an applicant must follow to supplement an application. Subsection (g) specifies how an applicant whose license number has previously been revoked may reapply. These amendments clarify existing department policies, reduce ambiguity, and ensure department compliance with statutory requirements.

Amendments to §18.84(e)(1) specify that approximately 60 days before a VSF license expires the department will mail a notice to the license holder. Subsection (e)(3) provides that a vehicle storage facility that has allowed its license to expire, but remains in business, must file a supplemental application to regain a license. The 90-day deadline that was formerly in this subsection and that limited a VSF's ability to retain its original license number is deleted. Instead, the VSF must submit a supplemental application. This change more accurately reflects the statutory requirements found in §9(c) and (d) of the VSF Act. The requirement that proof of insurance be included with the supplemental application is also added to ensure that the insurance requirements for supplemental applications and original applications are consistent. These revisions clarify department policy, better communicate with the regulated community, and improve department functions in implementing the VSF Act.

Amendments to §18.86 clarify existing requirements, improve readability, and more accurately describe department compliance with the VSF Act. The amendments include a restructuring of the subsections. Subsection (a) is amended to require that proof of a garage-keeper's liability insurance be in a form acceptable to the director of the Motor Carrier Division and must only include the information required by the department. Subsection (c) is also amended to require that notice of insurance cancellation must also be in a form acceptable to the director of the Motor Carrier Division. These amendments allow the department to improve its performance in regulating VSFs through the use of standardized forms to better insure that licensed facilities are satisfying the insurance requirements imposed by the department as provided by §6(a) of the VSF Act.

Section 18.86(c) is adopted with one change to correct the reference from Motor Vehicle Division to Motor Carrier Division.

Section 18.87(d) is amended to clarify how notices to vehicle owners must be published and what information the notices must include. New subsection (d)(2) is added to comply with new §(13)(g) of the Vehicle Storage Facility Act which states the required contents of a published notification.

Amendments to §18.93(1), (2), and (4) specify the fees associated with publishing a notification, the fees for vehicles exceeding 25 feet in length, and the person allowed to collect fees required to be submitted to law enforcement or a governmental entity. Specifically, subsection (a)(1) has been revised to increase the amount that a facility operator may charge for notification under §18.87. These maximum charges are consistent with §(14)(a) of the VSF Act. Subsection (a)(2) has been amended to comply with §(14)(c) of the VSF Act relating to the charges for vehicles longer than 25 feet. Subsection (a)(4) has been added to comply with §(14)(h) of the VSF Act allowing VSFs to collect fees required by law enforcement agencies.

Section 18.95 is amended to eliminate the 90-day grace period given when the licensee fails to file proof of insurance before the cancellation of its existing insurance. Removing the 90-day grace period more fully complies with the requirement in Subchapter C and §18.16 that carriers must file proof of current insurance with the department, and conforms this section to the amendments made to §18.72(e)(2). Section 18.95 is also amended to update statutory references and improve readability.

Section 18.96(c)(3) is added to identify the necessary form to obtain authority to dispose and demolish an abandoned nuisance vehicle. This addition clarifies department practice and is consistent with new §14B(c) of the VSF Act.

COMMENTS

No comments were received on the proposed amendments.

STATUTORY AUTHORITY

The amendments are adopted under Transportation Code, §201.101, which provides the commission with the authority to establish rules for the conduct of the work of the department, and more specifically, Texas Civil Statutes, Article 6687-9a, which authorizes the department to carry out the provision of those laws governing the VSF Act.

§18.86. Insurance Requirements.

(a) Garage keepers liability insurance requirements. No insurance policy or certificate of insurance will be accepted by the department unless issued by an insurance company licensed and authorized to do business in this state in the form prescribed or approved by the Texas Department of Insurance (DOI) and signed or countersigned by an authorized agent of the insurance company.

(1) An applicant for a VSF license must file proof of garage keepers legal liability insurance with the department on a form acceptable to the director of the Motor Carrier Division. This filing will be

considered as proof that the licensee has met insurance coverage requirements set forth in this section. The form must be filled out completely with only the required information. Extraneous information will not be considered acceptable, and the department may reject proof of insurance if it is provided in a format that includes information beyond what is required.

(2) The facility name and address shown on the proof of insurance form must be the same as the licensee name and address. The licensee is responsible for ensuring that the insurance information on file with the department reflects the correct licensee name and address. A corrected form must be received by the department within 10 days of a change of name or address.

(b) Coverage.

(1) Insurance coverage shall be in an amount of not less than $9,000 for loss of or damage to property of others if the VSF has space to store not more than 50 motor vehicles; $18,000 if the facility has space to store 51 to 99 motor vehicles; and $25,000 if the facility has space to store 100 or more motor vehicles.

(2) The VSF's insurance policy shall be kept in full force and effect so long as the facility is operating.

(c) Insurance cancellation. The insurance company will give the department 30 days written notice before any policy is cancelled. Notice must be in a form acceptable to the director of the Motor Carrier Division. The department will revoke a license if the insurance has been canceled.

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 27, 2002.

TRD-200206304
Richard D. Monroe
General Counsel
Texas Department of Transportation
Effective date: October 17, 2002
Proposal publication date: July 12, 2002
For further information, please call: (512) 463-8630

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REVIEW OF AGENCY RULES

This section contains notices of state agency rules review as directed by the Texas Government Code, §2001.039. Included here are (1) notices of *plan to review;* (2) notices of *intention to review,* which invite public comment to specified rules; and (3) notices of *readoption,* which summarize public comment to specified rules. The complete text of an agency's *plan to review* is available after it is filed with the Secretary of State on the Secretary of State's web site (http://www.sos.state.tx.us/texreg). The complete text of an agency's rule being reviewed and considered for *readoption* is available in the *Texas Administrative* Code on the web site (http://www.sos.state.tx.us/tac).

For questions about the content and subject matter of rules, please contact the state agency that is reviewing the rules. Questions about the web site and printed copies of these notices may be directed to the *Texas Register* office.

Agency Rule Review Plan

State Securities Board

Title 7, Part 7

TRD-200206263
Filed: September 26, 2002

Proposed Rule Reviews

Texas Department of Banking

Title 7, Part 2

The Finance Commission of Texas files this notice of intention to review and consider for readoption, revision, or repeal, Texas Administrative Code, Title 7, Chapter 12 (Loans and Investments). The review and consideration are being conducted in accordance with Government Code, §2001.039. The review will include, at a minimum, an assessment by the commission of whether the reasons for adopting the Chapter 12 rules continue to exist and whether the rules should be readopted.

Any questions or written comments pertaining to this rule review should be addressed to Robin Robinson, Assistant General Counsel, Texas Department of Banking, 2601 North Lamar Boulevard, Austin, Texas 78705, or by email to robin.robinson@banking.state.tx.us. The deadline for comments is 30 days after the date of publication of this notice. Any changes to rules proposed as a result of the review will be published in the Proposed Rules Section of the *Texas Register* and will be open for a separate 30-day comment period prior to final adoption or repeal by the commission.

TRD-200206393
Everette D. Jobe
Certifying Official
Texas Department of Banking
Filed: October 2, 2002

Texas Board of Chiropractic Examiners

Title 22, Part 3

The Texas Board of Chiropractic Examiners announces its intent to review and consider for re-adoption, repeal or revision Chapter 71, relating to Applications and Applicant, in accordance with the Government Code, §2001.039.

Chapter 71. Applications and Applicant

71.1. Definitions

71.2. Application for License

71.3. Qualifications of Applicants

71.5. Approved Chiropractic Schools and Colleges

71.6. Time, Place, and Scope of Examination

71.7. Jurisprudence Examination

71.9. Failure to Appear at Jurisprudence Examination

71.10. Reexaminations

71.11. Disqualification To Take Jurisprudence Examination

71.12. Temporary License

Comments on the proposal may be submitted, no later than 30 days from publication of this notice, to Sandy Grome, Director of Licensure, Texas Board of Chiropractic Examiners, 333 Guadalupe, Tower III, Suite 825, Austin, Texas 78701, (512) 305-6709.

TRD-200206290
Sandy Grome
Director of Licensure
Texas Board of Chiropractic Examiners
Filed: September 26, 2002

The Texas Board of Chiropractic Examiners announces its intent to review and consider for re-adoption, repeal or revision Chapter 73, relating to Licenses and Renewals, in accordance with the Government Code, §2001.039.

Chapter 73. Licenses and Renewals

73.1. Notification and Change of Business Address

73.2. Renewal of License

73.3. Continuing Education

73.4. Inactive Status

73.5. Failure To Meet Continuing Education Requirements

73.7. Approved Continuing Education Courses.

Comments on the proposal may be submitted, no later than 30 days from publication of this notice, to Sandy Grome, Director of Licensure, Texas Board of Chiropractic Examiners, 333 Guadalupe, Tower III, Suite 825, Austin, Texas 78701, (512) 305-6709.

TRD-200206291

Sandy Grome
Director of Licensure
Texas Board of Chiropractic Examiners
Filed: September 26, 2002

♦ ♦ ♦

Texas Ethics Commission

Title 1, Part 2

Notice of Intention to Review

In accordance with §2001.039, Government Code, and §1.11(b), Chapter 1499, Acts of the 76th Legislature, 1999, the Texas Ethics Commission proposes to review Title 1, Texas Administrative Code, Part 2, Chapters 18 (General Rules Concerning Reports), 20 (Reporting Political Contributions And Expenditures), 22 (Restrictions On Contributions And Expenditures), and 24 (Restrictions On Contributions And Expenditures Applicable To Corporations And Labor Organizations). The reason for adopting the rules continues to exist.

Comments on the proposed review from any member of the public are solicited. A written comment should be mailed or delivered to Karen Lundquist, Texas Ethics Commission, P.O. Box 12070, Austin, TX 78711-2070, or by facsimile (FAX) to (512)463-5777. A person who wants to offer spoken comments to the commission concerning the proposed review may do so at any commission meeting during the agenda item "Communication to the Commission from the Public." Information concerning the date, time, and location of commission meetings is available by telephoning (512)463-5800 or, toll free in Texas, (800) 325-8506.

TRD-200206318
Tom Harrison
Executive Director
Texas Ethics Commission
Filed: September 27, 2002

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Texas Workers' Compensation Commission

Title 28, Part 2

The Texas Workers' Compensation Commission files this notice of intention to review the rules contained in chapter 43, concerning Insurance Coverage. This review is pursuant to the General Appropriations Act, Article IX, §167, 75th Legislature, the General Appropriations Act, Section 9-10, 76th Legislature, and Texas Government Code §2001.039 as added by SB-178, 76th Legislature.

The agency's reason for adopting the following rules contained in this chapter continues to exist and it proposes to readopt these rules.

Chapter

§43.5. Notice That Employer Has Become Subscriber.

§43.10. Termination of Coverage.

§43.15. Sanctions.

The agency's reason for adopting the following rule no longer exists and therefore, the repeal of this rule is recommended:

§43.20. Required Information to Insureds.

Comments regarding whether the reason for adopting these rules continues to exist must be received by 5:00 p.m. on November 12, 2002, and submitted to Nell Cheslock, Legal Services Mailstop #4-D, Texas Workers' Compensation Commission, Southfield Building, 4000 South IH-35, Austin, Texas 78704-7491.

TRD-200206363
Susan Cory
General Counsel
Texas Workers' Compensation Commission
Filed: September 30, 2002

♦ ♦ ♦

The Texas Workers' Compensation Commission files this notice of intention to review the rules contained in chapter 45, concerning Employer's Report Of Injury Or Disease. This review is pursuant to the General Appropriations Act, Article IX, §167, 75th Legislature, the General Appropriations Act, Section 9-10, 76th Legislature, and Texas Government Code §2001.039 as added by SB-178, 76th Legislature.

The agency's reason for adopting the rules contained in this chapter continues to exist and it proposes to readopt chapter 45.

Comments regarding whether the reason for adopting these rules continues to exist must be received by 5:00 p.m. on November 11, 2002, and submitted to Nell Cheslock, Legal Services Mailstop #4-D, Texas Workers' Compensation Commission, Southfield Building, 4000 South IH-35, Austin, Texas 78704-7491.

Chapter 45. Employer's Report Of Injury Or Disease

§45.5. Forms.

§45.10. Employer's Report of Injury and Disease.

§45.13. Wage Statement.

§45.20. Board Request for Additional Information.

§45.25. Employer's Supplemental Report of Injury.

§45.30. Sanctions.

TRD-200206362
Susan Cory
General Counsel
Texas Workers' Compensation Commission
Filed: September 30, 2002

♦ ♦ ♦

The Texas Workers' Compensation Commission files this notice of intention to review the rules contained in Chapter 53, concerning Carrier's Report of Initiation and Suspension of Compensation Payments. This review is pursuant to the General Appropriations Act, Article IX, §167, 75th Legislature, the General Appropriations Act, Section 9-10, 76th Legislature, and Texas Government Code §2001.039 as added by SB-178, 76th Legislature.

The agency's reason for adopting the rules contained in this chapter continues to exist and it proposes to readopt Chapter 53.

Comments regarding whether the reason for adopting these rules continues to exist must be received by 5:00 p.m. on November 4, 2002, and submitted to Nell Cheslock, Legal Services Mailstop #4-D, Texas Workers' Compensation Commission, Southfield Building, 4000 South IH-35, Austin, Texas 78704-7491.

Chapter 53 Carrier's Report of Initiation and Suspension of Compensation Payments

§53.5. Payment of Benefits Without Prejudice

§53.10. Written Notice of Injury Defined.

§53.15. Board Notice to Carrier of Injury.

§53.20. Notice of Initiation of Compensation; Mode of Payment of Compensation.

§53.22. Application To Change the Benefits Payment Period.

§53.25. Contents of Statement of Controversion or Statement of Position.

§53.30. Filing of Wage Statement.

§53.35. Notice of Suspension of Compensation.

§53.40. Transmittal Letters.

§53.45. Maximum Payment to Minor.

§53.48. Payment of Partial Benefits for General Injuries.

§53.50. Resumption of Compensation. 4495.

§53.55. Payment for Amputation.

§53.60. Application for Suspension of Compensation.

§53.63. Suspension of Weekly Compensation.

§53.64. Nonpayment of Compensation Based on Another Carrier's Liability.

§53.65. Certification Procedure.

TRD-200206264
Susan Cory
General Counsel
Texas Workers' Compensation Commission
Filed: September 26, 2002

TABLES & GRAPHICS

Graphic images included in rules are published separately in this tables and graphics section. Graphic images are arranged in this section in the following order: Title Number, Part Number, Chapter Number and Section Number.

Graphic images are 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: 4 TAC §20.22(a)

Pest Mgmt Zone	Planting Dates	Destruction Deadline
1	after February 1	September 1
2 - Area 1	No dates set	**October 15** [~~September 28~~]
2 - Area 2 - Kleberg, Nueces, and northern Kenedy County above an east-west line through Katherine and Armstrong	No dates set	**October 15** [~~September 28~~]
2-Area 2 - Jim Wells County	No dates set	**October 15** [~~September 28~~]
2 - Area 3 - Aransas, San Patricio County east of Highway 77, Live Oak County south and east of U.S. Highway 59.	No dates set	**October 15** [~~September 28~~]
2- Area 3 - San Patricio County west of Highway 77, Bee County south and east of U.S. Highway 59	No dates set	**October 15** [~~September 28~~]
2 - Area 4	No dates set	October **15** [~~1~~]
3 - Area 1	after February 1	October 1
3 - Area 2	after February 1	October 15
4	No dates set	October 10
5	No dates set	October 20
6	No dates set	October 31
7	after February 1	November 30
8 - Area 1	after February 1	October 31
8 - Area 2	after February 1	November 30
9	No dates set	No date set
10	No dates set	February 1

Figure: 30 TAC §101.24(f)

SIC CODE - DESCRIPTION	FEE	
	Fiscal Year 1992 - 2002	Fiscal Year 2003
1311, 1321 - Natural Gas Processing		
Gas processing and treatment operations with a rated inlet capacity or highest average daily inlet volume for one of the last three years of at least 5 million standard cubic feet per day (scf/day), but less than 25 million scf/day		
1311 - Natural Gas Sweetening	$ 1,250.00	$ 1,675.00
1321 - Natural Gas Liquids Processing	$ 2,875.00	$ 3,850.00
Gas processing and treatment operations with a rated inlet capacity or highest average daily inlet volume for one of the last three years of at least 25 million scf/day		
1311 - Natural Gas Sweetening	$ 2,500.00	$ 3,345.00
1321 - Natural Gas Liquids Processing	$ 5,750.00	$ 7,695.00
Compression with total horsepower (HP) of at least 10,000 HP from fossil fuel-fired engines	$ 2,875.00	$ 3,850.00
1459 - Fuller's Earth Processing		
Material processing capacity of at least 25 tons per hour (tph)	$ 5,625.00	$ 7,530.00
1479 - Sulfur Mining		
Material processing capacity of at least 1 ton per day (tpd), but less than 10 tpd	$ 6,000.00	$ 8,030.00
Material processing capacity of at least 10 tpd	$ 12,000.00	$ 16,060.00

2061 - Cane Sugar Manufacturing

Processing capacity of at least 1,000 pounds per hour (lbs/hr)	\$ 6,875.00	\$ 9,200.00
2074 - Cottonseed Oil Mills		
Processing capacity equal to or greater than 100 tpd, but less than 425 tpd	\$ 1,250.00	\$ 1,674.00
Processing capacity equal to or greater than 425 tpd, but less than 850 tpd	\$ 1,875.00	\$ 2,510.00
Processing capacity equal to or greater than 850 tpd	\$ 4,000.00	\$ 5,355.00
2082 - Malt Beverages		
Capacity of at least 1 million barrels per year	\$ 3,375.00	\$ 4,520.00
2435, 2436, 2493 - Veneer, Plywood, Particle board and Fiberboard		
Capacity equal to or greater than 50 million square feet per year (ft^2/year), but less than 125 million ft^2/year 3/8" basis	\$ 2,185.00	\$ 2,925.00
Capacity equal to or greater than 125 million ft^2/year, but less than 350 million ft^2/year 3/8" basis	\$ 4,375.00	\$ 5,855.00
Capacity equal to or greater than 350 million ft^2/year 3/8" basis	\$ 8,750.00	\$ 11,710.00
2611, 2621 - Pulp and Paper Mills		
Capacity of at least 100 lbs/hr , but less than 1,000 lbs/hr	\$ 7,875.00	\$ 10,540.00
Capacity of at least 1,000 lbs/hr	\$ 15,750.00	\$ 21,075.00

2812 - Alkalies and Chlorine		
Capacity of at least 1 million pounds per year (lbs/yr), but less than 10 million lbs/yr	$ 2,625.00	$ 3,515.00
Capacity of at least 10 million lbs/yr, but less than 100 million lbs/yr	$ 5,250.00	$ 7,025.00
Capacity of at least 100 million lbs/yr	$ 10,500.00	$ 14,050.00
2813 - Industrial Gases		
Capacity of at least 1 million lbs/yr, but less than 10 million lbs/yr, and heat input capacity on-site of at least 250 million British thermal units (Btu) per hour	$ 1,875.00	$ 2,510.00
Capacity of at least 10 million lbs/yr, but less than 100 million lbs/yr, and heat input capacity on-site of at least 250 million Btu per hour	$ 3,750.00	$ 5,020.00
Capacity of at least 100 million lbs/yr, and heat input capacity on-site of at least 250 million Btu per hour	$ 7,500.00	$ 10,035.00
2819 - Inorganic Chemicals		
Capacity of at least 1 million lbs/yr, but less than 10 million lbs/yr	$ 3,750.00	$ 5,020.00
Capacity of at least 10 million lbs/yr, but less than 100 million lbs/yr	$ 7,500.00	$ 10,035.00
Capacity of at least 100 million lbs/yr	$ 15,000.00	$ 20,070.00
2821 - Plastics, Minerals and Resins		
Capacity of at least 1 million lbs/yr, but less than 10 million lbs/yr	$ 3,500.00	$ 4,685.00
Capacity of at least 10 million lbs/yr, but less than 100 million lbs/yr	$ 7,000.00	$ 9,370.00
Capacity of at least 100 million lbs/yr	$ 14,000.00	$ 18,735.00
2822 - Synthetic Rubber		
Capacity of at least 1 million lbs/yr, but less than 10 million lbs/yr	$ 3,375.00	$ 4,520.00
Capacity of at least 10 million lbs/yr, but less than 100 million lbs/yr	$ 6,750.00	$ 9,035.00
Capacity of at least 100 million lbs/yr	$ 13,500.00	$ 18,065.00

