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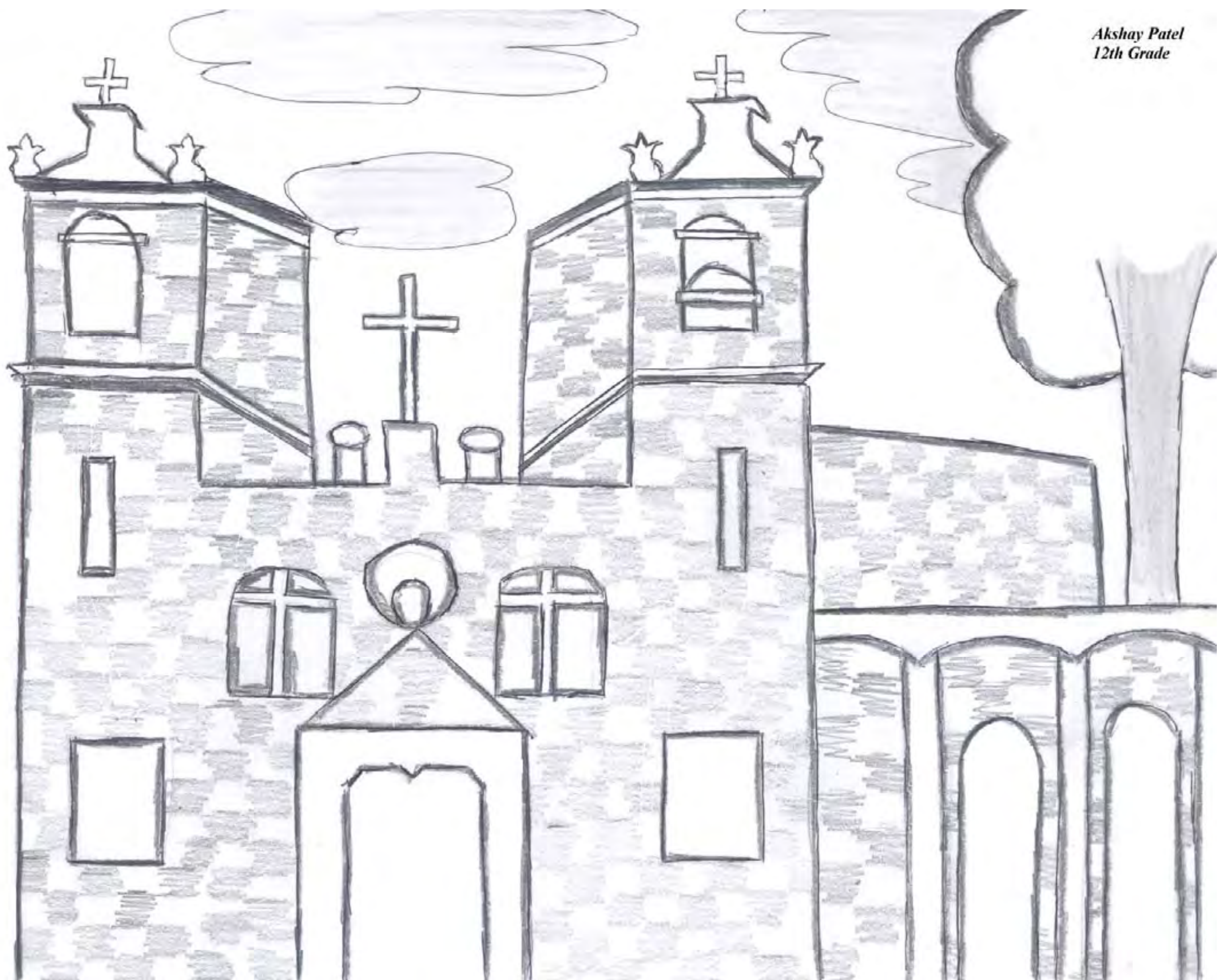

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IN THIS ISSUE

GOVERNOR

Appointments 1625

Proclamation 41-3247 1625

ATTORNEY GENERAL

Requests for Opinions 1627

Opinions 1627

TEXAS ETHICS COMMISSION

Ethics Advisory Opinion 1629

PROPOSED RULES

STATE OFFICE OF ADMINISTRATIVE HEARINGS

RULES OF PROCEDURE

1 TAC §155.101 1631

1 TAC §155.101 1631

1 TAC §155.501 1633

CREDIT UNION DEPARTMENT

CHARTERING, OPERATIONS, MERGERS, LIQUIDATIONS

7 TAC §91.501 1634

7 TAC §91.502 1635

7 TAC §91.516 1637

PUBLIC UTILITY COMMISSION OF TEXAS

PROCEDURAL RULES

16 TAC §22.52 1637

SUBSTANTIVE RULES APPLICABLE TO ELECTRIC SERVICE PROVIDERS

16 TAC §25.101 1639

TEXAS APPRAISER LICENSING AND CERTIFICATION BOARD

RULES RELATING TO PRACTICE AND PROCEDURE

22 TAC §157.9 1640

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

GENERAL AIR QUALITY RULES

30 TAC §101.27 1641

TEXAS COMMISSION ON FIRE PROTECTION

PRACTICE AND PROCEDURE

37 TAC §401.1 1646

FIRE SUPPRESSION

37 TAC §423.3 1647

37 TAC §423.201 1648

TEXAS COUNCIL ON PURCHASING FROM PEOPLE WITH DISABILITIES

PURCHASES OF PRODUCTS AND SERVICES FROM PEOPLE WITH DISABILITIES

40 TAC §§189.2, 189.6, 189.9, 189.10, 189.13 1649

TEXAS DEPARTMENT OF TRANSPORTATION

MANAGEMENT

43 TAC §1.85 1650

WITHDRAWN RULES

TEXAS ETHICS COMMISSION

LEGISLATIVE SALARIES AND PER DIEM

1 TAC §50.3 1655

TEXAS ALCOHOLIC BEVERAGE COMMISSION

MARKETING PRACTICES

16 TAC §45.102 1655

TEXAS BOARD OF PARDONS AND PAROLES

PAROLE

37 TAC §145.12, §145.15 1655

ADOPTED RULES

TEXAS ETHICS COMMISSION

LEGISLATIVE SALARIES AND PER DIEM

1 TAC §50.1 1657

CREDIT UNION DEPARTMENT

SHARE AND DEPOSITOR INSURANCE PROTECTION

7 TAC §95.102 1657

COMMISSION POLICIES AND ADMINISTRATIVE RULES

7 TAC §97.104 1658

RAILROAD COMMISSION OF TEXAS

PIPELINE SAFETY REGULATIONS

16 TAC §8.209 1658

TEXAS APPRAISER LICENSING AND CERTIFICATION BOARD

RULES RELATING TO PROVISIONS OF THE TEXAS APPRAISER LICENSING AND CERTIFICATION ACT

22 TAC §153.18 1669

ADVISORY BOARD OF ATHLETIC TRAINERS

ATHLETIC TRAINERS

22 TAC §§871.5, 871.9, 871.14 1671

DEPARTMENT OF STATE HEALTH SERVICES

CHILDREN PARTICIPATING IN RODEOS

25 TAC §§104.1 - 104.5 1671

SPECIAL CARE FACILITIES

25 TAC §125.36....1672

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

CONTROL OF AIR POLLUTION BY PERMITS FOR NEW CONSTRUCTION OR MODIFICATION

30 TAC §116.118 1673

UNDERGROUND AND ABOVEGROUND STORAGE TANKS

30 TAC §§334.42, 334.45, 334.49, 334.50....1678

30 TAC §§334.601 - 334.606 1678

TEXAS DEPARTMENT OF PUBLIC SAFETY

ORGANIZATION AND ADMINISTRATION

37 TAC §1.44....1681

TEXAS BOARD OF PARDONS AND PAROLES

GENERAL PROVISIONS

37 TAC §141.111 1681

PAROLE

37 TAC §145.12, §145.15....1681

MANDATORY SUPERVISION

37 TAC §§149.40 - 149.55 1682

TEXAS COMMISSION ON FIRE PROTECTION

TRAINING FACILITY CERTIFICATION

37 TAC §427.305....1688

FIRE INVESTIGATION

37 TAC §§431.1, 431.3, 431.13....1688

37 TAC §431.201, §431.211 1689

FIRE FIGHTER SAFETY

37 TAC §435.25....1689

FEES

37 TAC §§437.1, 437.5, 437.7....1689

TEXAS BOARD OF OCCUPATIONAL THERAPY EXAMINERS

REGISTRATION OF FACILITIES

40 TAC §376.5....1690

TEXAS DEPARTMENT OF TRANSPORTATION

RAIL FACILITIES

43 TAC §7.1....1692

43 TAC §§7.10 - 7.13 1692

43 TAC §7.13....1692

43 TAC §§7.20 - 7.22 1692

43 TAC §§7.30 - 7.42 1693

FINANCING AND CONSTRUCTION OF TRANSPORTATION PROJECTS

43 TAC §15.52....1693

RULE REVIEW

Proposed Rule Reviews

Credit Union Department 1695

Adopted Rule Reviews

Texas Department of Licensing and Regulation....1695

TABLES AND GRAPHICS

....1701

IN ADDITION

Department of Assistive and Rehabilitative Services

Request for Public Comment....1703

Office of the Attorney General

Contract Award 1703

Coastal Coordination Council

Notice and Opportunity to Comment on Requests for Consistency Agreement/Concurrence Under the Texas Coastal Management Program 1703

Concho Valley Workforce Development Board

Public Notice....1705

Office of Consumer Credit Commissioner

Notice of Rate Ceilings....1705

Court of Criminal Appeals

IN THE COURT OF CRIMINAL APPEALS 1706

East Texas Council of Governments

Request for Qualifications....1709

Employees Retirement System of Texas

Request for Proposal Texas Employees Group Benefits Program Medicare Advantage Plan 1709

Texas Commission on Environmental Quality

Agreed Orders....1710

Notice of District Petition 1713

Notice of Opportunity to Comment on Agreed Orders of Administrative Enforcement Actions 1714

Notice of Opportunity to Comment on Default Orders of Administrative Enforcement Actions 1715

Notice of Opportunity to Request a Public Meeting for a New Municipal Solid Waste Facility Registration Application No. 43031 1715

Notice of Public Hearings on Proposed Revisions to 30 TAC Chapter 101 1716

Notice of Public Meeting and a Proposed Amendment and Renewal of a General Permit Authorizing the Discharge of Storm Water 1716

Notice of Water Quality Applications............1717

Notice of Water Rights Application............1718

Texas Facilities Commission

Request for Proposals #303-1-20276............1718

Texas Forest Service

Renewal of a Major Consulting Contract 1719

Texas Health and Human Services Commission

Public Notice............1719

Department of State Health Services

Licensing Actions for Radioactive Materials 1719

Texas Department of Insurance, Division of Workers' Compensation

Correction of Error............1722

Texas Lottery Commission

Instant Game Number 1312 "Hot $100,000"............1722

North Central Texas Council of Governments

Notice of Vendor Contract Award............1727

Notice of Vendor Contract Award............1727

Public Utility Commission of Texas

Announcement of Application for Amendment to a State-Issued Certificate of Franchise Authority 1727

Announcement of Application for Amendment to a State-Issued Certificate of Franchise Authority 1727

Announcement of Application for Amendment to a State-Issued Certificate of Franchise Authority 1727

Announcement of Application for Amendment to a State-Issued Certificate of Franchise Authority 1728

Notice of Application for a Service Provider Certificate of Operating Authority............1728

Notice of Application for Service Area Exception............1728

Notice of Petition for Emergency Rulemaking............1728

Request for Comments on Amendments to Documents for Electric Transmission Certificate of Convenience and Necessity Applications............1729

To Provide Relay Access Services............1765

Texas Title Insurance Guaranty Association

Request for Proposal............1765

Texas Department of Transportation

Aviation Division - Request for Proposal for Professional Engineering Services............1765

Public Hearing Notice - Update to the 2010 Unified Transportation Program 1766

Request for Proposal - Private Consultant Services 1766

Open Meetings

Statewide agencies and regional agencies that extend into four or more counties post meeting notices with the Secretary of State.

Meeting agendas are available on the *Texas Register*'s Internet site:
http://www.sos.state.tx.us/open/index.shtml

Members of the public also may view these notices during regular office hours from a computer terminal in the lobby of the James Earl Rudder Building, 1019 Brazos (corner of 11th Street and Brazos) Austin, Texas. To request a copy by telephone, please call 512-463-5561. Or request a copy by email: register@sos.state.tx.us

For items ***not*** available here, contact the agency directly. Items not found here:

- minutes of meetings
- agendas for local government bodies and regional agencies that extend into fewer than four counties
- legislative meetings not subject to the open meetings law

The Office of the Attorney General offers information about the open meetings law, including Frequently Asked Questions, the *Open Meetings Act Handbook*, and Open Meetings Opinions.
http://www.oag.state.tx.us/open/index.shtml

The Attorney General's Open Government Hotline is 512-478-OPEN (478-6736) or toll-free at (877) OPEN TEX (673-6839).

Additional information about state government may be found here:
http://www.texas.gov

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

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 February 15, 2011

Appointed to Health Disparities Task Force for a term to expire February 1, 2013, Ben G. Raimer of Galveston. Dr. Raimer is being reappointed.

Appointments for February 18, 2011

Designating David Alders as presiding officer of the Texas Department of Rural Affairs for a term at the pleasure of the Governor. Mr. Alders is replacing Wallace Klussmann of Fredericksburg as presiding officer.

Designating Harold W. Hahn as vice chair of the Texas Higher Education Coordinating Board for a term at the pleasure of the Governor. Mr. Hahn is replacing Elaine Mendoza of San Antonio as vice chair.

Appointments for February 24, 2011

Appointed to the Early Childhood Intervention Advisory Committee for a term to expire February 1, 2015, John M. Cissik of McKinney (replacing Mirella Garcia of El Paso who resigned).

Appointed to the Early Childhood Intervention Advisory Committee for a term to expire February 1, 2015, Katherine Teutsch of Georgetown (replacing Beth Engelking of Austin who no longer qualifies).

Appointed to the Early Childhood Intervention Advisory Committee for a term to expire February 1, 2017, LaShonda Y. Brown of Missouri City (Ms. Brown is being reappointed).

Appointed to the Early Childhood Intervention Advisory Committee for a term to expire February 1, 2017, John Davis of Houston (replacing Myra Crownover of Denton whose term expired).

Appointed to the Early Childhood Intervention Advisory Committee for a term to expire February 1, 2017, Sarah S. Mills of Austin (replacing Monica Villegas-Thyssen of Cedar Park whose term expired).

Appointed to the Early Childhood Intervention Advisory Committee for a term to expire February 1, 2017, Pamela M. Perez of El Paso (Ms. Perez is being reappointed).

Appointed to the Early Childhood Intervention Advisory Committee for a term to expire February 1, 2017, Benna Hull Timperlake of Corpus Christi (replacing Rachel Reynolds of Weslaco whose term expired).

Rick Perry, Governor

TRD-201100809

Proclamation 41-3247

TO ALL TO WHOM THESE PRESENTS SHALL COME:

I, RICK PERRY, Governor of the State of Texas, issued an Emergency Disaster Proclamation on December 21, 2010, as extreme fire hazard posed a threat of imminent disaster in specified counties in Texas. The disaster proclamation was subsequently renewed on January 19, 2011;

WHEREAS, the extreme fire hazard continues to create a threat of disaster for the people in the State of Texas;

WHEREAS, the state of disaster includes the counties of Anderson, Andrews, Angelina, Aransas, Archer, Armstrong, Atascosa, Austin, Bailey, Bandera, Bastrop, Baylor, Bee, Bell, Bexar, Blanco, Borden, Bosque, Bowie, Brazoria, Brazos, Brewster, Briscoe, Brooks, Brown, Burleson, Burnet, Caldwell, Calhoun, Callahan, Cameron, Camp, Carson, Cass, Castro, Chambers, Cherokee, Childress, Clay, Cochran, Coke, Coleman, Collin, Collingsworth, Colorado, Comal, Comanche, Concho, Cooke, Coryell, Cottle, Crane, Crockett, Crosby, Culberson, Dallam, Dallas, Dawson, Deaf Smith, Delta, Denton, DeWitt, Dickens, Dimmit, Donley, Duval, Eastland, Ector, Edwards, Ellis, El Paso, Erath, Falls, Fannin, Fayette, Fisher, Floyd, Foard, Fort Bend, Franklin, Freestone, Frio, Gaines, Galveston, Garza, Gillespie, Glasscock, Goliad, Gonzales, Gray, Grayson, Gregg, Grimes, Guadalupe, Hale, Hall, Hamilton, Hansford, Hardeman, Hardin, Harris, Harrison, Hartley, Haskell, Hays, Hemphill, Henderson, Hidalgo, Hill, Hockley, Hood, Hopkins, Houston, Howard, Hudspeth, Hunt, Hutchison, Irion, Jack, Jackson, Jasper, Jeff Davis, Jefferson, Jim Hogg, Jim Wells, Johnson, Jones, Karnes, Kaufman, Kendall, Kenedy, Kent, Kerr, Kimble, King, Kinney, Kleberg, Knox, La Salle, Lamar, Lamb, Lampasas, Lavaca, Lee, Leon, Liberty, Limestone, Lipscomb, Live Oak, Llano, Loving, Lubbock, Lynn, Madison, Marion, Martin, Mason, Matagorda, Maverick, McCulloch, McLennan, McMullen, Medina, Menard, Midland, Milam, Mills, Mitchell, Montague, Montgomery, Moore, Morris, Motley, Nacogdoches, Navarro, Newton, Nolan, Nueces, Ochiltree, Oldham, Orange, Palo Pinto, Panola, Parker, Parmer, Pecos, Polk, Potter, Presidio, Rains, Randall, Reagan, Real, Red River, Reeves, Refugio, Roberts, Robertson, Rockwall, Runnels, Rusk, Sabine, San Augustine, San Jacinto, San Saba, Schleicher, Scurry, Shackelford, Shelby, Sherman, Smith, Somervell, Starr, Stephens, Sterling, Stonewall, Sutton, Swisher, Tarrant, Taylor, Terrell, Terry, Throckmorton, Titus, Tom Green, Travis, Trinity, Tyler, Upshur, Upton, Uvalde, Val Verde, Van Zandt, Victoria, Walker, Waller, Ward, Washington, Webb, Wharton, Wheeler, Wichita, Wilbarger, Willacy, Williamson, Wilson, Winkler, Wise, Wood, Yoakum, Young, Zapata and Zavala.

THEREFORE, in accordance with the authority vested in me by Section 418.014 of the Texas Government Code, I do hereby renew the disaster proclamation and direct that all necessary measures, both public and private as authorized under Section 418.017 of the code, be implemented to meet that disaster.

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

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 17th day of February, 2011.

Rick Perry, Governor

Attested by: Esperanza "Hope" Andrade, Secretary of State

TRD-201100770

The Attorney General

The *Texas Register* publishes summaries of the following: Requests for Opinions, Opinions, Open Records Decisions.

An index to the full text of these documents is available from the Attorney General's Internet site http://www.oag.state.tx.us.

Telephone: 512-936-1730. For information about pending requests for opinions, telephone 512-463-2110.

An Attorney General Opinion is a written interpretation of existing law. The Attorney General writes opinions as part of his responsibility to act as legal counsel for the State of Texas. Opinions are written only at the request of certain state officials. The Texas Government Code indicates to whom the Attorney General may provide a legal opinion. He may not write legal opinions for private individuals or for any officials other than those specified by statute. (Listing of authorized requestors: http://www.oag.state.tx.us/opinopen/opinhome.shtml.)

Requests for Opinions

RQ-0944-GA

Requestor:

The Honorable Elton R. Mathis

Waller County Criminal District Attorney

846 Sixth Street, Suite 1

Hempstead, Texas 77445

Re: Whether a county auditor is responsible for oversight of a constable's continuing education funds allocated under section 1701.157, Occupations Code (RQ-0944-GA)

Briefs requested by March 25, 2011

RQ-0945-GA

Requestor:

The Honorable Vince Ryan

Harris County Attorney

1019 Congress, 15th Floor

Houston, Texas 77002

Re: Authority of a county judge to order a municipal recall election (RQ-0945-GA)

Briefs requested by March 25, 2011

RQ-0946-GA

Requestor:

Ms. Mary L. Nichols

Grimes County Auditor

Post Office Box 510

Anderson, Texas 77830

Re: Authority of a commissioners court and a county auditor with regard to county budget amendments (RQ-0946-GA)

Briefs requested by March 28, 2011

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

TRD-201100853

Jay Dyer
Deputy Attorney General
Office of the Attorney General
Filed: March 2, 2011

♦ ♦ ♦

Opinions

Opinion No. GA-0846

The Honorable Vicki Truitt

Chair, Committee on Pensions, Investments and Financial Services

Texas House of Representatives

Post Office Box 2910

Austin, Texas 78768-2910

Re: Whether section 542.2035, Transportation Code, prohibits a municipal peace officer from using a handheld laser speed enforcement device to collect evidence before initiating a traffic stop (RQ-0914-GA)

S U M M A R Y

By enactment of Transportation Code section 542.2035, the Legislature has prohibited a municipality from using any radar device that records the speed of a motor vehicle and obtains one or more photographs or other recorded images of the vehicle, its license plate or its operator.

Opinion No. GA-0847

The Honorable Paul Johnson

Denton County Criminal District Attorney

Post Office Box 2850

Denton, Texas 76202

Re: Whether information contained in a presentence investigation report may be released to the Department of Family and Protective Services for the protection of a child (RQ-0917-GA)

S U M M A R Y

Under section 261.101, Family Code, a community supervision officer may release to the Department of Family and Protective Services information contained in a pre-plea presentence investigation report required by section 9 of article 42.12, Code of Criminal Procedure, to the extent that such information discloses that a child's physical or mental health or welfare has been adversely affected by abuse or neglect. An officer who releases such information to the Department is im-

mune from civil and criminal liability under section 261.101(a), Family Code, for having done so.

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

TRD-201100854

Jay Dyer
Deputy Attorney General
Office of the Attorney General
Filed: March 2, 2011

TEXAS ETHICS COMMISSION

The Texas Ethics Commission is authorized by the Government Code, §571.091, to issue advisory opinions in regard to the following statutes: the Government Code, Chapter 302; the Government Code, Chapter 305; the Government Code, Chapter 572; the Election Code, Title 15; the Penal Code, Chapter 36; and the Penal Code, Chapter 39. Requests for copies of the full text of opinions or questions on particular submissions should be addressed to the Office of the Texas Ethics Commission, P.O. Box 12070, Austin, Texas 78711-2070, (512) 463-5800.

Ethics Advisory Opinion

EAO-496. Whether the revolving door law prohibits a former employee of the Texas Department of Transportation from performing certain services related to road projects. (AOR-560)

SUMMARY

Section 572.054(b) of the Government Code does not prohibit a former employee of the Texas Department of Transportation from performing services related to road projects as described in this opinion.

The Texas Ethics Commission is authorized by §571.091 of the Government Code to issue advisory opinions in regard to the following statutes: (1) Chapter 572, Government Code; (2) Chapter 302, Government Code; (3) Chapter 303, Government Code; (4) Chapter 305, Government Code; (5) Chapter 2004, Government Code; (6) Title 15, Election Code; (7) Chapter 159, Local Government Code; (8) Chapter 36, Penal Code; (9) Chapter 39, Penal Code; (10) Section 2152.064, Government Code; and (11) Section 2155.003, Government Code.

Questions on particular submissions should be addressed to the Texas Ethics Commission, P.O. Box 12070, Capitol Station, Austin, Texas 78711-2070, (512) 463-5800.

TRD-201100807
Natalia Luna Ashley
General Counsel
Texas Ethics Commission
Filed: February 28, 2011

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 7. STATE OFFICE OF ADMINISTRATIVE HEARINGS

CHAPTER 155. RULES OF PROCEDURE

SUBCHAPTER C. FILING AND SERVICE OF DOCUMENTS

1 TAC §155.101

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

The State Office of Administrative Hearings (SOAH) proposes to repeal §155.101, concerning Filing Documents. The existing rule was developed to provide guidance and instructions for filing documents in contested cases at SOAH. Repeal of the existing rule will allow the simultaneous adoption of a new rule, which is being concurrently proposed, to give guidance and instruction on filing documents in contested cases at SOAH using its newly implemented Case Information System (CIS).

Kerry D. Sullivan, General Counsel, has determined that for the first five-year period the repeal is in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering the repeal.

Mr. Sullivan has also determined that for the first five-year period the repeal is in effect, the anticipated public benefit will be to make filing documents at SOAH simpler and to make the contents of non-confidential case files more accessible. There will be no effect on small businesses as a result of enforcing the repeal. There is no anticipated economic cost to individuals who are required to comply with the proposed repeal.

Written comments on the proposed repeal must be submitted within 30 days after publication of the proposed section in the *Texas Register* to Debra A. Anderson, Paralegal, State Office of Administrative Hearings, P.O. Box 13025, Austin, Texas 78711-3025, or by email at debra.anderson@soah.state.tx.us, or by facsimile to (512) 463-7791.

The repeal is proposed under Government Code, Chapter 2003, which authorizes the State Office of Administrative Hearings to conduct contested case hearings, Government Code, Chapter 2001, §2001.004, which requires agencies to adopt rules of practice setting forth the nature and requirements of formal and informal procedures, and §2003.050, which requires SOAH to adopt rules governing the procedures that relate to hearings conducted by SOAH.

The repeal affects Government Code, Chapters 2001 and 2003.

§155.101. Filing Documents.

This 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 February 24, 2011.

TRD-201100768
Kerry D. Sullivan
General Counsel
State Office of Administrative Hearings
Earliest possible date of adoption: April 10, 2011
For further information, please call: (512) 475-4931

1 TAC §155.101

The State Office of Administrative Hearings (SOAH) proposes new §155.101, concerning Filing Documents. The new rule replaces the current rule, which is being simultaneously repealed. In general, the new rule changes SOAH's existing rule to include instruction and guidance on how to file documents using SOAH's newly implemented Case Information System (CIS).

Kerry D. Sullivan, General Counsel, has determined that for the first five-year period the new rule is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the new rule.

Mr. Sullivan has also determined that for the first five-year period the new rule is in effect the public benefit anticipated as a result of the rule will be to make filing documents at SOAH simpler and to make the contents of non-confidential case files more accessible. There will be no effect on small businesses as a result of enforcing the rule. There is no anticipated economic cost to individuals who are required to comply with the new rule.

Mr. Sullivan has further determined that the new rule is revision of an existing rule and does not impose new or additional requirements on small businesses in Texas.

Written comments must be submitted within 30 days after publication of the proposed new rule in the *Texas Register* to Debra A. Anderson, Paralegal, State Office of Administrative Hearings, P.O. Box 13025, Austin, Texas 78711-3025, or by email at debra.anderson@soah.state.tx.us, or by facsimile to (512) 463-7791.

The new rule is proposed under Government Code, Chapter 2003, §2003.050, which authorizes the State Office of Administrative Hearings to conduct contested case hearings and requires adoption of procedural rules for hearings, and Govern-

ment Code, Chapter 2001, §2001.004, which requires agencies to adopt rules of practice setting forth the nature and requirements of formal and informal procedures.

The new rule affects Government Code, Chapters 2001 and 2003.

§155.101. Filing Documents.

(a) Electronic Case Information System.

(1) Except as otherwise provided in this section, documents relating to cases filed at SOAH and governed by this chapter shall be maintained in SOAH's electronic Case Information System (CIS). Subject to the exceptions in this chapter, CIS may be accessed through SOAH's internet home page.

(2) The electronic version of a document maintained in CIS shall be given the same legal status as the originally filed document, without regard to the original means of filing.

(3) Some documents will not be maintained in CIS. These include testimony and exhibits, whether offered at a hearing or filed in advance. Unless otherwise ordered by the judge, paper copies of these documents must be filed by mail or hand delivery. The judge may alter the application of this subsection with respect to particular documents or classes of documents as the judge deems appropriate. The judge may order the method by which documents may be filed at SOAH so they will not be included in CIS.

(4) If technical problems prevent the use of CIS, the chief administrative law judge, his or her designee, or the judge in a particular case may establish alternative means of filing or maintaining documents, including the filing and maintenance of the official file in a paper format.

(b) Place for filing original materials.

(1) Contested cases generally.

(A) The original of all pleadings and other documents, except contested cases referred to SOAH by the PUC and the TCEQ, shall be filed with SOAH when it acquires jurisdiction.