2834 - Pharmaceutical Preparations		
Capacity of at least 1 million lbs/yr, but less than 10 million lbs/yr	$ 1,685.00	$ 2,255.00
Capacity of at least 10 million lbs/yr, but less than 100 million lbs/yr	$ 3,375.00	$ 4,520.00
Capacity of at least 100 million lbs/yr	$ 6,750.00	$ 9,035.00
2841 - Soap and Other Detergents		
Capacity of at least 1 million lbs/yr, but less than 10 million lbs/yr	$ 750.00	$ 1,005.00
Capacity of at least 10 million lbs/yr, but less than 100 million lbs/yr	$ 1,500.00	$ 2,010.00
Capacity of at least 100 million lbs/yr	$ 3,000.00	$ 4,015.00
2861 - Gum and Wood Chemicals		
Capacity of at least 1 million lbs/yr, but less than 10 million lbs/yr	$ 2,310.00	$ 3,095.00
Capacity of at least 10 million lbs/yr, but less than 100 million lbs/yr	$ 4,625.00	$ 6,190.00
Capacity of at least 100 million lbs/yr	$ 9,250.00	$ 12,380.00
2865 - Cyclic Crudes and Intermediates		
Capacity of at least 1 million lbs/yr, but less than 10 million lbs/yr	$ 3,625.00	$ 4,855.00
Capacity of at least 10 million lbs/yr, but less than 100 million lbs/yr	$ 7,250.00	$ 9,705.00
Capacity of at least 100 million lbs/yr	$ 14,500.00	$ 19,405.00
2869 - Organic Chemicals		
Capacity of at least 1 million lbs/yr, but less than 10 million lbs/yr	$ 3,750.00	$ 5,020.00
Capacity of at least 10 million lbs/yr, but less than 100 million lbs/yr	$ 7,500.00	$ 10,035.00
Capacity of at least 100 million lbs/yr	$ 15,000.00	$ 20,070.00

2873 - Nitrogenous Fertilizers		
Capacity of at least 1 million lbs/yr, but less than 10 million lbs/yr	$ 1,560.00	$ 2,090.00
Capacity of at least 10 million lbs/yr, but less than 100 million lbs/yr	$ 3,125.00	$ 4,185.00
Capacity of at least 100 million lbs/yr	$ 6,250.00	$ 8,365.00
2874 - Phosphatic Fertilizers		
Capacity of at least 1 million lbs/yr, but less than 10 million lbs/yr	$ 2,560.00	$ 3,430.00
Capacity of at least 10 million lbs/yr, but less than 100 million lbs/yr	$ 5,125.00	$ 6,860.00
Capacity of at least 100 million lbs/yr	$ 10,250.00	$ 13,715.00
2879 - Agricultural Chemicals		
Capacity of at least 1 million lbs/yr, but less than 10 million lbs/yr	$ 2,310.00	$ 3,095.00
Capacity of at least 10 million lbs/yr, but less than 100 million lbs/yr	$ 4,625.00	$ 6,190.00
Capacity of at least 100 million lbs/yr	$ 9,250.00	$ 12,380.00
2895 - Carbon Black		
Capacity of at least 6 million lbs/yr, but less than 50 million lbs/yr	$ 7,750.00	$ 10,370.00
Capacity of at least 50 million lbs/yr	$ 15,500.00	$ 20,740.00
2899 - Chemical Preparations		
Capacity of at least 1 million lbs/yr, but less than 10 million lbs/yr	$ l,000.00	$ 1,340.00
Capacity of at least 10 million lbs/yr, but less than 100 million lbs/yr	$ 2,000.00	$ 2,680.00
Capacity of at least 100 million lbs/yr	$ 4,000.00	$ 5,355.00
2911 - Petroleum Refining		
Capacity of at least 10,000 barrels per day (bbl/day), but less than 100,000 bbl/day	$ 9,375.00	$ 12,545.00
Capacity of at least 100,000 bbl/day	$ 18,750.00	$ 25,090.00
2951 - Asphalt Paving Mixtures	$ 875.00	$ 1,175.00

2952 - Asphalt Felts and Coatings		
Capacity of at least 1 million lbs/yr, but less than 50 million lbs/yr	$ 4,250.00	$ 5,690.00
Capacity of at least 50 million lbs/yr	$ 8,500.00	$ 11,375.00
2992 - Waste Oil Re-Refining		
Capacity of at least 200,000 gallons per year	$ 3,750.00	$ 5,020.00
2999 - Petroleum and Coal Products		
Capacity of at least 1 million lbs/yr, but less than 50 million lbs/yr	$ 5,125.00	$ 6,860.00
Capacity of at least 50 million lbs/yr	$ 10,250.00	$ 13,715.00
3011 - Tires and Inner Tubes		
Capacity of at least 5 million lbs/yr, but less than 10 million lbs/yr	$ 7,125.00	$ 9,535.00
Capacity of at least 10 million lbs/yr	$ 14,250.00	$ 19,070.00
3211 - Flat Glass		
Capacity of at least 10 million lbs/yr, but less than 200 million lbs/yr	$ 5,875.00	$ 7,865.00
Capacity of at least 200 million lbs/yr	$ 11,750.00	$ 15,725.00
3221 - Glass Containers		
Capacity of at least 10 million lbs/yr, but less than 200 million lbs/yr	$ 3,375.00	$ 4,520.00
Capacity of at least 200 million lbs/yr	$ 6,750.00	$ 9,035.00
3229 - Pressed and Blown Glass		
Capacity of at least 10 million lbs/yr, but less than 200 million lbs/yr	$ 6,750.00	$ 9,035.00
Capacity of at least 200 million lbs/yr	$ 13,500.00	$ 18,065.00
3241 - Cement, Hydraulic		
Capacity of at least 10 million lbs/yr, but less than 500 million lbs/yr	$ 7,250.00	$ 9,705.00
Capacity of at least 500 million lbs/yr	$ 14,500.00	$ 19,405.00

3251 - Brick and Structural Clay Tile		
Capacity of at least 10 million lbs/yr, but less than 200 million lbs/yr	$ 2,375.00	$ 3,180.00
Capacity of at least 200 million lbs/yr	$ 4,750.00	$ 6,360.00
3259 - Structural Clay Products		
Capacity of at least 10 million lbs/yr, but less than 200 million lbs/yr	$ 6,250.00	$ 8,365.00
Capacity of at least 200 million lbs/yr	$ 12,500.00	$ 16,725.00
3261 - Vitreous Plumbing Fixtures		
Capacity of at least 10 million lbs/yr, but less than 200 million lbs/yr	$ 3,375.00	$ 4,520.00
Capacity of at least 200 million lbs/yr	$ 6,750.00	$ 9,035.00
3273 - Ready-Mixed Concrete		
Capacity to produce for delivery at least 10 cubic yards (yd^3) per hour (20,000 yd^3 per year)	$ 625.00	$ 840.00
3274 - Lime		
Capacity of at least 1 million lbs/yr, but less than 50 million lbs/yr	$ 7,375.00	$ 9,870.00
Capacity of at least 50 million lbs/yr	$ 14,750.00	$ 19,740.00
3275 - Gypsum Products		
Capacity of at least 10 million lbs/yr, but less than 200 million lbs/yr	$ 3,875.00	$ 5,185.00
Capacity of at least 200 million lbs/yr	$ 7,750.00	$ 10,370.00
3292 - Asbestos Products		
Capacity of at least 10 million lbs/yr, but less than 200 million lbs/yr	$ 1,250.00	$ 1,675.00
Capacity of at least 200 million lbs/yr	$ 2,500.00	$ 3,345.00
3295 - Minerals, Ground or Treated		
Capacity of at least 1 million lbs/yr, but less than 50 million lbs/yr	$ 3,375.00	$ 4,520.00
Capacity of at least 50 million lbs/yr	$ 6,750.00	$ 9,035.00

3296 - Mineral Wool		
Capacity of at least 10,000 lbs/yr, but less than 1 million lbs/yr	$ 7,375.00	$ 9,870.00
Capacity of at least 1 million lbs/yr	$ 14,750.00	$ 19,740.00
3312 - Blast Furnaces and Steel Mills		
Capacity of at least 50 million lbs/yr, but less than 1 billion lbs/yr	$ 7,000.00	$ 9,370.00
Capacity of at least 1 billion lbs/yr	$ 14,000.00	$ 18,735.00
3321 - Gray Iron Foundries		
Capacity of at least 10 million lbs/yr, but less than 100 million lbs/yr	$ 3,125.00	$ 4,185.00
Capacity of at least 100 million lbs/yr	$ 6,250.00	$ 8,365.00
3331 - Primary Copper Smelting and Refining		
Smelting capacity of at least 10 million lbs/yr, but less than 100 million lbs/yr	$ 9,375.00	$ 12,545.00
Smelting capacity of at least 100 million lbs/yr	$ 18,750.00	$ 25,090.00
Refining capacity of at least 10 million lbs/yr, but less than 100 million lbs/yr	$ 5,250.00	$ 7,025.00
Refining capacity of at least 100 million lbs/yr	$ 10,500.00	$ 14,050.00
3334 - Primary Aluminum		
Capacity of at least 10 million lbs/yr, but less than 100 million lbs/yr	$ 6,875.00	$ 9,200.00
Capacity of at least 100 million lbs/yr	$ 13,750.00	$ 18,400.00
3339 - Primary Nonferrous Metals		
Capacity of at least 10 million lbs/yr, but less than 100 million lbs/yr	$ 3,625.00	$ 4,855.00
Capacity of at least 100 million lbs/yr	$ 7,250.00	$ 9,705.00
3341 - Secondary Nonferrous Metals		
Capacity of at least 1 million lbs/yr, but less than 20 million lbs/yr	$ 6,625.00	$ 8,865.00
Capacity of at least 20 million lbs/yr	$ 13,250.00	$ 17,730.00

3354 - Aluminum Extruded Products		
Capacity of at least 500,000 lbs/yr, but less than 10 million lbs/yr	$ 2,250.00	$ 3,015.00
Capacity of at least 10 million lbs/yr	$ 4,500.00	$ 6,025.00
3355 - Aluminum Rolling and Drawing		
Capacity of at least 500,000 lbs/yr, but less than 10 million lbs/yr	$ 4,750.00	$ 6,360.00
Capacity of at least 10 million lbs/yr	$ 9,500.00	$ 12,715.00
3411 - Metal Cans		
Capacity of at least 10 million cans per year, but less than 50 million cans per year	$ 5,875.00	$ 7,865.00
Capacity of at least 50 million cans per year	$ 11,750.00	$ 15,725.00
3585 - Refrigeration and Heating Equipment		
Accounts with more than 500 employees	$ 6,875.00	$ 9,200.00
3624 - Carbon and Graphite Products		
Accounts with more than 1,000 employees	$ 5,125.00	$ 6,860.00
3661 - Telephone and Telegraph Apparatus		
Accounts with more than 1,000 employees	$ 4,250.00	$ 5,690.00
3663, 3669 - Communications Equipment		
Accounts with more than 1,000 employees	$ 5,625.00	$ 7,530.00
3674 - Semiconductors and Related Devices		
Accounts with more than 1,000 employees	$ 5,125.00	$ 6,860.00
3711 - Motor Vehicles		
Capacity of at least 1,000 vehicles per year, but less than 10,000 vehicles per year	$ 5,250.00	$ 7,025.00
Capacity of at least 10,000 vehicles per year	$ 10,500.00	$ 14,050.00
3721 - Aircraft Manufacturing Plants		
Accounts with at least 200 but less than 1,000 employees	$ 1,875.00	$ 2,510.00
Accounts with at least 1,000 but less than 5,000 employees	$ 5,625.00	$ 7,530.00
Accounts with at least 5,000 employees	$ 11,250.00	$ 15,055.00

3743 - Railroad Equipment		
Accounts with more than 25 employees	$ 5,875.00	$ 7,865.00
4226 - Storage and Terminal Facilities for Petroleum and Chemical Products		
Capacity of at least 50,000 gallons tankage and 20,000 gallons per day (gpd) throughput	$ 7,250.00	$ 9,705.00
4491 - Marine Cargo Handling		
Capacity of at least 25 tpd of product	$ 4,500.00	$ 6,025.00
4789 - Transportation Services		
Railcar repair, cleaning or painting accounts with at least 25 employees	$ 2,875.00	$ 3,850.00
Truck cleaning and painting accounts with at least 25 employees	$ 4,375.00	$ 5,855.00
Independent pipeline terminals with throughput of at least 20,000 gallons per day, but less than 200,000 gpd for all petroleum liquids except crude oil	$ 3,625.00	$ 4,855.00
Independent pipeline terminals with throughput of at least 200,000 gpd for all petroleum liquids except crude oil	$ 7,250.00	$ 9,705.00
4911 - Electric Services		
Capacity of at least 25 megawatts, but less than 100 megawatts (includes cogeneration units)	$ 5,000.00	$ 6,690.00
Capacity of at least 100 megawatts	$ 10,000.00	$ 13,380.00
4922, 4923, 4924, 4925 - Natural Gas Transmission/Distribution		
Capacity of at least 10,000 horsepower from fossil fuel-fired engines	$ 2,875.00	$ 3,850.00
4952 - Sludge Drying and Incineration		
Capacity of at least 5 tons per hour drying or 500 pounds per hour incineration (wet basis)	$ 3,750.00	$ 5,020.00
4961 - Steam Supply		
Capacity of at least 250 million Btu per hour	$ 7,500.00	$ 10,035.00

5093 - Scrap Metal Reclamation		
Capacity of at least 1 ton per day metal reclamation by incineration or melting	$ 3,750.00	$ 5,020.00
Metal reclamation by shredding	$ 625.00	$ 840.00
5169 - Distribution of Chemicals and Allied Products		
Throughput of at least 20,000 gpd	$ 3,375.00	$ 4,520.00
5171 - Petroleum and Petroleum Product Bulk Stations and Terminals		
Throughput of at least 20,000 gpd, but less than 200,000 gpd for all petroleum liquids except crude oil. Crude oil facilities with tankage of at least 5,000 but less than 10,000 barrel capacity and no floating roof for control of emissions, or tankage of at least 100,000 but less than 200,000 barrel capacity with floating roof controls	$ 3,625.00	$ 4,855.00
Throughput of at least 200,000 gpd for all petroleum liquids except crude oil. Crude oil facilities with tankage of at least 10,000 barrel capacity with no floating roof for control of emissions, or tankage of at least 200,000 barrel capacity with floating roof controls	$ 7,250.00	$ 9,705.00
9711 - Defense Plants and Military Bases		
Defense plants with at least 100 employees, or military bases with more than 1,000 employees	$ 9,875.00	$ 13,215.00

Figure: 30 TAC §101.27(f)(1)

Emissions Fee Schedule

Fiscal Year	Rate Per Ton	Minimum Fee
1992	$3	
1993	$5	$25
1994	$25	$25
1995 - 2002	$26	$26

For fiscal year 2003 and subsequent years, the rate per ton shall be calculated using the following formula. The minimum fee shall be equal to the rate per ton.

Rate per ton = $25.00 X (1 - CO) X (1 + {(CPI - 122.15)/122.15})

Where:
CO = carbon monoxide fraction of the fee basis, for all emissions fee payers for the previous fiscal year; and

CPI = average of the consumer price index for the 12 months preceding the fiscal year for which the fee is assessed (as published by the United States Bureau of Labor Statistics, CPI - All Urban Consumers, Not Seasonally Adjusted, base period 1982 - 84 = 100).

Figure: 30 TAC §116.313(a)

RENEWAL FEE TABLE*

X = TOTAL ALLOWABLE (TONS/YEAR)	BASE FEE	INCREMENTAL FEE
$X \leq 5$	$600	-
$5 < X \leq 24$	$600	$35/ton
$24 < X \leq 99$	$1,265	$28/ton
$99 < X \leq 651$	$3,365	$12/ton
$X > 651$	$10,000	--

Minimum fee: $600
Maximum fee: $10,000

* To calculate the fee, multiply the number of tons in excess of the lower limit of the appropriate category by the incremental fee, then add this amount to the base fee. For example, if total emissions of all air contaminants are 50 tons per year, the total fee would be $1,993 (base fee of $1,265, plus incremental fee of $28 x 26 tons or $728).

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 issued by the Office of Consumer Credit Commissioner, and consultant proposal requests and awards. State agencies also may publish other notices of general interest as space permits.

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 deemed administratively complete for the following projects(s) during the period of September 20, 2002, through September 26, 2002. The public comment period for these projects will close at 5:00 p.m. on November 1, 2002.

FEDERAL AGENCY ACTIONS:

Applicant: Oyster Creek Development Company; Location: The project is located on Oyster Creek on County Road 792 in the Oyster Creek Subdivision approximately 4 miles southeast of Freeport in Brazoria County, Texas. The project can be located on the U.S.G.S. quadrangle map entitled Oyster Creek, Texas. Approximate UTM Coordinates: Zone 15; Easting: 273900; Northing: 3211000. Project Description: The applicant requests an extension of time. To date, the marina and three of the proposed residential canals have been constructed. The applicant now proposes to complete the project. The applicant also wishes to amend the mitigation plan. To compensate for the filling of approximately 1.0-acre of wetlands and for the excavation of approximately 0.3-acre of fringe marsh, the applicant now proposes to create approximately 2.0 acres of on-site wetlands. The purpose of the proposed project is to construct a single-family canal lot subdivision. CCC Project No.: 02-0244-F1; Type of Application: U.S.A.C.E. permit application #13191(06) is being evaluated under §10 of the Rivers and Harbors Act of 1899 (33 U.S.C.A. §403) and §404 of the Clean Water Act (33 U.S.C.A. §125-1387).

Applicant: BNP Petroleum Corporation; Location: The project is located in the Laguna Madre in State Tract 211 approximately 14.5 miles south of the Bird Island basin boat ramp in Kleberg County, Texas. The project can be located on the U.S.G.S. quadrangle map entitled Point of Rocks, Texas. Approximate UTM Coordinates: Zone 14; Easting: 658750; Northing: 3109875. Project Description: The applicant proposes to install, operate, and maintain structures and equipment necessary for oil and gas drilling, production, and transportation activities for the Plum/Peach well site. Such activities include installation of typical marine barges and keyways, access channels with basins, and production structures with attendant facilities. Approximately 89,382 cubic yards of material will be hydraulically dredged to create an access channel and basin and pumped into an armored levee site located in State Tract 214 in the Laguna Madre approximately 0.4-mile south of the basin area. The access channel will be 12,110 feet long, have a bottom width of 60 feet, and will be approximately -7 feet Mean Low Tide. Four 3-pile clusters will be temporarily located along the access channel to provide two mooring locations during project construction. These will be removed within 60 days after completion of the drilling operation if the well is a dryhole or within 60 days after construction of the production facilities if the well is productive. Two additional clusters will be permanently located in the basin to provide mooring. The basin will be irregularly shaped with a maximum length of 435 feet and a maximum width of 210 feet. The excavated material will be used to create a 14-acre beneficial-use island for bird nesting in unvegetated shallow water. The island will be contoured so that approximately 30% of its area will be at an elevation suitable for trees. Another 30% will be at elevations that will support sparse to no vegetation. Herbaceous species are expected to grow in the area beneath the trees and the sparsely vegetated area. CCC Project No.: 02-0274-F1; Type of Application: U.S.A.C.E. permit application #22754 is being evaluated under §10 of the Rivers and Harbors Act of 1899 (33 U.S.C.A. §403) and §404 of the Clean Water Act (33 U.S.C.A. §125-1387). NOTE: The CMP consistency review for this project may be conducted by the Railroad Commission of Texas as part of its certification under §401 of the Clean Water Act.