(B) Non-confidential pleadings and other public documents that do not contain personal identifiers as described in subsection (d) of this section shall be filed with SOAH by mail addressed to P.O. Box 13025, Austin, Texas 78711-3025; hand delivery to 300 West 15th Street, Room 504; fax to (512) 322-2061; or electronic upload via SOAH's public website. If the parties are notified that the case has been assigned to a judge in a field office outside Austin, pleadings and other documents shall be filed with the judge at the appropriate field office address. Confidential documents and documents containing personal identifiers must be filed in accordance with subsections (c) and (d) of this section.

(C) With respect to documents filed by mail or hand delivery, the time and date of filing shall be determined by the file stamp affixed by SOAH. The time and date of documents filed electronically shall be determined by the time and date of receipt recorded by CIS. Documents received when SOAH is closed shall be deemed filed the next business day. Unless otherwise ordered by the judge, only one copy of any pleading or document shall be filed.

(2) Cases referred by the PUC.

(A) Except for exhibits offered at a prehearing conference or hearing, the original of all documents shall be filed at the PUC in accordance with the PUC rules.

(B) The party filing a document with the PUC (except documents provided in the discovery process that are not the subject of motions filed in a discovery dispute) shall serve the judge with a copy of the document by delivery to SOAH on the same day as the filing.

(C) The court reporter shall provide the transcript and exhibits to the judge at the same time the transcript is provided to the requesting party. SOAH shall maintain the transcript and exhibits until they are released to the PUC by the judge. If no court reporter was requested by a party, SOAH shall maintain the recording of the hearing and the exhibits until they are released to the PUC by the judge.

(3) Cases referred by the TCEQ.

(A) Except for exhibits offered at a prehearing conference or hearing, the original of all documents shall be filed with the TCEQ's chief clerk in accordance with the TCEQ rules.

(B) The time and date of filing these materials shall be determined by the file stamp affixed by the chief clerk, or as evidenced by the file stamp affixed to the document or envelope by the TCEQ mail room, whichever is earlier.

(C) The party filing a document with the TCEQ (except documents provided in the discovery process that are not the subject of motions filed in a discovery dispute) shall serve the judge with a copy of the document by delivery to SOAH on the same day as the filing.

(D) The court reporter shall provide the transcript and exhibits to the judge at the time the transcript is provided to the requesting party. SOAH shall maintain the transcript and exhibits until they are released to the TCEQ by the judge. If no court reporter was requested by a party, SOAH shall maintain the recording of the hearing and the exhibits until they are released to the TCEQ by the judge.

(c) Confidential materials.

(1) Filing of confidential materials in otherwise public dockets. A party filing materials made confidential by law shall file them by delivery of the physical materials in a sealed and labeled container, accompanied by an explanatory cover letter. The cover letter shall identify the docket number and style of the case and shall explain the nature of the sealed materials. The outside of the container shall identify the docket number, style of the case, and name of the submitting party, and be marked "CONFIDENTIAL AND UNDER SEAL" in bold print at least one inch in size. Each page of the confidential material shall be marked "confidential." Confidential materials shall not be filed by fax or electronic upload except as provided in paragraph (2) of this subsection.

(2) Filing of materials in confidential cases referred by the Office of the Attorney General and the Comptroller of Public Accounts. Hearings referred by the Office of Attorney General relating to the Title IV-D child support program are confidential pursuant to Texas Family Code §231.108 (relating to Confidentiality of Records and Privileged Communications). Hearings referred by the Comptroller of Public Accounts are confidential pursuant to Texas Government Code §2003.104 (relating to Confidentiality of Tax Division Information). Filings in these cases may be made pursuant to subsection (b)(1)(B) of this section, including fax or upload via SOAH's public website. The documents will be maintained by SOAH as confidential.

(3) Materials submitted for in camera review. A party submitting materials for in camera review by the judge shall supply them to the judge in a sealed and labeled container, accompanied by an explanatory cover letter copied to all parties. The cover letter, addressed to the judge, shall identify the docket number, style of the case, explain the nature of the sealed materials, and specify the relief sought. The outside of the container, addressed to the judge, shall identify the docket number, style of the case, and name of the submitting party, and shall be marked "IN CAMERA REVIEW" in bold print at least

one inch in size. Each page for which a privilege is asserted shall be marked "privileged." The judge will determine whether the materials will be received for filing by SOAH. Unless otherwise ordered by the judge, materials reviewed in camera will be returned to the party that submitted them.

(d) Redaction of personal identifiers

(1) Except for cases governed by subsection (c)(2) of this section, a person who files documents at SOAH, including exhibits offered at hearing, shall redact from the documents all personal identifiers that are:

(A) protected by law from disclosure; or

(B) unnecessary for resolution of the case. At the time of filing, SOAH personnel will not be responsible for screening documents for compliance with this rule.

(2) Personal identifiers. "Personal identifiers" shall include: Social Security numbers, taxpayer identification numbers, driver's license numbers, dates of birth, full names of minors, full names of persons who are patients or clients in a health care setting, full names of persons who are victims of crimes, addresses and telephone numbers of commissioned peace officers, expunged criminal records, or records subject to a non-disclosure order issued by a court of this state unless allowed by law.

(3) Protective measures. If the filer determines that the personal identifiers are necessary for the resolution of the case, the document shall be filed in the same manner as a confidential document in accordance with subsection (c) of this section. If the judge determines that personal identifiers are necessary to the resolution of the case, the judge may admit the information into the record under seal or employ appropriate protective measures.

(4) Return to party for redaction. If the judge determines that the personal identifiers are not necessary to the resolution of the case, the judge may order the documents redacted prior to their admission into the record.

(e) Parties' responsibilities regarding confidential materials and personal identifiers. The filing parties bear the responsibility to ensure that documents containing confidential information or personal identifiers are not filed by fax or electronic upload in public cases. Documents filed by fax or electronic upload in public cases will be posted on SOAH's public website and accessible to the public.

(f) Discovery materials.

(1) Discovery requests and documents produced in discovery shall not be filed with SOAH, except as provided in paragraph (3) of this subsection.

(2) Documents produced in discovery shall be served upon the requesting parties and notice of service shall be given to all parties. The party responsible for service of the discovery materials shall retain an exact duplicate of the original documents.

(3) Motions and responses in a discovery dispute shall include only the relevant portions of the discovery materials.

This 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 February 24, 2011.

TRD-201100772

Kerry D. Sullivan
General Counsel
State Office of Administrative Hearings
Earliest possible date of adoption: April 10, 2011
For further information, please call: (512) 475-4931

SUBCHAPTER J. DISPOSITION OF CASE

1 TAC §155.501

The State Office of Administrative Hearings (SOAH) proposes an amendment to §155.501, concerning Default Proceedings, to provide more efficient procedures for disposing of cases by default where appropriate notice has been provided.

Kerry D. Sullivan, General Counsel, 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 amendment.

Mr. Sullivan has also determined that for the first five-year period the amendment is in effect, the anticipated public benefit will be to reduce the time and resources required to dispose of cases by default where appropriate notice has been provided. There will be no effect on small businesses as a result of enforcing the amendment. There is no anticipated economic cost to individuals who are required to comply with the proposed amendment.

Written comments on the proposed amendment must be submitted within 30 days after publication of the proposed section in the *Texas Register* to Debra A. Anderson, Paralegal, State Office of Administrative Hearings, P.O. Box 13025, Austin, Texas 78711-3025, or by email at debra.anderson@soah.state.tx.us, or by facsimile to (512) 463-7791.

The amendment is proposed under Government Code, Chapter 2003, which authorizes the State Office of Administrative Hearings to conduct contested case hearings, Government Code, Chapter 2001, §2001.004, which requires agencies to adopt rules of practice setting forth the nature and requirements of formal and informal procedures, and §2003.050, which requires SOAH to adopt rules governing the procedures, including discovery procedures, that relate to a hearing conducted by SOAH.

The amendment affects Government Code, Chapters 2001 and 2003.

§155.501. Default Proceedings.

(a) Default. If a party that does not bear the burden of proof and to whom a notice of hearing is served or provided under this section fails to appear for hearing, the judge may proceed in that party's absence on a default basis. If a [~~In the~~] proposal for decision or final decision is issued, the factual allegations listed in the notice of hearing will be deemed admitted.

(b) Proof to support default. Any default proceeding under this section requires adequate proof of the following:

(1) proper notice was received by the defaulting party; [~~and~~]

(2) the notice included a disclosure in at least 12-point, bold-face type that the factual allegations listed in the notice could be deemed admitted, and the relief sought in the notice of hearing might be granted by default against the party that fails to appear at hearing; and[~~.~~]

(3) the notice satisfies the requirement of Texas Government Code §2001.051 and §2001.052, and §155.401 of this title (relating to Notice of Hearing).

(c) (No change.)

(d) Upon receiving the required showing of proof to support a default, the judge may recess the hearing, issue an order dismissing the case from the SOAH docket, and return the file to the referring agency for informal disposition on a default basis in accordance with Texas Government Code §2001.056. In the absence of receiving adequate proof to support a default, the judge shall continue the case and direct the party responsible for the provision of notice to provide adequate notice. If the responsible party persists in failing to provide adequate notice, the judge may dismiss the case from the SOAH docket without prejudice to refiling.

(e) Motion to set aside default. A party may file a motion with SOAH no later than ten days after the hearing to set aside a default and to reopen the record. The judge may grant the motion, set aside the default, and reopen the hearing for good cause shown, or in the interests of justice.

[(d) Motion to set aside default. A party may file a motion no later than ten days after the hearing to set aside a default and to reopen the record if a proposal for decision or a final decision has not been issued. The judge may grant the motion, set aside the default, and reopen the hearing for good cause shown.]

[(e) Judge's authority.]

[(1) If a party fails to appear at the hearing, the judge may:]

[(A) grant a continuance or dismissal from SOAH's docket to allow the referring agency to dispose of the case on a default basis under Tex. Gov't Code §2001.056 and the referring agency's rules;]

[(B) issue a default proposal for decision or final decision; or]

[(C) deny the relief sought if the notice of hearing fails to establish the necessary elements of the case.]

[(2) The judge has the authority to determine whether proper and adequate notice under Tex. Gov't Code Chapter 2001 and §155.401 of this title (relating to Notice of Hearing) was given.]

This 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-201100769
Kerry D. Sullivan
General Counsel
State Office of Administrative Hearings
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For further information, please call: (512) 475-4931

TITLE 7. BANKING AND SECURITIES

PART 6. CREDIT UNION DEPARTMENT

CHAPTER 91. CHARTERING, OPERATIONS, MERGERS, LIQUIDATIONS

SUBCHAPTER E. DIRECTION OF AFFAIRS

7 TAC §91.501

The Credit Union Commission (the Commission) proposes amendments to §91.501, concerning Director Eligibility and Disqualification. The amendments set out procedures for recalling directors and filling any resulting board vacancies, clarify when a director is automatically removed from office as a result of absences, and require credit unions to adopt election procedures that are impartial. The amendments also edit the rule for consistency and clarity.

The amendments are proposed as a result of the Texas Credit Union Department's (Department) general rule review.

Betsy Loar, General Counsel, has determined that for the first five-year period the proposed amendments are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the amended rule.

Ms. Loar has also determined that for each year of the first five years the proposed amendments are in effect, the public benefits anticipated as a result of enforcing the rule will be greater clarity and ease of use of the rule. There will be no effect on small or micro businesses as a result of adopting the amended rule. There is no economic cost anticipated to credit unions or individuals for complying with the amended rule if adopted.

Written comments on the proposal must be submitted within 30 days after its publication in the *Texas Register* to Betsy Loar, General Counsel, Credit Union Department, 914 East Anderson Lane, Austin, Texas 78752-1699.

The amendments are proposed under Texas Finance Code, §15.402, which authorizes the Commission to adopt reasonable rules for administering Title 2, Chapter 15 and Title 3, Subtitle D of the Texas Finance Code, and under Texas Finance Code §§122.053, 122.054, and 122.055, which set out qualifications for directors and procedures for filling vacancies.

The specific sections affected by the proposed amendments are Texas Finance Code, §§122.053, 122.054, and 122.055.

§91.501. Director Eligibility and Disqualification.

(a) Board Representation. The credit union's bylaws shall govern board selection and election procedures. [Elective office.] No credit union shall adopt or amend its articles of incorporation or bylaws to designate or reserve one or more places on the board of directors for any [member representative of any] classification that results in a restriction [restricts] or infringement [infringes] upon the equal rights of all members to vote for, or seek any position on, the board of directors of the credit union. In addition, each credit union shall adopt policies and procedures that are designed to assure that the elections of directors are conducted in an impartial manner.

(b) Qualifications. A [No] member may not [be elected to or] serve as director of a credit union [on the board of directors] if that member:

(1) has been convicted of any criminal offense involving dishonesty or breach of trust;

(2) is not eligible for coverage by the blanket bond required under the provisions of the Act, or §91.510 of this title (relating to Bond and Insurance Requirements);

(3) has had a final judgment entered against him/her in a civil action upon the grounds of fraud, deceit, or misrepresentation;

(4) has a payment on a voluntary obligation to the credit union that is more than 90 days delinquent or has otherwise caused the credit union to suffer a financial loss;

(5) has been removed from office by any regulatory or government agency as an officer, agent, employee, consultant or representative of any financial institution;

(6) has been personally made subject to an operating directive for cause while serving as an officer, director, or senior executive management person of a financial institution; or has caused or participated in a prohibited activity or an unsafe or unsound condition at a financial institution which resulted in the suspension or revocation of the financial institution's certificate of incorporation, or authority or license to do business;

(7) has failed to complete and return a director application in accordance with subsection (c) of this section; or

(8) refuses to take and subscribe to the prescribed oath or affirmation of office.

(c) Director application. Any member nominated for, or seeking election to, the board of directors shall submit a written application in such form as the credit union may prescribe. The application shall be submitted either to the nominating committee prior to its selection of nominees; or to the board chair within 30 days following the election of a member who was not nominated by the nominating committee or who was appointed by the board to fill a vacancy. The applications of the elected/appointed directors shall be incorporated into and made part of the minutes of the first board meeting following the election/appointment of those directors. Applications of unsuccessful candidates shall be destroyed or returned upon request. The commissioner may review and require that changes be made to any application form, which is deemed inadequate or unfairly discriminates against certain classes of members.

(d) Director continuing education. Directors must develop and maintain a fundamental, ongoing knowledge of the regulations and issues affecting credit union operations to assure a safe and sound institution. A credit union shall, by written board policy, establish appropriate continuing education requirements and provide sufficient resources for directors [~~elected officials~~] to achieve and maintain professional competence. The policy should be appropriate to the size and financial condition of the credit union and the nature and scope of its operations.

(e) Prohibited conduct. A director shall not:

(1) Divulge or make use of, except in the performance of office duties, any fact, information, or document not generally available to the membership that is acquired by virtue of serving on the board of the credit union.

(2) Use the director's position to obtain or attempt to obtain special advantage or favoritism for the director, any relative of the director, or any person residing in the director's household.

(3) Accept, directly or indirectly, any gift, fee, or other present that is offered or could be reasonably be viewed as being offered to influence official action or to obtain information that the director has access to by reason of serving on the board of the credit union.

(f) Recall of director(s) [~~director~~].

(1) Petition. Under procedures set out in the credit union's bylaws, members may request a special membership meeting to consider removing the entire board or individual directors for cause relating to serious mismanagement or a breach of fiduciary duties. The board shall conduct any resulting special meeting as prescribed in the credit union's bylaws.

(2) Membership Vote. The members of a credit union may remove a director by a vote of two-thirds of those members voting at the [~~any~~] special [~~or regular~~] meeting [~~of the members~~]; provided, however, that:

(A) a separate vote is conducted for each director sought to be recalled;

(B) [~~(1)~~] the members voting shall constitute not less than 10% of the membership eligible to vote in the recall election;

(C) [~~(2)~~] all members are given at least 30 days notice of the meeting which shall state the reasons why the meeting has been called; and

(D) [~~(3)~~] the affected director(s) [~~director~~] is afforded an opportunity to be heard at such meeting prior to a vote on removal.

(3) Vacancy on the Board. If a vacancy occurs as a result of a recall, the vacancy shall be filled by the affirmative vote of a majority of the remaining directors. If the entire board is removed as a result of the recall, the members shall fill the vacancies at the recall meeting. Directors elected to fill a recall vacancy shall hold office only until the next annual meeting when any unexpired terms shall be filled by vote of the members.

(g) Absences. Any director who fails to attend three (3) consecutive regularly scheduled meetings without an excuse approved by a majority vote of the board [~~The office of a director becomes vacant upon the convening of a regular board meeting, when a director fails to attend three (3) consecutive regular meetings without due cause~~], or who [~~when a director~~] fails to attend six (6) regularly scheduled [~~regular~~] meetings during [~~within~~] any twelve-month period following the director's election or appointment is automatically removed from office. A new person [~~individual~~] shall be appointed to fill any vacancies resulting from poor attendance [~~occurring in this manner~~] within sixty days of the date of the meeting that led to the automatic removal. The commissioner in the exercise of discretion may extend the deadline for filling the vacancy. [~~, unless extended by approval of the commissioner.~~]

This 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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Harold E. Feeney
Commissioner
Credit Union Department
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For further information, please call: (512) 837-9236

7 TAC §91.502

The Credit Union Commission (the Commission) proposes amendments to §91.502, concerning Director/Committee Member Fees, Insurance, Reimbursable Expenses, and Other Authorized Expenditures. The amendments provide for enhanced board oversight of travel expense reimbursements, clarify when a credit union cannot pay director fees, provide for additional credit union financial analysis when paying director

fees, and require that the board's annual review of fees and expenses be documented in the minutes. The amendments also address conditions under which a credit union can reimburse a director for guest travel expenses.

The amendments are proposed as a result of the Texas Credit Union Department's (Department) general rule review.

Betsy Loar, General Counsel, has determined that for the first five-year period the proposed amendments are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the amended rule.

Ms. Loar has also determined that for each year of the first five years the proposed amendments are in effect, the public benefits anticipated as a result of enforcing the rule will be greater clarity and ease of use of the rule. There will be no effect on small or micro businesses as a result of adopting the amended rule. There is no economic cost anticipated to credit unions or individuals for complying with the amended rule if adopted.

Written comments on the proposal must be submitted within 30 days after its publication in the *Texas Register* to Betsy Loar, General Counsel, Credit Union Department, 914 East Anderson Lane, Austin, Texas 78752-1699.

The amendments are proposed under Texas Finance Code, §15.402, which authorizes the Commission to adopt reasonable rules for administering Title 2, Chapter 15 and Title 3, Subtitle D of the Texas Finance Code, and under Texas Finance Code §122.062 which sets out conditions for director fees and reimbursements.

The specific section affected by the proposed amendments is Texas Finance Code, §122.062.

§91.502. Director/Committee Member Fees, Insurance, Reimbursable Expenses, and Other Authorized Expenditures.

(a) Expense reimbursement. A credit union may reimburse out-of-pocket travel and related expenses that are reasonable and appropriate for the business activity undertaken. A credit union shall adopt a [~~may, by~~] written board policy to administer and control travel expenses paid or incurred in connection with directors or committee members carrying out official credit union business. [~~, authorize the payment of reasonable expenses incurred by directors and committee members and their spouses for attending and participating in board approved conferences and/or educational programs.~~]

(b) Payment of fees. Directors and committee members may be paid reasonable fees, in accordance with [~~A credit union may, by~~] written board policy, [~~authorize the payment of reasonable fees~~] for [~~directors and/or committee members~~] attending duly called meetings for conducting [~~the conduct of~~] appropriate credit union business. A credit union may not [~~In addition to the limitations of this section, the policy shall include a schedule of meeting fee amounts and a provision that fees may be paid only for actual attendance at duly called meetings. The authority to~~] pay a meeting [~~any such~~] fee to a director or committee member if the credit union is operating under [~~is subject to the following limitations:~~]

[~~(1)~~] [~~the credit union is not operating under~~] a Net Worth Restoration Plan; or

[~~(2)~~] an [~~the credit union must not be subject to a cease and desist order or removal~~] order issued under Finance Code §122.257 or [~~and~~] §122.258. [~~;~~]

[~~(3) the credit union must notify the commissioner by furnishing a copy of the policy, and any amendments thereto, at least 30 days prior to the implementation of the policy or any revisions thereof; and~~]

[~~(4) the credit union must keep accurate and detailed records of the fees paid under the policy.~~]

(c) Advance Notice of Payment of Fees. A credit union shall provide written notice to the Department of its intent to pay or modify director or committee member meeting fees at least 30 days prior to commencing the new or modified program. The written notice shall include a copy of the board policy, the proposed or revised fee schedule, and a description of the anticipated cost and the credit union's ability to absorb the increase in operating costs. The credit union shall provide any additional information requested by the commissioner.

(d) [~~(c)~~] Use of credit union equipment. A credit union may provide personal computers, access to electronic mail, and other electronic conveniences to directors during their terms of office provided:

(1) the board of directors determines that the equipment and the electronic means are necessary and appropriate for the directors to fulfill their duties and responsibilities;

(2) the board of directors develops and maintains written policies and procedures regarding this matter; and

(3) the arrangement ceases immediately upon the person's leaving office[~~, without providing any residual physical benefits~~].

(e) [~~(d)~~] Insurance. A credit union may, in accordance with written board policy, provide health, life, accident, liability, or similar personal insurance protection for directors and committee members. The kind and amount of these insurance protections must be reasonable given the credit union's size, financial condition, and the duties of the director or committee member. The insurance protection must cease upon the director or committee member's leaving office, without providing residual benefits beyond those earned during the individual's term on the board or committee.

(f) [~~(e)~~] Review by board. A credit union shall implement and maintain appropriate controls and other safeguards to prevent the payment of fees or expenses that are excessive or that could lead to material financial loss to the institution. At least annually, the board, in good faith, shall review the director/committee member fees and director/committee member-related expenses incurred, paid or reimbursed by the credit union and determine whether its policy continues to be in the best interest of the credit union. The Board's review shall be included as part of the minutes of the meeting at which the policy and the fees and expenses were studied. Fees and expenses shall be considered excessive when amounts paid are disproportionate to the services performed by a director or committee member, or unreasonable considering the financial condition of the institution and similar practices at credit unions of a comparable asset size, geographic location, and/or operational complexity.

(g) Guest travel. A credit union's board may authorize the payment of travel expenses that are reasonable in relation to the credit union's financial condition and resources for one guest accompanying a director or committee member to an approved conference or educational program. The payment will not be considered compensation for purposes of Finance Code §122.062 if:

(1) it is determined by the board to be necessary or appropriate in order to carry out the official business of the credit union; and

(2) it is in accordance with written board policies and procedures.

[(f) Waiver by commissioner. The commissioner in the exercise of discretion may grant a waiver in writing of the limitations described in subsection (b) 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.

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Harold E. Feeney
Commissioner
Credit Union Department
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For further information, please call: (512) 837-9236

7 TAC §91.516

The Credit Union Commission (the Commission) proposes amendments to §91.516, concerning Audits and Verifications. The amendments update regulatory references and edit the rule for clarity.

The amendments are proposed as a result of the Texas Credit Union Department's (Department) general rule review.

Betsy Loar, General Counsel, has determined that for the first five-year period the proposed amendments are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the amended rule.

Ms. Loar has also determined that for each year of the first five years the proposed amendments are in effect, the public benefits anticipated as a result of enforcing the rule will be greater clarity and ease of use of the rule. There will be no effect on small or micro businesses as a result of adopting the amended rule. There is no economic cost anticipated to credit unions or individuals for complying with the amended rule if adopted.

Written comments on the proposal must be submitted within 30 days after its publication in the *Texas Register* to Betsy Loar, General Counsel, Credit Union Department, 914 East Anderson Lane, Austin, Texas 78752-1699.

The amendments are proposed under Texas Finance Code, §15.402, which authorizes the Commission to adopt reasonable rules for administering Title 2, Chapter 15 and Title 3, Subtitle D of the Texas Finance Code, and under Texas Finance Code §122.102, which sets out requirements for audits and member account verification.

The specific section affected by the proposed amendments is Texas Finance Code, §122.102.

§91.516. Audits and Verifications.

(a) Audit requirements. At least once every calendar year, the board of directors shall obtain or cause to be performed an annual audit of the credit union which must cover the period elapsed since the last audit period. A [, a] summary of the audit [which] must be reported to the members at the next membership meeting. The audit must be conducted in accordance with generally accepted auditing standards by a licensee of the Texas State Board of Public Accountancy or as permitted under the provisions of §741.202(a) [part 715] of the National Credit Union Administration's Rules and Regulations (12 CFR, Chapter VII, Part 741 [715]).

(b) Definitions.

(1) A record-keeping deficiency is serious if the commissioner reasonably believes that the board of directors and management of the credit union have not timely met financial reporting objectives and established practices and procedures sufficient to safeguard members' assets.

(2) A serious recordkeeping deficiency is persistent when it continues beyond a usual, expected or reasonable period of time.

(c) Verification obligation. The board of directors shall, at least once every two years, cause the share, deposit, and loan accounts to be verified against the records of the credit union as prescribed in §741.202(b) [§715.8] of the National Credit Union Administration's Rules and Regulations (12 CFR, Chapter VII, Part 741 [715]).

(d) Remedies. The commissioner may compel a credit union to obtain an audit and/or a verification of members' accounts, performed by an independent person, for any year in which any one of the following [three] conditions is present:

(1) the credit union has not obtained an annual audit or caused an audit/verification to be performed;

(2) the credit union has obtained an audit/verification or performed an audit/verification which does not meet the specified requirements; or

(3) the credit union has experienced serious and persistent recordkeeping deficiencies.

(e) Opinion audit required. The commissioner may compel a credit union to obtain an opinion audit performed in accordance with Generally Accepted Auditing Standards by an independent person who is licensed by the state for any year in which the credit union has experienced persistent serious recordkeeping deficiencies. The objective of such an audit is to obtain an unqualified opinion on the credit union's financial statements.

This 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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Harold E. Feeney
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Credit Union Department
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TITLE 16. ECONOMIC REGULATION

PART 2. PUBLIC UTILITY COMMISSION OF TEXAS

CHAPTER 22. PROCEDURAL RULES

SUBCHAPTER D. NOTICE

16 TAC §22.52

The Public Utility Commission of Texas (commission) proposes amendments to §22.52, relating to Notice in Licensing Proceedings. The amendments change references to routes for a pro-

posed transmission line for which a certificate of convenience and necessity is sought by a utility and require that newspaper notice for such a line include a map. Project Number 39125 is assigned to this proceeding.

Scottie Aplin, Attorney, Legal Division, has determined that for each year of the first five-year period the proposed amendments are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the amendments.

Ms. Aplin has determined that for each year of the first five years the proposed amendments are in effect the public benefit anticipated as a result of enforcing the amendments will be reduced landowner and public confusion concerning the routing of proposed transmission lines and better newspaper notice. The addition of the map to published notice will make the routing descriptions more readable and understandable for the general public. The anticipated economic cost to persons who are required to comply with the proposed amendments is the relatively small cost of including a map in the newspaper notice required for a proposed transmission line for which a certificate of convenience and necessity is sought. Some utilities have included the map in their newspaper notices. There will be no adverse economic effect on small businesses or micro-businesses as a result of enforcing these amendments. Therefore, no regulatory flexibility analysis is required.

Ms. Aplin has also determined that for each year of the first five years the proposed amendments 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 (APA), Texas Government Code §2001.022.

Comments on the proposed amendments may be submitted to the Filing Clerk, Public Utility Commission of Texas, 1701 North Congress Avenue, P.O. Box 13326, Austin, Texas 78711-3326. Sixteen copies of comments on the proposed amendments are required to be filed pursuant to §22.71(c) of this title. Initial comments are due by March 31, 2011 and reply comments are due by April 4, 2011. Comments should be organized in a manner consistent with the organization of the amended rules. The commission invites specific comments regarding the costs associated with, and benefits that will be gained by, implementation of the proposed amendments. The commission will consider the costs and benefits in deciding whether to adopt the amendments. All comments should refer to Project Number 39125.

Commission staff will conduct a public hearing on this rulemaking, if requested pursuant to APA §2001.029, at the commission's offices located in the William B. Travis Building, 1701 North Congress Avenue, Austin, Texas 78701 on Tuesday, April 5, 2011. The request for a public hearing must be received by March 31, 2011.

The amendments are proposed under the Public Utility Regulatory Act, Texas Utilities Code Annotated §14.002 (Vernon 2007 and Supp. 2010) (PURA), which requires the commission to adopt and enforce rules reasonably required in the exercise of its power and jurisdiction; PURA §14.052 and Administrative Procedure Act (APA), Texas Government Code §2001.004 (Vernon 2008 & Supp. 2010), which require the commission to adopt procedural rules; and PURA §§37.053 - 37.057, which provide the commission authority over applications for certificates of convenience and necessity.

Cross Reference to Statutes: PURA §§14.002, 14.052, and 37.053 - 37.057 and APA §2001.004.

§22.52. Notice in Licensing Proceedings.

(a) Notice in electric licensing proceedings. In all electric licensing proceedings except minor boundary changes, the applicant shall give notice in the following ways:

(1) Applicant shall publish notice once of the applicant's intent to secure a certificate of convenience and necessity in a newspaper having general circulation in the county or counties where a certificate of convenience and necessity is being requested, no later than the week after the application is filed with the commission. This notice shall identify the commission's docket number and the style assigned to the case by the Central Records Division. In electric transmission line cases, the applicant shall obtain the docket number and style no earlier than 25 days prior to making the application by filing a preliminary pleading requesting a docket assignment. The notice shall identify in general terms the type of facility if applicable, and the estimated expense associated with the project. The notice shall describe all routes without designating a preferred route or otherwise suggesting that a particular route is more or less likely to be selected than one of the other routes.

(A) (No change.)

(B) The notice shall include a map as described in subparagraph (C) of this paragraph and shall [~~further~~] describe in clear, precise language the geographic area for which the certificate is being requested and the location of all [~~preferred and~~] alternative routes of the proposed facility. This description shall refer to area landmarks, including but not limited to geographic landmarks, municipal and county boundary lines, streets, roads, highways, railroad tracks, and any other readily identifiable points of reference, unless no such references exist for the geographic area.

(C) The notice shall state a location where a map may be reviewed and from whom a copy of the map may be obtained. The map shall clearly and conspicuously illustrate the location of the area for which the certificate is being requested including all the [~~preferred locations and~~] alternative locations of the proposed routes [~~facility,~~] and shall reflect area landmarks, including but not limited to geographic landmarks, municipal and county boundary lines, streets, roads, highways, railroad tracks, and any other readily identifiable points of reference, unless no such references exist for the geographic area.

(D) (No change.)

(2) Applicant shall, upon filing an application, also mail notice of its application to municipalities within five miles of the requested territory or facility, neighboring utilities providing the same utility service within five miles of the requested territory or facility, and the county government(s) of all counties in which any portion of the proposed facility or requested territory is located. The notice shall contain the information as set out in paragraph (1) of this subsection and a map as described in paragraph (1)(C) [~~(1)~~] of this subsection. An affidavit attesting to the provision of notice to municipalities, utilities, and counties shall specify the dates of the provision of notice and the identity of the individual municipalities, utilities, and counties to which such notice was provided. Before final approval of any modification in the applicant's proposed route(s), applicant shall provide notice as required under this paragraph to municipalities, utilities, and counties affected by the modification which have not previously received notice. The notice of modification shall state such entities will have 20 days to intervene.

(3) Applicant shall, on the date it files an application, mail notice of its application to the owners of land, as stated on the current county tax roll(s), who would be directly affected by the requested certificate[~~, including the preferred location and any alternative location of the proposed facility~~]. For purposes of this paragraph, land is directly

affected if an easement or other property interest would be obtained over all or any portion of it, or if it contains a habitable structure that would be within 300 feet of the centerline of a transmission project of 230kV or less, or within 500 feet of the centerline of a transmission project greater than 230kV.

(A) - (E) (No change.)

(4) The utility shall hold at least one public meeting prior to the filing of its licensing application if 25 or more persons would be entitled to receive direct mail notice of the application. Direct mail notice of the public meeting shall be sent by first-class mail to each of the persons listed on the current county tax rolls as an owner of land within 300 feet of the centerline of a transmission project of 230kV or less, or within 500 feet of the centerline of a transmission project greater than 230kV. In the notice for the public meeting, at the public meeting, or in other communications with a potentially affected person, the utility shall not describe routes as preferred routes or otherwise suggest that a particular route is more or less likely to be selected than one of the other routes.

(5) - (6) (No change.)

(b) Notice in telephone licensing proceedings. In all telephone licensing proceedings, except minor boundary changes, applications for a certificate of operating authority, or applications for a service provider certificate of operating authority, the applicant shall give notice in the following ways:

(1) Applicants shall publish in a newspaper having general circulation in the county or counties where a certificate of convenience and necessity is being requested, once each week for two consecutive weeks, beginning the week after the application is filed, notice of the applicant's intent to secure a certificate of convenience and necessity. This notice shall identify in general terms the types of facilities, if applicable, the area for which the certificate is being requested, and the estimated expense associated with the project. Whenever possible, the notice should state the established intervention deadline. The notice shall also include the following statement: "Persons with questions about this project should contact (name of utility contact) at (utility contact telephone number). Persons who wish to intervene in the proceeding or comment upon action sought, should contact the Public Utility Commission, P.O. Box 13326, Austin, Texas 78711-3326, or call the Public Utility Commission at (512) 936-7120 or (888) 782-8477. Hearing- and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136. The deadline for intervention in the proceeding is (date 70 days after the date the application was filed with the commission) and you must send a letter requesting intervention to the commission which is received by that date." Proof of publication of notice shall be in the form of a publisher's affidavit, which shall specify the newspaper(s) in which the notice was published; the county or counties in which the newspaper(s) is or are of general circulation; [~~and~~] the dates upon which the notice was published and a copy of the notice as published. Proof of publication shall be submitted to the commission as soon as available.

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

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

Filed with the Office of the Secretary of State on February 28, 2011.

TRD-201100798

Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Earliest possible date of adoption: April 10, 2011
For further information, please call: (512) 936-7223

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CHAPTER 25. SUBSTANTIVE RULES APPLICABLE TO ELECTRIC SERVICE PROVIDERS
SUBCHAPTER E. CERTIFICATION, LICENSING AND REGISTRATION

16 TAC §25.101

The Public Utility Commission of Texas (commission) proposes amendments to §25.101, relating to Certification Criteria. The amendments change references to routes for a proposed transmission line for which a certificate of convenience and necessity is sought by a utility. Project Number 39125 is assigned to this proceeding.

Scottie Aplin, Attorney, Legal Division, has determined that for each year of the first five-year period the proposed amendments are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the amendments.

Ms. Aplin has determined that for each year of the first five years the proposed amendments are in effect the public benefit anticipated as a result of enforcing the amendments will be reduced landowner and public confusion concerning the routing of proposed transmission lines and better newspaper notice. There is no anticipated economic cost to persons who are required to comply with the amendments as proposed. There will be no adverse economic effect on small businesses or micro-businesses as a result of enforcing these amendments. Therefore, no regulatory flexibility analysis is required.

Ms. Aplin has also determined that for each year of the first five years the amendments 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 (APA), Texas Government Code §2001.022.

Comments on the proposed amendments may be submitted to the Filing Clerk, Public Utility Commission of Texas, 1701 North Congress Avenue, P.O. Box 13326, Austin, Texas 78711-3326. Sixteen copies of comments on the proposed amendments are required to be filed pursuant to §22.71(c) of this title. Initial comments are due by March 31, 2011 and reply comments are due by April 4, 2011. Comments should be organized in a manner consistent with the organization of the amended rules. The commission invites specific comments regarding the costs associated with, and benefits that will be gained by, implementation of the proposed amendments. The commission will consider the costs and benefits in deciding whether to adopt the amendments. All comments should refer to Project Number 39125.

Commission staff will conduct a public hearing on this rulemaking, if requested pursuant to APA §2001.029, at the commission's offices located in the William B. Travis Building, 1701 North Congress Avenue, Austin, Texas 78701 on Tuesday, April 5, 2011. The request for a public hearing must be received by March 31, 2011.

These amendments are proposed under the Public Utility Regulatory Act, Texas Utilities Code Annotated §14.002 (Vernon 2007 and Supp. 2010) (PURA), which requires the commission to adopt and enforce rules reasonably required in the exercise of its power and jurisdiction; PURA §14.052 and Administrative Procedure Act (APA), Texas Government Code §2001.004 (Vernon 2008 & Supp. 2010), which require the commission to adopt procedural rules; and PURA §§37.053 - 37.057, which provide the commission authority over applications for certificates of convenience and necessity.

Cross Reference to Statutes: PURA §§14.002, 14.052, and 37.053 - 37.057 and APA §2001.004.

§25.101. Certification Criteria.

(a) (No change.)

(b) Certificates of convenience and necessity for new service areas and facilities. Except for certificates granted under subsection (e) of this section, the commission may grant an application and issue a certificate only if it finds that the certificate is necessary for the service, accommodation, convenience, or safety of the public, and complies with the statutory requirements in the Public Utility Regulatory Act (PURA) §37.056. The commission may issue a certificate as applied for, or refuse to issue it, or issue it for the construction of a portion of the contemplated system or facility or extension thereof, or for the partial exercise only of the right or privilege. The commission shall render a decision approving or denying an application for a certificate within one year of the date of filing of a complete application for such a certificate, unless good cause is shown for exceeding that period. A certificate, or certificate amendment, is required for the following:

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

(3) New electric transmission line. All new electric transmission lines shall be reported to the commission in accordance with §25.83 of this title (relating to Transmission Construction Reports).

(A) (No change.)

(B) Routing: An application for a new transmission line shall address the criteria in PURA §37.056(c) and considering those criteria, engineering constraints, and costs, the line shall be routed to the extent reasonable to moderate the impact on the affected community and landowners unless grid reliability and security dictate otherwise. The following factors shall be considered in the selection of the utility's alternative [~~preferred and alternate~~] routes unless a route is agreed to by the utility, the landowners whose property is crossed by the proposed line, and owners of land that contains a habitable structure within 300 feet of the centerline of a transmission project of 230 kV or less, or within 500 feet of the centerline of a transmission project greater than 230 kV, and otherwise conforms to the criteria in PURA §37.056(c):

(i) - (iv) (No change.)

(C) - (D) (No change.)

(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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TRD-201100799

Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Earliest possible date of adoption: April 10, 2011
For further information, please call: (512) 936-7223

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TITLE 22. EXAMINING BOARDS

PART 8. TEXAS APPRAISER LICENSING AND CERTIFICATION BOARD

CHAPTER 157. RULES RELATING TO PRACTICE AND PROCEDURE

SUBCHAPTER B. CONTESTED CASE HEARINGS

22 TAC §157.9

The Texas Appraiser Licensing and Certification Board (TALCB) proposes amendments to 22 TAC §157.9, concerning Notice of Hearing. The proposed amendments clarify that respondents who are not licensees of the Board or current applicants at the time of the hearing must be served with notice of a hearing in accordance with the Administrative Procedure Act and Rules of the State Office of Administrative Hearings. The amendments also repeal the requirement that initial notices of complaints must be sent to respondents by certified mail.

Devon V. Bijansky, General Counsel, has determined that for the first five-year period the proposed amendments are in effect, there is no anticipated cost to the state or to units of local government as a result of enforcing or administering the amendments. It is anticipated that sending initial notice of all complaints by regular mail instead of certified mail will save approximately $1,000 per year in postage costs. There is no anticipated impact on local or state employment as a result of implementing the amendments. There is no anticipated economic impact on persons required to comply with the rule as amended. There is no anticipated economic impact on small businesses or micro-businesses as a result of implementing the amendments.

Ms. Bijansky has also determined that the anticipated public benefit as a result of these amendments is assurance of due process in enforcement actions as well as efficient use of agency resources.

Comments on the proposed amendments may be submitted to Devon V. Bijansky, General Counsel, P.O. Box 12188, Austin, Texas 78711-2188.

The amendments are proposed under the Texas Occupations Code, §1103.151, concerning Rules Relating to Certificates and Licenses.

The statute affected by this proposal is Texas Occupations Code, Chapter 1103. No other statute, code, or article is affected by the proposed amendments.

§157.9. Notice of Hearing.

(a) The notice of hearing shall be served [~~by personal service or certified mail return receipt requested~~] not later than the 30th day before the hearing date.

(b) Service of notice of hearing must be made in the manner prescribed by Chapter 2001, Texas Government Code, and the Rules of the State Office of Administrative Hearings. Notice to a person who is a current licensee or applicant of the board shall be complete and effective if [or investigation on the respondent or applicant shall be complete and effective if the document to be served is] sent by [registered or] certified mail, return receipt requested, to the respondent or applicant at his or her most recent address as shown by the records of the board. Service by mail shall be complete upon deposit of the document in question in a post paid properly addressed envelope in a post office of official depository under the care and custody of the United States Postal Service.

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

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

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Devon V. Bijansky
General Counsel
Texas Appraiser Licensing and Certification Board
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For further information, please call: (512) 465-3938

TITLE 30. ENVIRONMENTAL QUALITY

PART 1. TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

CHAPTER 101. GENERAL AIR QUALITY RULES

SUBCHAPTER A. GENERAL RULES

30 TAC §101.27

The Texas Commission on Environmental Quality (TCEQ or commission) proposes an amendment to §101.27.

Background and Summary of the Factual Basis for the Proposed Rule

The commission collects annual fees from sources that are subject to the permitting requirements of the Federal Clean Air Act (FCAA) Title V as required by Texas Health and Safety Code (THSC), Texas Clean Air Act (TCAA), §382.0621, Operating Permit Fee. THSC, §382.0621 states the commission shall collect an annual fee based on emissions for each source that is subject to the FCAA Title V. The fee is based on the amount of emissions from Title V sources. The revenue collected from the emissions fee is deposited in the Operating Permits Fees Account 5094, as required by THSC, §382.0622(b)(1).

As part of its air program activities, the commission implements a United States Environmental Protection Agency (EPA)-approved federal operating permit program (Title V). In order to obtain this approval, FCAA, §7661a(b)(3)(A) provides that state law must require sources subject to the operating permit program pay an annual fee "sufficient to cover all reasonable (direct and indirect) costs required to develop and administer the permit program requirements." Additionally, this fee must be dedicated for use only on Title V activities. These activities include, but are not limited to the costs for preparing applicable regulations; reviewing and issuing permits, ambient monitoring, modeling, implementing any Title IV or V permits, and preparing emissions inventories. These requirements in state law are reflected in THSC, §382.0621 and §382.0622.

In direct support of the Title V program, the commission conducts investigations at Title V sites or in-office file reviews to determine whether the entity is operating in accordance with applicable rules, permits, or orders of the commission or applicable state enforceable federal rules. Investigations include citizen complaint response and scheduled and unscheduled investigations at sources subject to Title V in order to assist in the development and enforcement of Title V permits. The staff complete on-site reviews to characterize ambient conditions of an area and operates stationary and photochemically reactive ambient monitoring stations throughout the state in order to establish compliance with the National Ambient Air Quality Standards (NAAQS), conduct monitoring around Title V sources, and verify conditions are as represented in permit applications.

All permitting activity at a major account is considered to be Title V permitting activity. Office of Permitting and Registration staff supports revising, amending, and altering permits due to state implementation plan (SIP) changes, rule changes, and new source review (NSR) activities. Staff also coordinate notice and comment hearings and support rule development efforts that affect Title V sources.

In support of the Title V program, commission staff also collect, assess, and report emissions inventory information from Title V sites, implement the Title V fee program, perform data analysis, and complete modeling of emission inventory data in support of nonattainment and near-nonattainment area control strategy development for SIP planning and submittal. The commission is also responsible for developing the SIP, submitting the SIP revisions to the EPA, and strategies to attain and maintain the NAAQS. These revisions include regulations affecting Title V source activities.

Legal staff provide support with enforcement cases, Title V and NSR permitting activities, and with rulemaking. Legal staff prepare cases for administrative enforcement, participate in SIP rules and demonstrations, and enforcement with Title V issues. Legal staff also provide legal support for all Title V permitting activities, and provide legal advice and briefings on matters related to permitting.

The existing rule language in §101.27 structures the emissions fees as a billed system. The emissions fee rate per ton is based on a base rate of $25 per ton modified by the rate of change of the consumer price index (CPI) and percentage of the carbon monoxide (CO) fraction of total emissions assessed a fee the previous year. This fee is commonly referred to as the air emissions fee (AEF) rate and, by calculation, using the aforementioned parameters, is currently set at $33.58 per ton for Fiscal Year (FY) 2011, down from $33.71 in FY 2010. Fees are due on all regulated pollutants emitted from the site during the last full calendar year preceding the beginning of the fiscal year that a fee is due. Therefore, FY 2011 fees are based on Calendar Year

2009 emissions. Emissions in excess of 4,000 tons per pollutant at a site are currently excluded from being assessed a fee.

Beginning in FY 2009, annual expenditures, i.e., funds used to administer the Title V permit program in Texas, exceeded annual revenue in the form of emissions fees. Revenue was $32.7 million and the total Title V obligation was $34.7 million. Fund surpluses will keep the fund balance positive until FY 2012. Beginning in FY 2012, emissions fee revenue based on FY 2011 projections, in conjunction with the fund balance, will be insufficient to adequately fund the operating costs associated with the Title V program. The FY 2011 projected cost to administer the Title V program is $34.7 million while the revenues are expected to be $26.2 million based on October 2011 invoices. This shortfall is expected to continue unless the commission pursues a rule change to revise how emissions fees are calculated.

The AEF revenue has declined as a result of emissions decreasing at an average rate of 5% annually over the past eight fiscal years. Although CPI has increased by a average rate of change of 3% over the past eight fiscal years, the CPI increased by only 0.19% for FY 2009 and 1.47% for FY 2010. Additionally, all categories of emissions have decreased annually since 2001; the reductions have been most notable in emissions other than CO largely because of regulations targeted on other criteria pollutants such as ozone precursors. Consequently, the CO fraction has increased from 22.0% to 24.47% over the last eight fiscal years, further reducing the annual revenue. Thus, in spite of a slight increase in the recent CPI, revenue has fallen from $35.5 million in FY 2007 and $32.7 million in FY 2009 to a projected $26.2 million in FY 2011, based on October 2011 invoices.

Although revenue has declined, the Title V operating obligation has not. Despite the decline in emissions, for example, Title V permits must be renewed every five years. Existing Title V sites revise their operating permits frequently due to changes in operations and equipment or changes to applicable state or federal requirements. The number of emissions inventories reviewed has remained consistent since 2004. The modeling for SIP revisions is more detailed in the nonattainment counties, and that number has not changed since 2004. Mobile monitoring resource allocation has remained nearly constant since 2004. Regulatory and non-regulatory stationary ozone monitors are not funded by Title V. However, the number of ozone monitors has increased since 2004 from 98 to 128, and the data from these monitors are used in Title V activities.

As a portion of the whole combined salary and operating costs (excluding fringe and indirect), Title V salary costs have increased slightly from $22.3 million in FY 2004 to $24.5 million in FY 2010. Over a similar time-period, budgeted full-time staff was 472 in FY 2006 and fell slightly to 464 in FY 2010. Despite staff reduction, a 9.5% increase in cost over a seven year period is attributable to an increase in staff costs including state mandated cost of living pay increases.

New sites may become subject to Title V as a result of the impending revision to the federal ozone standards. The impact of incorporating these sources into the Title V program is not yet known but may increase the Title V budget. However, these sources are not expected to be large emitters nor would the revenue based on their emissions be sufficient to make up the budget shortfall.

The commission proposes adjusting the base rate to $35 per ton or the rate necessary to collect at least $35 million in FY 2012 and incorporating the flexibility to adjust the rate annually as needed up to a set cap. In order to adequately fund the Title V program, the proposed rate of $35 per ton for FY 2012 may be revised when a more current CPI is issued in 2011 and as the emissions estimate is refined. The proposed flexibility in the base rate will also enable the commission to incorporate any new workload in its budget as a result of changing federal standards. Advantages to the proposed adjustable base rate also include the flexibility to compensate for fluctuating CPI, declining emissions rates, new regulations, and variations in the CO fraction.

Section Discussion

The commission proposes amending §101.27(f) to revise the base fee amount, deleting the fixed $25 base amount and in its place setting a base rate of $35 per ton or as necessary to collect at least $35 million for FY 2012 and providing flexibility to adjust the rate up to a maximum base rate amount that could be assessed in subsequent years. The proposed base rate and maximum amount are an increase above the fixed dollar amount currently in the rule. The proposed change in §101.27(f) will increase the base rate from $25 per ton to a projected $35 per ton in FY 2012. The budget to administer the Title V program is estimated to be $35.3 million while the revenues are expected to be $26.2 million in FY 2011 based on October 2010 (FY 2011) invoices. If adopted, the proposed increased base rate of $35 per ton is expected to generate an additional $9 million in revenue in FY 2012. The proposed base rate of $35 per ton for FY 2012 may be revised as a more current CPI is issued in January 2011 and emissions estimates are refined. A base rate must be selected to adequately fund the Title V program. The commission is soliciting comments on the proposed base rate for FY 2012.

Because emissions are expected to continue to decline and the rate of increases in the CPI is not known in subsequent years, additional proposed language allows the commission to annually adjust the base rate, as required, to generate adequate revenue to fund the Title V program. For example, if emissions continue to decline at the current average rate of 5% per year and the CPI increases at 2% per year, a base rate of $45 per ton may be required to generate $35.3 million in revenue by FY 2018.

An adjustable base rate will allow the agency flexibility to adjust to changes in the program that affect the fee revenue or obligations. Changes could include the fluctuating CPI, variations in the CO fraction, legislative mandates, and changes in staffing patterns. The commission is soliciting comments on the proposed $45 per ton cap for the base rate.

No standard agency practice exists for determining what percentage of the anticipated expenditures constitutes an adequate or appropriate fee amount. A common accounting practice is to generate revenue sufficient to have enough cash per year to account for 105% of expected expenditures. The 5% should cover the additional unknown expenditures of the account. Thus, starting in FY 2013, the commission will adjust the base rate to cover 105% of the expected obligation for the fiscal year. Any surplus in the fund balance from a previous year's revenue will be included in estimating the adjustment. The estimate will be made in the spring when the commission sends the billing notices to the Title V companies. In addition to eliminating the negative fund balance starting in FY 2012, this proposed practice should maintain smaller positive fund balances in future fiscal years than experienced historically. As recently as FY 2008, the fund balance surplus was $15.1 million with a $31.7 million total Title V obligation. Conversely, a $8.3 million deficit and a $35 million total obligation is predicted for FY 2012. The commission is so-

liciting comments on this practice and on the adequacy of a 5% margin given fluctuations of the CO fraction and the CPI.

The commission is also soliciting comment on the appropriateness of removing the CO fraction from the equation. The CO fraction in the current rule provides a discount on emissions fees based on the amount of CO in the previous year's inventory. For FY 2011, the CO fraction is 24.68%, and the fee is $33.58 per ton (up to 4,000 tons per pollutant). Thus, if the CO fraction were removed and the base remained at $25 per ton, the fee rate would increase to the presumptive federal minimum outlined in 40 Code of Federal Regulations §70.9. This amount is $44.45 per ton for FY 2011. Fees would still be assessed on actual CO emissions at a site but the initial base rate could be set lower to offset the removal of the CO fraction. If the CO fraction were removed and the base rate remained at $25 per ton, revenue estimates are $35.3 million for FY 2012. However, because emissions are projected to continue to decline, revenue would be insufficient starting in FY 2013 with an anticipated revenue of $34.3 million. The revenue is anticipated to continue to decrease in subsequent years because of the declining emissions. Thus, removal of the CO fraction is not a long-term solution and an increase in the base rate would be required to provide sufficient revenue in subsequent years.

Fiscal Note: Costs to State and Local Government

Jeff Horvath, Analyst in the Strategic Planning and Assessment Section, has determined that for the first five-year period the proposed rule is in effect, significant fiscal implications are anticipated for the commission in the form of increased revenue collections. The anticipated increase in revenue would be used to fund and operate the agency's Title V Federal Operating Permit Program. Units of state or local government that own or operate facilities with Title V permits can expect to pay higher fees. Based on a base rate of $35 per ton, additional fees are expected to range from less than $200 per year to $160,000 each year from two utilities that provide electric service.

The commission implements a federally approved Operating Permit Program authorized under the Title V, as part of its air program activities. In order to maintain federal approval, the commission is required to demonstrate that the fees collected from Title V sources are sufficient to support the Title V program.

The annual emissions fee revenue has been declining over the past eight fiscal years at an average rate of 5% annually, resulting in a declining fund balance in Account 5094 as expenditures have remained at a fairly consistent level. Beginning in FY 2012, the fund balance is projected to be insufficient to adequately fund the operating costs associated with the Title V program. The FY 2011 budget to administer the Title V program is estimated to be $35.3 million (including employee benefits) while the revenues are expected to be $26.2 million.

In order to comply with federal requirements and in order to maintain current levels of funding for the Title V program, the commission is proposing this rulemaking. The proposed rulemaking would revise the calculation method of the Title V emissions fee by adjusting the base fee amount. The proposed rule would remove the fixed $25 per ton base amount and replace it with an adjustable base rate with a cap of $45. The proposed adjustable base rate would not come into effect until FY 2012. In FY 2012, it would be equal to $35 per ton or the level necessary to cover program costs, with the potential to be adjusted annually thereafter up to a cap of $45 per ton.

The fee is based upon allowable levels or actual emissions at an account. Emissions in excess of 4,000 tons per pollutant are excluded. The rate per ton multiplied by the emissions tonnage for a specific account is used to determine the fee. The rate per ton takes into account the base rate, a CO fraction or discount, and the change in the CPI from the 1989 levels. The proposed rule would change the projected base rate to $35 per ton beginning in FY 2012. The initial base rate of $35 per ton may change, as necessary, to collect at least $35 million based upon the latest CPI and emissions estimate. This change is expected to result in an increase in revenue of approximately $9 million based on a FY 2011 fee rate that assumes a 5% decrease per year in emissions from FY 2010, no change in the CO fraction, and no change in the CPI. As proposed, the rate would be adjusted as necessary thereafter to provide flexibility to adjust the base rate to compensate for decreasing emissions, fluctuations in the CO fraction, or changes in the CPI for the fiscal years following FY 2012. Program staff anticipates that the fee base rate would be adjusted in the following fiscal years to collect sufficient revenue to maintain the fund balance in Account 5094 at approximately $35.3 million in order to fund the agency's Title V program. Additional revenue collected above FY 2010 amounts is estimated to be between $9 and $13 million for FY 2012 and each following fiscal year.

Governmental entities that own or operate facilities with Title V permits will be affected by the proposed rules. These facilities include power plants providing electrical service, university utilities, local landfills, and pumping plants for local water supplies. It is estimated that there are 28 local and governmental entities that would be impacted. Five facilities are owned by the federal government and include military bases and research centers. Seven are electric generating services. These 28 sources will have to pay an estimated $496,000 in additional fees beginning in FY 2012. Additional fees are expected to range from less than $200 per year from four sources to $142,000 and $160,000 from two utilities that provide electric service. The average increase is $17,800 and the median increase is $1,085. Ninety-five percent of the anticipated increase in revenue from governmental entities will come from ten electric services utilities.

Public Benefits and Costs

Mr. Horvath has also determined that for each year of the first five years the proposed rule is in effect, the public benefit anticipated from the changes seen in the proposed rule will be compliance with FCAA requirements and the continued protection of human health and the environment through adequate funding of the state's Title V Operating Permit Program.

Fiscal implications are anticipated for businesses that own or operate emission sources with Title V permits. No direct fiscal implications are anticipated for individuals.

The owner or operator of an emissions source that is required to obtain a Federal Operating Permit as described in 30 TAC Chapter 122 is subject to an emissions fee each fiscal year. If the owner or operator is also subject to an inspection fee, only the higher of the two fees is paid. However, each fee is directed to different General Revenue Dedicated Accounts. Inspection fees are deposited to the Clean Air Account 151. Emission fee revenue is deposited into Operating Permits Fees Account 5094.

In FY 2010, 1,241 sources were required to obtain a Federal Operating Permit and to submit either an inspection fee or an emission fee. Of these sources, 853 paid emissions fees and 408 paid an inspection fee. The proposed rule will not require

any additional sources to apply for a permit. Sources already subject to the fee are major sources of air pollutants as defined in §122.10. These sources include electric generating plants, refineries, chemical plants, cement plants, and natural gas compressor stations.

The revenue increase for the commission in FY 2012 is estimated to be approximately $9 million. Of this amount, approximately $500,000 will come from additional fees paid by governmental entities. Therefore, it is estimated that approximately 825 Title V sources owned by business and industry will pay an additional $8.5 million in fees. The average fee rate increase is estimated to be $10,486 with a median of $2,674 per emissions account. The maximum fee increase is estimated to be $171,500 for an electric utility. The average increase in fee rate for each entity is estimated to be 35%. The 40% increase in base rate is offset by an estimated 5% decrease in emissions. On average, the fee amount paid by each source in each fiscal year after FY 2012 will remain approximately the same as for FY 2012, even if the fee rate increases because base rate increases offset decreasing emissions and fluctuations in the CPI. The fee rate will be determined based on the revenue required to fund the Title V program.