Applicant: Craig Dishon; Location: The project is located at a 7.5-acre tract of land bounded to the north by Cottage Lane, to the west by Idylwood Street, to the south by a tidally influenced man-made canal connected to Round Bunch Bayou, and to the east by Round Bunch Bayou, Bridge City, Orange County, Texas. The project can be located on the U.S.G.S. quadrangle map entitled Orangefield, Texas. Approximate UTM Coordinates: Zone 15; Easting: 421795; Northing: 3322838. Project Description: The applicant proposes to fill approximately 0.488-acre of wetlands and excavate a 190-foot long by 55-foot wide extension on the existing man-made canal. Wetland A is 0.37-acre and will be filled due to the location of the applicant's residence. Wetland B is 0.358-acre in which approximately 0.118-acre will be filled and approximately 0.24-acre will be excavated for the canal to provide water access to the property. The wetlands are dominated by rusty flat sedge (Cyperus odoratus), iria flat sedge (Cyperus iria), green flatsedge (Cyperus virens), purple ammannia (Ammannia coccinea), and sand spike rush (Eleocharis montevidensis). The canal will be excavated to approximately -6 feet mean low tide, which is approximately -6 inches shallower than the existing canal. Approximately 3,200 cubic yards of material will be excavated. The excavated material from the canal will be used to fill the wetlands and raise the elevations on the uplands. CCC Project No.: 02-0282-F1 Type of Application: U.S.A.C.E. permit application #22772 is being evaluated under §10 of the Rivers and Harbors Act of 1899 (33 U.S.C.A. §403) and §404 of the Clean Water Act (33 U.S.C.A. §125-1387).

Applicant: Canal City Homeowner's Association, Inc.; Location: The project is located adjacent to the Gulf Intracoastal Waterway in the Canal City Subdivision, Gilchrist, Galveston County, Texas. The project can be located on the U.S.G.S. quadrangle map entitled High Island, Texas. Approximate UTM Coordinates: Zone 15; Easting: 357400; Northing: 3267000. Project Description: The applicant has requested an amendment to construct six additional riprap breakwaters within three existing canals to lessen impacts of vessel-generated waves within the canals and to place additional riprap to lessen shoreline erosion. The applicant also requests an extension of time to

place maintenance, mechanically-dredged material from the existing canals onto subdivision lots. The proposed canal breakwaters would be 60-foot-long and 12-foot-wide and would extend 2 feet above mean high tide. CCC Project No.: 02-0299-F1; Type of Application: U.S.A.C.E. permit application #16747(06) is being evaluated under §10 of the Rivers and Harbors Act of 1899 (33 U.S.C.A. §403) and §404 of the Clean Water Act (33 U.S.C.A. §125-1387). NOTE: The CMP consistency review for this project may be conducted by the Texas Commission on Environmental Quality as part of its certification under §401 of the Clean Water Act.

Applicant: Texas Department of Transportation; Location: This 8.4 mile segment of the proposed State Highway (SH) 35 widening project begins at the intersection of SH 36 and Farm-to-Market Road (FM) 1301 in West Columbia and ends at FM 524, approximately 3/4 mile east of Old Ocean in Brazoria County, Texas. The project can be located on the U.S.G.S. quadrangle map entitled West Columbia and Ashwood, Texas. Approximate UTM Coordinates: Beginning - Zone 15; Easting: 241440; Northing: 3226985. Ending - Zone 15; Easting: 232140; Northing: 3220190. Project Description: The proposed project involves construction improvements to SH 35 to address existing public safety and traffic efficiency issues associated with this roadway. The proposed improvements would involve expanding approximately 5.3 miles of the existing two-lane undivided thoroughfare to a four-lane divided thoroughfare with a grass median and the construction of bypasses around West Columbia and Old Ocean on approximately 3.1 miles of new right-of-way (ROW). Soil disturbing activities would include preparation of the ROW, grading, excavation, construction of embankments for slope erosion and sediment control, and topsoil work for sodding and seeding. Additional work would include construction of bridges and placement of precast concrete culverts, concrete riprap, cement stabilized sand, concrete piles, and concrete slope protection at SH 35 stream and river crossings. A total of 2.212 acres of low-quality wetlands, and 0.381 acres of other waters of the U.S. would be impacted by construction of the proposed roadway improvements. The applicant proposes to utilize construction methods and structures that would allow for the continued and/or restored conveyance function of affected streams and ditches. The applicant further proposes to purchase 5.2 acres of bottomland hardwood credits from the applicant's Brazoria mitigation bank. This would mitigate for direct impacts to identified jurisdictional areas at a ratio of 2:1. In addition, an estimated 11 acres of non-jurisdictional wetlands exist within the proposed project area. The applicant has voluntarily proposed to compensate for the loss of these non-jurisdictional wetlands through modifications to seven proposed detention basins. Contingent upon the final proposed detention basin design, the applicant estimates that 16 to 33 acres of wetlands could be created within these basins. CCC Project No.: 02-02302-F1; Type of Application: U.S.A.C.E. permit application #22777 is being evaluated under §10 of the Rivers and Harbors Act of 1899 (33 U.S.C.A. §403) and §404 of the Clean Water Act (33 U.S.C.A. §125-1387).

Applicant: Davis Petroleum Corporation; Location: The project is located in Galveston Bay in State Tract (ST) 223, offshore Chambers County, Texas. The project can be located on the U.S.G.S. quadrangle map entitled Smith Point, Texas. Approximate UTM Coordinates: Zone 15; Easting: 318192; Northing: 3270766. Project Description: The applicant proposes to install, operate, and maintain a well platform and a production platform for oil and gas drilling and production activities. The proposed well platform will measure 30 feet long by 7 feet wide and will be constructed upon a series of 8-inch pilings. The proposed production platform will measure 70 feet long by 70 feet wide and will be constructed on top of a 240-foot-long by 100-foot-long by 3-foot-high shell pad. Water depth at the proposed project site is approximately -13 feet. No wetlands or vegetated shallows will be impacted by the proposed activity. There are no known oyster reefs located within the permit area. CCC Project No.: 02-0303-F1; Type of Application: U.S.A.C.E. permit application #22784 is being evaluated under §10 of the Rivers and Harbors Act of 1899 (33 U.S.C.A. §403) and §404 of the Clean Water Act (33 U.S.C.A. §125-1387). NOTE: The CMP consistency review for this project may be conducted by the Railroad Commission of Texas as part of its certification under §401 of the Clean Water Act.

Applicant: Texas Department of Transportation; Location: This 5.5-mile segment of the proposed State Highway (SH) 35 widening project begins at Farm-to-Market Road (FM) 524 in Old Ocean, Brazoria County and ends at FM 1728 in Sugar Valley, Matagorda County, Texas. The project can be located on the U.S.G.S. quadrangle map entitled Ashwood, Texas. Approximate UTM Coordinates: Beginning - Zone 15; Easting: 232140; Northing: 3220190. Ending - Zone 15; Easting: 223495; Northing: 3218085. Project Description: The proposed project involves construction improvements to SH 35 to address existing public safety and traffic efficiency issues associated with this roadway. The proposed improvements would involve expanding approximately 4.3 miles of the existing two-lane undivided thoroughfare to a four-lane divided thoroughfare with a grass median and the construction of a bypass around Old Ocean on approximately 1.2 miles of new right-of-way (ROW). Soil disturbing activities would include preparation of the ROW, grading, excavation, construction of embankments for slope erosion and sediment control, and topsoil work for sodding and seeding. Additional work would include construction of bridges and placement of precast concrete culverts, concrete rip rap, cement stabilized sand, concrete piles, and concrete slope protection at SH 35 stream and river crossings. Approximately 2.89 acres of jurisdictional waters within the project area would be impacted as a result of the proposed improvements. The proposed 2.89 acres of impacts involve the following four categories of jurisdictional waters of the U.S.: 0.19 acres of perennial streams, 2.52 acres of intermittent streams, 0.30 acres of emergent herbaceous wetlands, and 0.15 acres of forested wetlands. The applicant proposes to utilize construction methods and structures that would allow for the continued and/or restored conveyance function of affected streams and ditches. The applicant further proposes to purchase 1.02 acre-credits from the applicant's Coastal Bottomlands Mitigation Bank to compensate for all impacts to herbaceous and forested wetlands. This would mitigate for direct impacts to one jurisdictional area of medium quality at a ratio of 4:1, and three jurisdictional areas of high quality at a ratio of 6:1. CCC Project No.: 02-0306-F1; Type of Application: U.S.A.C.E. permit application #22778 is being evaluated under §10 of the Rivers and Harbors Act of 1899 (33 U.S.C.A. §403) and §404 of the Clean Water Act (33 U.S.C.A. §125-1387).

Applicant: Dennis Weeden; Location: The project is located at the end of a private road, south of Farm-to-Market Road 1074 and approximately 2 miles northeast of White's Point in San Patricio County, Texas. The project can be located on the U.S.G.S. quadrangle map entitled Taft, Texas. Approximate UTM Coordinates: Zone 14; Easting: 651900; Northing: 3084550. Project Description: The applicant proposes to impound 25 acres of shallow water habitat by installing an earthen berm. The purpose of the project is to improve wildlife habitat and create a wildlife sanctuary where hunting will be prohibited. The earthen berm would be 4-foot-high by 23-foot-wide by 250-foot long and would include a 1-foot-high by 30-foot-long concrete spillway. The berm would tie into an existing oil field road at both ends and the spillway would be located on the road. Approximately 970 cubic yards of material would be removed from a clay deposit on the bluff that is located approximately 1,000 feet north of the project site. This

material would be used to construct the berm, to fill low sections of the existing road, and to tie the berm to the spillway. Approximately 275 cubic yards of material would be excavated from the site of the proposed berm and be deposited adjacent to the proposed berm. Trucks would bring in 565 cubic yards of clay material which would be spread and compacted by a bulldozer to form the berm. Approximately 5,800 square feet of wetlands would be filled by the berm. However, no wetlands would be impacted by the proposed spillway, the fill on each side of the spillway, or by the building up of low sections of the existing road. The spillway would include perpendicular wings on each side. Topsoil would be spread over the berm and the area adjacent to the spillway to improve vegetation growth. During flooding events, water would be able to enter or leave the impounded area without eroding the berm. The existing conditions at the site consist of 14 acres receiving freshwater run-off from the adjacent bluff and contains several small pools of water with brackish to freshwater vegetation. The proposed project would increase the amount of brackish and freshwater habitat at the project site. CCC Project No.: 02-0307-F1; Type of Application: U.S.A.C.E. permit application #22573 is being evaluated under §10 of the Rivers and Harbors Act of 1899 (33 U.S.C.A. §403) and §404 of the Clean Water Act (33 U.S.C.A. §125-1387). NOTE: The CMP consistency review for this project may be conducted by the Texas Commission on Environmental Quality as part of its certification under §401 of the Clean Water Act.

Applicant: Texas Department of Transportation; Location: The project is located at the mile marker 357.3 on the Gulf Intracoastal Waterway at IH 45 South near the City of Galveston in Galveston County, Texas Project Description: The applicant is applying for approval from the Commander of the U.S. Coast Guard for the location and plans to replace the IH 45 Galveston Causeway concrete bridge across the Gulf Intracoastal Waterway. The proposed bridge will replace the existing bridge, which will be removed during phased construction. Construction is planned to begin in July 2003 and is estimated to take four years to complete. Federal funds will be utilized and have been allocated for this project. Estimated cost for the proposed project is $91,000,000. An Environmental Assessment for the bridge replacement has been prepared. This document is pending approval from the Federal Highway Administration, which is the lead federal agency for the proposed project. CCC Project No.: 02-0318-F1; Type of Application: U.S. Coast Guard Section 9 bridge permit application.

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 on the applications listed above may be obtained from Ms. Diane P. Garcia, Council Secretary, Coastal Coordination Council, P.O. Box 12873, Austin, Texas 78711-2873, 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-200206401
Larry Soward
Chief Clerk, General Land Office
Coastal Coordination Council
Filed: October 2, 2002

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Office of Consumer Credit Commissioner

Notice of Rate Ceilings

The Consumer Credit Commissioner of Texas has ascertained the following rate ceilings by use of the formulas and methods described in Sections 303.003, 303.005, and 303.009, Tex. Fin. Code.

The weekly ceiling as prescribed by Sec. 303.003 and Sec. 303.009 for the period of 10/07/02 - 10/13/02 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 10/07/02 - 10/13/02 is 18% for Commercial over $250,000.

The monthly ceiling as prescribed by Sec. 303.005[3] for the period of 10/01/02 - 10/31/02 is 18% for Consumer/Agricultural/Commercial/credit thru $250,000.

The monthly ceiling as prescribed by Sec. 303.005 for the period of 10/01/02 - 10/31/02 is 18% for Commercial over $250,000.

[1]Credit for personal, family or household use.

[2]Credit for business, commercial, investment or other similar purpose.

[3]For variable rate commercial transactions only.

TRD-200206370
Leslie L. Pettijohn
Commissioner
Office of Consumer Credit Commissioner
Filed: October 1, 2002

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Texas Education Agency

Request for Alternate Assessments for Student Success Initiative

Description. The Texas Education Agency (TEA) is notifying test publishers that assessment instruments for the alternate assessment option of the Student Success Initiative (SSI) may be submitted for review. Texas Education Code (TEC), §28.0211, specifies the new grade advancement requirements enacted by the 76th Texas Legislature, 1999, as the SSI. This initiative mandates that students must pass specific subject-area tests at specific grade levels on the statewide assessment in order to be promoted to the next grade. These requirements will be phased in on the following schedule: Grade 3 Reading in 2002-2003; Grade 5 Reading and Mathematics in 2004-2005; and Grade 8 Reading and Mathematics in 2007-2008.

These testing requirements are part of an overall system of support for student academic achievement on grade level. The SSI is a comprehensive set of services for students, including informal and formal assessment of student needs and corresponding early intervention activities that address those needs, research-based instructional programs, targeted accelerated instruction informed by multiple testing opportunities, and a grade placement committee which decides, on an individual student basis, the most effective way to support a student's academic achievement and individual accelerated education plans. Further information on the SSI is available on the agency website at www.tea.state.tx.us/student.assessment.

Program Requirements. The TEC allows a school district the option of using an alternate assessment in place of the Texas Assessment of Knowledge and Skills (TAKS) on the third testing opportunity. TEC, §28.0211(b), specifies: "A school district may administer an alternate assessment instrument to a student who has failed an assessment instrument specified under Subsection (a) on the previous two opportunities. Notwithstanding any other provision of this section, a student may be promoted if the student performs at grade level on an alternate

assessment instrument under this subsection that is appropriate for the student's grade level and approved by the commissioner."

Under 19 TAC Chapter 101, Assessment, Subchapter BB, Commissioner's Rules Concerning the Student Success Initiative, §101.2011, Alternative Assessment, the commissioner of education shall adopt a list of alternate assessments that school districts may use on the third testing opportunity. These rules specify the following program requirements:

(a) On the third testing opportunity, each school district and charter school may establish by local board policy a district-wide procedure to use a state-approved alternate assessment instead of the statewide assessment instrument specified in 19 TAC §101.2003(a) (relating to grade advancement testing requirements). The commissioner of education shall provide annually, to school districts and charter schools, a list of state-approved group-administered achievement tests certified by test publishers as meeting the requirements of TEC, §28.0211. This list shall include nationally recognized instruments for obtaining valid and reliable data, which demonstrate a student's competencies in the applicable subject at the appropriate grade level range. The district shall select only one test for each applicable grade and subject to be used under this section.

(b) The alternate assessment must be given during the period established in the assessment calendar to coincide with the date of the third administration of the statewide assessment.

(c) A company or organization scoring a test defined in 19 TAC §101.2011(a) shall send the test results to the school district for verification within 10 working days following receipt of the test materials from the school district.

(d) To maintain the security and confidential integrity of group-administered achievement tests, school districts and charter schools shall follow the procedures for test security and confidentiality delineated in 19 TAC Chapter 101, Assessment, Subchapter C, Security and Confidentiality.

Both criterion-referenced tests (CRTs) and norm-referenced tests (NRTs) are eligible for inclusion on the commissioner's list of alternate assessments.

In addition to the program requirements listed previously, alternate assessments must meet the following requirements specified for group-administered achievement tests under TEC, §39.032: (1) the school district not use the same form of an assessment instrument for more than three years (both CRTs and NRTs); (2) the standardization norms not be more than six years old at the time the test is administered (NRTs only); and (3) standardization norms must be based on a national probability sample that meets accepted standards for educational and psychological testing (NRTs only).

The commissioner's list of alternate assessment instruments is expected to be made available to local school districts and charter schools no later than January 2003. The list of instruments adopted by the commissioner will remain in effect through the 2002-2003 school year.

Selection Criteria. Each instrument adopted by the commissioner must meet the following criteria and proposals from test publishers must address each of these criteria and include a copy of the instrument and the administrative materials to be used the first year of this program.

Reliability and Validity. The proposal must describe the reliability and validity data for the test in accordance with applicable educational testing standards, as set forth by the American Educational Research Association, the American Psychological Association, and the National Council on Measurement in Education. The proposal must include discussion of measurement error.

Curriculum Alignment and Match. The proposal must demonstrate, using an acceptable, industry-recognized methodology, how the assessment instrument aligns with and matches the domain of the Texas Essential Knowledge and Skills (TEKS) for the grade and subject area tested. TAKS Information Booklets, which show the alignment of the TAKS with the TEKS for each grade and subject, are available on the agency website at www.tea.state.tx.us/student.assessment.

Comparable Standard. The proposal must provide a plan to establish a comparable "passing" performance standard to the TAKS passing standard scheduled to be set by the State Board of Education in November 2002. This plan must describe a method for providing this comparable standard (e.g., the equipercentile or equivalent passing standards method) in accordance with applicable educational testing standards. The plan must also provide for the comparable passing standard to be established and made available to schools no later than May 16, 2003.

Reporting. Each assessment instrument administered in accordance with TEC, §28.0211, must be scored and the results returned to the appropriate school district not later than 10 days after receipt of the test materials by the alternate assessment contractor.

Security. A test publisher must ensure that any tests offered for the purposes of this application have not been publicly disclosed or otherwise released in a manner that could compromise the validity of the instrument. The proposal must describe the procedures that will be followed to ensure the security of the test form while used for this program.

Additional Features. The proposal may include any additional benefits to the State of Texas as a result of the proposer's specific plan for providing an alternate assessment.

The commissioner shall have the right to select any or none of the instruments submitted for review. This notice is not a guarantee that a test will be selected.

Deadline for Receipt of Proposals. Proposals must be submitted to the Student Assessment Division, Texas Education Agency, 1701 North Congress Avenue, Suite 3-100, Austin, Texas 78701, by 5:00 p.m. (Central Time) Tuesday, November 19, 2002, to be considered. If you would like your assessment instrument returned after review, please indicate so on a cover letter submitted with the proposal.

Further information. For additional information contact the Student Assessment Division at (512) 463-9536.