Small Business and Micro-Business Assessment

No adverse fiscal implications are anticipated for small or micro-businesses as a result of the proposed rule. No small businesses are listed as a major source of emissions in the State of Texas Air Reporting System database and the major sources of emissions subject to the rule have indicated on their annual emissions inventory statement that they are not small businesses.

Small Business Regulatory Flexibility Analysis

The commission has reviewed this proposed rulemaking and determined that a small business regulatory flexibility analysis is not required because the proposed rule is a component of the state's plan to protect the environment and reduce risks to human health from environmental exposure to air pollutants, and the proposed rule does not adversely affect a small or micro-business in a material way for the first five years that the proposed rule is in effect.

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 reviewed the proposed rulemaking in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and determined that the proposed rulemaking action is not subject to Texas Government Code, §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 §101.27 are not intended to protect the environment or reduce risks to human health from environmental exposure to air pollutants. These changes are specifically intended to adjust the base rate for assessing fees from Title V sources and to provide future flexibility in assessing these fees. Therefore, the commission finds that it is not a "major environmental rule." Additionally, the fee collected under the proposed revision 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. By federal and state statute, emission fees are to be assessed and collected from Title V sources sufficient to fund the Title V permitting program.

As defined in the Texas Government Code, §2001.0225 only applies to a major environmental rule, the result of which is to: 1) exceed a standard set by federal law, unless the rule is specifically required by state law; 2) exceed an express requirement of state law, unless the rule is specifically required by federal law; 3) exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or 4) adopt a rule solely under the general powers of the agency instead of under a specific state law. This rulemaking does not meet any of these four applicability requirements of a "major environmental rule." Specifically, the emissions fee is required under federal law to be sufficient to support the permit program under FCAA, Title V (42 United States Code (USC), §§7661 - 7661f), which includes issuance of acid rain permits under FCAA, Title IV (§§7651 - 7651o). The emissions fee is also required by state law, THSC, §382.0621 and §382.0622, to be sufficient to support the Title IV and Title V programs. This proposed rulemaking does not exceed an express requirement of federal or state law. The proposed rulemaking does not exceed a requirement of a delegation agreement, but the emissions fee is specifically required by EPA's approval of the Title V programs to the commission. The proposed rulemaking was not developed solely under the general powers of the commission but was specifically developed and authorized under TCAA, §§382.011, 382.017, 382.0621, and 382.0622.

The commission invites public comment regarding the draft regulatory impact analysis determination during the public comment period. Written comments on the draft regulatory impact analysis determination may be submitted to the contact person at the address listed under the SUBMITTAL OF COMMENTS section of this preamble.

Takings Impact Assessment

The commission conducted a takings impact evaluation for the proposed rule in accordance with Texas Government Code, §2007.043. The specific purpose of the proposed rulemaking is to ensure sufficient funding of the Title V permit program as required under federal and state law. Promulgation and enforcement of the proposed rule will not burden private, real property because this is a fee rule that supports air quality programs of the commission. Although the proposed rule revision does not directly prevent a nuisance or prevent an immediate threat to life or property, the change in the emissions fee requirements does fulfill a federal mandate under 42 USC, §§7661 - 7661f. The emissions fee is also required by state law, THSC, §382.0621 and §382.0622, to be sufficient to support the Title V programs. Consequently, the proposed change to the fee requirements is an action reasonably taken to fulfill an obligation mandated by federal and state law. Therefore, this proposed rulemaking action will not constitute a taking under Texas Government Code, Chapter 2007.

Consistency with the Coastal Management Program

The commission reviewed the proposed rulemaking and found the proposal is a rulemaking identified in the Coastal Coordination Act Implementation Rules, 31 TAC §505.11(b)(2) relating to rules subject to the Texas Coastal Management Program (CMP), and will, therefore, require that goals and policies of the 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 amendment 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 amendment will not violate (exceed) any standards identified in the applicable CMP goals and policies. Written comments on the consistency of this rulemaking may be submitted to the contact person at the address listed under the SUBMITTAL OF COMMENTS section of this preamble.

Effect on Sites Subject to the Federal Operating Permits Program

Owners and operators of Title V sites may be required to pay higher annual emissions fees. The emissions fee is required under federal law to be sufficient to support the permit program under Title V. The emissions fee is also required by state law, THSC, §382.0621 and §382.0622, to be sufficient to support the Title V programs. The intent of this proposed amendment is to collect sufficient revenue to support the permit program under Title V.

Announcement of Hearings

The commission will hold public hearings on this proposal in Houston on April 4, 2011, at 1:00 p.m. at the Houston-Galveston Area Council, Room A, 3555 Timmons and in Austin on April 7, 2011, at 2:00 p.m. in Building F, Room 2210, at the commission's central office located at 12100 Park 35 Circle. The hearings are structured for the receipt of oral or written comments by interested persons. Individuals may present oral statements when called upon in order of registration. Open discussion will not be permitted during the hearings; however, commission staff members will be available to discuss the proposal 30 minutes prior to each hearing.

Persons who have special communication or other accommodation needs who are planning to attend the hearing should contact Sandy Wong, Office of Legal Services at (512) 239-1802. Requests should be made as far in advance as possible.

Submittal of Comments

Comments may be submitted to Charlotte Horn, MC 205, Office of Legal Services, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087, or faxed to (512) 239-4808. Electronic comments may be submitted at: *http://www5.tceq.texas.gov/rules/ecomments/.* File size restrictions may apply to comments being submitted via the eComments system. All comments should reference Rule Project Number 2011-006-101-EN. The comment period closes April 11, 2011. Copies of the proposed rulemaking can be obtained from the commission's Web site at *http://www.tceq.texas.gov/nav/rules/propose_adopt.html.* For further information, please contact Kathy Pendleton, Emissions Assessment Section, (512) 239-1936.

Statutory Authority

The amended section is proposed under Texas Water Code (TWC), §§5.102, concerning General Powers, 5.103, concerning Rules, and 5.105 concerning General Policy, which authorize the commission to adopt rules as necessary to carry out its power and duties under the TWC. The amendment is also proposed under Texas Health and Safety Code (THSC), Texas Clean Air Act (TCAA), §382.011, which authorizes the commission to administer the requirements of the TCAA; THSC, §382.017, which authorizes the commission to adopt rules consistent with the policy and purpose of the TCAA; and THSC, §382.0621, which authorizes the commission to adopt, charge, and collect an annual fee from regulated entities subject to the permitting requirements of the Federal Clean Air Act Title V.

The proposed amendment implements TWC, §§5.102. 5.103, and 5.105; and THSC, §§382.011, 382.017, and 382.0621.

§101.27. Emission Fees.

(a) Applicability. The owner or operator of an account that is required to obtain a federal operating permit as described in Chapter 122 of this title (relating to Federal Operating Permits Program) 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. Each account will be assessed a separate emissions fee. 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. 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 that a fee is being 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.

(b) Self reported/billed information. Emissions/inspection fees information packets will be mailed to each account owner or operator prior to the fiscal year that a fee is due. The completed emissions/inspection fees basis form must be returned to the address specified on the emissions/inspection fees basis form within 60 calendar days of the date the agency sends the emissions fees information packet. The completed emissions/inspection fees basis form must include, at least, the company name, mailing address, site name, all commission 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 must be the 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. If an account owner or operator has not received the fee information packet described in subsection (b) of this section by June 1 prior to the fiscal year that a fee is due, the owner or operator of the account shall notify the commission by July 1 prior to the fiscal year that a fee is due. For accounts that begin or resume operation after September 1, the owner or operator of the account shall request an information packet within 30 calendar days prior to commencing operation.

(d) Payment. Fees must be remitted by check, certified check, electronic funds transfer, or money order and sent to the address printed on the billing statement.

(e) Due date. Payment of the emissions fee is due within 30 calendar days of the date the agency sends a statement of the assessment to the account owner or operator.

(f) Basis for fees.

(1) The fee must be based on allowable levels or actual emissions at the account. For purposes of this section, allowable levels are those limits as specified in an enforceable document such as a permit, certified registration of emissions, or Commission Order that are in effect during the fiscal year that a fee is due and actual emissions are the emissions of all regulated pollutants emitted from the account during the last full calendar year preceding the beginning of the fiscal year that a fee is due. Under no circumstances may 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 must include emissions during all operational conditions, including all emissions from emissions events and maintenance, startup, and shutdown activities as described in Subchapter F of this chapter (relating to Emissions Events and Scheduled Maintenance, Startup, and Shutdown Activities). 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)
[~~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 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, certified registration of emissions, or a Commission Order establishing allowable levels for individual emission points or process units, the actual emissions from all individual emission points and process units at the account may be used to calculate the fee basis only if a complete and verifiable emission inventory for the account is submitted as described in §101.10 of this title (relating to Emissions Inventory Requirements). Where a complete and verifiable emissions inventory is not submitted, the executive director may direct that the fee be based on all of the allowable levels for the account.

(B) Where there is not an enforceable document such as a permit, certified registration of emissions, or a Commission Order establishing allowable levels for individual emissions points or process units; actual emissions from all individual emission points and process units must be used to calculate the fee basis. 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 emission factors used in such calculations.

(3) For purposes of this section, the term "regulated pollutant" includes any volatile organic compound, any pollutant subject to Federal Clean Air Act (FCAA), §111, any pollutant listed as a hazardous air pollutant under FCAA, §112, each pollutant that 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 must result in enforcement action under Texas Water Code, §7.178. The provisions of this section, as first adopted and amended thereafter, are and must 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 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 February 25, 2011.

TRD-201100781
Robert Martinez
Director, Environmental Law Division
Texas Commission on Environmental Quality
Earliest possible date of adoption: April 10, 2011
For further information, please call: (512) 239-0779

TITLE 37. PUBLIC SAFETY AND CORRECTIONS

PART 13. TEXAS COMMISSION ON FIRE PROTECTION

CHAPTER 401. PRACTICE AND PROCEDURE

SUBCHAPTER A. GENERAL PROVISIONS AND DEFINITIONS

37 TAC §401.1

The Texas Commission on Fire Protection (the Commission) proposes amendments to Chapter 401, Practice and Procedure, Subchapter A, General Provisions and Definitions, concerning §401.1, Purpose and Scope. The purpose of the proposed amendment is to remove language that references the Fire Department Emergency Program which was transferred to the Texas Forest Service effective January 1, 2010.

Jake Soteriou, Director of the Fire Service Standards and Certification Division, has determined that for the first five-year period the proposed amendments are in effect there will be no fiscal impact on state or local governments.

Mr. Soteriou has also determined that for the first five years these proposed amendments are in effect, there will be no effect on micro businesses, small businesses or persons required to comply with the amended section as proposed; therefore, no regulatory flexibility analysis is required. The public benefit will be that the Commission will maintain a clear, concise set of rules and avoid the potential for confusion from retaining the language referencing a program that was transferred to the Texas Forest Service.

Comments regarding these proposed amendments may be submitted, in writing, within 30 days following the publication of this notice in the *Texas Register* to Gary L. Warren, Sr., Executive Director, Texas Commission on Fire Protection, P.O. Box 2286, Austin, Texas 78768-2286 or e-mailed to info@tcfp.state.tx.us.

Comments will be reviewed and discussed at a future Commission meeting.

The amendment is proposed under Texas Government Code, Title 4, Subtitle B, Chapter 419, Subchapter B, Regulating and Assisting Fire Fighters and Fire Departments.

Cross reference to statute: Texas Government Code §419.008, General Powers and Duties, and §419.0082, Rulemaking, which provide the Commission the authority to adopt rules for the administration of its powers and duties.

There are no other codes or statutes affected by this proposed amendment.

§401.1. Purpose and Scope.

(a) Purpose. The purpose of this chapter is to provide a system of procedures for practice before the Texas Commission on Fire Protection that will promote the just and efficient disposition of proceedings and public participation in the decision-making process. The provisions of this chapter shall be given a fair and impartial construction to attain these objectives.

(b) Scope.

(1) This chapter shall govern the initiation, conduct, and determination of proceedings required or permitted by law in matters regulated by the commission, whether instituted by order of the commission or by the filing of an application, complaint, petition, or any other pleading.

(2) This chapter shall not be construed so as to enlarge, diminish, modify, or otherwise alter the jurisdiction, powers, or authority of the commission, its staff, or the substantive rights of any person.

[~~(3) This chapter shall not apply to applications or proceedings concerning Fire Department Emergency Program funds which are governed by Chapter 461 of this title (relating to General Administration), Chapter 463 of this title (relating to Application Criteria), and Chapter 465 of this title (relating to Equipment, Facilities, and Training Standards).~~]

(3) [~~(4)~~] This chapter shall not apply to matters related solely to the internal personnel rules and practices of this agency.

(4) [~~(5)~~] To the extent that any provision of this chapter is in conflict with any statute or substantive rule of the commission, the statute or substantive rule shall control.

(5) [~~(6)~~] In matters referred to the State Office of Administrative Hearings (SOAH), hearings or other proceedings are governed by 1 TAC Chapter 155 (relating to Rules of Procedures) adopted by SOAH effective January 2, 1998. To the extent that any provision of this chapter is in conflict with SOAH Rules of Procedures, the SOAH rules shall control.

This 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 February 18, 2011.

TRD-201100721
Gary L. Warren, Sr.
Executive Director
Texas Commission on Fire Protection
Earliest possible date of adoption: April 10, 2011
For further information, please call: (512) 936-3813

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CHAPTER 423. FIRE SUPPRESSION
SUBCHAPTER A. MINIMUM STANDARDS FOR STRUCTURE FIRE PROTECTION PERSONNEL CERTIFICATION

37 TAC §423.3

The Texas Commission on Fire Protection (the Commission) proposes an amendment to Chapter 423, Fire Suppression, Subchapter A, Minimum Standards for Structure Fire Protection Personnel Certification, concerning §423.3, Minimum Standards for Basic Structure Fire Protection Personnel Certification. The purpose of the proposed amendment is to remove language referencing completion of the five phase levels of the Basic Fire Suppression Curriculum as an avenue to become certified as basic structure fire protection personnel.

Jake Soteriou, Director of the Fire Service Standards and Certification Division, has determined that for the first five-year period the proposed amendment is in effect there will be no fiscal impact on state or local governments.

Mr. Soteriou has also determined that for the first five years these proposed amendments are in effect, there will be no effect on micro businesses, small businesses or persons required to comply with the amended section as proposed; therefore, no regulatory flexibility analysis is required. The public will benefit from the passage of this amendment in that it will allow the Commission to maintain a clear, concise set of rules regarding its minimum standards for certification as basic structure fire protection personnel.

Comments regarding these proposed amendments may be submitted, in writing, within 30 days following the publication of this notice in the *Texas Register* to Gary L. Warren, Sr., Executive Director, Texas Commission on Fire Protection, P.O. Box 2286, Austin, Texas 78768-2286 or e-mailed to info@tcfp.state.tx.us. Comments will be reviewed and discussed at a future Commission meeting.

The amendment is proposed under Texas Government Code, Title 4, Subtitle B, Chapter 419, Subchapter B, Regulating and Assisting Fire Fighters and Fire Departments.

Cross reference to statute: Texas Government Code §419.021, Definitions, and §419.032, Appointment of Fire Protection Personnel.

There are no other codes or statutes affected by this proposed amendment.

§423.3. Minimum Standards for Basic Structure Fire Protection Personnel Certification.

(a) In order to become certified as basic structure fire protection personnel, an individual must:

(1) possess valid documentation of accreditation from the International Fire Service Accreditation Congress as a Fire Fighter I, Fire Fighter II, Hazardous Materials Awareness Level Personnel; and

(A) Hazardous Materials Operations Level Responders including the Mission-Specific Competencies for Personal Protective Equipment and Product Control under the current edition; or

(B) NFPA 472 Hazardous Materials Operations prior to the 2008 edition; and

(C) must meet the medical requirements outlined in §423.1(b) of this title; or

(2) complete a Commission-approved basic structure fire suppression program, meet the medical requirements outlined in §423.1(b), and successfully pass the Commission examination(s) as specified in Chapter 439 of this title (relating to Examinations for Certification). An approved basic structure fire suppression program shall consist of one or any combination of the following:

(A) completion of a Commission-approved Basic Fire Suppression Curriculum, as specified in Chapter 1 of the Commission's Certification Curriculum Manual; or

[~~(B) completion of the five phase levels of the approved Basic Fire Suppression Curriculum, as specified in Chapter 1 of the Commission's Certification Curriculum Manual; or~~]

(B) [~~(C)~~] completion of an out-of-state, and/or military training program deemed equivalent to the Commission-approved Basic Fire Suppression Curriculum; or

(C) [~~(D)~~] documentation of the receipt of an advanced certificate or training records from the State Firemen's and Fire Marshals' Association of Texas, that is deemed equivalent to a Commission-approved Basic Fire Suppression Curriculum.

(b) A basic fire suppression program may be submitted to the Commission for approval by another jurisdiction as required in Texas Government Code, §419.032(d), Appointment of Fire Protection Personnel. These programs include out-of-state and military programs, and shall be deemed equivalent by the Commission if the subjects taught, subject content, and total hours of training meet or exceed those contained in Chapter 1 of the Commission's Certification Curriculum Manual.

This 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 February 18, 2011.

TRD-201100722
Gary L. Warren, Sr.
Executive Director
Texas Commission on Fire Protection
Earliest possible date of adoption: April 10, 2011
For further information, please call: (512) 936-3813

SUBCHAPTER B. MINIMUM STANDARDS FOR AIRCRAFT RESCUE FIRE FIGHTING PERSONNEL

37 TAC §423.201

The Texas Commission on Fire Protection (the Commission) proposes an amendment to Chapter 423, Fire Suppression, Subchapter B, Minimum Standards for Aircraft Rescue Fire Fighting Personnel, concerning §423.201, Minimum Standards for Aircraft Rescue Fire Fighting Personnel. The purpose of the proposed amendment is to make grammatical changes.

Jake Soteriou, Director of the Fire Service Standards and Certification Division, has determined that for the first five-year period the proposed amendments are in effect there will be no fiscal impact on state or local governments.

Mr. Soteriou has also determined that for the first five years these proposed amendments are in effect, there will be no effect on micro businesses, small businesses or persons required to comply with the amended section as proposed; therefore, no regulatory flexibility analysis is required. The public will benefit from the passage of this amendment in that it will allow the Commission to maintain a clear, concise set of rules regarding its minimum standards for certification as aircraft rescue fire fighting personnel.

Comments regarding the proposed amendment may be submitted, in writing, within 30 days following the publication of this notice in the *Texas Register* to Gary L. Warren, Sr., Executive Director, Texas Commission on Fire Protection, P.O. Box 2286, Austin, Texas 78768-2286 or e-mailed to info@tcfp.state.tx.us. Comments will be reviewed and discussed at a future Commission meeting.

The amendment is proposed under Texas Government Code, Title 4, Subtitle B, Chapter 419, Subchapter B, Regulating and Assisting Fire Fighters and Fire Departments.

Cross reference to statute: Texas Government Code §419.021, Definitions, and §419.032, Appointment of Fire Protection Personnel.

§423.201. Minimum Standards for Aircraft Rescue Fire Fighting Personnel.

(a) Aircraft rescue fire fighting personnel are employees of a local governmental entity who are appointed to aircraft rescue firefighting duties. These duties may include fighting aircraft fires at airports, standing by for potential crash landings, and performing aircraft rescue and fire fighting duties.

(b) Personnel appointed as [~~for~~] Aircraft Rescue Fire Fighting Personnel must be certified to at least the basic level by the Commission within one year from their employment in an [~~for~~] Aircraft Rescue Fire Fighting Personnel position.

(c) Prior to being appointed to aircraft rescue fire suppression duties, all personnel must:

(1) successfully complete a Commission-approved basic fire suppression course and pass the Commission's examination pertaining to that curriculum; and

(2) successfully complete a Commission-approved basic aircraft rescue fire protection course and pass the Commission's examination pertaining to that curriculum.

(d) "Stand by" means the act of responding to a designated position in the movement area on the airfield at which initial response fire and rescue units will await the arrival of an aircraft experiencing an announced emergency.

(e) "Movement area" is comprised of all runways, taxiways, and other areas of the airport which are used for taxiing or hover taxiing, take-off, and landing of aircraft, exclusive of loading ramps and aircraft parking areas.

(f) Personnel holding any level of aircraft rescue fire fighting personnel certification shall be required to comply with the continuing education specified in §441.9 of this title (relating to Continuing Education for Aircraft Rescue Fire Fighting Personnel).

(g) Aircraft rescue fire fighting personnel that perform structure fire fighting duties must be certified, as a minimum, as basic structural fire protection personnel.

This 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 February 18, 2011.

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Gary L. Warren, Sr.
Executive Director
Texas Commission on Fire Protection
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For further information, please call: (512) 936-3813

TITLE 40. SOCIAL SERVICES AND ASSISTANCE

PART 7. TEXAS COUNCIL ON PURCHASING FROM PEOPLE WITH DISABILITIES

CHAPTER 189. PURCHASES OF PRODUCTS AND SERVICES FROM PEOPLE WITH DISABILITIES

40 TAC §§189.2, 189.6, 189.9, 189.10, 189.13

The Comptroller of Public Accounts proposes amendments to five rules under the Texas Administrative Code, Title 40 (Social Services and Assistance), Part 7 (Texas Council on Purchasing from People with Disabilities), Chapter 189, concerning Purchases of Products and Services from People with Disabilities.

§189.2(11) - Changes are added to the section to clarify the definition of "value added" by including a specific example of the types of activities that are not considered to meet the definition.

§189.6 - Amended to clarify and better define the documentation required of Community Rehabilitation Programs (CRPs) seeking certification, and to memorialize practices that the TCPPD Certification Subcommittee has developed as they have reviewed applications.

§189.9 - Modified to clarify that the list in the rule is alternative not cumulative.

§189.10 - Language in subsection (a) is changed to mandate inclusion of statutorily required information in all complaints made to the TCPPD. Subsection (d) is changed to allow for broader consideration of, and action on, complaints by the Council.

§189.13 - The section is modified to ensure that "value added" as defined in §189.2(11) is considered on a product-by-product basis as the products are considered for inclusion into the program by the TCPPD Pricing Subcommittee.

John Heleman, Chief Revenue Estimator, has determined that for the first five-year period that the rules will be in effect, there will be no fiscal impact on the state government, units of local government, or individuals.

Mr. Heleman also determined that for the first five years the rules would be in effect the proposed amendments would have no anticipated significant economic cost to the public, and that the rules would benefit the public by clarifying the responsibilities and obligations of the Community Rehabilitation Programs (CRPs) regulated by the rules, and to ensure that the TCPPD is fully apprised of information necessary to make "fair market value" determinations on products and services provided by the CRPs.

Mr. Heleman also determined that the proposed amendment would have no significant fiscal impact on small businesses.

Comments on the proposal may be submitted to David Duncan, Deputy General Counsel, P.O. Box 13186, Austin, Texas 78711-3186, or e-mail comments to: david.duncan@cpa.state.tx.us.

The amendments are proposed under the authority of the Texas Human Resources Code Chapter 122, §122.013. The amendments implement Texas Human Resources Code §§122.003, 122.007, 122.015, 122.020.

The proposed rule amendments affecting §§189.2 (definitions), 189.6 (certification and re-certification of programs), 189.9 (fair market value), 189.10 (consumer information), and 189.13 (recognition and approval of products and services) would provide clarifications and updates to ensure that the purposes and objectives of the enabling statute for the Texas Council on Purchasing from People with Disabilities (TCPPD), Chapter 122 of the Human Resources Code, are met.

This amendment is proposed under the Texas Administrative Code, Title 40 (Social Services and Assistance), Part 7 (Texas Council on Purchasing from People with Disabilities), Chapter 189, concerning Purchases of Products and Services from People with Disabilities.

§189.2. Definitions.

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

(1) - (10) (No change.)

(11) Value added--The labor of persons with disabilities applied to raw materials, components, goods purchased in bulk form resulting in a change in the composition or marketability of component materials, packaging operations, and/or the servicing tasks associated with a product. Pass-throughs are not allowed; therefore, solely affixing a packaging label to a commodity does not qualify.

§189.6. Certification and Re-Certification of Community Rehabilitation Programs.

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

(e) A certified CRP must:

(1) maintain payroll, human resource functions, accounting, and all relevant documentation showing that the employees who produce products or perform services under the State Use Program are persons with disabilities. Documentation shall include council-approved disability determination forms which shall be subject to review at the request of the council or the CNA under authority from the council, with adherence to privacy and confidentiality standards applicable to such CRP and employee records;

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

(f) An applicant for certification must submit a completed application and the required documents to the Certification Subcommittee, through the CNA for the State Use Program. Upon receipt, the CNA will verify the completeness and accuracy of the application. No application will be considered without the following documents:

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

(5) proof of [copy of the] current insurance coverage in the form of a certificate of insurance specifying each and all coverages for liability insurance for the CRP, auto insurance for vehicles owned or leased by the CRP for State Use contract purposes, and worker's compensation insurance coverage or legally-recognized equivalent coverage, if applicable. Such insurance shall be carried with an insurance company authorized to do business in the State of Texas, and written notice of cancellation or any material change in insurance coverage will be provided to the CNA ten (10) days in advance of cancellation or change;

(6) [current] fire inspection certificate issued within one year of the Certification Subcommittee's formal consideration of the CRP application, if required by city, county, or state regulations, for each location where clients will be served or where persons with disabilities will be employed, or a statement of unavailability from the appropriate city, county, or state entity;

(7) - (9) (No change.)

(g) - (n) (No change.)

§189.9. Determination of Fair Market Value.

(a) (No change.)

(b) The pricing subcommittee shall review products, services and price revisions submitted by the CNA on behalf of participating or prospective CRP(s). Due consideration shall be given to the following factors set forth in the Human Resources Code §122.015 and other criteria which is necessary to determine the fair market price of the products and/or services:

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

(4) the actual cost of manufacturing the product or performing a service at a community rehabilitation program offering employment services on or off premises to persons with disabilities, with adequate weight to be given to legal and moral imperatives to pay workers with disabilities equitable wages; or [and]

(5) (No change.)

(c) - (d) (No change.)

§189.10. Consumer Information; Complaints and Resolution.

(a) Complaints regarding matters under the jurisdiction of the council shall be made in writing and addressed to the council's presiding officer who shall refer the complaint to the appropriate subcommittee for review and determination. The subcommittee shall then recommend action on the complaint to the full council. The council shall maintain information regarding each complaint. The written complaint must include the name and address of the person who filed the complaint and the subject matter of the complaint.

(b) - (c) (No change.)

(d) Complaints [regarding a CNA] shall be resolved by a quorum of the council [and representatives of the CNA in an open meeting].

§189.13. Recognition and Approval of Community Rehabilitation Program Products and Services.

(a) (No change.)

(b) A CRP must comply with the following requirements to obtain approval from the council for state use products:

(1) (No change.)

(2) Appreciable contribution and value added to the product by persons with disabilities must be determined on a product-by-product basis to be substantial based on acceptable documentation provided to the council upon application for a product to be approved for the state use program.

(c) - (e) (No change.)

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

Filed with the Office of the Secretary of State on February 23, 2011.

TRD-201100766
David Duncan
Deputy General Counsel
Texas Council on Purchasing from People with Disabilities
Earliest possible date of adoption: April 10, 2011
For further information, please call: (512) 463-3562

TITLE 43. TRANSPORTATION

PART 1. TEXAS DEPARTMENT OF TRANSPORTATION

CHAPTER 1. MANAGEMENT

SUBCHAPTER F. ADVISORY COMMITTEES

43 TAC §1.85

The Texas Department of Transportation (department) proposes amendments to §1.85, concerning Department Advisory Committees.

EXPLANATION OF PROPOSED AMENDMENTS

The proposed rule creates a strategic research program advisory committee that gives advice and recommendations to the department on the selection of strategic research and the selection of appropriate research entities, including but not limited to, universities, research institutions, or consultants to carry out that research. The purpose of the proposed rule is to ensure that the selection of research topics is done in an objective manner by obtaining input from the committee, which is made up of individuals with private sector finance or international experience or knowledge of the transportation field.

New §1.85(a)(6) creates the TxDOT Strategic Research Program Advisory Committee.

Section 1.85(a)(6)(A) describes the purpose of the committee, which is to advise and make recommendations to the department regarding the selection of strategic research topics relating to transportation challenges the department is likely to face over the next 30 years. This subparagraph also provides that the Texas Transportation Commission (commission) will appoint the members of the committee and describes the types of individuals who may sit on the committee. They are people from various industries with expertise or knowledge applicable to the transportation field.

Section 1.85(a)(6)(B) describes the duties of the TxDOT Strategic Research Program Advisory Committee, which are to advise and make recommendations to the department on the selection of strategic research topics and the selection of appropriate

research entities, including, but not limited to, universities, research institutions, or consultants to carry out the research.

Section 1.85(a)(6)(C) authorizes the committee to appoint a liaison for specific research projects. If appointed, the liaison will periodically meet with the researchers hired for a particular project and report progress back to the committee.

Section 1.85(a)(6)(D) describes the manner of reporting by the committee to the department. The rule requires the committee to report its advice and recommendations to the executive director or the executive director's designee, as well as to report to the commission when requested to do so.

FISCAL NOTE

James Bass, Chief Financial Officer, has determined that for each year of the first five years the amendments as proposed are in effect, there will be no fiscal implications for state or local governments as a result of enforcing or administering the amendments.

Rick Collins, Director, Research and Technology Implementation Office, 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 AND COST

Mr. Collins 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 better preparing the department for the transportation challenges that it is likely to face over the next 30 years. There are no anticipated economic costs for persons required to comply with the section as proposed. There will be no adverse economic effect on small businesses.

SUBMITTAL OF COMMENTS

Written comments on the proposed amendments to §1.85 may be submitted to Rick Collins, Director, Research and Technology Implementation Office, Texas Department of Transportation, 125 East 11th Street, Austin, Texas 78701-2483. The deadline for receipt of comments is 5:00 p.m. on April 11, 2011.

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 more specifically, Transportation Code, §201.117, which authorizes the commission to create the advisory committees it considers necessary.

CROSS REFERENCE TO STATUTE

None.

§1.85. Department Advisory Committees.

(a) Creation.

(1) Project advisory committees.

(A) Purpose. The executive director may authorize a district engineer to create, by written order, an ad hoc project advisory committee composed of the following members as may be deemed appropriate by the district engineer: department staff; affected property owners and business establishments; technical experts; professional consultants representing the department; and representatives of local governmental entities, the general public, chambers of commerce, and the environmental community. A project advisory committee shall serve the purpose of facilitating, evaluating, and achieving support and consensus from the affected community and governmental entities in the initial stages of a transportation project. Advice and recommendations of a committee provide the department with an enhanced understanding of public, business, and private concerns about a project from the development phase through the implementation phase, thus facilitating the department's communications and traffic management objectives, resulting in a greater cooperation between the department and all affected parties during project development and construction.

(B) Duties. A project advisory committee shall:

(i) maintain community and local government communication; and

(ii) respond in a timely fashion to affected parties' concerns about project development and construction.

(C) Manner of reporting. A project advisory committee shall report its advice and recommendations to the district engineer.

(D) Duration. A project advisory committee may be abolished at any stage of project development, but in no event may a committee continue beyond completion of the project.

(2) Rulemaking advisory committees.

(A) Purpose. The commission, by order, may create ad hoc rulemaking advisory committees pursuant to Government Code, Chapter 2001, §2001.031, for the purpose of receiving advice from experts, interested persons, or the general public with respect to contemplated rulemaking.

(B) Duties. A rulemaking advisory committee shall provide advice and recommendations with respect to a specific contemplated rulemaking.

(C) Manner of reporting. A rulemaking advisory committee shall report its advice and recommendations to the division responsible for the development of the rules.

(D) Duration. A rulemaking committee shall be abolished upon final adoption of rules by the commission.

(3) Intelligent Transportation Systems (ITS) Steering Committees.

(A) Purpose. Federal law encourages the expenditure of federal transportation funds to achieve improvements in the efficiency of transportation operations. A portion of these funds are specifically designated for the planning and testing of Intelligent Transportation Systems technologies. As part of the development and implementation of these projects, a district engineer, in conjunction with local officials, may create a steering committee to provide support for ITS activities. Advice and recommendations expressed by a committee will foster the coordination of state and local benefit in the design, maintenance, and operation of ITS facilities.

(B) Duties. A committee shall provide advice and recommendations with respect to:

(i) ITS project priorities;

(ii) the approval of projects;

(iii) seeking project funding;

(iv) coordinating public and private ventures; and

(v) promoting ITS at local, state, and national levels.

(C) Manner of reporting. A committee shall report its advice and recommendations to the local district engineer, or the district engineer's designee.

(4) Bicycle Advisory Committee.

(A) Purpose. The purpose of the Bicycle Advisory Committee is to advise the commission on bicycle issues and matters related to the Safe Routes to School Program. By involving representatives of the public, including bicyclists and other interested parties, the department helps ensure effective communication with the bicycle community, and that the bicyclist's perspective will be considered in the development of departmental policies affecting bicycle use, including the design, construction and maintenance of highways. The committee will also provide recommendations to the department on the Safe Routes to School Program.

(B) Duties. The committee shall:

(i) in accordance with Transportation Code, §201.9025, advise and make recommendations to the commission on the development of bicycle tourism trails;

(ii) provide recommendations on the selection of projects under Chapter 25, Subchapter I of this title (relating to Safe Routes to School Program); and

(iii) review and make recommendations on items of mutual concern between the department and the bicycling community.

(C) Manner of reporting. The committee shall report its advice and recommendations to the commission, except for matters relating to the Safe Routes to School Program. Under the Safe Routes to School Program the committee shall reports its recommendations to the director of the division responsible for administering the program.

(5) Trans-Texas Corridor advisory committees.

(A) Purpose. The commission by order may create an advisory committee concerning the Trans-Texas Corridor or a project that is part of the Trans-Texas Corridor, for the purpose of facilitating and achieving support and consensus from affected communities, governmental entities, and other interested parties in the planning of the Trans-Texas Corridor and in the establishment of development plans for a project that is part of the Trans-Texas Corridor. A committee may be composed of the following members as deemed appropriate by the commission: department staff; affected property owners and business establishments; technical experts; professional consultants representing the department; representatives of local governmental entities; the general public; chambers of commerce; and the environmental community. Advice and recommendations of a committee will provide the department with an enhanced understanding of public, business, and private concerns about the Trans-Texas Corridor and projects that are part of the Trans-Texas Corridor, thus facilitating the department's communications and project development objectives, resulting in greater cooperation between the department and all affected parties during project planning and development.

(B) Duties. A Trans-Texas Corridor advisory committee shall provide advice and recommendations to the department regarding facilities to be included in a development plan for the Trans-Texas Corridor or a project that is part of the Trans-Texas Corridor.

(C) Manner of reporting. A Trans-Texas Corridor advisory committee shall report its advice and recommendations to the executive director or designee.

(D) Duration. A Trans-Texas Corridor advisory committee may be abolished at any time by the commission, but in no event may a committee continue beyond completion of the Trans-Texas Corridor or the project for which the committee is created.

(6) TxDOT Strategic Research Program Advisory Committee.

(A) Purpose. The TxDOT Strategic Research Program Advisory Committee is created. The purpose of the committee is to make recommendations to the department concerning the selection of research topics and the direction and facilitation of strategic research to prepare the department for the transportation challenges it is likely to face over the next 30 years. The commission, by order, will appoint the members of the committee. The committee may be composed of members who are: private sector executives whose companies are major users of the state's multimodal transportation system; private sector finance or international business experts; technical experts with a broad base of transportation knowledge in one or more applicable fields, such as mobility, safety, economics, and demographics; and individuals in the public or private sector who have national standing and credibility in the transportation field.

(B) Duties. The committee shall advise and make recommendations to the department regarding:

(i) the selection of strategic research topics relating to challenges the department is likely to face over the next 30 years; and

(ii) the selection of appropriate research entities, including, but not limited to, universities, research institutions, or consultants to carry out the research.

(C) Liaison. The committee may appoint a member of the committee as a liaison for a specified research project. The liaison will meet with researchers responsible for the project on a regular basis and report progress on the project to the committee.

(D) Manner of reporting. The committee shall report its advice and recommendations to the executive director or a department employee designated by the executive director and shall make reports to the commission, as requested.

(b) Operating procedures.

(1) Membership. Except as otherwise specified in this section, an advisory committee shall be composed of not more than 24 members to be appointed by the office or official to whom the committee is to report. When applicable to the purpose and duties of the committee, the membership shall provide a balanced representation between:

(A) industries or occupations regulated or directly affected by the department; and

(B) consumers of services provided either by the department or by industries or occupations regulated by the department.

(2) Meetings.

(A) An advisory committee shall meet once a calendar year and at such other times as requested by the office to which it reports.

(B) A majority of the membership of an advisory committee constitutes a quorum. A committee may take formal action only by majority vote of its membership.

(3) Officers. Each committee shall elect a chair and vice-chair by majority vote of the members of the committee.

(c) Duration. Except as otherwise specified in this section, a committee created under this section is abolished December 31, 2011, unless the commission amends its rules to provide for a different date.

(d) Reimbursement. The department may, if authorized by law and the executive director, reimburse a member of a committee for reasonable and necessary travel expenses. Current rules and laws govern-

ing reimbursement of expenses for state employees shall govern reimbursement of expenses for advisory committee members.

This 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 February 25, 2011.

TRD-201100784
Joanne Wright
Deputy General Counsel
Texas Department of Transportation
Earliest possible date of adoption: April 10, 2011
For further information, please call: (512) 463-8683

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 1. ADMINISTRATION

PART 2. TEXAS ETHICS COMMISSION

CHAPTER 50. LEGISLATIVE SALARIES AND PER DIEM

1 TAC §50.3

The Texas Ethics Commission withdraws proposed new §50.3 which appeared in the December 31, 2010, issue of the *Texas Register* (35 TexReg 11779).

Filed with the Office of the Secretary of State on February 25, 2011.

TRD-201100792
David A. Reisman
Executive Director
Texas Ethics Commission
Effective date: February 25, 2011
For further information, please call: (512) 463-5800

TITLE 16. ECONOMIC REGULATION

PART 3. TEXAS ALCOHOLIC BEVERAGE COMMISSION

CHAPTER 45. MARKETING PRACTICES

SUBCHAPTER D. ADVERTISING AND PROMOTION--ALL BEVERAGES

16 TAC §45.102

The Texas Alcoholic Beverage Commission withdraws the proposed amendment to §45.102 which appeared in the September 24, 2010, issue of the *Texas Register* (35 TexReg 8634).

Filed with the Office of the Secretary of State on February 24, 2011.

TRD-201100775
Alan Steen
Administrator
Texas Alcoholic Beverage Commission
Effective date: February 24, 2011
For further information, please call: (512) 206-3443

TITLE 37. PUBLIC SAFETY AND CORRECTIONS

PART 5. TEXAS BOARD OF PARDONS AND PAROLES

CHAPTER 145. PAROLE

SUBCHAPTER A. PAROLE PROCESS

37 TAC §145.12, §145.15

The Texas Board of Pardons and Paroles withdraws the emergency amendments to §145.12 and §145.15 which appeared in the January 7, 2011, issue of the *Texas Register* (36 TexReg 11).

Filed with the Office of the Secretary of State on February 25, 2011.

TRD-201100783
Bettie Wells
General Counsel
Texas Board of Pardons and Paroles
Effective date: March 10, 2011
For further information, please call: (512) 406-5388

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 rule (Government Code, §2001.036). If a rule is adopted without change to the text of 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 2. TEXAS ETHICS COMMISSION

CHAPTER 50. LEGISLATIVE SALARIES AND PER DIEM

1 TAC §50.1

The Texas Ethics Commission (Commission) adopts an amendment to §50.1, to set the legislative per diem as required by the Texas Constitution, Article III, §24a. The amendment to §50.1 is adopted with changes to the proposed text as published in the November 5, 2010, issue of the *Texas Register* (35 TexReg 9811) and will be republished. Two proposals were considered by the Commission and the Commission voted to adopt the legislative per diem of $150.

Section 50.1 sets the per diem for members of the legislature and the lieutenant governor at $150 for each day during the regular session and any special session.

No comments were received regarding the proposed rule during the comment period.

The amendment to §50.1 is adopted under the Texas Constitution, Article III, §24a, and the Government Code, Chapter 571, §571.062.

§50.1. Legislative Per Diem.

(a) The legislative per diem is $150. The per diem is intended to be paid to each member of the legislature and the lieutenant governor for each day during the regular session and for each day during any special session.

(b) If necessary, this rule shall be applied retroactively to ensure payment of the $150 per diem for 2011.

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 February 25, 2011.

TRD-201100791
David A. Reisman
Executive Director
Texas Ethics Commission
Effective date: March 17, 2011
Proposal publication date: November 5, 2010
For further information, please call: (512) 463-5800

TITLE 7. BANKING AND SECURITIES

PART 6. CREDIT UNION DEPARTMENT

CHAPTER 95. SHARE AND DEPOSITOR INSURANCE PROTECTION

SUBCHAPTER A. INSURANCE REQUIREMENTS

7 TAC §95.102

The Credit Union Commission (the Commission) adopts amendments to §95.102, concerning Qualifications for an Insuring Organization, without changes to the proposed text as published in the October 29, 2010, issue of the *Texas Register* (35 TexReg 9595). The amendments clarify that an insuring organization must continue to meet the qualifications for approval in order to do business in the state. The amendments also address the process for an insuring organization to become compliant if the commissioner notifies it that it is not in compliance.

The amendments are adopted as a result of the Texas Credit Union Department's (Department) general rule review.

The Commission received no comments on these amendments.

The amendments are adopted under Texas Finance Code, §15.402, which authorizes the Commission to adopt reasonable rules for administering Title 2, Chapter 15 and Title 3, Subtitle D of the Texas Finance Code, and under Texas Finance Code §15.410, which directs the Commission to adopt rules requiring a credit union to provide share and deposit insurance protection for members and depositors, and which permits a credit union to provide the insurance through another source approved by the Department.

The specific section affected by the amendments is Texas Finance Code, §15.410.

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 February 18, 2011.

TRD-201100707
Harold E. Feeney
Commissioner
Credit Union Department
Effective date: March 10, 2011
Proposal publication date: October 29, 2010
For further information, please call: (512) 837-9236

CHAPTER 97. COMMISSION POLICIES AND ADMINISTRATIVE RULES

SUBCHAPTER A. GENERAL PROVISIONS

7 TAC §97.104

The Credit Union Commission (Commission) adopts new §97.104, concerning Petitions for Adoption or Amendment of Rules, without changes to the proposed text as published in the October 29, 2010, issue of the *Texas Register* (35 TexReg 9596). The new rule sets out the procedure for an interested person to petition the Department to adopt or amend a rule.

The new rule is adopted to comply with Texas Government Code §2001.021 which directs agencies to adopt a rule prescribing the form for a petition and the procedure for its submission, consideration, and disposition.

The Commission received no comments on the proposed new rule.

The new rule is adopted under Texas Government Code §2001.021 which directs agencies to adopt a rule for petitions to adopt rules.

The specific section affected by the new rule is Texas Government Code, §2001.021.

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 February 18, 2011.

TRD-201100708
Harold E. Feeney
Commissioner
Credit Union Department
Effective date: March 10, 2011
Proposal publication date: October 29, 2010
For further information, please call: (512) 837-9236

TITLE 16. ECONOMIC REGULATION

PART 1. RAILROAD COMMISSION OF TEXAS

CHAPTER 8. PIPELINE SAFETY REGULATIONS

SUBCHAPTER C. REQUIREMENTS FOR NATURAL GAS PIPELINES ONLY

16 TAC §8.209

The Railroad Commission of Texas adopts new §8.209, relating to Distribution Facilities Replacements, with changes to the proposed text as published in the September 10, 2010, issue of the *Texas Register* (35 TexReg 8220). On July 6, 2010, the Commission authorized staff to draft a proposed new rule to address mandatory replacement of steel service lines and other facilities in natural gas distribution systems. The Pipeline Safety Division hosted a public workshop on August 18, 2010, with interested persons and stakeholders to discuss the elements of the draft proposed rule. During the workshop, the attendees and Commission staff discussed the draft proposed rule and many of the comments were reflected in the September 10, 2010, proposal.

Following publication of the proposal, the Commission received comments from Atmos Energy Corporation ("Atmos"), CenterPoint Energy Arkla and CenterPoint Energy Entex (jointly "CenterPoint"), CPS Energy ("CPS"), Texas Gas Service ("TGS"), West Texas Gas, Inc. ("WTG"), Continental Industries, Inc. ("Continental"), Dresser Piping Specialties ("Dresser"), R. W. Lyall & Company ("Lyall"), Norton McMurray Manufacturing Company ("NORMAC"), Texas Gas Association ("TGA"), Texas Pipeline Association ("TPA"), and Texas Pipeline Safety Coalition ("TPSC"). None of the comments expressed either complete agreement or complete disagreement with the proposed rule; all offered suggestions for clarifying, adding, or striking provisions of the proposed rule.

CPS expressed appreciation for the revisions the Commission made to proposed §8.209 following the public hearing on August 18, 2010, and opined that the proposed rulemaking will compliment the Commissions' previous rulemaking addressing §8.206 of this title (relating to Risk-Based Leak Survey Program) and the federal government's recently enacted distribution integrity rule (49 CFR Subpart P). The Commission thanks CPS for the comment.

NORMAC pointed out that the product line that it designed, manufactured, and sold included compression fittings of all types, such as adapters, tees, elbows, couplings and risers. The NORMAC fittings are widely accepted and as a result millions have been sold to pipeline operators across the United States. NORMAC commented that several incidents have occurred in Texas where leaks of natural gas have emanated from mechanical fittings, specifically compression type fittings. Other incidents have occurred in other areas of the country. These problems have occurred only in specific areas, while millions upon millions of such fittings outside of these limited areas have shown no sign of trouble. NORMAC contends that several patterns are clearly revealed by an in-depth reading of the entire record of the high profile cases involving mechanical fittings. First, a great deal of mis-information has been presented and accepted as fact by some regulatory bodies. Second, where fittings were not installed appropriately, leaks have occurred. Third, no one has identified any material problem with the fittings themselves. NORMAC greatly appreciated the opportunity to work with Commission staff at the August 18, 2010, workshop in Austin, and urges all regulators to reach out to manufacturers and tap into the wealth of knowledge and experience these companies have to offer. A litany of misunderstandings surrounding compression fittings have surfaced in recent years. Some of those misunderstandings remain today. The Commission neither agrees nor disagrees with these comments.

WTG urged the Commission to adopt a rule for replacement of distribution service lines that is identical to the federal rule and not one that is more stringent. Because WTG also distributes natural gas in Oklahoma, the Commission's proposed rule if adopted, will require WTG to follow two different rules regarding the replacement of steel service lines. Adoption of a statewide rule that corresponds with the federal rule will promote public safety and prevent higher operating costs. WTG is not aware of any studies or relevant evidence to justify a rule that is more stringent than the federal rule. The Commission disagrees in part with WTG's comment, for reasons set out in greater detail in response to TGA's comments. However, the Commission

adopts new §8.209 with some clarifying changes that make the Commission's rule more compatible with the federal Distribution Integrity Management Program ("DIMP") rules.

CenterPoint has been analyzing its distribution system and replacing pipe posing unusual risks for many years. For example, CenterPoint has replaced over 240 miles of steel main and 17,000 steel service lines over the past three years. The CenterPoint risk-based program not only considers steel service lines, but also assesses the relative risks of main lines and service lines constructed of plastic, cast iron, and PVC. This analysis is applied to all similar pipe installed in the 488 systems that CenterPoint operates in Texas, without regard to individual system boundaries, in order to insure that the highest risks are addressed regardless of location. CenterPoint continues to refine its risk analysis capabilities and recently implemented a software program named Optimain, which assists in quantifying and identifying the risks existing in its facilities. The Optimain program was used to develop CenterPoint's risk-based leak survey program, which is an integral part of its distribution integrity management plan for its Texas assets. CenterPoint believes that an ideal risk management process prioritizes risk so that those with the greatest loss and the greatest probability of occurring are addressed first, with the lower probability of risks handled in descending order. While quantifying risk is always difficult, the most widely accepted formula for risk quantification is: Rate of occurrence multiplied by the impact of the event (consequences) = risk. The most effective risk management program applies this analysis across the largest universe of assets subject to common management, which insures that the risk equation is applied consistently and is not distorted by artificial limitations on the sets of risks analyzed. This approach is consistent with the International Standard Organization's ("ISO") recommendations for such programs contained in its ISO 13,000 standard on risk management principles and guidelines. The federal Distribution Integrity Management rule also adopts this philosophy and encourages operators to conduct their analysis not only by geographical area, but also by areas with common materials or subject to other environmental factors. See 49 CFR §192.100(c). Finally, it also reflects the legal fact that pipeline safety regulation in Texas is based on the rules of the Railroad Commission and the federal rules, which apply uniformly statewide and do not vary by system identification.

In CenterPoint's view, the Commission's proposed rule seeks to require operators to conduct a risk-based analysis of their distribution systems in order to identify those facilities that pose the highest risk and accelerate their replacement. CenterPoint supports the use of this tool as a method of prioritizing distribution facility replacements, but believes the rule can be improved from its original draft to ensure consistency in the operation of those programs and the replacement of the riskiest facilities on a timely and efficient basis. The new risk-based analysis that the Commission seeks to require under this rule will strengthen the reliability of local distribution systems by introducing an explicit replacement obligation into the integrity management plans already required under the federal rules. However, CenterPoint believes it can be made more consistent both internally and with the federal rule and other applicable standards. The Commission disagrees in part with CenterPoint's comments for reasons set out in greater detail in subsequent paragraphs that address each subsection of the rule. The Commission agrees that some clarification is needed to make the Commission's rule more compatible with the federal DIMP requirements.

The Commission appreciates the comments regarding the rule development process and, in particular, appreciates the participation of the operators in the workshop on August 18, 2010. The Commission agrees that an effective risk management process prioritizes risk so that those with the greatest loss and the greatest probability of occurring are addressed first. The Commission disagrees with WTG's comment that the Commission should adopt only the federal requirements in 49 CFR Part 192, Subpart P-Gas Distribution Pipeline Integrity Management (IM); in fact, the Commission has already adopted these rules by reference in §8.1 of this title (relating to General Applicability and Standards). The Commission does not agree with all of NORMAC's comments; however, because the Commission is adopting new §8.209 with changes to the proposal, the Commission does agree that some aspects of the proposal require modification or clarification.

TPA and TPSC sought clarification of proposed new §8.209 as it applies to farm taps. The discussions leading to the approval of the proposed rule for publication and comment focused on the operators of local distribution systems. The rule refers to operators of distribution systems or distribution facilities, but without any indication that the Commission was using those terms in any manner other than their traditional and commonly understood meaning, which did not include farm taps. Farm taps have historically never been considered distribution lines by industry or the Commission. According to TPA and TPSC, farm taps generally consist of a riser and regulator directly connected to a transmission or gathering pipeline and providing an above-ground connection for a distribution company or a customer. Sometimes, the farm tap will include a meter. Farm taps have historically been installed in satisfaction of easement provisions negotiated with landowners and are generally located in rural locations. They are not located in densely populated areas and typically do not include any significant length of line extending from the main transmission line. Because most transmission pipelines are steel and connected to the farm tap riser by welded connections, there is no alternative material to be used for these installations and no more secure connection to use in place of present practices. The cost of complying with proposed new §8.209 will outweigh any safety benefits to be derived from applying this rule to farm taps, and in fact, application of this rule to farm taps could actually result in the lessening of pipeline safety because of the technology issues. Application of the proposed rule to transmission farm taps could result in many operators seeking to disconnected or abandon many farms taps. They were certainly not included in the discussions by Commissioners and Staff prior to the issuance of the proposed rule nor were they included in any of the Commission's evaluations of the fiscal impact of the proposed rule. TPA's and TPSC's concern with the scope of the Commission's proposed rule arises from a recent Pipeline and Hazardous Materials Safety Administration (PHMSA) guidance document relating to its distribution integrity management rule. The guidance document states: The vast majority of "farm taps" meet the definition of a distribution line given that they do not meet the criteria to be classified as a gathering line or a transmission line.

TPA and TPSC do not believe the intent of the Commission was to apply the proposed rule to farm taps. Prior to the frequently asked questions ("FAQ") guidance document issued by PHMSA, no gathering or transmission operator would have ever thought or considered that they would be subject this proposed rule. Further, at no time during the development of the rule proposal did the Commission discuss the applicability of the rule

to transmission or gathering lines. For these reasons, TPA and TPSC request that the Commission clarify the applicability of the proposed rule to exclude farm taps on transmission and gathering lines, because farm taps on transmission pipelines are subject to the Commission's pipeline integrity rule, §8.101 of this title (relating to Pipeline Integrity Assessment and Management Plans for Natural Gas and Hazardous Liquids Pipelines), which adequately addresses safety and any operational issues. TPA suggested that clarification could easily be provided by simply adding one or two sentences to the preamble of the rule upon adoption. Because this proposed rule imposes requirements beyond those contained in the Federal minimum pipeline safety standards, TPA does not believe that there are any federal prohibitions to the Commission's issuance of the requested clarification of this "above and beyond" rule.

The Commission agrees that farm taps were not expressly discussed in the workshop or in the proposal preamble. However, the Commission disagrees with the assertions by TPA and TPSC that farm taps are part of transmission pipeline integrity management plans pursuant to §8.101 of this title. Transmission pipeline operators have not included farm taps in their integrity management plans, according to those plans that have been reviewed by the Pipeline Safety Division. Given the PHMSA guidance document, it may not be possible for the Commission to exclude farm taps from the DIMP requirements that the Commission administers. However, because TPA and TPSC have clearly taken the position that farm taps are not part of distribution facilities, the Commission will wait to make a final determination on this issue as it pertains to §8.209.

Atmos commented that it is not aware of any industry study or finding that suggests joints on below-ground piping should be limited to welding or fusing. While welding and fusing are preferred joining methods, other methods including threaded connections and flanged connections are viable joining methods on below-ground piping. Further, Atmos recognized that, as proposed, subsection (b) appropriately distinguishes between requirements for below-ground connections and above-ground connections. Atmos suggested a minor re-wording of this subsection to clarify the intent, along with the inclusion of standards related to the connection of steel pipe to polyethylene pipe. Atmos proposed that subsection (b) be revised to read as follows: *"(b) When practical, joints on below-ground piping will be made by welding or fusing. Each fitting used to make a non-fused joint on a polyethylene system must meet the requirements of ASTM D2513 for Category 1. Each non-welded joint on a below-ground steel system must meet the requirements of 49 C.F.R. §192.273. When polyethylene pipe is joined to steel pipe the connection must be made with a transition type of fitting that meets the requirements of ASTM D2513 Category 1 for the polyethylene connection and 49 C.F.R. §192.273 for the steel connection."*

The Commission agrees that subsection (b) should be clarified, but disagrees with the wording suggested by Atmos.

CenterPoint observed that, in addition to the provisions specifying the elements of an operator's risk-based programs, the rule contains a new requirement that distribution operators use welding and fusing to make connections where practical. Where non-fused joints are used on a plastic system, the joint must comply with the ASTM D2513 standard for Category 1 fittings. Non-welded joints on steel systems must meet the requirements of the federal pipeline safety rules provided in 49 CFR §192.273. If applied to all replaced pipe, this rule would conflict with the Commission's rules regarding compression couplings contained in §8.208 of this title, relating to Mandatory Removal and Replacement Program. In order to avoid such a conflict, CenterPoint suggested that this new rule apply only to replacements performed pursuant to the risk-based programs required by the rule. The Commission disagrees with CenterPoint's specific recommendations concerning subsection (b), but agrees that as proposed it conflicts with §8.208 and that the "where practical" standard is too vague to be consistently enforced. The Commission adopts subsection (b) with clarified wording as explained in subsequent paragraphs.

Dresser commented that, as proposed, subsection (b) severely limits the use of mechanical fittings except in special circumstances. Dresser is aware of the incidents in Texas where mechanical fittings were the target of investigations, but concluded that from published data, news articles, and conversations with government regulators that the investigations did not provide any factual information to prove that the fittings were defective or provide a root cause for why the fittings were investigated. In Dresser's opinion, the proposed rule requiring that joints below-ground must be made by welding or fusing is not supported by factual data to indicate that welding or fusing provides a safer joining method than mechanical fittings. The proposed rule implies that mechanical fittings are a practical method for any joint in a piping system where making a joint by welding or fusion is determined to be impractical. Common sense would suggest that if a mechanical fitting can be used to make joints where welding or fusion is impractical, mechanical fittings are an acceptable joining method and the rule should not limit their use. Dresser requested that the Commission remove subsection (b) in its entirety from the rule. Dresser further suggested that if a new rule is needed to improve the reliability associated with the use of mechanical fittings, the rule should address the requirement that pipeline operators follow the manufacturers' installation instructions and application guidelines, similar to federal regulations. The Commission disagrees with removing subsection (b) from the rule, but adopts the subsection with wording that clarifies the Commission's intent with respect to methods of joining.