TRD-200206402
Cristina De La Fuente-Valadez
Manager, Policy Planning
Texas Education Agency
Filed: October 2, 2002

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Edwards Aquifer Authority

Notice of Proposed Approval of Applications to Transfer Interim Authorization Status and Amend Applications for Initial Regular Permit, and Applications to Transfer and Amend Initial Regular Permits, and Technical Summary in Support Thereof

THE EDWARDS AQUIFER AUTHORITY HEREBY GIVES NOTICE OF the issuance of Proposed Approval of Applications to Transfer Interim Authorization Status and Amend Applications for Initial Regular Permits, and Applications to Transfer and Amend Initial Regular Permits ("Transfer Application"). This Transfer Application

applies to transfer interim authorization status and amend Applications for Initial Regular Permit ("IRP Applications") and transfer and amend Initial Regular Permits ("IRPs") where the location of the point of withdrawal is proposed to be transferred from west of Cibolo Creek to east of Cibolo Creek. The Transfer Applications, if approved, would authorize the transferees to withdraw groundwater from the Edwards Aquifer at a new point of withdrawal east of Cibolo Creek according to the terms and conditions set forth in the amended IRP Applications and IRPs. The conditions contained in the amended IRP Applications and IRPs concern the location of points of withdrawal, among other things.

A copy of the Proposed Approval, and of the Technical Summary 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 Proposed Approval of the Transfer Applications, and Technical Summary are set out on the attached table of Proposed Approvals of Transfer Applications.

Graphic: Edwards Aquifer Authority - Table of Proposed Approvals of Transfer Applications

Edwards Aquifer Authority Technical Summary Table for Notice of Transfer Applications:

Docket Number	Transferor	Status	Purpose of Use	Place of Use/Point of Withdrawal	Transferee	Purpose of Use	Place of Use/Point of Withdrawal	Amount of Transfer (Acre-Feet)	E.A.A. Proposal
UV00427A	R. B. Willoughby, Jr..	IRP	Irrigation	Uvalde	AquaSource Utility, Inc.	Municipal	Hays	78.000	G
BE00090	Myrtle La Verne Fischer	IRP	Irrigation	Bexar	George H. Fischer and Myrtle La Verne Fischer	Industrial-Agriculture	Comal	8.000	G
ME00442	Malvern J. Benke	IRP	Irrigation	Medina	Mort Roszell	Municipal	Comal	2.000	G

Explanation: G = Grant
IRP = Initial Regular Permit
AIRP = Application for Initial Regular Permit

The Proposed Action on the Transfer Applications will be presented to the Board of Directors for action within 60 days of the date of the last publication of the Notices required to be published pursuant to §707.510(b) (relating to Publication of Notice of Proposed Permits and Technical Summary in the *Texas Register* and in Local Newspapers) of the Authority's rules, unless a Request for a Contested Case Hearing is submitted within 30 days after publication of this Notice in the *Texas Register* pursuant to §707.510(d)(6) and §§707.601-707.604 (relating to Filing Procedures for Contested Case Hearings on Applications).

An applicant, another applicant for a groundwater withdrawal permit, or a permittee holding a groundwater withdrawal permit may request a hearing on a Transfer 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 §707.510(d)(6) and §§707.601-707.604. Specifically, the deadline for filing a Request for a Contested Case Hearing is on or before Monday, November 11, 2002 at 4:30 p.m. at the Authority's Offices.

A request for a Contested Case 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 Approval of Applications to Transfer Interim Authorization Status and Amend Applications for Initial Regular Permits, and Applications to Transfer and Amend Initial Regular Permits and Technical Summary in Support Thereof is published pursuant to §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*.

If you have questions on any information in this notice or in the event you require additional information hearing procedures, you may contact Ms. Brenda J. Davis, Docket Clerk for the Authority, at (210) 222-2204 or 1-800-292-1047.

TRD-200206403
Gregory M. Ellis
General Manager
Edwards Aquifer Authority
Filed: October 2, 2002

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Texas Commission on Environmental Quality

Enforcement Orders

An agreed order was entered regarding Eastex Waste Systems, Inc., Docket No. 2000-0353- MSW-E on September 26, 2002 assessing $10,000 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Troy Nelson, Staff Attorney at (903)525-0380, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Sinton, Docket No. 2000-1393-MWD-E on September 26, 2002 assessing $13,875 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Katharine Hodgins, SEP Coordinator at (512)239-5731, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding Alfredo Saavedra, Docket No. 2001-1116-MLM-E on September 26, 2002 assessing $5,000 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Edward Wesley, Staff Attorney at (512)239-0276, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Manuel B. Lopez dba Lopez Stop-N-Go, Docket No. 2001-1006-PST-E on September 26, 2002 assessing $5,625 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Audra Baumgartner, Enforcement Coordinator at (361)825-3312, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Schneider Distributing Co., Inc., Docket No. 2002-0384- PST-E on September 26, 2002 assessing $1,500 in administrative penalties with $300 deferred.

Information concerning any aspect of this order may be obtained by contacting Gary Shipp, Enforcement Coordinator at (806)796-7092, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding S E Asia, Inc. dba Shop N Go No. 2570, Docket No. 2001-1508-PST-E on September 26, 2002 assessing $900 in administrative penalties with $180 deferred.

Information concerning any aspect of this order may be obtained by contacting Catherine Sherman, Enforcement Coordinator at (713)767-3624, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Westwood VII Management, LLC, Docket No. 2001- 1297-AIR-E on September 26, 2002 assessing $5,000 in administrative penalties with $1,000 deferred.

Information concerning any aspect of this order may be obtained by contacting Laura Clark, Enforcement Coordinator at (409)899-8760, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding SOS Liquid Waste Haulers, Ltd. Co. and South Loop Land & Cattle, L.C., Docket No. 2001-1551-MLM-E on September 26, 2002 assessing $6,750 in administrative penalties with $1,350 deferred.

Information concerning any aspect of this order may be obtained by contacting Malcolm Ferris, Enforcement Coordinator at (210)403-4061, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Small Business Loan Source, Inc., Docket No. 2002- 0341-PST-E on September 26, 2002 assessing $5,500 in administrative penalties with $1,100 deferred.

Information concerning any aspect of this order may be obtained by contacting Sarah Slocum, Enforcement Coordinator at (512)239-6589, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Shyona, Inc. dba PC Market and Grocery, Docket No. 2002-0063-PST-E on September 26, 2002 assessing $11,500 in administrative penalties with $2,300 deferred.

Information concerning any aspect of this order may be obtained by contacting John Barry, Enforcement Coordinator at (409)899-8781, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding San Antonio Shoe, Inc., Docket No. 2001-1264-AIR-E on September 26, 2002 assessing $1,875 in administrative penalties with $375 deferred.

Information concerning any aspect of this order may be obtained by contacting Katharine Hodgins, SEP Coordinator at (512)239-5731, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding R R J & P, Inc. dba Stop N Drive, Docket No. 2002- 0064-PST-E on September 26, 2002 assessing $13,600 in administrative penalties with $2,720 deferred.

Information concerning any aspect of this order may be obtained by contacting John Barry, Enforcement Coordinator at (409)899-8781, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Navajo Refining Company, Docket No. 2001-1204-AIR- E on September 26, 2002 assessing $3,750 in administrative penalties with $750 deferred.

Information concerning any aspect of this order may be obtained by contacting Katharine Hodgins, SEP Coordinator at (512)239-5731, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding National Business Network, Inc. dba Gessner Road Texaco, Docket No. 2001-1050-PST-E on September 26, 2002 assessing $1,500 in administrative penalties with $900 deferred.

Information concerning any aspect of this order may be obtained by contacting Trina Grieco, Enforcement Coordinator at (713)767-3607, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Mike D. Hill dba Mike's Country Store, Docket No. 2001-1556-PST-E on September 26, 2002 assessing $7,500 in administrative penalties with $1,500 deferred.

Information concerning any aspect of this order may be obtained by contacting Dan Landenberger, Enforcement Coordinator at (915)570-1359, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Lone Star Industries Incorporated, Docket No. 2001- 1431-AIR-E on September 26, 2002 assessing $27,100 in administrative penalties with $5,420 deferred.

Information concerning any aspect of this order may be obtained by contacting George Ortiz, Enforcement Coordinator at (915)698-9674, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Lanar, Inc. dba Three Corners Food Store, Docket No. 2001-1512-PST-E on September 26, 2002 assessing $4,000 in administrative penalties with $800 deferred.

Information concerning any aspect of this order may be obtained by contacting Alayne Furgurson, Enforcement Coordinator at (817)588-5812, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding El Paso Energy Corporation, Docket No. 2002-0225- AIR-E on September 26, 2002 assessing $7,500 in administrative penalties with $1,500 deferred.

Information concerning any aspect of this order may be obtained by contacting Sheila Smith, Enforcement Coordinator at (512)239-1670, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Duke Energy Field Services, LP, Docket No. 2001-1480- AIR-E on September 26, 2002 assessing $7,500 in administrative penalties with $1,500 deferred.

Information concerning any aspect of this order may be obtained by contacting Katharine Hodgins, SEP Coordinator at (512)239-5731, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Dalton Oil, Inc., Docket No. 2002-0157-PST-E on September 26, 2002 assessing $500 in administrative penalties with $100 deferred.

Information concerning any aspect of this order may be obtained by contacting Michelle Harris, Enforcement Coordinator at (512)239-0492, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Dal-Tile Corporation, Docket No. 2002-0052-AIR-E on September 26, 2002 assessing $2,500 in administrative penalties with $500 deferred.

Information concerning any aspect of this order may be obtained by contacting Miriam Hall, Enforcement Coordinator at (512)239-1044, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Calpine Central, L.P., Docket No. 2002-0191-AIR-E on September 26, 2002 assessing $2,500 in administrative penalties with $500 deferred.

Information concerning any aspect of this order may be obtained by contacting Rebecca Johnson, Enforcement Coordinator at (713)422-8931, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Brookshire Brothers, Ltd dba Brookshire Brothers #28, Docket No. 2001-1038-PST-E on September 26, 2002 assessing $22,550 in administrative penalties with $4,510 deferred.

Information concerning any aspect of this order may be obtained by contacting John Barry, Enforcement Coordinator at (409)898-8781, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Adobe Fuels, L.L.C., Docket No. 2001-1582-PST-E on September 26, 2002 assessing $500 in administrative penalties with $100 deferred.

Information concerning any aspect of this order may be obtained by contacting John Schildwachter, Enforcement Coordinator at (512)239-2355, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Hydro Conduit Corporation, Docket No. 2001-1517- AIR-E on September 26, 2002 assessing $4,500 in administrative penalties with $900 deferred.

Information concerning any aspect of this order may be obtained by contacting Jorge Ibarra, P.E., Enforcement Coordinator at (817)588-5890, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Scott Hewitt dba Hewitt Broiler Farm, Docket No. 2002- 0073-AIR-E on September 26, 2002 assessing $1,250 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Elnora Moses, Enforcement Coordinator at (903)535-5136, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Harris County Water Control and Improvement District No. 21, Docket No. 2002-0005-MWD-E on September 26, 2002 assessing $2,250 in administrative penalties with $450 deferred.

Information concerning any aspect of this order may be obtained by contacting David Van Soest, Enforcement Coordinator at (512)239-0468, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Garrett Place, Incorporated dba Pier 121 Marina, Docket No. 2001-1581-PST-E on September 26, 2002 assessing $1,500 in administrative penalties with $300 deferred.

Information concerning any aspect of this order may be obtained by contacting Jorge Ibarra, P.E., Enforcement Coordinator at (817)588-5890, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Fuller Oil Company, Inc., Docket No. 2002-0051-PST-E on September 26, 2002 assessing $11000 in administrative penalties with $2,200 deferred.

Information concerning any aspect of this order may be obtained by contacting Laura Clark, Enforcement Coordinator at (409)899-8760, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding EOTT Energy Liquids, L. P., Docket No. 2002-0145- AIR-E on September 26, 2002 assessing $750 in administrative penalties with $150 deferred.

Information concerning any aspect of this order may be obtained by contacting Suzanne Walrath, Enforcement Coordinator at (512)239-2134, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Aarey Colloney, Inc., Docket No. 2002-0158-PST-E on September 26, 2002 assessing $5,000 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Susan Kelly, Enforcement Coordinator at (409)899-8704, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding ANF Corporation dba Texaco Popeyes, Docket No. 2002-0027-PST-E on September 26, 2002 assessing $1,500 in administrative penalties with $300 deferred.

Information concerning any aspect of this order may be obtained by contacting A. Sunday Udoetok, Enforcement Coordinator at (512)239-0739, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Pelican Island Storage Terminal, Inc. dba Galveston Terminals, Inc., Docket No. 2002-0499-AIR-E on September 26, 2002 assessing $3,750 in administrative penalties with $750 deferred.

Information concerning any aspect of this order may be obtained by contacting Rebecca Johnson, Enforcement Coordinator at (713)422-8931, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Wanda Dean dba Kwick Stop, Docket No. 2001-1402- PST-E on September 26, 2002 assessing $2,500 in administrative penalties with $500 deferred.

Information concerning any aspect of this order may be obtained by contacting Jorge Ibarra, P.E., Enforcement Coordinator at (817)588-5890, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding KAD Investments, Inc., Docket No. 2001-0379-PST-E on September 26, 2002 assessing $22,500 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Laurencia Fasoyiro, Staff Attorney at (713)422-8914, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding Sammy's Groceries, Inc. dba Fisco Oil, Docket No. 2001- 0698-PST-E on September 26, 2002 assessing $7,000 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Lisa Lemanczyk, Staff Attorney at (512)239-5915, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding Fuel Supply, Inc. dba Shepherd Food Mart, Docket No. 2001-1390-PST-E on September 26, 2002 assessing $5,500 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Edward Wesley, Staff Attorney at (512)239-0276, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Abed Ammouri, Docket No. 2001-0800-PST-E on September 26, 2002 assessing $7,000 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Robin Chapman, Staff Attorney at (512)239-0497, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding Carla Bowden Young dba C. Young's Tire Salvage, Docket No. 2001-1031-MSW-E on September 26, 2002 assessing $10,125 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Edward Wesley, Staff Attorney at (512)239-0276, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Dan Hughitt dba Hughitt's Sawmill, Docket No. 2001- 0952-AIR-E on September 26, 2002 assessing $5,625 in administrative penalties with $5,025 deferred.

Information concerning any aspect of this order may be obtained by contacting Tel Croston, Enforcement Coordinator at (512)239-5717, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

TRD-200206380
LaDonna Castañuela
Chief Clerk
Texas Commission on Environmental Quality
Filed: October 1, 2002

Notice of Application for Hazardous Waste Permits

For the Period of September 25, 2002

APPLICATION. CHEMICAL WASTE MANAGEMENT, INC., located within a 285.213- acre tract of land in Jefferson County, Texas, on the south side of Highway 73, approximately 3.2 miles west of the intersection of Highway 73 and Taylor Bayou in Port Arthur, Texas has applied to the Texas Natural Resource Conservation Commission (TNRCC) for renewal/major amendment of hazardous waste permit HW-50384-001 and compliance plan CP-50384-001. This is a closed hazardous waste management facility. The permit renewal would authorize the construction and continued operation of three existing storage tanks; final closure (cap) activities of the Below-Grade Landfill 02; construction, testing and operation of the Below-Grade 02 Landfill of the automatic leachate collection system; and post-closure care of hazardous waste and nonhazardous waste. The compliance plan renewal authorizes and requires the applicant to continue to monitor the concentration of hazardous constituents in ground water and remediate ground -water quality to specified standards.

The Executive Director of the TNRCC has prepared a draft permit which, if approved, would establish the conditions under which the facility must operate. The Executive Director has reviewed this action for consistency with the goals and policies of the Texas Coastal Management Program (CMP) in accordance with the regulations of the Coastal Coordination Council and has determined that the action is consistent with the applicable CMP goals and policies.

This notice satisfies the requirements of the Resource Conservation and Recovery Act (RCRA), as amended, 42 U.S. 6901 et seq. and 40 CFR 124.10. Once the final permit decisions of the TNRCC and U.S. Environmental Protection Agency (EPA) are effective regarding this facility, they will implement the requirements of RCRA as amended by the Hazardous and Solid Waste Amendments of 1984 (HSWA). The final permit decision will also implement the federally authorized State requirements. The TNRCC and EPA have entered into a joint permitting agreement whereby permits will be issued in Texas in accordance with the Texas Solid Waste Disposal Act, Texas Health and Safety Code Ann., Chapter 361 and RCRA, as amended. In order for the applicant to have a fully effective RCRA permit, both the TNRCC and EPA must issue the permit. All permit provisions are fully enforceable under State and Federal law. The State of Texas has not received full HSWA authority. Areas in which the TNRCC has not been authorized by EPA are denoted in the draft permit with an asterisk (*). Persons wishing to comment or request a hearing on a HSWA requirement denoted with an asterisk (*) in the draft permit should also notify in writing, Chief, RCRA Permits Branch, EPA Region 6, 1445 Ross Avenue, Dallas, Texas 75202-2733. EPA will accept hearing requests submitted to the TNRCC.

PUBLIC COMMENT / PUBLIC MEETING. Written public comments and requests for a public meeting should be submitted to the Office of the Chief Clerk at the address provided in the information section below, within 45 days of the date of newspaper publication of the notice. A public meeting is intended for the taking of public comment, and is not a contested case hearing. A public meeting will be held if the Executive Director determines that there is a significant degree of public interest in the application or if requested in writing by an affected person within 45 days of the date of newspaper publication of the notice.

CONTESTED CASE HEARING. The TNRCC may grant a contested case hearing on this application if a written hearing request is filed within 45 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.

To request a contested case hearing, you must submit the following: (1) your name (or for a group or association, an official representative), mailing address, daytime phone number, and fax number, if any; (2) applicant's name and permit number; (3) the statement "[I/we] request a contested case hearing;" (4) a brief and specific description of how you would be affected by the granting of the application in a way not common to the general public; and (5) the location and distance of your property relative to the proposed activity. You may also submit your proposed adjustments to the application/permit which would

satisfy your concerns. Requests for a contested case hearing must be submitted in writing to the Office of the Chief Clerk at the address provided in the information section below.

If a hearing request is filed, the Executive Director will not issue the permit and will forward the application and hearing request to the TNRCC Commissioners for their consideration at a scheduled Commission meeting. If a contested case hearing is held, it will be a legal proceeding similar to a civil trial in state district court.

INFORMATION. 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 Office of Public Interest Counsel, MC 103, the same address as above. Individual members of the general public may contact the Office of Public Assistance, c/o Office of the Chief Clerk, at the address above, or by calling 1-800-687-4040 to: (a) review or obtain copies of available documents (such as draft permit, technical summary, and application); (b) inquire about the information in this notice; or (a) inquire about other agency permit applications or permitting processes. General information regarding the TNRCC can be found at our web site at www.tnrcc.state.tx.us.

TRD-200206384
LaDonna Castañuela
Chief Clerk
Texas Commission on Environmental Quality
Filed: October 1, 2002

Notice of District Petition

Notices mailed during the period September 18, 2002 through October 1, 2002.

TCEQ Internal Control No. petition for creation of Harris County Municipal Utility District No. 390 (District) with the Texas Commission on Environmental Quality (TCEQ). The petition was filed pursuant to Article XVI, Section 59 of the Constitution of the State of Texas; Chapters 49 and 54 of the Texas Water Code; 30 Texas Administrative Code Chapter 293; and the procedural rules of the TCEQ. The petition states that: (1) the petitioner is the owner of a majority in value of the land to be included in the proposed District; (2) that there are two lien holders on the property to be included in the proposed District; (3) the proposed District will contain approximately 375.567 acres located within Harris County, Texas; and (4) the proposed District is within the corporate boundaries of the City of Houston, Texas, and is not within such jurisdiction of any other city. By City of Houston, Texas, Ordinance No. 2002-763, the City of Houston, Texas, effective August 27, 2002, passed, approved and gave its consent to create the proposed District, and has given its authorization to initiate proceedings to create such political subdivision within its jurisdiction. According to the petition, the Petitioner has conducted a preliminary investigation to determine the cost of the project, and from the information available at the time, that the cost of the project is estimated to be approximately $27,600,000.