NORMAC commented that the proposed requirement that the operator "weld and fuse" is unjustified, resulting in arbitrary and capricious rulemaking. By requiring "weld and fuse," subsection (b) is internally inconsistent and unworkable; therefore subsection (b) should be struck. NORMAC stated that the Commission did not provide justification, reasoning, or rationale for restricting joining methods to "weld and fuse." To impose such a restriction without clearly enunciating the reasons for the decision is both arbitrary and capricious. The Commission has ignored its obligation to formulate rules and policy based on substantial evidence. *See* Tex. Code Ann. §2000.174(2)(E)-(F) *(sic).* The Commission has provided no reasonable basis for requiring the "weld and fuse" method, and categorically rejecting all other methods. Because the Commission has failed to provide a legitimate reason to promote the use of the "weld and fuse" method of joining pipes over other, equally safe methods, the proposed rule is, by definition, arbitrary and capricious. *See Bullock v. Hewlett-Packard Co.,* 628 S.W.2d 754 (Tx. 1982) (citing *Gerst v. Oak Cliff Savings and Loan Association,* 432 S.W.2d 702 (Tex.1968)). The Commission agrees that subsection (b) should be clarified, but disagrees with NORMAC's characterization of the proposal as "arbitrary and capricious" under the cited legal standards. Tex. Gov't Code, §2001.174, pertains to judicial review of administrative decisions in contested cases using the substantial evidence rule or an undefined scope of review; this

part of the Texas Administrative Procedure Act does not apply to rulemaking proceedings.

NORMAC further commented that although there is no evidence of any material problem with the fittings themselves, the question remains why failures have occurred. According to NORMAC, the answer is simple: failures have been a result of inadequate installation or application practices. Failures have occurred only in limited, specific portions of Texas or the United States. Installations elsewhere remain safe and sound. In areas where these practices were performed properly, mechanical fittings have served successfully. Where poor, rushed or sloppy practices were employed, the results have been disastrous. The Plastic Pipe Database Committee published an updated status report which finds that leaks are commonly due to "installation error": "The data indicate an elevated number of leaks associated with new pipe or appurtenance installations occur within the first three years after being put into service. The data also indicate a decrease in the number of these leaks since the implementation of Operator Qualification requirements in 2002. However, leaks are still occurring in this time period at an elevated frequency. Operators have reported the cause of these leaks as installation error which could be the result of inadequate procedures, training, or implementation of the procedures. In light of the data collected, it is suggested that operators remain vigilant in their efforts to maintain their operator qualification programs, installation procedure reviews and inspection efforts to assure the integrity of their systems." Whatever the time frame, appurtenances including both mechanical fittings and "weld and fuse" fittings that are properly used and installed provide long-term, safe service. Therefore, installations of both types of devices should be allowed to be installed by qualified personnel. No study has shown any deficiency with properly installed and properly applied mechanical fittings. There is no evidence of safety advantages of proper installations of "weld and fuse" over joints properly made with mechanical fittings. When done properly, each joining method is viable and secure. Therefore, each should be afforded equal standing by the Commission. The Commission agrees with NORMAC that there has been no specific determination that mechanical fittings are inherently unsafe. However, by NORMAC's own argument, such devices may fail when they are improperly installed, and such devices have been implicated in at least two incidents in Texas.

NORMAC further commented that by requiring "weld and fuse," proposed subsection (b) is internally inconsistent and unworkable. Given that the Commission's mandate appears to be grounded in safety concerns, the only logical reason for requiring "weld and fuse," rather than mechanical fittings, as the primary means for joining is that "weld and fuse" is believed to be a safer method. Were this true, mechanical fittings would be completely banned. However, the proposed rule allows mechanical fittings to be used in situations in which the "weld and fuse" method is not "practical." If mechanical fittings are safe for any use, then they are safe for every use for which they are intended. Additionally, there is no consistency in requiring the use of the "weld and fuse" method underground, while allowing any joining method above ground on the same service line. Subsection (b) of the proposed rule allows limited use of mechanical fittings "where practical." The words "where practical" are vague, overly subjective, and thus unenforceable. How is an engineer at a gas company to determine if a joint made with a mechanical fitting is more or less "practical" than one made by "weld and fuse"? What are the ramifications if, after a mechanical fitting has been used, the operator and the Commission disagree as to whether its use was practical? Nor is it clear exactly where and when the requirements of subsection (b) will apply. Further, NORMAC compared proposed subsection (b) to Commission rule §8.208 of this title, (relating to Mandatory Removal and Replacement Program). That rule makes no mention of "weld and fuse" and allows mechanical joints as long as they meet the appropriate ASTM D2513 Category and comply with applicable regulations. If mechanical fittings are allowed by one rule, they ought to be allowed by all applicable rules. This inconsistency is not only illogical; it is confusing and impractical to follow and to enforce. NORMAC's first recommendation is for the Commission to delete subsection (b); if not, the Commission should modify the language to follow the changes made to proposed subsections (c), (d), (f), and (g) just prior to the August 30, 2010, Commission meeting so as to clarify that the prescriptive actions in (b) apply only to operators who find that steel service lines pose the highest risk. The Commission agrees that the language "where practical" is vague and subjective and therefore difficult to enforce consistently. The Commission disagrees that subsection (b) should be removed from the rule and disagrees that it should apply only to operators that find that steel service lines pose the highest risk. The Commission adopts subsection (b) with clarifying language explained in subsequent paragraphs.

Continental commented that the proposed requirement that operators "weld and fuse" is unjustified, and suggested rewriting proposed subsection (b) so that there is no preference given between approved fittings and joining methods. Although aware of recent issues with compression fittings in Texas, Continental stated that the bias against all mechanical fittings is unjustified. Other mechanical fittings that may be affected by the proposed rule include; factory made transition fittings, risers, mechanical saddles, and stab type fittings. Continental expressed concern that proposed subsection (b) will result in the creation of baseless and unwarranted prejudice against mechanical fittings resulting in reduced competition and higher costs to the ratepayer. Furthermore, the safety of gas distribution systems will be compromised if gas distribution operators do not include mechanical fittings in evaluations of system design and maintenance. Mechanical fittings offer the highest possible joint integrity in certain situations with regard to environment, materials, operator skill level and training. The language of the proposed rule puts the operator in a defensive position to justify why it is not practical to use fusion instead of using mechanical fittings that meet the requirements of ASTM D2513 Category 1, and why it is not practical to weld instead of using mechanical fittings that meet the requirements of 49 CFR §192.273.The determination of what is practical will be highly subjective and difficult to enforce in a standardized fashion. Continental offered the following substitute language for subsection (b):

(b) Each operator will make joints on below-ground piping that meets the following requirements:

(1) Joints on steel pipe must be welded or designed and installed to resist axial pullout per 49 CFR 192.273.

(2) Joints on plastic pipe must be fused or designed and installed to resist axial pullout per ASTM D2513-Category 1.

Lyall's comments focused on the August 18, 2010, workshop, at which it was expressed that the intent of subsection (b) of this rule was not to establish a new imperative regarding the use of approved component types and joining methods on plastic or steel piping but to establish and clarify that a joint on either piping material must be made to be at least as strong as the pipe in the longitudinal (axial) direction. Lyall offered a summary of the

technical provisions governing joints on plastic and steel pipe. For plastic joints, it is clear and well established in code and practice that sound joint integrity is accomplished through cooperation between material and method that is achieved through design and validation for both heat fusion and mechanical joints. The qualification of procedures for joining using heat fusion or mechanical means is the same in respect to requirements for axial strength and pull out resistance. Both mechanical joints and heat fusion joints are approved today for new installation and repair of service lines. For steel joints, the pipeline must be designed and installed so that each joint will sustain the longitudinal pullout or thrust forces caused by contraction or expansion of the piping or by anticipated external or internal loading. Again it is well understood that sound joint integrity is accomplished through cooperation between material and method that is achieved through design and validation for both welded steel joints and mechanical steel joints. A mechanical joint must provide pullout resistance to anticipated external and internal loading. It is these standards for both plastic and steel joints that was expressed when it was stated, during the workshop, that it was not the intent of §8.209(b) to change what was already currently approved in regard to pipe joining. There were many changes to subsection (b) from initial draft to the present. Each change sought to bring more clarity to the requirement that a joint provide longitudinal pull out resistance and provide strength at least as strong as the pipe in the axial direction. While likely unintended, the language of the proposed rule puts the operator in a defensive position to justify why it is not practical to use fusion before using a Category 1 mechanical fitting which, as discussed above, is already approved. It will also cause the operator to justify why it is not "practical" to use a weld joint before an approved mechanical method is used. Determination of what is "practical" will be highly subjective and difficult at best to manage in a standardized fashion. An operator will be faced with deciding what is "practical" instead of what is appropriate. What is appropriate is already established as a joint that provides a seal and resistance to pull out in the axial direction. Lyall submitted the following language as a replacement for the language in section (b) of the proposed rule, identical to that offered by Continental:

(b) Each operator will make joints on below ground piping that meets the following requirements:

(1) Joints on steel pipe must be welded or designed and installed to resist axial pullout per 49 CFR 192.273.

(2) Joints on plastic pipe must be fused or designed and installed to resist axial pullout per ASTM D2513-Category 1.

Lyall offered the replacement language as a reasonable way to satisfy the intent of the rule, because it is in line with what is in federal code and in line with specifications referenced by federal code today, and does not introduce unwarranted preferences except that only fusing and Category 1 mechanical fittings can be used for in line plastic joints, and only welded or axially restrained fittings can be used for in line steel joints. The Commission agrees that the "where practical" standard is vague and too subjective to be consistently enforced, and that as proposed, subsection (b) is inconsistent with §8.208. The Commission adopts subsection (b) with the wording offered by Continental and Lyall to clarify the standards for joints on below-ground piping, with one change. In place of the word "axial pullout," the Commission is using "longitudinal pullout or thrust forces" because that terminology is consistent with 49 CFR §192.273.

Regarding proposed subsection (c), Atmos expressed concern that the timing of the proposed submission - no later than March 1, 2011 - will not allow an operator to fully utilize its DIMP efforts because the March 1, 2011, date precedes the DIMP implementation time line. Therefore, in order to more closely align the rule with the Commission's stated goal of utilizing the DIMP efforts, Atmos suggested that the subsection (c) filing date be changed to August 1, 2011, to coincide with the DIMP implementation time line.

CPS urged the Commission modify the rule's implementation deadline to follow the implementation of the DIMP rule in 49 CFR Subpart P. Subsection (d) of the Commission's proposed rule directs each operator to collect data under its DIMP, but the implementation requirement of the DIMP is not until August 2011. CPS suggested an implementation date of January 1, 2012, for the submission of each operator's written procedures for implementing the requirements of this section, following the completion of the DIMP in August 2011. Delaying implementation of §8.209 until January 1, 2012, would allow the Commission to make several modifications to the proposed rule that would provide the Commission with more useful information relative to the performance of steel infrastructure between and within system IDs and time to gather and study the data provided.

TGA pointed out that, effective February 12, 2010, 49 CFR Part 192 was revised to require that gas distribution operators develop and implement a DIMP no later than August 2, 2011. As noted in the preamble to the Commission's proposed rule, the risk-based programs that the proposed rule requires Texas gas distribution operators to implement are to ". . .be developed in conjunction with the recently adopted. . ." federal regulations. The preamble also notes that the Commission estimates that it will take operators at least a year to develop the risk model required by the proposed rule. TGA commented that despite the Commission's acknowledgment that operators will need at least a year to develop the risk model portion of the risk-based program, the Commission failed to take that fact into consideration by requiring that written procedures be submitted to the Commission on March 1, 2011, for review and approval. Furthermore, a March 1, 2011, filing date will necessitate that operators develop their risk-based programs ahead of the development of their federally mandated DIMP programs rather than in conjunction with the development of those programs. Because the Commission's proposed risk-based programs should necessarily complement the programs operators are developing and implementing in response to the federal regulations, TGA concluded that it is reasonable to revise the filing date to August 1, 2011.

WTG concurred with the written comments of TGA, adopted its comments by reference, and urged the Commission to establish an appropriate date for submission of written procedures make proposed §8.209 effective August 1, 2011, instead of March 1, 2011. WTG needs the additional time to more effectively and economically adopt a risk-based integrity management plan for proposed §8.209 to coincide with DIMP rules.

TGS commented that the filing date for submission of the written procedures required by §8.209(c) be changed from March 1, 2011, to May 1, 2011. The rule provides that the Commission's program will work in conjunction with the federal DIMP. A May 1, 2011, submission deadline will encourage operators to focus on the preparation of a single plan that meets both the Commission's and the federal government's requirements. Such a submission will result in a more effective and efficient implementation of both sets of rules by providing time for preparation of the most robust plan possible, minimize potentially duplicative efforts, and assure that the Commission receives submissions

that are consistent with both its own rules and those of the federal government.

CenterPoint observed that the Commission's proposed rule apparently seeks to impose a stronger replacement mandate on Texas LDC's than the current federal DIMP rules. While subsection (a) states that the new programs are to work in conjunction with operators' DIMP programs, as proposed the rule also requires operators to submit their programs by March 1, 2011, even though the distribution integrity management plans required by the federal DIMP rules are not required to be completed until August 1, 2011. This will require operators to potentially prepare two separate programs with the attendant risks of conflict and waste of resources. CenterPoint suggested that the deadline for the submission of the state programs be changed to the August 1, 2011, so that it is coextensive with the effectiveness of the federal rule.

The Commission agrees with the comments that imposition of a March 1, 2011, deadline for the filing of operators' written procedures for implementing the requirements of this section may not provide effective and efficient implementation of plans that meet the both the Commission's and the federal government's requirements. While the Commission seeks to ensure that operators are well on the way to implementing their risk management programs as mandated by the federal rules, the Commission also recognizes that imposing a compliance deadline that is only five months earlier than that for the federal program may thwart that goal. Therefore the Commission amends subsection (c) as adopted to amend the compliance date to August 1, 2011, to match the federal DIMP deadline.

Atmos requested clarification of the provision in subsection (c) requiring that written procedures to implement §8.209 must be submitted to the Pipeline Safety Division for review and approval. Atmos is uncertain whether the intent is to require the submission of written procedures that an operator will, in turn, use to develop relative risks and associated consequences or if the written procedures are intended to reflect the approach the operator intends to take based upon an already completed risk analysis. The Commission anticipates that the operators' initial filings would consist of written procedures for identifying the factors to be used and the proposed weighting or approach an operator would use. The Commission expects that the actual risk analysis would take another year to complete.

CenterPoint had additional comments on subsection (c) with respect to the requirement that each operator develop a risk-based program to determine the relative risks and their associated consequences within each pipeline system or segment. In CenterPoint's view, the best risk management programs examine risk across as broad a universe of facilities as possible in order to insure the statistical validity of the analysis. As previously mentioned, CenterPoint analyzes its system through its Optimain program, which applies the same risk factor elements and consequence analysis consistently across its distribution systems in Texas. CenterPoint commented that the current draft of the rule would require an operator to conduct separate risk-based analyses for each of the operator's distribution systems and identify segments within those systems for replacements. Many of CenterPoint's systems consist of only a few service lines while others, such as Houston, contain thousands. Requiring separate risk-based analyses for each of these systems would defeat the purpose of the rule, which is to consistently identify the highest risk pipe for replacement and another action. CenterPoint suggested that the rule be changed by allowing operators to apply their risk-based analysis jointly across all of their distribution systems in Texas and not severally.

The Commission disagrees with CenterPoint's description of the risk program development process. The Commission does not intend for each operator to develop a separate risk model for each system ID. The Commission's intent is that each operator develop a single risk based program that will be implemented across its entire distribution operations. In developing such a risk-based program, the operator is to evaluate its pipeline systems by analyzing data collected for each system or segment, as identified, to provide a clear picture of the particular risks within each of the operator's distribution systems.

In addition, CenterPoint asserted that, while the proposed rule appropriately assigns to the operator the responsibility of identifying the highest risks on its system, subsection (c) creates a special replacement regime in cases where steel service lines are determined to be the greatest risk. Specifically it requires operators to calculate a leak repair rate for steel service lines by dividing the number of leaks on such lines by the number of other types of leaks occurring in a particular system. If this calculation yields a percentage greater than 25%, the operator must replace all service lines in the system by June 30, 2013. Systems with leak rates of between 5% and 25% must replace 10% of the steel service lines in the system per year. CenterPoint commented that this prescriptive program is inconsistent with good risk management practices in several ways. First, it assumes steel service lines pose such an unusual risk that they must be subject to a special program. In fact, CenterPoint observed, steel lines generally are more resistant to third-party damage and, if properly coated or protected with cathodic protection, are not subject to a significantly higher corrosion risk. When leaks occur on steel systems, the source is a fitting in the vast majority of cases. The Commission has already addressed this risk in its compression coupling rule codified at §8.208 of this title (relating to Mandatory Removal and Replacement Program). The Commission disagrees in part with this comment. The Commission recognizes that steel service lines may not be the riskiest part of an operator's system. However, the Commission has adopted modifications to the calculation of the leak repair rate for steel service lines in subsection (d) that makes a more appropriate comparison of leaks on steel service lines to the total number of steel service lines rather than to the total number leaks on the system. In turn, modifying the formula required a modification of the percentage brackets for Priority 1 and Priority 2 categories.

Atmos commented that subsection (d) does not make clear whether the Commission intends for an operator to use "raw" leak data from PS-95 or if operators will have the ability to adjust PS-95 leak data to remove leaks related to assets that have been retired or replaced. If assets have been removed from service, it is logical that leaks related to those assets should be excluded from future risk analysis scenarios. If not excluded, consideration of leaks that occurred on retired or replaced assets would continue to highlight areas where facilities have already been retired or replaced as areas where facilities need to be replaced. This creates a circular, unintended result in the process. This can be easily remedied by removing leak data from the analysis that is associated with facilities that have been retired or replaced. The Commission agrees with Atmos and has clarified the wording in subsection (d) to allow operators to remove data for those facilities that have been retired or replaced facilities.

CPS encouraged the Commission to revise the formula in subsection (d) because it does not provide a reasonable basis of comparison of performance of steel infrastructure between System IDs or segments within a system. The formula or ratio of leaks repaired on steel service lines divided by the total number of leaks repaired does not provide an accurate depiction of relative risk or performance and could lead to an inappropriate allocation of resources to replace steel service lines in segments that have a low overall leak rate as a percent of steel service lines. In the penultimate sentence in subsection (d), the rule requires that the leak repair rate for steel service lines is determined by dividing the number of leaks repaired on steel service lines by the number of all repaired leaks. CPS recommended that the more useful denominator is the total number of steel services in the system ID, not all repaired leaks. CPS's proposed revision is, "In addition, each operator that determines that steel service lines are the greatest risk must conduct a steel service line leak repair analysis to determine the leak repair rate for steel service lines compared to all steel services within the system ID." In the last sentence in subsection (d), CPS suggested that the total number of steel service lines is a more useful denominator. The sentence states, *"The leak rate for below-ground steel service lines is determined by dividing the number of below-ground leaks repaired on steel service lines (excluding third-party leaks) by the total number of leaks repair (sic) on the pipeline system."* The preferred relationship again is between steel services, and the denominator should be the total number of steel service lines. CPS proposed the following revision: "The leak repair rate for below-ground steel service lines is determined by dividing the number of below-ground leaks repaired on steel service lines (excluding third-party leaks) by the total number of steel services on the pipeline system."

TGS also commented that the formula in subsection (d) does not actually provide for the best method to conduct this analysis. The Gas Piping Technology Committee's (GPTC) guide to DIMP was developed using a task group with diverse and varied members. The task group, in addition to members of the GPTC, included persons representing segments of the gas pipeline industry not currently active on the GPTC, such as industry associations, small gas operators, state pipeline safety program directors, public representatives, and Pipeline and Hazardous Materials Safety Administration (PHMSA) personnel. The GPTC's guide recommends a risk evaluation method that states, "one approach to risk evaluation is to group facilities by common traits and problems, which allows each group to be risk-ranked as a unit. The risk ranking is an analysis that assigns a relative risk value and may result in a recommendation for action." The guide also recommends in the federal rule, paragraph 5.4(a)(4), that "the operator should evaluate problem trends. Stable or improving trends may require no further action," and suggests a review of leaks caused by excavation measured by miles of main or services per number of services. Such an approach would better allow an operator to determine and address potential trends. TGS suggested that subsection (d) be amended to reflect an "apples to apples" calculation consistent with the GPTC guide for purposes of calculating the leak repair rate for below-ground steel services, by dividing the number of below-ground leaks repaired on steel service lines (excluding third-party leaks) by the total number of steel services on each system. As part of the annual filing required by subsection (i), a company would be required to submit the number of steel services by system. The total of these steel services would equal the number of steel services reported on the Annual Gas Distribution Report, form PHMSA F 7100.1-1. This will provide the Commission with the data necessary to review an operator's leak analysis. TGS believes that modifying the formula, in conjunction with using a conservative percentage cutoff in subsection (f), will result in more accurate identification of pipeline integrity risk, more consistent with the DIMP guideline, and, as a result, increased pipeline safety.

CenterPoint commented that, if the Commission still deems the prescriptive program to be necessary, the leak calculation rate should be based on leaks per number of steel service lines and not the number of leaks in a system. The former calculation is a more accurate measure of a system's performance while the latter can distort the true picture of a system's risks and mis-allocate scarce resources. If the Commission agrees with this recommendation and adopts a leak rate calculation based on the number of steel service lines, CenterPoint believes that a 7.5% threshold should be established for Priority 1 systems and a 5% threshold used for Priority 2 systems. This would direct the operator to those few systems that may require attention and potential replacement. In addition, an exception should be carved out for those steel lines that must remain due to special operational conditions such as state or local rules for highway crossings and the use of highway right of way. The Commission agrees with the comments that the leak calculation rate should be based on leaks per number of steel service lines and not the number of leaks in a system. The Commission also agrees that the calculation should exclude those facilities that have been retired or replaced. The Commission adopts subsection (d) with clarifying language regarding the methodology for performing the leak calculation and for using the data from Commission Form PS-95. The exception for steel service lines that must remain in service for special operational conditions or requirements remains in subsection (g); the deadlines that were set out in paragraphs (1), (2), and (3) of the proposed rule have been moved to subsection (f).

TGS suggested that subsection (e) be modified to clarify that the risk ranking is intended to identify segments for which replacement is necessary by adding the word "necessary" in the last sentence of the subsection. The Commission agrees that the subsection should be clarified, and has added the recommended clarifying language. In addition, the Commission has modified the subsection by placing some of the requirements in a slightly different sequence, and making grammatical corrections.

TGA commented that the prescriptive provisions of subsections (f) and (g) are inconsistent with a risk-based program and should be deleted. The general comments that accompanied adoption of the DIMP regulations state that the purpose of a risk-based safety program is to require that natural gas distribution operators ". . .evaluate their pipelines to identify the risks important to their circumstances and take appropriate actions to address those risks." The comments also note that ". . .incidents are most often caused by a combination of circumstances that represent risks for the pipeline involved, but may not affect other pipelines." TGA concludes that it is ". . .not practical to create additional prescriptive requirements to address these pipeline specific risks."

TGA stated that the Commission has done an exceptional job of enforcing the state and federal pipeline regulations that are meant to help assure public safety. In fact, the Commission's pipeline integrity rule, as well as its risk-based leak survey rule, were trend-setters for other state and federal regulators. However, including the prescriptive provisions in subsections (f) and (g) are not consistent with the overarching purpose of a risk-based program that requires an operator to evaluate its distribution system for risk and then enact a replacement program

that results in the reduction of that system specific risk. In addition, the implementation of the prescriptive provisions of the proposed rule could pose a financial hardship on certain of the municipally operated distribution systems. The prescriptive provisions have the potential to cause municipal operators to incur additional costs to develop the required risk-based program. To the extent that the Commission can adopt a rule that will allow a municipal operator to utilize the same risk-based program for purposes of complying with both the Commission's rule as well as the federal DIMP, the overall cost to the operator will be reduced.

The Commission disagrees with TGA that the prescriptive elements of the rule should be removed. The Commission recognizes that steel service lines may not pose the greatest risk on some systems. For those systems on which steel service lines are the highest risk, the Commission has imposed a more stringent safety requirement. The Commission also disagrees with the comment that implementation of the prescriptive provisions of the rule could pose a financial hardship on certain of the municipally operated distribution systems. The Commission recognizes that financial issues can be daunting for municipal governments, yet risk is not distributed according to the financial resources of the operator. Municipal operators are not required to come before the Railroad Commission to seek rate relief for capital improvements to their distribution systems.

CPS recommended a revision to §8.209(f)(1), which identifies "a segment with a steel service line leak rate of 25% or greater" as a Priority 1 segment. CPS suggested replacing the preceding "25% or greater" language with "7.5% or greater on an annualized basis or 20% over three years." Based on an analysis conducted by several large Texas LDCs, the recommended annualized leak rate based on the new formula effectively targets the worst performing systems and/or segments. TGS also recommended the same change to subsection (f)(1).

CPS recommended eliminating §8.209(f)(2), because §8.209(h) states that "all replacement programs require a minimum annual replacement of 5% of the segments identified for replacement." This program will be continuously evolving, and the worst performing segments will always escalate up to Priority 1 status if they worsen. TGS recommended amending subsection (f)(2) to read: "a segment with a steel service line rate of 7.5 % or greater but less than 5% is a Priority 2 segment." TGS also recommended that subsection (f)(3) be changed to read: *"a segment with a steel service line rate of less than 5% is a Priority 3 segment. An operator is not required to remove or replace any Priority 3 segment; however, upon discovery of a leak on a Priority 3 segment, the operator must remove or replace rather than repair, except as outlined in subsection (g) of this section."*

The Commission agrees with the comments that suggest revisions to the determination of risk categories Priority 1 and Priority 2. Because of the change in the formula for calculating the leak rate for steel service lines, the percentage brackets for those categories should be reduced. The Commission adopts subsection (f) with amended percentages for the Priority 1 and Priority 2 categories as follows: a segment with an annualized steel service line leak rate of 7.5% or greater is a Priority 1 segment; a segment with an annualized steel service line leak rate of 5% or greater but less than 7.5% is a Priority 2 segment. The definition of a Priority 3 segment remains unchanged at a leak rate of less than 5%; however, the Commission has clarified the calculation to specify an annualized rate. In addition, the Commission has included in subsection (f)(1), (2), and (3) the replacement deadlines that were proposed in subsection (g)(1), (2), and (3).

Atmos commented that rather than establishing a firm deadline of June 30, 2013, for replacement of Priority 1 steel service lines, operators should be provided a firm time frame for the Priority 1 replacement completion. In other words, if an operator submits written procedures per subsection (c) on March 1, 2011, and the Safety Division reviews the written procedures within its specified 90 days time frame and then requests revision by the operator and re-submission of written procedures, the resulting replacement time frame for Priority 1 steel service lines may be significantly less than two years. To provide an operator with the intended two year replacement window, Atmos proposes that subsection (g)(1) be revised to provide: *"For Priority 1 segments, an operator must complete the removal or replacement of steel service lines within twenty-four months following the date that the Pipeline Safety Division approves the operator's written procedure required under subsection (c)."* The Commission disagrees with Atmos's comment regarding extension of the June 30, 2013, deadline. The Commission's intent was not to provide a two-year window for replacement, it was to establish a deadline for replacement of steel service lines.

With respect to subsection (g)(2), concerning Priority 2 steel service lines, which must be replaced at a pace of 10% of the original inventory per year, Atmos commented that an operator should not be required to direct resources to replace Priority 2 steel service lines when there are still higher risk Priority 1 steel service lines in the ground. Therefore, Atmos proposes that subsection (g)(2) be revised as follows: *"Upon completion of the Priority 1 segment removal or replacement, an operator must remove or replace no less than 10% of the original inventory of Priority 2 segments per year."* With respect to the deployment of resources toward Priority 2 steel service lines while Priority 1 steel service lines are still in place, the Commission disagrees; such a requirement would allow a more efficient deployment of work crews in one town or neighborhood. After June 30, 2013, there should not be any Priority 1 steel service lines in place. Operators also may address this issue in the proposed work plans required to be filed pursuant to subsection (i).

TGS recommended amending the language in subsection (i)(2) to add a reference to using the PHMSA Form F 7100.1-1 as the source of the number of steel service lines. The Commission agrees in part with this suggestion because the form is already filed at the Commission and is readily accessible. The Commission has added this clarifying reference to the adopted rule, but not in subsection (i)(2); the reference has been added as part of the leak rate calculation in subsection (d). In addition, the Commission has added clarifying language in subsection (i)(2) regarding the annual filing required from operators.

With respect to §8.209(j), TGA commented that the Commission's financial analysis of the potential costs that operators will incur in developing and implementing the risk-based program is set out in the preamble of the proposed rule. Clearly, cost is a significant factor whenever an operator undertakes the replacement of distribution system infrastructure and the TGA commends the Commission for considering this issue and including the accounting treatment provisions contained in subsection (j).