TCEQ Internal Control No. 07122002-D07; Coleman County Water Supply Corporation (Petitioner) has filed a petition with the Texas Commission on Environmental Quality (TCEQ) to convert Coleman County Water Supply Corporation to Coleman County Special Utility District and to transfer Certificate of Convenience and Necessity (CCN) No. 11308 from Coleman County Water Supply Corporation to Coleman County Special Utility District. Coleman County Special Utility District's business address will be 214 Santa Anna Avenue, Coleman, Texas 76843-0000. The petition was filed pursuant to Chapters 13 and 65 of the Texas Water Code; 30 Texas Administrative Code Chapters 291 and 293; and the procedural rules of the TCEQ. The nature and purpose of the petition are for the conversion of Coleman County Water Supply Corporation and the organization, creation and establishment of Coleman County Special Utility District under the provisions of Article XVI, Section 59, Texas Constitution, and Chapter 65 of the Texas Water Code, as amended. The District shall have the purposes and powers provided in Chapters 49 and 65 of the Texas Water Code, and CCN No. 11308 shall be transferred as provided in Chapter 13, of the Texas Water Code, as amended. It is anticipated that conversion will have no adverse effects on the rates and services provided to the customers. The proposed District is located in Brown, Callahan, Coleman, McCulloch, and Runnels Counties and will contain approximately 1,575 square miles. The territory to be included within the proposed District includes all of the singly certified service area covered by CCN No. 11308. CCN No. 11308 will be transferred after a positive confirmation election.

INFORMATION SECTION

The TCEQ may grant a contested case hearing on these petitions if a written hearing request is filed within 30 days after the newspaper publication of the notice. To request a contested case hearing, you must submit the following: (1) your name (or for a group or association, an official representative), mailing address, daytime phone number, and fax number, if any; (2) the name of the petitioner and the TCEQ Internal Control Number; (3) the statement "I/we request a contested case hearing"; (4) a brief description of how you would be affected by the petition in a way not common to the general public; and (5) the location of your property relative to the proposed district's boundaries. You may also submit your proposed adjustments to the petition which would satisfy your concerns. Requests for a contested case hearing must be submitted in writing to the Office of the Chief Clerk at the address provided in the information section below.

The Executive Director may approve the petitions unless a written request for a contested case hearing is filed within 30 days after the newspaper publication of the notice. If a hearing request is filed, the Executive Director will not approve the petition and will forward the petition and hearing request to the TCEQ Commissioners for their consideration at a scheduled Commission meeting. If a contested case hearing is held, it will be a legal proceeding similar to a civil trial in state district court.

Written hearing requests should be submitted to the Office of the Chief Clerk, MC 105, TCEQ, P.O. Box 13087, Austin, TX 78711-3087. For information concerning the hearing process, please contact the Public Interest Counsel, MC 103, the same address. For additional information, individual members of the general public may contact the Office of Public Assistance, at 1-800-687- 4040. General information regarding the TCEQ can be found at our web site at www.tceq.state.tx.us.

TRD-200206383
LaDonna Castañuela
Chief Clerk
Texas Commission on Environmental Quality
Filed: October 1, 2002

Notice of Opportunity to Comment on Default Orders of Administrative Enforcement Actions

The Texas Commission on Environmental Quality (commission) staff is providing an opportunity for written public comment on the listed Default Orders (DOs). The commission staff proposes a DO when the staff has sent an executive director's preliminary report and petition (EDPRP) to an entity outlining the alleged violations; the proposed

penalty; and the proposed technical requirements necessary to bring the entity back into compliance; and the entity fails to request a hearing on the matter within 20 days of its receipt of the EDPRP. Similar to the procedure followed with respect to Agreed Orders entered into by the executive director (ED) of the commission in accordance with Texas Water Code (TWC), §7.075, this notice of the proposed order and the opportunity to comment is published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **November 12, 2002**. The commission will consider any written comments received and the commission may withdraw or withhold approval of a DO if a comment discloses facts or considerations that indicate a proposed DO is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the commission's jurisdiction, or orders and permits issued in accordance with the commission's regulatory authority. Additional notice of changes to a proposed DO is not required to be published if those changes are made in response to written comments.

A copy of each proposed DO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building A, 3rd Floor, Austin, Texas 78753, (512) 239-3400 and at the applicable regional office listed as follows. Comments about the DO should be sent to the attorney designated for the DO at the commission's central office at P.O. Box 13087, MC 175, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on November 12, 2002**. Comments may also be sent by facsimile machine to the attorney at (512) 239-3434. The commission's attorneys are available to discuss the DOs and/or the comment procedure at the listed phone numbers; however, comments on the DOs should be submitted to the commission in **writing**.

(1) COMPANY: Bauke Mulder dba B & A Dairy; DOCKET NUMBER: 2001-1522-AGR-E; TCEQ ID NUMBER: 04108; LOCATION: approximately 3.8 miles southeast of the intersection of U.S. Highway 281 and County Road 207 on County Road 207, in Segment 1226 of the Brazos River Basin, approximately 8 - 10 miles northeast of Hico, Hamilton County, Texas; TYPE OF FACILITY: concentrated animal feeding operation; RULES VIOLATED: 30 TAC §321.31(a), §305.125(1) and (5) and TWC, §26.121, and TCEQ Water Quality Permit Number 04108, Condition V, by failing to prevent an unauthorized discharge of wastewater from a retention structure into an unnamed tributary of a river that ultimately flows into the Brazos River; 30 TAC §305.125(1) and §321.42 and TCEQ Water Quality Permit Number 04108, Special Provision VI.B.4, by failing to notify the executive director of the TCEQ in writing of an unauthorized discharge of wastewater; PENALTY: $2,250; STAFF ATTORNEY: Alfred Okpohworho, Litigation Division, MC R-12, (713) 422-8918; REGIONAL OFFICE: Dallas-Fort Worth Regional Office, 2301 Gravel Drive, Forth Worth, Texas 76118-6951, (817) 588-5800.

(2) COMPANY: Eftakhar Khan dba Papa Joe's Food Mart & Deli; DOCKET NUMBER: 2001- 1325-PST-E; TCEQ ID NUMBER: 0056697; LOCATION: Avenue A and Prospect, Trinity, Trinity County, Texas; TYPE OF FACILITY: convenience store with retail gasoline sales; RULES VIOLATED: 30 TAC §334.8(c)(5)(A)(i) and TWC, §26.3467(a), by failing to make available, to a common carrier, a current TCEQ delivery certificate before accepting delivery of a regulated substance into the USTs; 30 TAC §37.815(a)(1) and (b)(1), by failing to demonstrate the required financial responsibility for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of petroleum USTs; 30 TAC §334.50(b)(1)(A) and (b)(2) and TWC, §26.3475, by failing to test a line leak detector at least once per year for performance and operational reliability and by failing to monitor the USTs and piping for releases at a frequency of at least once every month; 30 TAC §334.8(c)(4)(B) and TWC, §26.346(a), by failing to ensure that the UST registration and self-certification form was fully and accurately completed and submitted to the TCEQ in a timely manner; 30 TAC §334.48(c), by failing to conduct effective manual or automatic inventory control procedures for all UST systems at retail service stations; 30 TAC §334.51(b)(2)) and TWC, §26.3475, by failing to equip each tank with a valve or other device designed to automatically shut off the flow of regulated substances into the tank when the liquid level in the tank reaches no higher than 95% capacity; PENALTY: $23,000; STAFF ATTORNEY: Lisa Lemanczyk, Litigation Division, MC 175, (512) 239-5915; REGIONAL OFFICE: Beaumont Regional Office, 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

TRD-200206364
Paul C. Sarahan
Director, Litigation Division
Texas Commission on Environmental Quality
Filed: October 1, 2002

Notice of Opportunity to Comment on Settlement Agreements of Administrative Enforcement Actions

The Texas Commission on Environmental Quality (commission) staff is providing an opportunity for written public comment on the listed Agreed Orders (AOs) in accordance with 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 **November 12, 2002**. Section 7.075 also requires that the commission promptly consider any written comments received and that the commission may withdraw or withhold approval of an AO if a comment discloses facts or considerations that the consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the commission's orders and permits issued in accordance with the commission's regulatory authority. Additional notice of changes to a proposed AO is not required to be published if those changes are made in response to written comments.

A copy of each proposed AO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building A, 3rd Floor, Austin, Texas 78753, (512) 239-3400 and at the applicable regional office listed as follows. Comments about an AO should be sent to the attorney designated for the AO at the commission's central office at P.O. Box 13087, MC 175, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on November 12, 2002**. Comments may also be sent by facsimile machine to the attorney at (512) 239-3434. The designated attorney is available to discuss the AO and/or the comment procedure at the listed phone number; however, §7.075 provides that comments on an AO should be submitted to the commission in **writing**.

(1) COMPANY: Hadeel Corporation dba H and H Food Mart Texaco; DOCKET NUMBER: 2002-0047-PST-E; TCEQ ID NUMBER: 05593; LOCATION: 5001 Trail Lake Drive, Fort Worth, Tarrant County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §115.245(2) and Texas Health and Safety Code (THSC), §382.085(b), by failing to perform the annual pressure decay test; 30 TAC §115.242(4) and (5) and THSC, §382.085(b), by failing to repair or replace leaking stage II vapor recovery equipment; 30 TAC §334.21, by failing to pay the underground storage tank registration fees; PENALTY: $2,000; STAFF ATTORNEY: Ed Wesley, Litigation Division, MC 175, (512)

239-0276; REGIONAL OFFICE: Dallas- Fort Worth Regional Office, 2301 Gravel Drive, Forth Worth, Texas 76118-6951, (817) 588-5800.

(2) COMPANY: Jim Stinnett; DOCKET NUMBER: 2001-0496-AIR-E; TCEQ ID NUMBER: EE-0821-T; LOCATION: 10197 Alameda, El Paso, El Paso County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §114.100(a) and THSC, §382.085(b), by offering gasoline, for use as a motor vehicle fuel, for sale in El Paso County which failed to meet the minimum oxygen content; PENALTY: $1,000; STAFF ATTORNEY: Robert Hernandez, Litigation Division, MC 175, (210) 403-4016; REGIONAL OFFICE: El Paso Regional Office, 401 E. Franklin Avenue, Suite 560, El Paso, Texas 79901-1206, (915) 834-4949.

(3) COMPANY: Johnson Utilities Inc. dba Branchwood WSC Public Water Supply; DOCKET NUMBER: 2002-0061-PWS-E; TCEQ ID NUMBER: 1870158; LOCATION: 3.5 miles east of downtown Onalaska, Polk County, Texas; TYPE OF FACILITY: public water system; RULES VIOLATED: 30 TAC §291.101 and TWC, §13.242, by failing to obtain a certificate of convenience and necessity before rendering retail water to the public; PENALTY: $500; STAFF ATTORNEY: Ed Wesley, Litigation Division, MC 175, (512) 239-0276; REGIONAL OFFICE: Beaumont Regional Office, 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(4) COMPANY: Schmidt & Sons, Inc.; DOCKET NUMBER: 2002-0194-PST-E; TCEQ ID NUMBER: none; LOCATION: 1916 Saint Joseph Street and 1110 Sarah Dewitt Drive, Gonzales, Gonzales County, Texas; TYPE OF FACILITY: fuel distribution operation; RULES VIOLATED: 30 TAC §334.5(b)(1)(A), by depositing a regulated substance into two regulated underground storage tank (UST) systems without first confirming that each owner or operator had a valid, current delivery certificate issued by the commission covering that UST system; PENALTY: $1,000; STAFF ATTORNEY: Robin Chapman, Litigation Division, MC 175, (512) 239-0497; REGIONAL OFFICE: Corpus Christi Regional Office, 6300 Ocean Drive, Suite 1200, Corpus Christi, Texas 78412-5503, (361) 825-3100.

(5) COMPANY: Williams Terminals Holdings, L.P.; DOCKET NUMBER: 2002-0433-IHW-E; TCEQ ID NUMBER: none; LOCATION: 12901 American Petroleum Road, Galena Park, Harris County, Texas; TYPE OF FACILITY: former tar plant; RULES VIOLATED: 30 TAC §335.4 and TWC, §26.121, by causing, suffering, or allowing the discharge or threat of discharge of waste or pollutant into or adjacent to waters in the state without authorization; PENALTY: $0; STAFF ATTORNEY: Elisa Roberts, Litigation Division, MC 175, (512) 239-6939; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

TRD-200206404
Paul C. Sarahan
Director, Litigation Division
Texas Commission on Environmental Quality
Filed: October 2, 2002

Notice of Public Hearing on Proposed Revisions to 30 TAC Chapter 330

In accordance with the requirements of Texas Government Code, Chapter 2001, Subchapter B, the Texas Commission on Environmental Quality (TCEQ or commission) will conduct a public hearing to receive comments concerning 30 TAC Chapter 330, Municipal Solid Waste, amendment to §330.4, Permit Required; and new §330.75, Animal Crematory Facility Design and Operation Requirements for Permitting by Rule.

These proposed revisions to Chapter 330 clarify that municipal solid waste (MSW) authorizations are not needed for pet cemeteries as defined in §330.4(aa). The proposed revisions also clarify under what conditions animal crematories may operate under an MSW permit by rule and provide the requirements for such operations. The rulemaking does not affect the requirements for air permits for animal crematories.

A public hearing on this proposal will be held in Austin on November 4, 2002 at 10:00 a.m. at the TCEQ central office, 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.

Written comments may be submitted to Patricia Durón, MC 205, TCEQ, 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 2002-048-330-WS. Comments must be received by 5:00 p.m., November 12, 2002. For further information, please contact Joe Thomas, Policy and Regulations Division, (512) 239-4580.

TRD-200206359
Stephanie Bergeron
Director, Environmental Law Division
Texas Commission on Environmental Quality
Filed: September 30, 2002

Notice of Water Quality Applications

The following notices were issued during the period of September 26, 2002 through September 30, 2002.

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.

AGRIFOS FERTILIZER L.P. has applied for a major amendment to TNRCC permit No. 00649 to authorize the combination of the discharge of contaminated non-process wastewater from former Outfalls 001 and 002 and the discharge of noncontact process cooling water from former Outfalls 006 and 007 into one discharge point to be indentified as new Outfall 001, at a daily average flow not to exceed 2,907,000 gallons per day. The current permit authorizes the discharge of treated effluent (contaminated non-process wastewater) at a daily average flow not to exceed 785,000 gallons per day via Outfall 002; storm water runoff from material storage areas on an intermittent and flow variable basis via Outfall 004 and 005 (renumbered as new Outfalls 002 and 003) , which will remain the same; non contact process cooling water (fertilizer area) at a daily average flow not to exceed 720,000 gallons per day via Outfall 006; and noncontact process cooling water (fertilizer area) at a daily average flow not to exceed 432,000 gallons per day via Outfall 007. The facility is located at 2001 Jackson Road, on the south bank of the Houston Ship Channel/Buffalo Bayou Tidal at the

northern termination of Jackson Road, in the City of Pasadena, Harris County, Texas.

CEMEX CEMENT OF TEXAS, L.P. which operates the Balcones Cement Plant, which manufactures Portland and masonry cement, has applied for a renewal of TPDES Permit No. 02179, which authorizes the discharge of truck wash water and storm water runoff on an intermittent and flow variable basis from a 9.1 acre storm water settling pond via Outfall 001 and disposal of treated domestic wastewater and non-contact cooling water via evaporation in a 3.0 acre pond. The facility is located at 2580 Wald Road, at the intersection of Wald Road and Solms Road, approximately 0.75 mile north of Interstate Highway 35, and approximately 1.8 miles southwest of the City of New Braunfels, Comal County, Texas.

ENCYCLE/TEXAS, INC. which operates a metals reclamation facility, has applied for a major amendment to TNRCC Permit No. 00314 to authorize an increase in the discharge of treated process wastewater, treated domestic sewage, and treated storm water runoff from a daily average flow not to exceed 500,000 gallons per day to a daily average flow not to exceed 750,000 gallons per day via Outfall 001; authorize the discharge of treated laboratory wastewater via Outfall 001; increase effluent limitations for all limited parameters at Outfall 001; and reduce the monitoring frequencies for total organic carbon, ammonia-nitrogen, phenols, sulfides, cyanide, total chromium, total zinc, and biomonitoring at Outfall 001. The current permit authorizes the discharge of treated process wastewater, treated domestic sewage, and treated storm water runoff at a daily average flow not to exceed 500,000 gallons per day via Outfall 001; and storm water on an intermittent and flow variable basis via Outfall 002, which will remain the same. Issuance of this Texas Pollutant Discharge Elimination System (TPDES) permit will replace the existing NPDES Permit No. TX0003191 issued on June 20, 1997 and TNRCC Permit No. 00314, issued on August 22, 1997. The facility is located at 5500 Up River Road in the City of Corpus Christi, Nueces County, Texas.

GULF COAST WASTE DISPOSAL AUTHORITY which operates the 40-Acre Facility, a publicly-owned treatment works, has applied for a major amendment to TNRCC Permit No. 01485 to authorize site-specific pollutant limits for its sewage sludge surface disposal site. The current permit authorizes the discharge of treated industrial wastewater at a daily average flow not to exceed 15,700,000 gallons per day via Outfall 001, which will remain the same. The publicly-owned treatment works are located adjacent to State Highway Loop 197 on the south side of the Hurricane Levee Pump Discharge Canal in the City of Texas City, in Galveston County, Texas. The sludge disposal site is located 0.5 miles south of the publicly-owned treatment works facility, and 0.6 miles east of State Highway 197, adjacent to Swan Lake.

CITY OF HOUSTON has applied for a renewal of TPDES Permit No. 10495-078, which authorizes the discharge of treated domestic wastewater at an annual average flow not to exceed 8,000,000 gallons per day. The facility is located south of and adjacent to Rankin Road and approximately 3,000 feet east of the Aldine-Westfield and Rankin Road intersection in the City of Houston in Harris County, Texas.

KENDALL COUNTY WATER CONTROL AND IMPROVEMENT DISTRICT NO. 1 has applied for a renewal of TPDES Permit No. 10414-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 350,000 gallons per day. The existing permit authorizes the disposal of treated domestic wastewater via irrigation of 37 acres of land. The facility is located northeast and adjacent to the intersection of Interstate Highway 10 and Farm-to-Market Road 473, east of Comfort in Kendall County, Texas.

LONE STAR GROWERS, L.P. has applied for a major amendment to TNRCC Permit No. 02212 to authorize the discharge of process wastewater from greenhouse/nursery operations and boiler blowdown at a daily average flow not to exceed 95,000 gallons per day via Outfall 001, while maintaining the option to irrigate; and authorize the revision of effluent limitations from the limitations established in the existing irrigation permit to limitations more appropriate for the discharge via proposed Outfall 001 to waters in the State. The current permit authorizes the disposal of process wastewater from greenhouse/nursery operations, boiler blowdown, and treated domestic wastewater at a daily average flow not to exceed 3,500 gallons per day via irrigation of three acres of cropland. The facility is located at 16 Wire Road, approximately 1.2 miles southeast of the intersection of U.S. Highway 75 and Farm-to-Market Road 1696, and approximately five miles northwest of the City of Huntsville, Walker County, Texas.

CITY OF MUENSTER has applied for a major amendment to TPDES Permit No. 10341-001 to authorize an increase in the discharge of treated domestic wastewater from a daily average flow not to exceed 207,000 gallons per day to a daily average flow not to exceed 341,000 gallons per day. The facility is located 800 feet south of the intersection of South Hickory Street and East Eddy Street in the City of Muenster, just north of Brushy Elm Creek in Cooke County, Texas.

PD GLYCOL has applied for a major amendment to TNRCC Permit No. 00490 to authorize the discharge of boiler blowdown, steam condensate, and raw water clarifier waste at Outfall 001. The current permit authorizes the discharge of storm water from non-process areas on an intermittent and flow variable basis via Outfall 001. Issuance of this Texas Pollutant Discharge Elimination System (TPDES) permit will replace the existing NPDES Permit No. TX0008931 issued on December 12, 1989 and TNRCC Permit No. 00490 issued on December 21, 1993. The applicant operates the Beaumont Plant, which manufactures ethylene glycol and ethylene oxide. The plant site is located approximately three miles southeast of the Jefferson County Courthouse, just east of the City of Beaumont, Jefferson County, Texas.