TGS recommended changes in subsection (j)(1)(A) and (j)(1)(C), and the addition of language in (j)(1)(E), that would provide for possible recovery and amortization of the unamortized balance of the designated regulatory asset accounts consistent with proposed subsection (j)(1)(D), as written.

CenterPoint commented that safety has always been the highest priority of both the Commission and distribution system operators. As a result, local distribution companies in Texas have implemented a web of operations and maintenance programs and practices to fulfill their service obligations with the highest degree of safety and reliability. The Commission has historically recognized the importance of these programs by authorizing the recovery of pipeline safety-related costs in the rate base and cost of service components of a utility's rates. Thus, it is appropriate that the proposed rule sets an accounting framework for the potential recovery of the costs of the new risk-based safety programs. Subsection (j) will allow LDCs to establish regulatory asset and capital accounts to capture the expenses related to this new program and adjust those balances as they are recovered in rates. CenterPoint believes this accounting treatment is the correct method to insure that these costs are adequately reflected in a utility's books and supports this portion of the rule.

TGS recommended adding the word "replacement" in subsection (j)(1)(A). The Commission disagrees; the word "installation" includes "replacement." TGS recommended adding language in subsection (j)(1)(C) that would allow a utility operator to record a return on unamortized balance using a pretax cost of capital approved for ratemaking purposes by the Commission or other regulatory body. TGS also recommended a new subsection (j)(1)(E) that would permit a utility operator to recover a return on and amortization of the unamortized balance of the designated regulatory asset accounts through base rates or a separate rider established in a subsequent Statement of Intent filing or other rate adjustment mechanism.

The Commission disagrees with these comments and declines to make the recommended changes. Current regulatory accounting practices already permit a utility to create sub-accounts and to request special rate treatment for specific capital investments. In fact, as proposed, subsection (j) contained nothing new or different with respect to traditional ratemaking principles. Incorporating the suggested changes might it appear that the Commission is approving particular accounting methodologies, treatments, or even retroactive ratemaking, which would not be consistent with Texas Utilities Code, Chapter 104, or the Commission's rules in Chapter 7 of this title (relating to Gas Services Division). Certainly, TGS may make such requests in a Statement of Intent to increase rates, and, as always, would bear the burden of proving that such accounting practices and rate treatment are necessary and reasonable. The Commission adopts subsection (j) without changes to the proposal.

The Commission adopts new §8.209, relating to Distribution Facilities Replacements, with clarifying changes as explained in previous paragraphs.

Subsection (a) sets out the applicability and purpose of the new rule. This section applies to each operator of a gas distribution system that is subject to the requirements of 49 CFR Part 192, and prescribes the minimum requirements by which all operators will develop and implement a risk-based program for the removal or replacement of distribution facilities, including steel service lines, in such gas distribution systems. The risk-based program will work in conjunction with the Distribution Integrity Management Program (DIMP) using scheduled replacements to manage identified risks associated with the integrity of distribution facilities. The Commission has removed the proposed January 1, 2011, effective date of the new rule; the rule will become effective 20 days from the date of filing.

Subsection (b) prescribes the requirements for making joints on below-ground piping. Joints on steel pipe must be welded or designed and installed to resist longitudinal pullout or thrust forces per 49 CFR §192.273. Joints on plastic pipe must be fused or designed and installed to resist longitudinal pullout or thrust forces per ASTM D2513-Category 1.

Subsection (c) provides that no later than August 1, 2011, operators must submit to the Pipeline Safety Division for review and approval their written procedures for implementing the requirements of this section. Each operator must develop a risk-based program to determine the relative risks and their associated consequences within each pipeline system or segment. Operators that determine that steel service lines are the greatest risk must conduct the steel service line leak repair analysis set forth in subsection (d) and use the prescriptive model in subsection (f) for the replacement of those steel service lines. Within 90 days after receipt of an operator's written procedures, the Pipeline Safety Division must either notify the operator of the acceptance of the plan or complete an evaluation of the plan to determine compliance with this section. If the Pipeline Safety Division determines that an operator's procedures do not comply with the requirements of this section, the operator must modify its procedures as directed by the Pipeline Safety Division.

Subsection (d) directs that in developing its risk-based program, each operator must develop a risk analysis using data collected under its DIMP and the data submitted on the PS-95 to determine the risks associated with each of the operator's distribution systems and establish its own risk ranking for pipeline segments and facilities to determine a prioritized schedule for service line or facility replacement. The operator must support the analysis with data, collected to validate system integrity, that allow for the identification of segments or facilities within the system that have the highest relative risk ranking or consequence in the event of a failure. The operator must identify in its risk-based program the distribution piping, by segment, that poses the greatest risk to the operation of the system. In addition, each operator that determines that steel service lines are the greatest risk must conduct a steel service line leak repair analysis to determine the leak repair rate for steel service lines. The Commission clarified the formula for calculating the leak repair rate for below-ground steel service lines to state that it is determined by dividing the annualized number of below-ground leaks repaired on steel service lines (excluding third-party leaks and leaks on steel service lines removed or replaced under this section) by the total number of steel service lines as reported on PHMSA Form F 7100.1-1, the Gas Distribution System Annual Report. Until the Commission has collected three full calendar years of data submitted on the PS-95, operators may use two calendar years of data to perform the steel service line leak repair analysis. Once the Commission has collected three full calendar years of data submitted on the PS-95, each operator that determines that steel service lines are the greatest risk must conduct the steel service line leak repair analysis using the most recent three calendar years of data reported to the Commission on Form PS-95.

Subsection (e) requires each operator to create a risk model that will identify by segment those lines that pose the highest risk ranking or consequence of failure. The determination of risk is based on the degree of hazard associated with the risk factors assigned to the pipeline segments or facilities within each of the operator's distribution systems. The priority of service line or facility replacement is determined by classifying each pipeline segment or facility based on its degree of hazard associated with each risk factor. Each operator must establish its own risk rank-

ing for pipeline segments or facilities to determine the priority for necessary service line or facility replacements. Operator should include the following five factors in developing its risk analysis: pipe location, including proximity to buildings or other structures and the type and use of the buildings and proximity to areas of concentrations of people; composition and nature of the piping system, including the age of the pipe, materials, type of facilities, operating pressures, leak history records, prior leak grade repairs, and other studies; corrosion history of the pipeline, including known areas of significant corrosion or areas where corrosive environments are known to exist, cased crossings of roads, highways, railroads, or other similar locations where there is susceptibility to unique corrosive conditions; environmental factors that affect gas migration, including conditions that could increase the potential for leakage or cause leaking gas to migrate to an area where it could create a hazard, such as extreme weather conditions or events (significant amounts or extended periods of rainfall, extended periods of drought, unusual or prolonged freezing weather, hurricanes, etc.); particular soil conditions; unstable soil; or areas subject to earth movement, subsidence, or extensive growth of tree roots around pipeline facilities that can exert substantial longitudinal force on the pipe and nearby joints; and any other condition known to the operator that has significant potential to initiate a leak or to permit leaking gas to migrate to an area where it could result in a hazard, including construction activity near the pipeline, wall-to-wall pavement, trenchless excavation activities (e.g., boring), blasting, large earth-moving equipment, heavy traffic, increase in operating pressure, and other similar activities or conditions.

Subsection (f) applies to operators that determine under subsection (c) that steel service lines are the greatest risk. Based on the results of the steel service line leak repair analysis under subsection (d), each operator must categorize each segment and complete the removal and replacement of steel service lines by segment according to the risk ranking established pursuant to subsection (e). A segment with an annualized steel service line leak rate of 7.5% or greater is a Priority 1 segment and an operator must complete the removal or replacement by June 30, 2013. A segment with an annualized steel service line leak rate of 5% or greater but less than 7.5% is a Priority 2 segment and an operator must remove or replace no less than 10% of the original inventory per year. A segment with an annualized steel service line leak rate of less than 5% is a Priority 3 segment. An operator is not required to remove or replace any Priority 3 segments; however, upon discovery of a leak on a Priority 3 segment, the operator must remove or replace rather than repair those lines except as outlined in subsection (g).

Subsection (g) provides that for those steel service lines that must remain in service because of specific operational conditions or requirements, each operator must determine if an integrity risk exists on the segment, and if so, must replace the segment with steel as part of the integrity management plan. On adoption, the Commission moved the deadlines for removing and replacing pipeline segments or facilities to subsection (f) of the rule.

Subsection (h) states that, unless otherwise approved in an operator's risk-based plan, all replacement programs require a minimum annual replacement of 5% of the pipeline segments or facilities posting the greatest risk and identified for replacement pursuant to this section. Each operator with steel service lines subject to subsection (f) must establish a schedule for the replacement of steel service lines or other distribution facilities according to the risk ranking established as part of the operator's risk-based program and must submit the schedule to the Pipeline Safety Division for review and approval or amendment under subsection (c).

Subsection (i) requires that, in conjunction with the filing of the pipeline safety user fee pursuant to §8.201 of this title (relating to Pipeline Safety Program Fees) and no later than March 15 of each year, each operator file with the Pipeline Safety Division by System ID, a list of the steel service line or other distribution facilities replaced during the prior calendar year; and the operator's proposed revisions to its risk-based program and proposed work plan for removal or replacement for the current calendar year, the implementation of which is subject to review and amendment by the Pipeline Safety Division. Each operator must notify the Pipeline Safety Division of any revisions to the proposed work plan and, if requested, provide justification for such revision. Within 45 days after receipt of an operator's proposed revisions to its risk-based plan and work plan, the Pipeline Safety Division will notify the operator either of the acceptance of the risk-based program and work plan or of the necessary modifications to the risk-based program and work plan.

Subsection (j) authorizes each operator of a gas distribution system that is subject to the requirements of §7.310 of this title (relating to System of Accounts), to use the provisions of this subsection to account for the investment and expense incurred by the operator to comply with the requirements of this section. The subsection provides that the operator may establish one or more designated regulatory asset accounts in which to record any expenses incurred by the operator in connection with acquisition, installation, or operation (including related depreciation) of facilities that are subject to the requirements of this section; record in one or more designated plant accounts capital costs incurred by the operator for the installation of facilities that are subject to the requirements of this section; record interest on the balance in the designated distribution facility replacement accounts based on the pretax cost of capital last approved for the utility by the Commission; reduce balances in the designated distribution facility replacement accounts by the amounts that are included in and recovered though rates established in a subsequent Statement of Intent filing or other rate adjustment mechanism; and use the presumption set forth in §7.503 of this title (relating to Evidentiary Treatment of Uncontroverted Books and Records of Gas Utilities), with respect to investment and expense incurred by a gas utility for distribution facilities replacement made pursuant to this section. This subsection does not render any final determination of the reasonableness or necessity of any investment or expense.

The Commission adopts the new rule under Texas Natural Resources Code, §81.051 and §81.052, which give the Commission jurisdiction over all common carrier pipelines in Texas, persons owning or operating pipelines in Texas and their pipelines and oil and gas wells, and authorize the Commission to adopt all necessary rules for governing and regulating persons and their operations under the jurisdiction of the Commission as set forth in §81.051, including such rules as the Commission may consider necessary and appropriate to implement state responsibility under any federal law or rules governing such persons and their operations; and Texas Utilities Code, §§121.201 - 121.210, which authorize the Commission to adopt safety standards and practices applicable to the transportation of gas and to associated pipeline facilities within Texas to the maximum degree permissible under, and to take any other requisite action in accordance with, 49 United States Code Annotated, §§60101, *et seq.*

Texas Natural Resources Code, §81.051 and §81.052; Texas Utilities Code, §§121.201 - 121.211; and 49 United States Code Annotated, §§60101, *et seq.,* are affected by the new rule.

Statutory authority: Texas Natural Resources Code, §81.051 and §81.052; Texas Utilities Code, §§121.201 - 121.211; and 49 United States Code Annotated, §§60101, *et seq.*

Cross-reference to statute: Texas Natural Resources Code, Chapter 81; Texas Utilities Code, Chapter 121; and 49 United States Code Annotated, Chapter 601.

Issued in Austin, Texas, on February 22, 2011.

§8.209. Distribution Facilities Replacements.

(a) This section applies to each operator of a gas distribution system that is subject to the requirements of 49 CFR Part 192. This section prescribes the minimum requirements by which all operators will develop and implement a risk-based program for the removal or replacement of distribution facilities, including steel service lines, in such gas distribution systems. The risk-based program will work in conjunction with the Distribution Integrity Management Program (DIMP) using scheduled replacements to manage identified risks associated with the integrity of distribution facilities.

(b) Each operator must make joints on below-ground piping that meets the following requirements:

(1) Joints on steel pipe must be welded or designed and installed to resist longitudinal pullout or thrust forces per 49 CFR §192.273.

(2) Joints on plastic pipe must be fused or designed and installed to resist longitudinal pullout or thrust forces per ASTM D2513-Category 1.

(c) No later than August 1, 2011, each operator must establish and submit to the Pipeline Safety Division for review and approval the operator's written procedures for implementing the requirements of this section. Each operator must develop a risk-based program to determine the relative risks and their associated consequences within each pipeline system or segment. Each operator that determines that steel service lines are the greatest risk must conduct the steel service line leak repair analysis set forth in subsection (d) of this section and use the prescriptive model in subsection (f) of this section for the replacement of those steel service lines. Within 90 days after receipt of an operator's written procedures, the Pipeline Safety Division must either notify the operator of the acceptance of the plan or complete an evaluation of the plan to determine compliance with this section. If the Pipeline Safety Division determines that an operator's procedures do not comply with the requirements of this section, the operator must modify its procedures as directed by the Pipeline Safety Division.

(d) In developing its risk-based program, each operator must develop a risk analysis using data collected under its DIMP and the data submitted on the PS-95 to determine the risks associated with each of the operator's distribution systems and establish its own risk ranking for pipeline segments and facilities to determine a prioritized schedule for service line or facility replacement. The operator must support the analysis with data, collected to validate system integrity, that allow for the identification of segments or facilities within the system that have the highest relative risk ranking or consequence in the event of a failure. The operator must identify in its risk-based program the distribution piping, by segment, that poses the greatest risk to the operation of the system. In addition, each operator that determines that steel service lines are the greatest risk must conduct a steel service line leak repair analysis to determine the leak repair rate for steel service lines. The leak repair rate for below-ground steel service lines is determined by dividing the annualized number of below-ground leaks repaired on steel service lines (excluding third-party leaks and leaks on steel service lines removed or replaced under this section) by the total number of steel service lines as reported on PHMSA Form F 7100.1-1, the Gas Distribution System Annual Report. Until the Commission has collected three full calendar years of data submitted on the PS-95, operators may use two calendar years of data to perform the steel service line leak repair analysis. Once the Commission has collected three full calendar years of data submitted on the PS-95, each operator that determines that steel service lines are the greatest risk must conduct the steel service line leak repair analysis using the most recent three calendar years of data reported to the Commission on Form PS-95.

(e) Each operator must create a risk model that will identify by segment those lines that pose the highest risk ranking or consequence of failure. The determination of risk is based on the degree of hazard associated with the risk factors assigned to the pipeline segments or facilities within each of the operator's distribution systems. The priority of service line or facility replacement is determined by classifying each pipeline segment or facility based on its degree of hazard associated with each risk factor. Each operator must establish its own risk ranking for pipeline segments or facilities to determine the priority for necessary service line or facility replacements. Each operator should include the following factors in developing its risk analysis:

(1) pipe location, including proximity to buildings or other structures and the type and use of the buildings and proximity to areas of concentrations of people;

(2) composition and nature of the piping system, including the age of the pipe, materials, type of facilities, operating pressures, leak history records, prior leak grade repairs, and other studies;

(3) corrosion history of the pipeline, including known areas of significant corrosion or areas where corrosive environments are known to exist, cased crossings of roads, highways, railroads, or other similar locations where there is susceptibility to unique corrosive conditions;

(4) environmental factors that affect gas migration, including conditions that could increase the potential for leakage or cause leaking gas to migrate to an area where it could create a hazard, such as extreme weather conditions or events (significant amounts or extended periods of rainfall, extended periods of drought, unusual or prolonged freezing weather, hurricanes, etc.); particular soil conditions; unstable soil; or areas subject to earth movement, subsidence, or extensive growth of tree roots around pipeline facilities that can exert substantial longitudinal force on the pipe and nearby joints; and

(5) any other condition known to the operator that has significant potential to initiate a leak or to permit leaking gas to migrate to an area where it could result in a hazard, including construction activity near the pipeline, wall-to-wall pavement, trenchless excavation activities (e.g., boring), blasting, large earth-moving equipment, heavy traffic, increase in operating pressure, and other similar activities or conditions.

(f) This subsection applies to operators that determine under subsection (c) of this section that steel service lines are the greatest risk. Based on the results of the steel service line leak repair analysis under subsection (d) of this section, each operator must categorize each segment and complete the removal and replacement of steel service lines by segment according to the risk ranking established pursuant to subsection (e) of this section as follows:

(1) a segment with an annualized steel service line leak rate of 7.5% or greater is a Priority 1 segment and an operator must complete the removal or replacement by June 30, 2013;

(2) a segment with an annualized steel service line leak rate of 5% or greater but less than 7.5% is a Priority 2 segment and an operator must remove or replace no less than 10% of the original inventory per year; and

(3) a segment with an annualized steel service line leak rate of less than 5% is a Priority 3 segment. An operator is not required to remove or replace any Priority 3 segments; however, upon discovery of a leak on a Priority 3 segment, the operator must remove or replace rather than repair those lines except as outlined in subsection (g) of this section.

(g) For those steel service lines that must remain in service because of specific operational conditions or requirements, each operator must determine if an integrity risk exists on the segment, and if so, must replace the segment with steel as part of the integrity management plan.

(h) Unless otherwise approved in an operator's risk-based plan, all replacement programs require a minimum annual replacement of 5% of the pipeline segments or facilities posting the greatest risk and identified for replacement pursuant to this section. Each operator with steel service lines subject to subsection (f) of this section must establish a schedule for the replacement of steel service lines or other distribution facilities according to the risk ranking established as part of the operator's risk-based program and must submit the schedule to the Pipeline Safety Division for review and approval or amendment under subsection (c) of this section.

(i) In conjunction with the filing of the pipeline safety user fee pursuant to §8.201 of this title (relating to Pipeline Safety Program Fees) and no later than March 15 of each year, each operator must file with the Pipeline Safety Division:

(1) by System ID, a list of the steel service line or other distribution facilities replaced during the prior calendar year; and

(2) the operator's proposed revisions to its risk-based program and proposed work plan for removal or replacement for the current calendar year, the implementation of which is subject to review and amendment by the Pipeline Safety Division. Each operator must notify the Pipeline Safety Division of any revisions to the proposed work plan and, if requested, provide justification for such revision. Within 45 days after receipt of an operator's proposed revisions to its risk-based plan and work plan, the Pipeline Safety Division will notify the operator either of the acceptance of the risk-based program and work plan or of the necessary modifications to the risk-based program and work plan.

(j) Each operator of a gas distribution system that is subject to the requirements of §7.310 of this title (relating to System of Accounts) may use the provisions of this subsection to account for the investment and expense incurred by the operator to comply with the requirements of this section.

(1) The operator may:

(A) establish one or more designated regulatory asset accounts in which to record any expenses incurred by the operator in connection with acquisition, installation, or operation (including related depreciation) of facilities that are subject to the requirements of this section;

(B) record in one or more designated plant accounts capital costs incurred by the operator for the installation of facilities that are subject to the requirements of this section;

(C) record interest on the balance in the designated distribution facility replacement accounts based on the pretax cost of capital last approved for the utility by the Commission. The utility's pre-tax cost of capital may be adjusted and applied prospectively if the Commission establishes a new pre-tax cost of capital for the utility in a future proceeding;

(D) reduce balances in the designated distribution facility replacement accounts by the amounts that are included in and recovered though rates established in a subsequent Statement of Intent filing or other rate adjustment mechanism; and

(E) use the presumption set forth in §7.503 of this title (relating to Evidentiary Treatment of Uncontroverted Books and Records of Gas Utilities) with respect to investment and expense incurred by a gas utility for distribution facilities replacement made pursuant to this section.

(2) This subsection does not render any final determination of the reasonableness or necessity of any investment or expense.

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 February 22, 2011.

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Mary Ross McDonald
Managing Director
Railroad Commission of Texas
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For further information, please call: (512) 475-1295

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TITLE 22. EXAMINING BOARDS

PART 8. TEXAS APPRAISER LICENSING AND CERTIFICATION BOARD

CHAPTER 153. RULES RELATING TO PROVISIONS OF THE TEXAS APPRAISER LICENSING AND CERTIFICATION ACT

22 TAC §153.18

The Texas Appraiser Licensing and Certification Board (TALCB) adopts amendments to 22 TAC §153.18, concerning Appraiser Continuing Education (ACE), with changes to the proposed text as published in the December 24, 2010, issue of the *Texas Register* (35 TexReg 11469). The changes to the adopted text that were not in the proposed text are that the new subsection that was erroneously proposed as "(l)" was relettered as "(d)," and the reference to "subparagraphs (A) - (I) of this paragraph" in subsection (c) was changed accordingly. The revisions to the rules as adopted are nonsubstantive and do not change the nature and scope of the rules, do not affect individuals other than those contemplated by the rules as adopted, and do not materially alter the issues raised in the proposed rules.

The amendments clarify the duration of course approval and the process for revoking the approval of courses.

The reasoned justification for the amendments as adopted is more current courses and a greater ability to ensure compliance

with Appraiser Qualifications Board requirements for continuing education courses.

No comments were received regarding the amendments as proposed.

The amendments are adopted under the Texas Occupations Code, §1103.151, Rules Relating to Certificates and Licenses.

The statute affected by this adoption is Texas Occupations Code, Chapter 1103. No other statute, code, or article is affected by the amendments.

§153.18. Appraiser Continuing Education (ACE).

(a) Certified and licensed appraisers. In order to renew a license or certification, an appraiser must successfully complete, during the two-year period preceding the expiration of the certification or license, the equivalent of at least 28 classroom hours of ACE courses approved by the board, including the 7-hour National USPAP Update course. The courses must comply with the requirements set out in subsection (c) of this section.

(b) Appraiser trainees. In order to renew an approval, a trainee must successfully complete, during the one-year period preceding the expiration of the approval, 14 classroom hours of ACE courses. Every two years, the required hours must include the 7-hour National USPAP Update course.

(c) Approval of ACE courses. In approving ACE courses, the board shall base its review and approval of ACE courses upon the then current appraiser qualifications criteria of the Appraiser Qualifications Board (AQB).

(1) The purpose of ACE is to ensure that certified and licensed appraisers participate in programs that maintain and increase their skill, knowledge, and competency in real estate appraising.

(2) The following types of educational offerings that may be accepted for meeting the ACE requirements are listed in subparagraphs (A) - (H) of this paragraph:

(A) A course that meets the requirements for certification or licensing also may be accepted for meeting ACE provided:

(i) The course is devoted to one or more of the appraisal related topics of the then current appraiser qualifications criteria of the Appraiser Qualifications Board (AQB) for continuing education;

(ii) the course was not repeated within a three year period; and

(iii) the educational offering is at least two hours in length.

(B) The board shall accept as continuing education any continuing education offering that has been approved by the AQB course approval process or by another state appraiser licensing and certification board. Course providers may obtain prior approval of continuing education offerings by filing forms prescribed by the board and submitting a letter indicating that the course has been approved by the AQB under its course approval process or by another state appraiser licensing and certification board. Approval of a course based on AQB approval shall expire on the date of expiration of the AQB approval and shall be automatically revoked upon the revocation of AQB approval. Approval of a course based on any other authority shall expire on the earlier of the date of expiration in another state, if applicable, or two years from board approval and shall be automatically revoked upon the revocation of the other state's approval.

(C) Distance education courses, provided that the course is approved by the board and the course either has been presented by an accredited college or university that offers distance education programs in other disciplines, or has been approved by the Appraiser Qualifications Board under its course approval process and the student successfully completed a written examination proctored by an official approved by the presenting college or university or by the sponsoring organization consistent with the requirements of the course accreditation. A minimum number of hours equal to the number of hours of credit must elapse from course enrollment until completion.

(D) "In-house" education and training may not be counted toward ACE requirements.

(E) To satisfy the USPAP ACE requirement, a course must:

(i) be the 7-hour National USPAP Update Course or its equivalent, as determined by the AQB;

(ii) use the current edition of the USPAP promulgated by the Appraisal Standards Board of the Appraisal Foundation;

(iii) provide each student with his or her own permanent copy of the current USPAP promulgated by the Appraisal Standards Board of the Appraisal Foundation; and

(iv) be taught by at least one instructor who is an AQB-certified USPAP instructor and also a certified appraiser.

(F) Providers of USPAP ACE courses may include up to one additional hour of supplemental Texas specific information. This may include such topics as the TALCB Act, TALCB Rules, processes and procedures, enforcement issues, or other topics deemed to be appropriate by the board.

(G) Up to one half of an individual's continuing education requirement may be satisfied through participation other than as a student, in real estate appraisal educational processes and programs. Examples of activities for which credit may be granted are teaching, educational program development, authorship of real estate appraisal textbooks, or similar activities that are determined by the board to be equivalent to obtaining ACE. Appraisal experience may not be substituted for ACE.

(H) Neither current members of the Texas Appraiser Licensing and Certification Board nor those board staff engaged in the approval of courses or educational qualifications of applicants, certificate holders or licensees shall be eligible to teach or guest lecture as part of an approved appraiser qualifying or continuing education course.

(d) If the board determines that a course no longer complies with the requirements for approval, it may suspend or revoke the approval. Proceedings to suspend or revoke approval of a course shall be conducted in accordance with the board's disciplinary provisions for certifications, licenses, authorizations, or registrations.

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 February 28, 2011.

TRD-201100804
Devon V. Bijansky
General Counsel
Texas Appraiser Licensing and Certification Board
Effective date: March 20, 2011
Proposal publication date: December 24, 2010
For further information, please call: (512) 465-3938

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PART 40. ADVISORY BOARD OF ATHLETIC TRAINERS

CHAPTER 871. ATHLETIC TRAINERS

SUBCHAPTER A. GENERAL GUIDELINES AND REQUIREMENTS

22 TAC §§871.5, 871.9, 871.14

The Advisory Board of Athletic Trainers (board) adopts amendments to §§871.5, 871.9, and 871.14, concerning the licensure and regulation of athletic trainers, without changes to the proposed text as published in the December 31, 2010 issue of the *Texas Register* (35 TexReg 11789), and the sections will not be republished.

BACKGROUND AND PURPOSE

The amendments are adopted under Occupations Code, Chapter 451, and establish deadlines for incomplete applications, and for applicants to take the state licensing examination after being approved. The amendments also establish guidelines for accepting the surrender of a license during the course of a complaint.

SECTION-BY-SECTION SUMMARY

The amendment to §871.5 requires an applicant to clear application deficiencies within one year of filing the application or the application shall be voided. The amendment to §871.9 requires an applicant to take the state licensure examination within two years after being approved for examination, or the approval may be withdrawn and the application voided. The amendment to §871.14 establishes guidelines for the board to accept the surrender of a license after a complaint has been filed against the licensee.

COMMENTS

The board did not receive any comments regarding the amendments during the comment period.

STATUTORY AUTHORITY

The amendments are adopted under Occupations Code, §451.103, which authorizes the board to adopt rules necessary for the performance of its duties.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on February 25, 2011.

TRD-201100797
David L. Weir
Chair
Advisory Board of Athletic Trainers
Effective date: March 17, 2011
Proposal publication date: December 31, 2010
For further information, please call: (512) 458-7111 x6972

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TITLE 25. HEALTH SERVICES

PART 1. DEPARTMENT OF STATE HEALTH SERVICES

CHAPTER 104. CHILDREN PARTICIPATING IN RODEOS

25 TAC §§104.1 - 104.5

The Executive Commissioner of the Health and Human Services Commission (commission), on behalf of the Department of State Health Services (department), adopts new §§104.1 - 104.5 concerning children participating in rodeos without changes to the proposed text as published in the November 12, 2010, issue of the *Texas Register* (35 TexReg 10026) and, therefore, the sections will not be republished.

BACKGROUND AND PURPOSE

The new sections are necessary to comply with Health and Safety Code, Chapter 768 (Senate Bill 2505, 81st Legislature, Regular Session, 2009) which requires the establishment of standards for protective vests and bull riding helmets for children who participate in rodeos; and requirements for an educational program on safety, including the proper use of protective gear for children planning to participate in rodeos.

Research and clinical experience in the sport of bull riding has provided evidence there is a high incidence of head, facial and body injury in bull riders. This sport has been implicated in up to 37% of rodeo injuries and is one of the most dangerous sporting activities of the modern era. In one study, the incidence was found to be 1.5 head and facial injuries per 100 rides. This can be compared with Canadian intercollegiate ice hockey, in which the incidence of concussion was 1.55 per 1,000 athlete exposures and high school football in the United States which as many as 5.6% of high school players will suffer a concussion per season.