CITY OF TENAHA has applied for a major amendment to TPDES Permit No. 10818-001 to authorize the land application of sewage sludge for beneficial use on 10 acres. The facility is located adjacent to Hilliard Creek; approximately 2,400 feet south of U.S. Highway 84 and 3,300 feet east of U.S. Highway 96 in Shelby County, Texas. The sludge disposal site is located on a 10 acre tract of land on the northeast side of the wastewater treatment facility.

TEXAS ECOLOGISTS, INC. which operates a hazardous and nonhazardous waste disposal facility (SIC 4953), has applied for a major amendment to TPDES Permit No. 02888 to authorize the discharge of storm water on an intermittent and flow variable basis through an additional outfall, Outfall 004. The current permit authorizes the discharge of storm water on an intermittent and flow variable basis via Outfalls 001, 002 and 003. The facility is located approximately 1/2 mile southeast of the intersection of Farm to Market Road 2826 and Farm to Market Road 892, approximately four miles south of the City of Robstown, Nueces County, Texas.

THE WINDFERN CORPORATION has applied for a major amendment to TPDES Permit No. 13509-001 to authorize an increase in the discharge of treated domestic wastewater from a daily average flow not to exceed 28,000 gallons per day to a daily average flow not to exceed 40,000 gallons per day. The facility is located at 9401 Windfern Road approximately 300 feet south of Zaka Road and approximately 3.0 miles north of the intersection of Windfern Road and U.S. Highway 290 in Harris County, Texas.

TRD-200206381

LaDonna Castañuela
Chief Clerk
Texas Commission on Environmental Quality
Filed: October 1, 2002

Notice of Water Rights Application

Notice mailed September 23, 2002.

Application No. TA-8232; Robert Rogers, 206 Wild Basin Road, Suite 300, Austin, Texas 78746-3343, applicant, seeks a Temporary Water Use Permit pursuant to TWC 11.138 and Texas Commission on Environmental Quality Rules 30 TAC 295.1, et seq. Notice is being mailed pursuant to 30 TAC 295.154 to the downstream water right holders to the confluence of the San Marcos River and the Guadalupe River. Applicant seeks to divert and use not to exceed 10 acre-feet of water within a two year period from the San Marcos River, tributary of the Guadalupe River, the Guadalupe River Basin for industrial purposes (archeological excavations) at a maximum diversion rate of 0.46 cfs (205 gpm). The diversion point is located at a point which is1.5 miles west of State Highway 80 and 1 mile east of FM 621, located 11 miles southwest of the City of Lockhart, Texas and 2 miles northwest of the City of Fentress, Texas, in Caldwell and Guadalupe Counties. The application was received on July 12, 2002. Additional fees were received on September 13, 2002. The application was accepted for filling and declared administratively complete on September 16, 2002. Written public comments and request for a public meeting should be submitted to the Office of the Chief Clerk, at the address provided in the information section below by October 11, 2002.

Information Section

A public meeting is intended for the taking of public comment, and is not a contested case hearing. A public meeting will be held if the Executive Director determines that there is a significant degree of public interest in an application.

The Executive Director can consider approval of an application unless a written request for a contested case hearing is filed. To request a contested case hearing, you must submit the following: (1) your name (or for a group or association, an official representative), mailing address, daytime phone number, and fax number, if any: (2) applicant's name and permit number; (3) the statement "[I/we] request a contested case hearing;" and (4) a brief and specific description of how you would be affected by the application in a way not common to the general public. You may also submit any proposed conditions to the requested application which would satisfy your concerns. Requests for a contested case hearing must be submitted in writing to the TCEQ 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 TCEQ 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, TCEQ, 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 TCEQ can be found at our web site at www.tceq.state.tx.us.

TRD-200206382

LaDonna Castañuela
Chief Clerk
Texas Commission on Environmental Quality
Filed: October 1, 2002

Office of the Governor

Request for Proposals

The Office of the Governor is accepting proposals for nomination by the Governor to compete for funding from the U.S. Environmental Protection Agency (EPA) Watershed Initiative.

Subject to the availability of federal appropriations, $21 million will be available in FY 2003 for the Watershed Initiative, the majority of that amount to be used to fund up to 20 watershed projects nationally. EPA anticipates that typical grant awards for the selected watersheds will range from $300,000 to $1,300,000. EPA is requiring applicants to demonstrate a minimum non-federal match of 25% of the total cost of the project or projects. In addition to cash, the match can come from in-kind goods and services such as the use of volunteers and their donated time, equipment, expertise, etc., consistent with the regulation governing match requirements (40 CFR 31.24 or 40 CFR 30.23).

Proposals for nomination submitted to the Office of the Governor should respond to the guidelines and priorities outlined in the EPA Watershed Initiative notice published in the August 20, 2002 issue of the Federal Register (Volume 67, Number 161, pages 53925-53530). The internet address for the notice is: http://www.access.gpo.gov/su_docs/aces/aces140.html. This notice can also be found on the EPA Water Initiative website: http://www.epa.gov/owow/watershed/initiative/.

Two (2) projects within the State of Texas will be selected by the Office of the Governor and submitted to EPA. Applications submitted to the Office of the Governor will be evaluated using the criteria outlined in the EPA Watershed Initiative notice. In addition to the two projects located exclusively in Texas nominated by Office of the Governor, an unlimited number of inter-state or joint state and tribal watershed projects may be nominated. For inter-state or joint state and tribal projects, any of the involved Governors/Tribal Leaders may submit the nomination. Such watershed nominations must have the endorsement of all affected state or tribal governmental entities before submittal to EPA. It is the responsibility of inter-state or joint state and tribal project administrators to submit applications to the appropriate state and Tribal entities.

Application submittal: Five (5) complete copies and one electronic reproducible copy of each proposal must be received by the deadline. Submissions by mail should be sent to State Grants Team, Office of the Governor, P.O. Box 12428, Austin, Texas 78711, ATTN: Watershed Initiative. Submissions by courier should be sent to State Grants Team, Office of the Governor, State Insurance Bldg., 1100 San Jacinto, Austin, Texas 78701, ATTN: Watershed Initiative. Contact phone: (512) 463-6678.

Please note that applicants should follow, in particular, sections II.C. "Format of the Nomination" and II.D. "Required Elements of the Nomination," in the above referenced Federal Register notice, in preparing their applications. Only those nominees selected by EPA for awards will be required to submit a formal grant application directly to EPA.

Submission Deadline: Applications must be received by 5 p.m. October 31, 2002. Those received after 5 p.m. will not be reviewed.

Contact information: State Nomination Process: Ron Ayer, Office of the Governor, (512) 463-6678; rayer@governor.state.tx.us; EPA Region VI: Brad Lamb, (214) 665-6683; lamb.brad@epa.gov.

TRD-200206379
Royce Poinsett
Assistant General Counsel
Office of the Governor
Filed: October 1, 2002

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Texas Department of Health

Designation of Amazon Health Center as a Site Serving Medically Underserved Populations

The Texas Department of Health (department) is required under the Occupations Code, §157.052 to designate sites serving medically underserved populations. In addition, the department is required to publish notice of such designations in the *Texas Register* and to provide an opportunity for public comment on the designations.

Accordingly, the department has designated the following as a site serving medically underserved populations: Amazon Health Center, 990 South Gessner, Houston, Texas 77071. The designation is based on proven eligibility as a site serving a disproportionate number of clients eligible for federal, state, or locally funded health care programs.

Oral and written comments on this designation may be directed to Bruce Gunn, Ph.D., Director, Health Professions Resource Center, Office of Health Information and Analysis, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756; telephone (512) 458-7261. Comments will be accepted for 30 days from the publication date of this notice.

TRD-200206369
Susan Steeg
General Counsel
Texas Department of Health
Filed: October 1, 2002

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Designation of Paisano Medical Center as a Site Serving Medically Underserved Populations

The Texas Department of Health (department) is required under the Occupations Code, §157.052 to designate sites serving medically underserved populations. In addition, the department is required to publish notice of such designations in the *Texas Register* and to provide an opportunity for public comment on the designations.

Accordingly, the department has designated the following as a site serving medically underserved populations: Paisano Medical Center, 5301 Alameda, El Paso, Texas 79905. The designation is based on proven eligibility as a site serving a disproportionate number of clients eligible for federal, state, or locally funded health care programs.

Oral and written comments on this designation may be directed to Bruce Gunn, Ph.D., Director, Health Professions Resource Center, Office of Health Information and Analysis, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756; telephone (512) 458-7261. Comments will be accepted for 30 days from the publication date of this notice.

TRD-200206368
Susan Steeg
General Counsel
Texas Department of Health
Filed: October 1, 2002

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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
Beaumont	Healthsouth Imaging Services of Beaumont	L05582	Beaumont	00	09/19/02
Throughout Tx	New Millenium Nuclear Technologies LLP	L05605	Arlington	00	09/16/02

AMENDMENTS TO EXISTING LICENSES ISSUED:

Location	Name	License #	City	Amend-ment #	Date of Action
Austin	PET Imaging LTD	L05365	Austin	09	09/20/02
Beaumont	Metalforms Inc	L02261	Beaumont	31	09/23/02
Bedford	Dallas Cardiology Associates PA	L05448	Bedford	04	09/19/02
Bishop	Ticona Polymers Inc	L02441	Bishop	39	09/26/02
Corpus Christi	Jordan Laboratories Inc	L02455	Corpus Christi	16	09/19/02
Corpus Christi	Flint Hills Resources LP	L00322	Corpus Christi	34	09/20/02
Corpus Christi	Spohn Hospital	L02495	Corpus Christi	70	09/26/02
Dallas	Medi Physics Inc DBA Amersham Health	L05529	Dallas	03	09/20/02
Dallas	Dallas Cardiology Associates PA	L04607	Dallas	37	09/25/02
Dallas	Raytheon Company	L00946	Dallas	84	09/25/02
Dallas	Dallas Cardiology Associates PA	L04607	Dallas	38	09/26/02
Dallas	Lone Star Cardiology Consultants P A	L04997	Dallas	26	09/26/02
Deer Park	Equistar Chemicals LP	L00204	Deer Park	56	09/20/02
Deer Park	Equistar Chemicals LP	L00204	Deer Park	57	09/25/02
Denton	Denton Hospital Inc	L04003	Denton	28	09/23/02
Diboll	Temple-Inland Forest Products Corporation	L04250	Diboll	04	09/26/02
El Paso	El Paso Healthcare System LTD	L02715	El Paso	51	09/19/02
El Paso	El Paso Healthcare System LP	L03395	El Paso	36	09/23/02
El Paso	El Paso Healthcare System LTD	L02715	El Paso	52	09/23/02
El Paso	Providence Memorial Hospital	L02353	El Paso	69	09/25/02
El Paso	Allegiance Healthcare Corporation	L02407	El Paso	24	09/25/02
El Paso	Providence Memorial Hospital	L02353	El Paso	70	09/30/02
Fort Worth	Harris Methodist Fort Worth	L01837	Fort Worth	83	09/16/02
Fort Worth	Radiology Associates of Tarrant County PA	L05387	Fort Worth	03	09/18/02
Fort Worth	TIDC Inc	L05247	Fort Worth	09	09/20/02
Fort Worth	Baylor All Saints Medical Center	L02212	Fort Worth	60	09/24/02
Fort Worth	John Peter Smith Hospital	L02208	Fort Worth	44	09/24/02
Fort Worth	Harris Methodist Fort Worth	L01837	Fort Worth	84	09/25/02
Fort Worth	TIDC Inc	L05247	Fort Worth	10	09/25/02
Fort Worth	Adventist Health System	L02920	Fort Worth	23	09/26/02
Garland	Cardiology Consultants of North Dallas P A	L05454	Garland	03	09/24/02
Houston	Medi Physics Inc DBA Amersham Health	L05517	Houston	02	09/20/02

CONTINUED AMENDEMENTS TO EXISTING LICENSES ISSUED:

Location	Name	License #	City	Amend-ment #	Date of Action
Houston	Doctors Hospital LP	L02047	Houston	26	09/20/02
Houston	University of Houston Clear Lake	L02108	Houston	15	09/20/02
Houston	Tenet Healthcare LTD	L02432	Houston	33	09/24/02
Houston	Columbia Hospital Corporation	L02038	Houston	37	09/27/02
Huntsville	Huntsville Memorial Hospital	L02822	Huntsville	10	09/23/02
Ingleside	E I Du Pont De Nemours & Company Inc	L01753	Ingleside	33	09/20/02
Irving	Baylor Medical Center at Irving	L02444	Irving	43	09/19/02
Katy	Memorial Hermann Hospital System	L03052	Katy	33	09/20/02
Kingsville	Christus Spohn Health System	L02917	Kingsville	28	09/27/02
Longview	King Tool Company	L05142	Longview	01	09/24/02
Lubbock	Methodist Diagnostic Imaging	L03948	Lubbock	29	09/13/02
Lufkin	Donohue Industries Inc	L03870	Lufkin	12	09/26/02
Marshall	Harrison County Hospital Association	L02572	Marshall	20	09/27/02
McKinney	Columbia Medical Center Subsidiary LP	L02415	McKinney	21	09/23/02
Mesquite	Baylor Medical Center - Mesquite	L04914	Mesquite	11	09/13/02
Orange	Printpack Inc	L01081	Orange	29	09/20/02
Palestine	Palestine Principal Healthcare Limited Partnership	L02728	Palestine	35	09/19/02
Pasadena	Celanese LTD Clear Lake Plant	L01130	Pasadena	53	09/24/02
Pasadena	Celanese LTD Clear Lake Plant	L01130	Pasadena	54	09/30/02
Plano	Columbia Medical Center of Plano Subsidiary LP	L02032	Plano	57	09/27/02
Port Arthur	Christus St Mary Hospital	L01212	Port Arthur	68	09/13/02
Port Arthur	Atofina Petrochemicals Inc	L03498	Port Arthur	19	09/20/02
Port Arthur	Beaumont Hospital Holdings Inc	L01707	Port Arthur	43	09/23/02
Richmond	Polly Ryon Hospital Authority	L02406	Richmond	30	09/20/02
San Antonio	CTRC Clinical Foundation	L01922	San Antonio	65	09/13/02
San Antonio	Methodist Healthcare System of San Antonio	L00594	San Antonio	168	09/18/02
San Antonio	Medi-Physics Inc DBA Amersham Health	L04764	San Antonio	17	09/20/02
San Antonio	Southwest Research Institute	L04958	San Antonio	07	09/19/02
San Antonio	Nix Medical Center	L03531	San Antonio	22	09/24/02
San Antonio	Radiology Associates of San Antonio PA	L05358	San Antonio	07	09/26/02
San Antonio	Bionumerik Pharmaceuticals Inc	L05226	San Antonio	06	09/27/02
San Marcos	Austin Heat PA	L05452	San Marcos	04	09/16/02
Throughout Tx	New Millenium Nuclear Technologies LLP	L05605	Arlington	01	09/17/02
Throughout Tx	E I Dupont De Nemours & Co Inc	L00517	Beaumont	64	09/27/02
Throughout Tx	Computalog Wireline Services Inc	L04286	Fort Worth	45	09/19/02
Throughout Tx	Shaw Environmental Inc	L02906	Fort Worth	24	09/27/02
Throughout Tx	Roxar Inc	L05547	Houston	01	09/16/02
Throughout Tx	H & G Inspection Company Inc	L02181	Houston	154	09/20/02
Throughout Tx	D-Arrow Inspection	L03816	Houston	71	09/23/02
Throughout Tx	Mandes Inspection & Testing Services Inc	L05220	Houston	26	09/23/02
Throughout Tx	Raven Inspection & Testing	L05219	Huffman	06	09/27/02
Throughout Tx	Longview Inspection Inc	L01774	La Porte	187	09/24/02
Throughout Tx	Anatec Inc	L04865	Nederland	49	09/13/02
Throughout Tx	CONAM Inspection	L05010	Pasadena	57	09/26/02
Throughout Tx	Texas Gamma Ray LLC	L05561	Pasadena	08	09/27/02
Throughout Tx	Thermo Measuretech	L03524	Round Rock	62	09/17/02
Throughout Tx	Southwest Research Institute	L00775	San Antonio	66	09/19/02

CONTINUED AMENDMENTS TO EXISTING LICENSES ISSUED:

Location	Name	License #	City	Amend-ment #	Date of Action
Throughout Tx	GCT Inspection Inc	L02378	South Houston	68	09/23/02
Trinity	East Texas Medical Center Trinity	L05392	Trinity	02	09/16/02
Tyler	Nutech Inc	L04274	Tyler	38	09/27/02
Webster	Diagnostic Systems Laboratories Inc	L03084	Webster	28	09/19/02

RENEWAL OF LICENSES ISSUED:

Location	Name	License #	City	Amend-ment #	Date of Action
Austin	Daughters of Charity Health Services of Austin	L00268	Austin	74	09/13/02
Houston	Atomic Energy Industrial Laboratories of the Southwest	L01067	Houston	25	09/19/02
Throughout Tx	MLA Labs Inc	L01820	Austin	28	09/26/02

LICENSE AMENDMENT DENIED:

Location	Name	License #	City	Amend-ment #	Date of Action
San Antonio	Heart Institute of South Texas	L04377	San Antonio		09/24/02

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 (department), 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. In granting termination of licenses, the department has determined that the licensee has properly decommissioned its facilities according to the applicable requirements of 25 TAC, Chapter 289. In denying the application for a license, license renewal or license amendment, the department has determined that the applicant has not met the 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-200206397
Susan K. Steeg
General Counsel
Texas Department of Health
Filed: October 2, 2002

Notice of Public Hearing on Proposed Rules Concerning the Rabies Immunization Requirements for Dogs and Cats in Texas

A public hearing will be held by the Texas Department of Health (department) on October 29, 2002, from 2:00 p.m. until 5:00 p.m., in Room M-739 at the Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756, to accept comments on the proposed rules relating to the rabies immunization requirements for dogs and cats in Texas. The proposed amendments to 25 Texas Administrative Code,

§§169.22, 169.27, 169.29 and 169.31 - 169.33, were published in the September 20, 2002, issue of the *Texas Register* (27 TexReg 8890).

Written comments may be submitted by November 20, 2002 to the Texas Department of Health, Zoonosis Control Division, 1100 West 49th Street, Austin, Texas 78756. Comments may also be submitted by emailing Rabies.Control@tdh.state.tx.us or by faxing to (512) 458-7454.

TRD-200206367
Susan Steeg
General Counsel
Texas Department of Health
Filed: October 1, 2002

Notice of Public Hearing on Proposed Rules Concerning Definitions and Facilities for the Quarantining of Animals

A public hearing will be held by the Texas Department of Health (department) on October 29, 2002, from 12:00 noon until 2:00 p.m., in Room M-739 at the Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756, to accept comments on the proposed rules relating to definitions and facilities for the quarantining of animals. The proposed amendments to 25 Texas Administrative Code, §§169.22 and 169.26, were published in the August 9, 2002, issue of the *Texas Register* (27 TexReg 6981).

Further information may be obtained from Dr. Jane Mahlow, D.V.M., Director, Zoonosis Control Division, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756, (512) 458-7255.

TRD-200206366
Susan Steeg
General Counsel
Texas Department of Health
Filed: October 1, 2002

Notice of Public Hearings on Proposed Rules Concerning the Children with Special Health Care Needs Program

The Texas Department of Health (department) will hold a series of public hearings to receive comments on the proposed rules concerning the Children with Special Health Care Needs (CSHCN) Program, 25 Texas Administrative Code, §§38.2-38.4, 38.10, 38.12-38.13, 38.15, and 38.16, as published in the September 20, 2002, issue of the *Texas Register* (27 TexReg 8873).

At the public hearings, the department will accept comments on the proposed rules. You may also ask questions and provide comments by contacting directly the department staff reflected in the notice.

The hearings' scheduled times and locations are as follows:

October 28, 2002

9:00 a.m., Texas Department of Health, Public Health Region 2/3, 1301 South Bowen Road,

Conference Room 2210, Arlington, TX 76013

October 29, 2002

10:00 a.m., Texas Department of Health, Public Health Region 6/5 South, 5425 Polk Avenue, Houston, TX 77023

October 29, 2002

2:00 p.m., Harlingen Public Library, 410 '76 Drive, Harlingen, TX 78550

October 31, 2002

10:00 a.m., Texas Department of Health, Public Health Region 9/10, 4th Floor Conference

Room, 401 East Franklin, El Paso, TX 79905

November 1, 2002

10:00 a.m., Texas Department of Health, Board of Health Meeting Room, Moreton Building,

Room M-739, 1100 West 49th Street, Austin, Texas 78756

All hearing facilities are accessible according to the requirements of the Americans with Disabilities Act. The department will provide Spanish language interpretation at all hearings.

CONTACT

Requests for a copy of the proposed rules may be directed to Anita Freeman, RN, Children with Special Health Care Needs Program, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756, telephone 1-800-252-8023 or (512) 458-7111, extension 3027. Faxed requests should be submitted to the attention of Jona Mauriello at (512) 458-7417; and the CSHCN Email address is: cshcn@tdh.state.tx.us.

TRD-200206396
Susan Steeg
General Counsel
Texas Department of Health
Filed: October 2, 2002

Texas Health and Human Services Commission

Public Notice Statement - Amendment Number 634

The Texas Health and Human Services Commission announces its intent to submit Transmittal Number 02-15, Amendment Number 634, to the Texas State Plan for Medical Assistance, under Title XIX of the Social Security Act. Amendment Number 634 addresses client copay requirements for adult TANF and adult Aged Blind and Disabled recipients. Copay requirements apply to non-emergency services provided in an emergency department in the amount of $3.00 per non-emergency visit. Copay requirements for generic prescription medications will be $.50 and $3.00 for brand name prescriptions. Copayments will be limited to an $8 maximum for any single month. Copay requirements will be voluntary for recipients and providers will not be allowed to deny services on the basis of the recipient's inability to pay.

The proposed amendment is to be effective December 1, 2002. The fiscal impact of implementing cost sharing requirements for Medicaid recipients as authorized under 42 C.F.R. §447.51, et seq. is expected to result in a cost savings to HHSC general revenue (GR) of $4,829,455 for nine months of State Fiscal Year 2003. Five-year savings, from FY03-FY07, are estimated at $30,701,196 GR and $76,461,938 for all funds.

For further information contact Dee Sportsman, Program Development, Medicaid/CHIP Division, Texas Health and Human Services Commission, 1100 West 49th Street, Austin, Texas 78756-3199 or via facsimile at (512) 794-6818.

TRD-200206358

Marina S. Henderson
Executive Deputy Commissioner
Texas Health and Human Services Commission
Filed: September 30, 2002

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Texas Department of Insurance

Company Licensing

Application for incorporation to the State of Texas by VALLEY LLOYD'S INSURANCE COMPANY, a domestic Lloyds company. The home office is in McAllen, Texas.

Application to change the name of PROVIDENT MUTUAL LIFE INSURANCE COMPANY to NATIONWIDE LIFE INSURANCE COMPANY OF AMERICA, a foreign life, accident and/or health company. The home office is in Berwyn, Pennsylvania.

Application to change the name of PROVIDENTMUTUAL LIFE AND ANNUITY COMPANY OF AMERICA to NATIONWIDE LIFE AND ANNUITY COMPANY OF AMERICA, a foreign life, accident and/or health company. The home office is in Newark, Delaware.

Any objections must be filed with the Texas Department of Insurance, addressed to the attention of Godwin Ohaechesi, 333 Guadalupe Street, M/C 305-2C, Austin, Texas 78701.

TRD-200206400
Gene C. Jarmon
Acting General Counsel and Chief Clerk
Texas Department of Insurance
Filed: October 2, 2002

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Public Utility Commission of Texas

Notice of Amendment to Interconnection Agreement

On September 26, 2002, VoiceStream Wireless Corporation 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 2002) (PURA). The joint application has been designated Docket Number 26691. The joint application and the underlying interconnection agreement are available for public inspection at the Public Utility Commission of Texas (commission) 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 13 copies of the comments with the commission's filing clerk. Additionally, a copy of the comments should be served on each of the applicants. The comments should specifically refer to Docket Number 26691. 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 29, 2002, and shall include:

1) a detailed statement of the person's interests in the agreement, including a description of how approval of the agreement may adversely affect those interests;

2) specific allegations that the agreement, or some portion thereof:

a) discriminates against a telecommunications carrier that is not a party to the agreement; or

b) is not consistent with the public interest, convenience, and necessity; or

c) is not consistent with other requirements of state law; and

3) the specific facts upon which the allegations are based.

After reviewing any comments, the commission will issue a notice of approval, denial, or determine whether to conduct further proceedings concerning the joint application. The commission shall have the authority given to a presiding officer pursuant to the commission's 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 action, 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, or by phone 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 26691.

TRD-200206340
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: September 30, 2002

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Notice of Amendment to Interconnection Agreement

On September 26, 2002, Cellco Partnership, LLC, Verizon Wireless Texas, LLC, and Dallas MTA, LP doing business as Verizon Wireless 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 2002) (PURA). The joint application has been designated Docket Number 26693. The joint application and the underlying interconnection agreement are available for public inspection at the Public Utility Commission of Texas (commission) 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 13 copies of the comments with the commission's filing clerk. Additionally, a copy of the comments should be served on each of the applicants. The comments should specifically refer to Docket Number 26693. 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 29, 2002, and shall include:

1) a detailed statement of the person's interests in the agreement, including a description of how approval of the agreement may adversely affect those interests;

2) specific allegations that the agreement, or some portion thereof:

a) discriminates against a telecommunications carrier that is not a party to the agreement; or

b) is not consistent with the public interest, convenience, and necessity; or

c) is not consistent with other requirements of state law; and

3) the specific facts upon which the allegations are based.

After reviewing any comments, the commission will issue a notice of approval, denial, or determine whether to conduct further proceedings concerning the joint application. The commission shall have the authority given to a presiding officer pursuant to commission 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 action, 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, or by phone 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 26693.

TRD-200206341
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: September 30, 2002

Notice of Amendment to Interconnection Agreement

On September 27, 2002, Southwestern Bell Telephone, LP doing business as Southwestern Bell Telephone Company and GlobelNet Paging, Inc. doing business as GlobalNet Communications, collectively referred to as applicants, filed a joint application for approval of amendment to an existing interconnection agreement under Section 252(i) of the federal Telecommunications Act of 1996, Public Law Number 104-104, 110 Statute 56, (codified as amended in scattered sections of 15 and 47 United States Code) (FTA) and the Public Utility Regulatory Act, Texas Utilities Code Annotated, Chapters 52 and 60 (Vernon 1998 & Supplement 2002) (PURA). The joint application has been designated Docket Number 26700. The joint application and the underlying interconnection agreement are available for public inspection at the Public Utility Commission of Texas (commission) 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 13 copies of the comments with the commission's filing clerk. Additionally, a copy of the comments should be served on each of the applicants. The comments should specifically refer to Docket Number 26700. 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 30, 2002, and shall include:

1) a detailed statement of the person's interests in the agreement, including a description of how approval of the agreement may adversely affect those interests;

2) specific allegations that the agreement, or some portion thereof:

a) discriminates against a telecommunications carrier that is not a party to the agreement; or

b) is not consistent with the public interest, convenience, and necessity; or

c) is not consistent with other requirements of state law; and

3) the specific facts upon which the allegations are based.

After reviewing any comments, the commission will issue a notice of approval, denial, or determine whether to conduct further proceedings concerning the joint application. The commission shall have the authority given to a presiding officer pursuant to the commission's 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 action, 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, or by phone 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 26700.

TRD-200206386
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: October 2, 2002

Notice of Amendment to Interconnection Agreement

On September 30, 2002, Southwestern Bell Telephone, LP doing business as Southwestern Bell Telephone Company and Arizona Dialtone, Inc., collectively referred to as applicants, filed a joint application for approval of amendment to an existing interconnection agreement under Section 252(i) of the federal Telecommunications Act of 1996, Public Law Number 104-104, 110 Statute 56, (codified as amended in scattered sections of 15 and 47 United States Code) (FTA) and the Public Utility Regulatory Act, Texas Utilities Code Annotated, Chapters 52 and 60 (Vernon 1998 & Supplement 2002) (PURA). The joint application has been designated Docket Number 26703. The joint application and the underlying interconnection agreement are available for public inspection at the Public Utility Commission of Texas (commission) 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 13 copies of the comments with the commission's filing clerk. Additionally, a copy of the comments should be served on each of the applicants. The comments should specifically refer to Docket Number 26703. 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 31, 2002, and shall include:

1) a detailed statement of the person's interests in the agreement, including a description of how approval of the agreement may adversely affect those interests;

2) specific allegations that the agreement, or some portion thereof:

a) discriminates against a telecommunications carrier that is not a party to the agreement; or

b) is not consistent with the public interest, convenience, and necessity; or

c) is not consistent with other requirements of state law; and

3) the specific facts upon which the allegations are based.

After reviewing any comments, the commission will issue a notice of approval, denial, or determine whether to conduct further proceedings concerning the joint application. The commission shall have the authority given to a presiding officer pursuant to the commission's 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 action, 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, or by phone 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 26703.

TRD-200206387
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: October 2, 2002

Notice of Amendment to Interconnection Agreement

On September 30, 2002, Southwestern Bell Telephone, LP doing business as Southwestern Bell Telephone Company and Weston Telecommunications, LLC doing business as Easton Telecom Services, LLC, collectively referred to as applicants, filed a joint application for approval of amendment to an existing interconnection agreement under Section 252(i) of the federal Telecommunications Act of 1996, Public Law Number 104-104, 110 Statute 56, (codified as amended in scattered sections of 15 and 47 United States Code) (FTA) and the Public Utility Regulatory Act, Texas Utilities Code Annotated, Chapters 52 and 60 (Vernon 1998 & Supplement 2002) (PURA). The joint application has been designated Docket Number 26704. The joint application and the underlying interconnection agreement are available for public inspection at the Public Utility Commission of Texas (commission) 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 13 copies of the comments with the commission's filing clerk. Additionally, a copy of the comments should be served on each of the applicants. The comments should specifically refer to Docket Number 26704. 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 31, 2002, and shall include:

1) a detailed statement of the person's interests in the agreement, including a description of how approval of the agreement may adversely affect those interests;

2) specific allegations that the agreement, or some portion thereof:

a) discriminates against a telecommunications carrier that is not a party to the agreement; or

b) is not consistent with the public interest, convenience, and necessity; or

c) is not consistent with other requirements of state law; and

3) the specific facts upon which the allegations are based.

After reviewing any comments, the commission will issue a notice of approval, denial, or determine whether to conduct further proceedings concerning the joint application. The commission shall have the authority given to a presiding officer pursuant to the commission's 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 action, 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, or by phone 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 26704.

TRD-200206388
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: October 2, 2002

Notice of Amendment to Interconnection Agreement

On September 30, 2002, Southwestern Bell Telephone, LP doing business as Southwestern Bell Telephone Company and Birch Telecom of Texas Ltd, LLP, collectively referred to as applicants, filed a joint application for approval of amendment to an existing interconnection agreement under Section 252(i) of the federal Telecommunications Act of 1996, Public Law Number 104-104, 110 Statute 56, (codified as amended in scattered sections of 15 and 47 United States Code) (FTA) and the Public Utility Regulatory Act, Texas Utilities Code Annotated,

Chapters 52 and 60 (Vernon 1998 & Supplement 2002) (PURA). The joint application has been designated Docket Number 26705. The joint application and the underlying interconnection agreement are available for public inspection at the Public Utility Commission of Texas (commission) 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 13 copies of the comments with the commission's filing clerk. Additionally, a copy of the comments should be served on each of the applicants. The comments should specifically refer to Docket Number 26705. 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 31, 2002, and shall include:

1) a detailed statement of the person's interests in the agreement, including a description of how approval of the agreement may adversely affect those interests;

2) specific allegations that the agreement, or some portion thereof:

a) discriminates against a telecommunications carrier that is not a party to the agreement; or

b) is not consistent with the public interest, convenience, and necessity; or

c) is not consistent with other requirements of state law; and

3) the specific facts upon which the allegations are based.

After reviewing any comments, the commission will issue a notice of approval, denial, or determine whether to conduct further proceedings concerning the joint application. The commission shall have the authority given to a presiding officer pursuant to the commission's 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 action, 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, or by phone 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 26705.

TRD-200206389
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: October 2, 2002

Notice of Amendment to Interconnection Agreement

On September 30, 2002, Southwestern Bell Telephone, LP doing business as Southwestern Bell Telephone Company and Capital 4 Outsourcing, Inc., collectively referred to as applicants, filed a joint application for approval of amendment to an existing interconnection agreement under Section 252(i) of the federal Telecommunications Act of 1996, Public Law Number 104-104, 110 Statute 56, (codified as amended in scattered sections of 15 and 47 United States Code) (FTA) and the Public Utility Regulatory Act, Texas Utilities Code Annotated, Chapters 52 and 60 (Vernon 1998 & Supplement 2002) (PURA). The joint application has been designated Docket Number 26708. The joint application and the underlying interconnection agreement are available for public inspection at the Public Utility Commission of Texas (commission) 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 13 copies of the comments with the commission's filing clerk. Additionally, a copy of the comments should be served on each of the applicants. The comments should specifically refer to Docket Number 26708. 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 31, 2002, and shall include:

1) a detailed statement of the person's interests in the agreement, including a description of how approval of the agreement may adversely affect those interests;

2) specific allegations that the agreement, or some portion thereof:

a) discriminates against a telecommunications carrier that is not a party to the agreement; or

b) is not consistent with the public interest, convenience, and necessity; or

c) is not consistent with other requirements of state law; and

3) the specific facts upon which the allegations are based.

After reviewing any comments, the commission will issue a notice of approval, denial, or determine whether to conduct further proceedings concerning the joint application. The commission shall have the authority given to a presiding officer pursuant to P.U.C. Procedural Rule §22.202. The commission may identify issues raised by the joint application and comments and establish a schedule for addressing those issues, including the submission of evidence by the applicants, if necessary, and briefing and oral argument. The commission may conduct a public hearing. Interested persons who file comments are not entitled to participate as intervenors in the public hearing.

Persons with questions about this action, 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, or by phone 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 26708.

TRD-200206390
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: October 2, 2002

Notice of Application for an Amendment to a Certificate of Convenience and Necessity

Notice is given to the public of the filing with the Public Utility Commission of Texas of an application filed on September 26, 2002, to amend a certificate of convenience and necessity for a minor boundary change in Austin County, Texas.

Docket Style and Number: Application of Southwestern Bell Telephone, L.P. doing business as Southwestern Bell Telephone Company for Approval of an Amendment to the Certificate of Convenience and Necessity in Austin County. Docket Number 26692

The Application: Southwestern Bell Telephone, L.P. doing business as Southwestern Bell Telephone Company (SWBT) filed an application to amend its Certificate of Convenience and Necessity to realign the boundary between SWBT's Brenham and Bellville exchanges in Austin County. In the application, SWBT states the amendment requests a minor boundary change in order for SWBT to more efficiently serve a customer from the Brenham exchange whose property is currently split by the existing boundary of the Brenham and Bellville exchanges.

Persons wishing to comment on the action sought should contact the Public Utility Commission of Texas by mail at P. O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll-free at 1-888-782-8477. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or use Relay Texas (toll- free) 1-800-735-2989. All comments should reference Docket Number 26692.

TRD-200206392
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: October 2, 2002

Notice of Application for Amendment to Service Provider Certificate of Operating Authority

On September 25, 2002, Global Crossing Local Services, Inc., and Global Crossing Telemanagement, Inc. filed an application with the Public Utility Commission of Texas (commission) to amend their service provider certificates of operating authority (SPCOA) granted in SPCOA Certificate Numbers 60148 and 60149. Applicant intends to reflect a transfer of control to GC Acquisition Limited.

The Application: Application of Global Crossing Local Services, Inc., and Global Crossing Telemanagement, Inc. for an Amendment to Their Service Provider Certificates of Operating Authority, Docket Number 26687.

Persons wishing to comment on the action sought should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas, 78711-3326, or by phone at (512) 936-7120 or toll free at 1-888-782-8477 no later than October 16, 2002. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136 or toll free at 1-800-735-2989. All comments should reference Docket Number 26687.

TRD-200206338
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: September 30, 2002

Notice of Interconnection Agreement

On September 23, 2002, Texas Am-Tel I, LP 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 2002) (PURA). The joint application has been designated Docket Number 26682. The joint application and the underlying interconnection agreement are available for public inspection at the Public Utility Commission of Texas (commission) 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 13 copies of the comments with the commission's filing clerk. Additionally, a copy of the comments should be served on each of the applicants. The comments should specifically refer to Docket Number 26682. 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 25, 2002, and shall include:

1) a detailed statement of the person's interests in the agreement, including a description of how approval of the agreement may adversely affect those interests;

2) specific allegations that the agreement, or some portion thereof:

a) discriminates against a telecommunications carrier that is not a party to the agreement; or

b) is not consistent with the public interest, convenience, and necessity; or

c) is not consistent with other requirements of state law; and

3) the specific facts upon which the allegations are based.

After reviewing any comments, the commission will issue a notice of approval, denial, or determine whether to conduct further proceedings concerning the joint application. The commission shall have the authority given to a presiding officer pursuant to the commission's 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 action, 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, or by phone 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 26682.

TRD-200206259
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: September 25, 2002

Notice of Workshop on the Return of NXX Codes Designated Unavailable for Assignment (UA)

The Public Utility Commission of Texas (commission) will hold a workshop regarding The Return of NXX Codes designated Unavailable for Assignment (UA), on Thursday, October 17, 2002 at 1:00 p.m. in Hearing Room Gee located on the 7th floor of the William B. Travis Building, 1701 North Congress Avenue, Austin, Texas 78701. Project Number 23225, *Activities related to Reclamation of NXX Codes* has been established for this proceeding. In conjunction with the workshop, a senior NPA relief planner from the North American Numbering Plan Administration (NANPA) will conduct a conference call for carriers unable to attend.

The commission request that persons planning on attending the workshop register by phone or e-mail with Betsy Tyson, Telecommunications Division, at (512) 936-7323 or betsy.tyson@puc.state.tx.us.

Questions concerning the workshop or this notice should be referred to Betsy Tyson, Telecommunications Division, at (512) 936-7323 or betsy.tyson@puc.state.tx.us. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136.

TRD-200206339
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: September 30, 2002

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Notice of Workshop on Wholesale Market Design Issues in the Electric Reliability Council of Texas

The Public Utility Commission of Texas (commission) will hold a workshop regarding wholesale market design issues in the Electric Reliability Council of Texas (ERCOT), on Friday, November 1, 2002, beginning at 9:30 a.m. in the Commissioners' Hearing Room, located on the 7th floor of the William B. Travis Building, 1701 North Congress Avenue, Austin, Texas 78701. Project Number 26376, *Rulemaking Proceeding on Wholesale Market Design Issues in the Electric Reliability Council of Texas,* has been established for this proceeding. This meeting will be an educational workshop on wholesale market design issues in ERCOT, focusing on the different options the commission and ERCOT market participants have for the design of the ERCOT wholesale market. Prior to the workshop, the commission requests that interested persons file comments in Central Records under Project Number 26376 by 3:00 p.m. on October 25, 2002 to the following question:

On September 24, 2002, the Market Oversight Division filed in Central Records in Project Number 26376 a draft procedural timeline for this rulemaking and subsequent implementation of approved changes in the design of the ERCOT wholesale market. What changes, if any, are needed to improve the timeline, and why?

The commission expects to make available in Central Records under Project Number 26376 an agenda for the format of the workshop, ten days prior to the workshop.

Questions concerning the workshop or this notice should be directed to Eric S. Schubert, Senior Market Economist, Market Oversight Division, 512-936-7398, eric.schubert@puc.state.tx.us. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136.

TRD-200206385
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: October 2, 2002

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Questions for Comment and Notice of Workshop Regarding Review of Texas Universal Service Fund (TUSF)

The Public Utility Commission of Texas (commission) will hold a workshop regarding Project Number 26647, *P.U.C. Review of Texas Universal Service Fund (TUSF) Pursuant to Substantive R. §26.403(d)(2)(A)(i) and §26.403(e)(2)(A)(i)*. In this project and workshop, the commission will begin the process to review the definition of services to be supported by the Texas High Cost Universal Service Plan (THCUSP) as required under §26.403(d)(2)(A)(i) and to review the forward-looking cost methodology, the benchmark levels, and/or the base support amounts as required under §26.403(e)(2)(A)(i). Also, the commission will consider whether other issues related to the TUSF should be reviewed. The commission will use the information gathered in this project to help determine the issues that need to be addressed and the processes under which the issues will be addressed.

A workshop will be held on November 13, 2002 at 9:00 a.m. in the Commissioner's Hearing Room located on the seventh floor of the William B. Travis State Office Building, 1701 North Congress Avenue, Austin, Texas 78701.

No later than October 25, 2002, the commission requests that interested persons file comments to the following questions:

A. Definition of Services to be Supported by the THCUSP

1. What change(s), if any, should be made to §26.403(d), regarding the services to be supported under the THCUSP?

2. What change(s), if any, should be made to subsection (d)(1), regarding the definition of basic local telecommunications service? How would the change(s), if any, meet the criteria in subsection (d)(2)(B)?

3. Should any services be deleted from the list of services that are supported by the THCUSP in §26.403(d)? How would the deletion(s), if any, fail to meet the criteria in subsection (d)(2)(B)?

4. Should the commission consider other factors not listed in the criteria in subsection (d)(2)(B)? If yes, what specific factor(s) should be considered?

B. Forward-Looking Cost Methodology, Revenue Benchmark, and Base Support Amounts

1. What change(s), if any, should be made to §26.403(e)(1)(A), regarding the calculation of the forward-looking cost of service?

(a) Should the commission consider any changes to the cost model, underlying assumptions, and level of disaggregation associated with the calculation of the forward-looking cost of service?

2. Are there any changes in current retail rates and revenues for basic local service, growth patterns, and/or income levels in low-density areas that justify a change to the forward- looking cost methodology, benchmark levels and/or the base support amount?

3. Should the commission consider other factors in reviewing the forward-looking cost methodology, the benchmark levels, and/or the base support amount that are not listed in the criteria in subsection (e)(2)(B)? If yes, what specific factor(s) should be consider?

4. What change(s), if any, should be made to §26.403(e)(1)(B)(i) and §26.403(e)(1)(B)(ii), regarding calculation of the statewide residential and business revenue benchmarks?

5. Should the commission consider the use of a cost benchmark, similar to the Federal Communications Commission's (FCC) methodology, rather than a revenue benchmark?

6. What change(s), if any, should be made to §26.403(e)(1), regarding the determination of base support amount available to ETPs?

C. Other Related Issues

1. What change(s), if any, should be made to the access revenue adjustment, federal universal service support (USF) support adjustment, and adjustment for service provided solely or partially through the purchase of unbundled network elements (UNEs) in §26.403(e)(3)(A)-(C)?

2. Does PURA §56.026(c) have any impact on the commission's review of the forward looking cost methodology, revenue benchmark levels, and base support amounts?

3. Should the commission take into consideration an eligible telecommunications provider (ETP) carrier's overearnings in determining the amount of USF support available to that carrier under the THCUSP and Small Rural Incumbent Local Exchange Carrier (ILEC) Universal Service Plan?

4. Should the commission coordinate the implementation of this review with the UNE Review proceeding?

(a) Should USF support be aggregated on a zone-wide basis as determined for UNE prices?

(b) Should the commission utilize the same forward-looking cost model to compute USF support and UNE prices?

5. What change(s), if any, should be made to the Small Rural ILEC Universal Service Plan in §26.404?

(a) Should the commission consider any changes relating to the utilization of a cost model or underlying assumptions and level of disaggregation associated with the fund?

Responses may be filed by submitting 16 copies to the commission's Filing Clerk, Public Utility Commission of Texas, 1701 North Congress Avenue, PO Box 13326, Austin, Texas 78711-3326 no later than October 25, 2002. All responses should reference Project Number 26647.

Questions concerning the workshop or this notice should be referred to Marshall Adair, Director, Policy Development Division, 936-7214. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136.

TRD-200206265
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: September 26, 2002

Request for Proposals in Project Number 26511 for Market Monitoring and Oversight Services

The Public Utility Commission of Texas (commission) is requesting proposals for consulting services to assist the commission in fulfilling its duties to oversee and monitor the developing competitive electric market in Texas.

Purpose. The purpose of this Request for Proposals (RFP) is to invite proposals from firms and electric industry researchers with electric industry and market analysis experience for services necessary to meet the investigating and monitoring needs of the commission.

Services Requested. The commission seeks proposals for consulting services regarding (a) market monitoring, (b) market behavior analysis, (c) development of indices and screens, (d) development of computer models and other quantitative tools for market monitoring purposes, and (e) annual maintenance and updating of quantitative tools (collectively referred to as Required Services).

Eligible Proposers. One proposer or a proposer representing a consortium of providers will be selected to provide the commission's Market Oversight Division (MOD) with the Required Services described in this document. A proposal may include a partial solution or offer to provide all the Required Services. The commission will consider proposals that meet all or part of the requirements of the RFP. A proposer who wishes to offer partial services must be willing to work with a team of vendors to provide services in response to this RFP. A proposal submitted by a consortium of vendors must identify a single point of contact that is responsible for each Required Service to be provided by all vendors within the consortium.

Selection Criteria. Proposals will be evaluated based on the ability of the proposer to provide the best value for the services rendered and the proposer's ability to provide the Required Services. In addition the commission will consider the proposer's ability to carry out all of the requirements contained in the RFP, demonstrated competence and qualifications of the proposer and the reasonableness of the proposed fee.

Requesting a copy of the Request for Proposals. A complete copy of the RFP for services may be obtained by writing Lisa Trueper, Purchaser, Public Utility Commission, William B. Travis Building, 1701 North Congress Avenue, Austin, TX, 78701, or lisa.trueper@puc.state.tx.us, or calling (512) 936- 7069. You may also download the RFP from the commission website at www.puc.state.tx.us, under "Hot Topics" and Project 26511, and from the electronic business daily website sponsored by the Texas Building and Procurement Commission at www.marketplace.state.tx.us.

For Further Information. You may request clarifying information in writing only. For clarifying information about the RFP, write to Lisa Trueper, Purchaser, Public Utility Commission, P.O. Box 13326, Austin, TX 78711-3326, fax (512) 936-7003, or lisa.trueper@puc.state.tx.us.

Deadline for Receipt of Responses. Responses must be filed under seal with a cover letter for filing in Project Number 26511 and received no later than 3:00 p.m. on Monday, December 2, 2002, in Central Records, room G-113, Public Utility Commission of Texas, William B. Travis Building, 1701 North Congress Avenue, Austin, TX. 78701. Central Records is open to the public for filing between 9:00 a.m. and 5:00 p.m., Monday through Friday, except on state holidays. Regardless of the method of submission of the response, the commission will rely solely on the time/date stamp of the Central Records Division in establishing the time and date of receipt.

TRD-200206391
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: October 2, 2002

Texas Department of Transportation

Requests for Qualifications for Engineering Services - Aviation Division

The Airport Sponsors listed, through their agent, the Texas Department of Transportation (TxDOT), intend to engage aviation professional engineering firms for services pursuant to Government Code, Chapter 2254, Subchapter A. TxDOT, Aviation Division will solicit and receive qualifications for professional engineering design services as described in the project scope for each project listed:

Airport Sponsor: County of Cherokee, Jacksonville, Cherokee County Airport. TxDOT CSJ No.: 0310JACKS. Project Scope: Provide engineering/design services to rehabilitate and mark Runway 14-32; rehabilitate and mark all taxiways; rehabilitate hanger access taxiways; reconstruct south portion of apron; construct new hanger access taxiway, replace medium intensity runway lights, visual approach slope indicator with precision approach path indicator Runway 14, precision approach path indicator at Runway 32, and rotating beacon and tower. Project Manager: Harry Lorton.

Airport Sponsor: County of Dimmitt, Carrizo Springs, Dimmitt County Airport. TxDOT CSJ No.: 0322CRIZO. Project Scope for Phase I: Provide engineering/design services to widen, overlay, and mark north parallel taxiway; reconstruct apron north side; install signage and erosion/sedimentation controls. Project Scope for Phase II: Provide engineering/design services to rehabilitate and mark Runway 13-31, turnaround Runway 31 end, south parallel and stub taxiways and rehabilitate apron south side. Project Manager: Harry Lorton.

Airport Sponsor: County of Kleberg, Kingsville, Kleberg County Airport. TxDOT CSJ No.: 0316KNGVL. Project Scope: Provide engineering/design services to rehabilitate and mark Runway 13-31; construct connecting taxiway; reconstruct hangar access taxiways, replace visual approach slope indicator with precision approach path indicator-4 Runway 13-31, install signage and erosion/sedimentation controls and improve drainage. Project Manager: Harry Lorton.

Airport Sponsor: County of Nueces, Robstown, Nueces County Airport. TxDOT CSJ No.: 0316ROBST. Project Scope: Provide engineering/design services to rehabilitate and mark Runway 13-31 and stub taxiway; rehabilitate turnarounds Runway 13-31, hanger access taxiways and apron; update hold signs; relocate entrance road and install erosion/sedimentation controls. Project Manager: John Wepryk.

Interested firms shall utilize the Form 439, titled "Aviation Engineering Services Questionnaire" (August 2000 version). The forms may be requested from TxDOT, Aviation Division, 125 E. 11th Street, Austin, Texas 78701-2483, phone number, 1-800-68-PILOT (74568). The form may be emailed by request or downloaded from the TxDOT web site, URL address

http://www.dot.state.tx.us./insdtdot/orgchart/avn/avninfo/avninfo.htm

Download the file from the selection "Engineer Services Questionnaire Packet". The form may not be altered in any way, and all printing must be in black. QUALIFICATIONS WILL NOT BE ACCEPTED IN ANY OTHER FORMAT. (Note: The form is an MS Word, Version 7, document.)

Two completed, unfolded copies of Form 439 (August 2000 version), for each project of interest to the engineer must be postmarked by U. S. Mail by midnight October 24, 2002. Mailing address: TxDOT, Aviation Division, 125 E. 11th Street, Austin, Texas 78701-2483. Overnight delivery must be received by 4:00 p.m. on October 25, 2002; overnight address: TxDOT, Aviation Division, 200 E. Riverside Drive, Austin, Texas, 78704. Hand delivery must be received by 4:00 p.m. on October 25, 2002; hand delivery address: 150 E. Riverside Drive, 5th Floor, South Tower, Austin, Texas 78704. The two pages of instructions should not be forwarded with the completed questionnaires. Electronic facsimiles will not be accepted.

EMAIL DELIVERY OPTION Your form 439 may be emailed to TxDOT, at email address

AVNRFQ@dot.state.tx.us

Emails must be received by 4:00 p.m. on October 24, 2002. Received times will be determined by the marked time and date as the email is received into the TxDOT network system. Please allow sufficient time to ensure delivery into the TxDOT system by the deadline. After receipt, you will be electronically notified of receipt by return email. Return notification may be delayed by a day or two, as the forms will be opened and printed at the TxDOT offices. Before emailing the form, please confirm your completion of the form. TxDOT will directly print the transmittal and not change the formatting or information contained on the form following receipt. Signatures will not be required on electronically submitted forms. You may type in the responsible party's name on the signature line.

Each airport sponsor's duly appointed committee will review all professional qualifications and may select three to five firms to submit proposals. Those firms selected will be required to provide more detailed, project-specific proposals which address the project team, technical approach, Disadvantage Business Enterprise (DBE) participation or Historically Underutilized Business (HUB) participation, design schedule, and other project matters, prior to the final selection process.

The final engineer selection by the sponsor's committee will generally be made following the completion of review of Request for Qualification statements/proposals and/or engineer interviews. Each airport sponsor reserves the right to reject any or all statements of qualifications and to conduct new professional services selection procedures.

If there are any procedural questions, please contact Karon Wiedemann, Director, Grant Management, or the designated project manager for technical questions at 1-800-68-PILOT (74568).

TRD-200206394
Bob Jackson
Deputy General Counsel
Texas Department of Transportation
Filed: October 2, 2002

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Texas Water Development Board

Applications Received

Pursuant to the Texas Water Code, Section 6.195, the Texas Water Development Board provides notice of the following applications received by the Board:

Greater Texoma Utility District, on behalf of the City of Gainesville, 5100 Airport Drive, Denison, Texas, 75020, received August 30, 2002, application for financial assistance in the total amount of $2,065,000 from the Texas Water Development Funds and the Clean Water State Revolving Fund.

Benton City Water Supply Corporation, 21180 Naeglin, P.O. Box 1210, Lytle, Texas, 78052, received August 23, 2002, application for financial assistance in the amount of $3,300,000 from the Rural Water Assistance Fund.

Brushy Creek Municipal Utility District, 901 Great Oaks Drive, Round Rock, Texas, 78681, received August 30, 2002, application for financial assistance in the amount of $1,500,000 from the Texas Water Development Funds.

Cade Lakes Water Supply Corporation, c/o Professional General Management Services, 1600 Stagecoach Ranch Road, Dripping Springs, Texas, 78620, received December 31,2001, application for financial

assistance in the amount of $420,000 from the Rural Water Assistance Fund and the Texas Water Development Funds.

City of Kaufman, 209 South Washington, Kaufman, Texas, 75142, received August 29, 2002, application for financial assistance in the amount of $1,325,000 from the Clean Water State Revolving Fund.

Mountain Peak Water Supply Corporation, 5671 Waterworks Road, Midlothian, Texas, 76065, received August 23, 2002, application for financial assistance in the amount of $3,200,000 from the Rural Water Assistance Fund.

Cibolo Creek Municipal Authority, 100 Dietz Road, P.O. Box 930, Cibolo, Texas, 78154, received May 1, 2002, application for financial assistance in the amount of $1,500,000 from the Clean Water State Revolving Fund.

San Antonio Water System, 1001 East Market Street, San Antonio, Texas, 78298-2449, received September 3, 2002, application for financial assistance in the amount of $82,235,000 from the Clean Water State Revolving Fund.

City of Houston, P.O. Box 1562, Houston, Texas, 77251-1562, received August 29, 2002, application for financial assistance in the amount of $14,875,000 from the Clean Water State Revolving Fund.

City of Missouri City, 1522 Texas Parkway, Missouri City, Texas, 77489, received May 2, 2002, application for financial assistance in the amount of $16,115,000 from the Clean Water State Revolving Fund.

Macbee Water Supply Corporation, P.O. Box 780, Wills Point, Texas, 75169, received July 1, 2002, application for financial assistance in the amount of $640,000 from the Rural Water Assistance Fund.

City of Del Rio, 109 West Broadway, Del Rio, Texas, 78840, received September 3, 2002, application for financial assistance in the amount of $2,190,000 from the Clean Water State Revolving Fund.

R.W. Harden and Associates, Inc., 3409 Executive Center Drive, Suite 226, Austin, Texas, 78731, received June 7, 2002, application for financial assistance in an amount not to exceed $1,250,000 from the Research and Planning Fund.

Waterstone Environmental Hydrology and Engineering, Inc., 1650 38th Street, Suite 201E, Boulder, Colorado, 80301, received June 7, 2002, application for financial assistance in an amount not to exceed $1,250,000 from the Research and Planning Fund.

University of Texas/Bureau of Economic Geology, Box 7726, University Station, Austin, Texas, 78713, received June 7, 2002, application for financial assistance in an amount not to exceed $1,250,000 from the Research and Planning Fund.

URS Corporation, P. O. Box 201088, Austin, Texas, 78720-1088, received June 7, 2002, application for financial assistance in an amount not to exceed $600,000 from the Research and Planning Fund.

Intera, Incorporated, 9111-A Research Blvd., Austin, Texas 78758, received June 7, 2002, application for financial assistance in an amount not to exceed $600,000 from the Research and Planning Fund.

TRD-200206398
Gail L. Allan
Director of Administration and Northern Legal Services
Texas Water Development Board
Filed: October 2, 2002

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How to Use the Texas Register

Information Available: The 13 sections of the ***Texas Register*** represent various facets of state government. Documents contained within them include:

Governor - Appointments, executive orders, and proclamations.

Attorney General - summaries of requests for opinions, opinions, and open records decisions.

Secretary of State - opinions based on the election laws.

Texas Ethics Commission - summaries of requests for opinions and opinions.

Emergency Rules- sections adopted by state agencies on an emergency basis.

Proposed Rules - sections proposed for adoption.

Withdrawn Rules - sections withdrawn by state agencies from consideration for adoption, or automatically withdrawn by the Texas Register six months after the proposal publication date.

Adopted Rules - sections adopted following a 30-day public comment period.

Texas Department of Insurance Exempt Filings - notices of actions taken by the Texas Department of Insurance pursuant to Chapter 5, Subchapter L of the Insurance Code.

Texas Department of Banking - opinions and exempt rules filed by the Texas Department of Banking.

Tables and Graphics - graphic material from the proposed, emergency and adopted sections.

Open Meetings - notices of open meetings.

In Addition - miscellaneous information required to be published by statute or provided as a public service.

Review of Agency Rules - notices of state agency rules review.

Specific explanation on the contents of each section can be found on the beginning page of the section. The division also publishes cumulative quarterly and annual indexes to aid in researching material published.

How to Cite: Material published in the ***Texas Register*** is referenced by citing the volume in which the document appears, the words "TexReg" and the beginning page number on which that document was published. For example, a document published on page 2402 of Volume 26 (2001) is cited as follows: 26 TexReg 2402.

In order that readers may cite material more easily, page numbers are now written as citations. Example: on page 2 in the lower-left hand corner of the page, would be written "26 TexReg 2 issue date," while on the opposite page, page 3, in the lower right-hand corner, would be written "issue date 26 TexReg 3."

How to Research: The public is invited to research rules and information of interest between 8 a.m. and 5 p.m. weekdays at the ***Texas Register*** office, Room 245, James Earl Rudder Building, 1019 Brazos, Austin. Material can be found using ***Texas Register*** indexes, the ***Texas Administrative Code***, section numbers, or TRD number.

Both the ***Texas Register*** and the ***Texas Administrative Code*** are available online through the Internet. The address is: http://www.sos.state.tx.us. The ***Register*** is available in an .html version as well as a .pdf (portable document format) version through the Internet. For subscription information, see the back cover or call the Texas Register at (800) 226-7199.

Texas Administrative Code

The ***Texas Administrative Code (TAC)*** is the compilation of all final state agency rules published in the ***Texas Register***. Following its effective date, a rule is entered into the ***Texas Administrative Code***. Emergency rules, which may be adopted by an agency on an interim basis, are not codified within the ***TAC***.

The ***TAC*** volumes are arranged into Titles (using Arabic numerals) and Parts (using Roman numerals). The Titles are broad subject categories into which the agencies are grouped as a matter of convenience. Each Part represents an individual state agency.

The complete TAC is available through the Secretary of State's website at http://www.sos.state.tx.us/tac. The following companies also provide complete copies of the TAC: Lexis-Nexis (1-800-356-6548), and West Publishing Company (1-800-328-9352).

The Titles of the ***TAC***, and their respective Title numbers are:

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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