Some recent evidence has indicated that bull riders who wear protective headgear are much less likely to suffer head injuries. Research is very limited in this area and virtually nonexistent for protective vests. It is known, however, that most bull-related injuries are sustained after the fall when the rider is kicked or gored in the upper or lower portion of the torso. So, it stands to reason that wearing a protective vest would be recommended. Research has been conducted on wearing protective gear while competing in auto racing, baseball, bicycle racing, football, ice hockey, horse racing and skiing. Protective vests and headgear reduce the incidence of injury in these activities. However, most of the benefits of wearing protective vests and headgear during bull riding are derived from anecdotal experience accounts and observation.

In Texas, children as young as four years old compete in livestock riding competitions, and bull riding can begin with children of middle school age. Health and Safety Code, Chapter 768, was written to require children participating in rodeos to wear a protective vest and bull riding helmet; to require the department to develop standards for the vests and helmets; and to require children participating in rodeos associated with schools to participate in an educational program on safety, including the proper use of protective gear.

Because of complex interactions of variables such as bull motion, size and weight; rider size, direction, point of impact and proper fit of protective gear; serious injury and or death can result from both low and high energy impact even when protective gear is worn. It is expected that the new rules will help reduce

the impact of some of the forces reaching the head and body that may occur in bull riding and limit contact with the facial features of the rider to provide enough protection to reduce the risk of injury that would occur without protective gear. Additional protection from injury is possible as a result of the prerequisite educational program on safety, required of children participating in rodeos.

SECTION BY SECTION SUMMARY

New §104.1 states the purpose of the sections which is to establish standards for protective vests and bull riding helmets for children who participate in rodeos; and requirements for a school-based educational program on safety, including the proper use of protective gear, for children planning to participate in rodeos.

New §104.2 defines the terms and phrases used in the rules relating to rodeo, protective gear, education guideline development and school rodeo involvement.

New §104.3 presents specific standards for protective vests and bull riding helmets; specifies to whom the rule applies and addresses parent noncompliance, specified in "Failure of a Parent to Comply," Health and Safety Code, §768.002.

New §104.4 addresses requirements for the educational program on safety and specifies to whom the standard applies; when the program must take place; presents participation requirements and requirements for structuring the educational content of the program.

New §104.5 states when the rules will become effective and why.

COMMENTS

The department, on behalf of the commission, did not receive any comments regarding the proposed rules during the comment period.

LEGAL CERTIFICATION

The Department of State Health Services General Counsel, Lisa Hernandez, certifies that the rules, as adopted, have been reviewed by legal counsel and found to be a valid exercise of the agencies' legal authority.

STATUTORY AUTHORITY

The new sections are authorized by Health and Safety Code, §768.004, which requires the Executive Commissioner of the Health and Human Services Commission to adopt rules with standards for bull riding helmets, protective vests, and rodeo safety educational programs; and Government Code, §531.0055, and Health and Safety Code, §1001.075, which authorize the Executive Commissioner of the Health and Human Services Commission to adopt rules and policies necessary for the operation and provision of health and human services by the department and for the administration of Health and Safety Code, Chapter 1001.

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 February 28, 2011.

TRD-201100801

Lisa Hernandez
General Counsel
Department of State Health Services
Effective date: March 20, 2011
Proposal publication date: November 12, 2010
For further information, please call: (512) 458-7111 x6972

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CHAPTER 125. SPECIAL CARE FACILITIES
SUBCHAPTER C. OPERATIONAL REQUIREMENTS

25 TAC §125.36

The Executive Commissioner of the Health and Human Services Commission (commission), on behalf of the Department of State Health Services (department), adopts new §125.36, concerning the regulation of special care facilities without changes to the proposed text as published in the November 12, 2010, issue of the *Texas Register* (35 TexReg 10028) and, therefore, the section will not be republished.

BACKGROUND AND PURPOSE

The new section is necessary to promulgate a rule in compliance with House Bill 3737, 81st Legislature, Regular Session, 2009. House Bill 3737 amended Health and Safety Code, Chapter 250, which requires special care facilities to conduct nurse aide registry, employee misconduct registry, and criminal history checks on employees and applicants for employment in special care facilities.

The department regulates special care facilities as required by Health and Safety Code, Chapter 248.

SECTION-BY-SECTION SUMMARY

The new §125.36 requires special care facilities to comply with the provisions of Health and Safety Code, Chapter 250; specifies that an unlicensed applicant or employee excludes licensed health professionals and defines a licensed health professional; requires a facility to obtain criminal history record information from the Department of Public Safety for all unlicensed applicants for employment; prohibits a facility from employing unlicensed applicants with certain convictions or contraindications to employment; requires a facility to search the nurse aide registry and the employee misconduct registry for all unlicensed applicants for employment; prohibits a facility from employing an applicant with a finding concerning abuse, neglect, or mistreatment of a patient, or misappropriation of a patient's property; requires a facility to obtain a criminal history check on all unlicensed employees; requires a facility to annually search the nurse aide registry and employee misconduct registry for all unlicensed employees and maintain documentation in the employee's personnel file; requires a facility to immediately discharge employees with a finding concerning abuse, neglect, or mistreatment of a patient, or misappropriation of a patient's property, or a conviction of a crime that bars employment under Health and Safety Code, §250.006, or that is a contraindication to employment; allows a facility to hire an applicant after the nurse aide registry and employee misconduct registry check but before obtaining the criminal conviction check in a justified and documented emergency; and requires a facility to ensure that an employee has no direct contact with a patient until criminal history record is obtained and employability verified.

COMMENTS

The department, on behalf of the commission, did not receive any comments regarding the proposed rule during the comment period.

LEGAL CERTIFICATION

The Department of State Health Services General Counsel, Lisa Hernandez, certifies that the proposed rule, as adopted, has been reviewed by legal counsel and found to be a valid exercise of agencies' legal authority.

STATUTORY AUTHORITY

The new rule is authorized by Health and Safety Code, §248.026, concerning rules and minimum standards for the licensing and regulation of special care facilities; Health and Safety Code, Chapter 250, concerning nurse aide registry and criminal history checks of employees and applicants for employment in certain facilities serving the elderly, persons with disabilities, or persons with terminal illness; and Government Code, §531.0055, and Health and Safety Code, §1001.075, which authorize the Executive Commissioner of the Health and Human Services Commission to adopt rules and policies necessary for the operation and provision of health and human services by the department and for the administration of Health and Safety Code, Chapter 1001.

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 February 28, 2011.

TRD-201100802
Lisa Hernandez
General Counsel
Department of State Health Services
Effective date: March 20, 2011
Proposal publication date: November 12, 2010
For further information, please call: (512) 458-7111 x6972

TITLE 30. ENVIRONMENTAL QUALITY

PART 1. TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

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

SUBCHAPTER B. NEW SOURCE REVIEW PERMITS

DIVISION 1. PERMIT APPLICATION

30 TAC §116.118

The Texas Commission on Environmental Quality (TCEQ or commission) adopts the repeal of §116.118 without changes to the proposal as published in the October 15, 2010, issue of the *Texas Register* (35 TexReg 9215).

Background and Factual Basis for the Adopted Repeal

On April 14, 2010, the United States Environmental Protection Agency (EPA) published notice in the *Federal Register* (75 *Federal Register* 19468) of its disapproval of the TCEQ rules that implement the state's qualified facilities program, established by the Legislature in 1995, as a state implementation plan revision. On September 15, 2010, the commission adopted amendments to Chapter 116 (TCEQ Rule Project Number 2010-006-116-PR; October 1, 2010, issue of the *Texas Register* (35 TexReg 8944)), to address the issues identified by EPA which resulted in the disapproval of the qualified facility program rules.

Section 116.118 addresses facilities that were exempted from obtaining an authorization to emit air contaminants under Texas Health and Safety Code (THSC), §382.0518(g), and how these facilities could meet the requirements of the qualified facility rules. These facilities are also known as grandfathered facilities. In 2001, the legislature added THSC, §382.05181, which requires any facility constructed prior to 1971 to either obtain or apply for an authorization to emit contaminants by March 1, 2007, or March 1, 2008, depending on its location, or cease emitting air contaminants. During the public comment period on Rule Project Number 2010-006-116-PR, EPA also noted that the application of §116.118 appeared to be limited to grandfathered facilities. The commission agreed and decided that §116.118 had no further application and should be repealed. The section could not be repealed at the September 15, 2010, adoption of Rule Project Number 2010-006-116-PR because it was noticed for amendment only in the publication of the rule proposal in the April 16, 2010, issue of the *Texas Register* (35 TexReg 2978). The commission is now taking action to repeal §116.118.

Section Discussion

The commission adopts the repeal of §116.118, Pre-change Qualification, based on the reasoning in Background and Factual Basis for the Proposed Repeal.

Final Regulatory Impact Analysis Determination

The commission reviewed the repeal in light of the regulatory impact analysis requirements of Texas Government Code, §2001.0225, and determined that the repeal does not meet the definition of a major environmental rule as defined in that statute, and in addition, if it did meet the definition, would not be subject to the requirement to prepare a regulatory impact analysis.

A major environmental rule means a rule, the specific intent of which is to protect the environment or reduce risks to human health from environmental exposure, and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. The specific intent of this repeal is to remove an obsolete regulation that has no further application to the air permitting program of the commission. The repeal is not anticipated to add any significant additional costs to affected individuals or businesses beyond what is already required to comply with federal standards and will not adversely affect the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state.

Additionally, the repeal does not meet any of the four applicability criteria for requiring a regulatory impact analysis for a major environmental rule, which are listed in Texas Government Code, §2001.0225(a). Texas Government Code, §2001.0225, applies only to a major environmental rule, the result of which is to: 1) exceed a standard set by federal law, unless the rule is specifi-

cally required by state law; 2) exceed an express requirement of state law, unless the rule is specifically required by federal law; 3) exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or 4) adopt a rule solely under the general powers of the agency instead of under a specific state law.

The repeal will remove a requirement from the air permitting rules that no longer has any applicability to the air permitting program. The repeal does not exceed a requirement of a delegation agreement or a contract between state and federal government if this rulemaking is adopted. The repeal was not developed solely under the general powers of the agency, but is authorized by specific sections of THSC, Chapter 382 (also known as the Texas Clean Air Act (TCAA)), and the Texas Water Code, which are cited in the Statutory Authority section of this rulemaking, including THSC, §382.003(9) and §382.0518.

Therefore, this repeal is not subject to the regulatory analysis provisions of Texas Government Code, §2001.0225(b).

Takings Impact Assessment

Under Texas Government Code, §2007.002(5), taking means a governmental action that affects private real property, in whole or in part or temporarily or permanently, in a manner that requires the governmental entity to compensate the private real property owner as provided by the Fifth and Fourteenth Amendments to the United States Constitution or §17 or §19, Article I, Texas Constitution; or a governmental action that affects an owner's private real property that is the subject of the governmental action, in whole or in part or temporarily or permanently, in a manner that restricts or limits the owner's right to the property that would otherwise exist in the absence of the governmental action; and is the producing cause of a reduction of at least 25% in the market value of the affected private real property, determined by comparing the market value of the property as if the governmental action is not in effect and the market value of the property determined as if the governmental action is in effect.

The commission completed a takings impact analysis for the repeal under the Texas Government Code, §2007.043. The primary purpose of this repeal is to remove an obsolete regulation that has no further application to the air permitting program of the commission. The repeal will not create any additional burden on private real property. The repeal will not affect private real property in a manner that would require compensation to private real property owners under the United States Constitution or the Texas Constitution. The repeal also will not affect private real property in a manner that restricts or limits an owner's right to the property that would otherwise exist in the absence of the governmental action. Therefore, the repeal will not cause a taking under Texas Government Code, Chapter 2007.

Consistency with the Coastal Management Program

The commission determined that this repeal relates to an action or actions subject to the Texas Coastal Management Program (CMP) in accordance with the Coastal Coordination Act of 1991, as amended (Texas Natural Resources Code, §§33.201 *et seq.),* and commission rules in 30 TAC Chapter 281, Subchapter B, concerning Consistency with the Texas Coastal Management Program. As required by §281.45(a)(3) and 31 TAC §505.11(b)(2), relating to Actions and Rules Subject to the Coastal Management Program, commission rules governing air pollutant emissions must be consistent with the applicable goals and policies of the CMP. The commission reviewed this action for consistency with the CMP goals and policies in accordance with the rules of the Coastal Coordination Council and determined that the action is consistent with the applicable CMP goals and policies.

The CMP goal applicable to this repeal is the goal to protect, preserve, and enhance the diversity, quality, quantity, functions, and values of coastal natural resource areas (31 TAC §501.12(l)). The repeal will benefit the environment by removing a potentially confusing regulation to help ensure that all facilities emitting air contaminants have an authorization under the TCAA. The CMP policy applicable to this repeal action is the policy that commission rules comply with federal regulations in 40 Code of Federal Regulations, to protect and enhance air quality in the coastal areas (31 TAC §501.32). Therefore, in accordance with 31 TAC §505.22(e), the commission affirms that this action is consistent with CMP goals and policies.

Effect on Sites Subject to the Federal Operating Permits Program

Chapter 116 is an applicable requirement under 30 TAC Chapter 122, Federal Operating Permits Program. Owners or operators subject to the federal operating permit program must, consistent with the revision process in Chapter 122, include any changes made using the amended Chapter 116 requirements into their operating permit.

Public Comment

The commission scheduled a public hearing on this proposal in Austin on November 8, 2010. The executive director's staff was present for the hearing, but there were no attendees. The commission received no comments on the proposal during the public comment period, which closed on November 15, 2010.

Statutory Authority

The repeal is adopted under Texas Water Code (TWC), §5.103, concerning Rules, and §5.105, concerning General Policy, which authorize the commission to adopt rules necessary to carry out its powers and duties under the TWC; and under Texas Health and Safety Code (THSC), §382.017, concerning Rules, which authorizes the commission to adopt rules consistent with the policy and purposes of the Texas Clean Air Act. The repeal is also adopted under THSC, §382.002, concerning Policy and Purpose, which establishes the commission's purpose to safeguard the state's air resources, consistent with the protection of public health, general welfare, and physical property; §382.003, concerning Definitions; §382.011, concerning General Powers and Duties, which authorizes the commission to control the quality of the state's air; §382.012, concerning State Air Control Plan, which authorizes the commission to prepare and develop a general, comprehensive plan for the control of the state's air; §382.051, concerning Permitting Authority of Commission; Rules, which authorizes the commission to issue a permit by rule for types of facilities that will not significantly contribute air contaminants to the atmosphere; §382.0511, concerning Permit Consolidation and Amendment, which allows the commission to combine permits; §382.0512, concerning Modification of Existing Facility, which restricts what the commission may consider in determining a facility modification; §382.0518, concerning Preconstruction Permit, which authorizes the commission to require a permit before a facility is constructed or modified; and §382.05181, concerning Permit Required, which requires grandfathered facilities to obtain an air quality permit.

The adopted repeal implements THSC, §§5.103, 5.105, 382.002, 382.003, 382.011, 382.012, 382.017, 382.051, 382.0511, 382.0512, 382.0518, and 382.05181.

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 February 25, 2011.

TRD-201100780
Robert Martinez
Director, Environmental Law Division
Texas Commission on Environmental Quality
Effective date: March 17, 2011
Proposal publication date: October 15, 2010
For further information, please call: (512) 239-0177

CHAPTER 334. UNDERGROUND AND ABOVEGROUND STORAGE TANKS

The Texas Commission on Environmental Quality (agency, commission, or TCEQ) adopts the amendments to §§334.42, 334.45, 334.49, and 334.50; and new §§334.601 - 334.606.

Sections 334.42, 334.45, 334.49, 334.50, 334.601 and 334.604 are adopted *without changes* as published in the October 1, 2010, issue of the *Texas Register* (35 TexReg 8880) and will not be republished. Sections 334.602, 334.603, 334.605 and 334.606 are adopted *with changes* to the proposed text and will be republished.

Background and Summary of the Factual Basis for the Adopted Rules

These rules create an underground storage tank (UST) operator training program in order to meet federal requirements contained in the Federal Energy Policy Act of 2005 (Pub.L. 109-58, August 8, 2005, 119 Stat. 294, codified at 42 United States Code, §15801), (Energy Act). The Energy Act required states to implement training programs for persons responsible for the on-site operation and maintenance of UST systems by August 8, 2012. The operator training program in new Subchapter N meets the requirements of the Energy Act and is consistent with the United States Environmental Protection Agency's (EPA) "Grant Guidelines To States For Implementing The Operator Training Provision Of The Energy Policy Act Of 2005."

In addition, changes to Subchapter C, Technical Standards, are adopted to simplify and clarify the existing rules in the areas of secondary containment, sumps, and corrosion protection.

Section by Section Discussion

Throughout this rulemaking package, administrative changes have been made as necessary in accordance with Texas Register requirements.

Subchapter C: Technical Standards

TCEQ adopts the amendment to §334.42(i) by: (1) specifying which UST sumps must be inspected and kept liquid and debris free; (2) specifying that liquid and debris found during any agency or agency-authorized inspections must also be removed and properly disposed; and (3) allowing more time for removal and proper disposal of liquid and debris.

Section 334.45(d)(1)(E)(ii) is amended to increase the amount of existing piping that can be replaced without triggering secondary containment requirements from 20% to 35% and by stating that if the replaced portion of existing piping exceeds 35% or connects to a new dispenser, only the replaced portion of piping would need to be secondarily contained to better facilitate and encourage owners to make tank system upgrades when necessary. Section 334.45(d)(1)(E)(iv) and (vi) is amended to add language that clarifies which sumps and manways require testing, inspection, and sensor probes. Section 334.45(d)(1)(E)(vii) is amended to allow more time to properly dispose of liquids in sumps and to require debris (in addition to liquids) in sumps to be properly disposed of upon discovery.

Section 334.49(a)(4) is amended to add language that clarifies the section's applicability to both existing and new UST systems to assure that the applicability of the section is understood to be universal. Language is also added to clearly specify that the section's requirements also apply not only to underground but also to totally or partially submerged metal components, in keeping with the intent of existing rule language which requires underground metal components to be protected from corrosion if they are in contact with groundwater or any other water. Section 334.49(b)(6) is amended by deleting language which allows submersible pump risers and housings to be protected from corrosion by coating and wrapping with a dielectric.

Section 334.50(b)(2)(A)(i) is amended to add language exempting airport hydrant systems from automatic line leak detection requirements because no practical methodologies are available.

Subchapter N: Operator Training

New Subchapter N, Operator Training, is adopted to create a UST facility operator training program to implement requirements of the Energy Act.

New §334.601 describes the purpose and applicability of the subchapter and remains unchanged from proposal.

New §334.602 requires UST owners and operators to identify and designate for each facility at least one individual for each class of operator (A, B, and C), and it describes the required functions and training of those individuals. This section is amended as follows for adoption:

TCEQ adopts revisions to proposed §334.602(a)(3) by changing the maximum number of facilities an individual may be designated as a Class B Operator from 30 to 50 in response to comments.

TCEQ adopts non-substantive revisions to proposed §334.602(b)(2)(A) to make grammatical corrections.

TCEQ adopts revisions to proposed §334.602(b)(2)(B) to state that a UST facility owner or operator may designate as its Class B Operator a third party (i.e. an individual who is an independent contractor or consultant and is unaffiliated with the facility owner or operator) only if that individual is (in accordance with Chapter 334, Subchapter I and with 30 TAC Chapter 30, Subchapter I) also a licensed UST On-Site Supervisor who holds a current "A" or "A/B" license and who either is, or is employed by, a registered UST Contractor. However, designation of an independent or not affiliated Class B operator in this manner does not also entitle that individual to certification as a Class A Operator for a facility.

TCEQ adopts revisions to proposed §334.602(b)(3)(A), to provide consistency in rule terminology, by changing the term "a person" to the term "an individual." This change was made be-

cause a Class C Operator must be an individual, whereas the term "person" could be interpreted to include business entities.

New §334.603 describes the types of acceptable training and certification processes that meet the requirements of this subchapter and is amended as follows:

TCEQ adopts revisions to proposed §334.603(a)(1) to make a grammatical correction and to further clarify the intent of the rule language by adding the phrase "non-contracted provider" in order to clarify the intent of the paragraph with regard to approved training, such that non-contracted training providers must be sponsored by an association or industry organization recognized nationwide or statewide with regard to its affiliation with regulated petroleum UST systems. Training providers who enter into contracts with TCEQ to provide training do not have to be sponsored by an organization or association as described above.

In response to comments, TCEQ adopts revisions to proposed §334.603(a)(2)(B) to allow Class A and B operators to ensure that site-specific emergency procedures are maintained in an easily accessible location and are immediately available to a Class C operator at a UST facility, rather than requiring the posting of the emergency procedures.

New §334.604 establishes deadlines relating to this subchapter's operator training requirements. Per the deadlines established in the Energy Act, August 8, 2012, is the deadline for the initial training of all classes of operators. This section remains unchanged from proposal.

New §334.605 requires all classes of operators to be re-trained every three years and upon a finding of significant noncompliance. This section is amended as follows for adoption:

TCEQ adopts revisions to proposed §334.605(c), in response to comments, by changing the term "substantial noncompliance" to "significant noncompliance" and defining the new term. In addition, language is added to limit re-training on the basis of significant noncompliance to a maximum of once every 12 months.

New §334.606 describes how the documentation of operator training must be maintained by owners and operators of UST facilities and must be made available to investigators upon request and is amended as follows for adoption:

TCEQ adopts revisions to proposed §334.606, in response to comments, to allow owners and operators of UST facilities (except unmanned facilities) who maintain off-site electronic records, to provide a clear printed copy of operator training certification documentation to a TCEQ investigator or a TCEQ-authorized investigator within 72 hours of a facility investigation.

Final Regulatory Impact Analysis Determination

The commission reviewed the 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. Regarding the first part of this definition, the specific intent of this rulemaking is to "protect the environment" by ensuring that UST operators are trained, which is anticipated to reduce the number of releases to the environment from USTs, and by making minor changes to UST technical requirements to areas such as corrosion protection and secondary containment which are intended to prevent or minimize releases to the environment. However, the second part of the definition of a "major environmental rule" is not met: the adopted rules would not adversely affect, in a material way, the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. The term "material" means "having real importance or great consequence" in contrast to incidental or insignificant impact. Although there are some cost impacts associated with operator training and some cost-saving impacts associated with the UST technical requirement revisions, neither are determined to have the above-described adverse effect on the state so as to constitute a "major environmental rule."

Further, even if it were considered a "major environmental rule," the rulemaking does not meet any of the four requirements listed in Texas Government Code, §2001.0225(a). Texas Government Code, §2001.0225(a) states: "(a) This section applies only to a major environmental rule adopted by a state agency, 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." These adopted rules do not meet any of the four applicability requirements and thus are not subject to the regulatory analysis provisions of the Texas Government Code. Specifically, the adopted rules "do not exceed a standard set by federal law"; they do not "exceed an express requirement of state law"; they do not "exceed a requirement of a federal delegation agreement or contract"; and they are not "adopted solely under the general powers of the agency" but rather under specific authorizing statutes as referenced in the STATUTORY AUTHORITY sections of this rulemaking.

The commission invited public comment regarding the draft regulatory impact analysis determination during the public comment period. No comments were received on the draft regulatory impact analysis determination.

Takings Impact Assessment

The commission evaluated the adopted rules and performed an assessment of whether the adopted rules constitute a taking under Texas Government Code, Chapter 2007. The specific purpose of the adopted rules is to prevent releases and spills from USTs by requiring that UST operators be trained and by making certain minor changes to UST rules relating to such things as corrosion protection and secondary containment. The adopted rules would substantially advance this stated purpose by creating UST operator training requirements which will allow UST operators to be trained effectively and efficiently and by making minor changes to UST technical rules.

The commission's assessment indicates that Texas Government Code, Chapter 2007 does not apply to these adopted rules because certain portions of this action (operator training and secondary containment) fall under the exception listed in Texas Government Code, §2007.003(b)(4): "an action . . . reasonably taken to fulfill an obligation mandated by federal law." In addition, the adopted rules in total are an action in response to a real and

substantial threat to public health and safety; that is designed to significantly advance the health and safety purpose; and that does not impose a greater burden than is necessary to achieve the health and safety purpose. Thus, this action is exempt under Texas Government Code, §2007.003(b)(13).

The adopted rules are an "action taken in response to a real and substantial threat to public health and safety" in that contamination from releases from USTs pose a threat to both soils and groundwater with which the public may come into contact. The adopted rules are "designed to significantly advance the health and safety purpose" by requiring operator training of those who are responsible for and in control of USTs which contain regulated substances and by requiring changes to technical rules which relate to prevention of releases from USTs. The intent of this training and of the technical changes is to reduce the likelihood of releases of contaminants to the environment. The adopted rules "do not impose a greater burden than is necessary to achieve the health and safety purpose" because the training requirements are narrowly tailored to the class of tank operators and narrowly tailored to specific training requirements which have a direct bearing on basic knowledge to prevent UST releases and spills. Additionally, the changes to the technical requirements are also narrowly tailored to achieve a health and safety purpose.

Nevertheless, the commission further performed an assessment of whether these adopted rules constitute a taking under Texas Government Code, Chapter 2007. The adopted rules implement the UST operator training portions of the Energy Act and make certain changes to the UST technical requirements. Promulgation and enforcement of the adopted rules would be neither a statutory nor a constitutional taking of private real property by the commission. Specifically, the adopted rules do not affect a landowner's rights in private real property because this rulemaking does not burden (constitutionally) nor restrict or limit the owner's rights to property and reduce its value by 25% or more beyond that which would otherwise exist in the absence of the adopted rules. There are no burdens imposed on private real property from these adopted rules and the benefits to society are the adopted rules' effect of training UST operators (and clarifications of technical requirements relating to release prevention) such that occurrences of releases of regulated substances into the environment are reduced. As a whole, this rulemaking will not constitute a taking under Texas Government Code, Chapter 2007.

Consistency with the Coastal Management Program

The commission reviewed the rulemaking and found that the rulemaking is subject to the Texas Coastal Management Program (CMP) in accordance with the Coastal Coordination Act, Texas Natural Resources Code, §§33.201 *et seq.,* and therefore, must be consistent with all applicable CMP goals and policies. The commission conducted a consistency determination for the rulemaking in accordance with Coastal Coordination Act Implementation Rules, 31 TAC §505.22, and found the rulemaking is consistent with the applicable CMP goals and policies.

CMP goals applicable to the rulemaking include two of the goals listed in 31 TAC §505.12: (1) to protect, preserve, restore, and enhance the diversity, quality, quantity, functions, and values of coastal natural resource areas (CNRAs); and (2) to minimize loss of human life and property due to the impairment and loss of protective features of CNRAs. Because this rulemaking requires UST operators to be trained in maintaining and operating UST systems and therefore indirectly will aid in preventing releases to the environment from those systems, this rulemaking is consistent with the goals of protecting and preserving coastal environments.

None of the CMP policies stated in 31 TAC §501.13 are relevant to, nor are they adversely affected by, the rulemaking for the reason that there are no substantive changes relating to provision of information, monitoring of compliance, or variances. Additionally, none of the specific policies described in 31 TAC §§501.16 - 501.34 apply to this rulemaking.

Promulgation and enforcement of these rules will not violate or exceed any standards identified in the applicable CMP goals and policies because the rulemaking is consistent with these CMP goals and policies, and because these rules do not create or have a direct or significant adverse effect on any CNRAs.

The commission invited public comment regarding the consistency with the coastal management program during the public comment period. No comments were received on the coastal management program.

Public Comment

The commission held a public hearing on October 26, 2010. The comment period closed on November 1, 2010. The commission received comments from the Texas Petroleum Marketers and Convenience Store Association (TPCA), Wal-Mart Stores, Inc. (Walmart), and Sam's Club (Walmart), which is a subsidiary of Wal-Mart Stores, Inc. and is therefore also referred to below as "Walmart." The commenters were in general support of the rule amendments, and each commenter suggested changes.

Response To Comments

Regarding proposed §334.602(a)(3), Walmart requested that the maximum number of facilities for which an individual may be designated as a Class B Operator be increased from 30 to "75 to 100" facilities to allow reduction in compliance costs. Walmart also suggested that "up to 100" facilities be the maximum number.

The commission adopts a revision to proposed §334.602(a)(3) by changing the maximum number from 30 to 50 facilities. A Class B operator implements the daily aspects of operating, maintaining, and recordkeeping and is responsible for implementing applicable UST regulatory requirements and standards in the field. Therefore, the commission in amenable to increasing the number of facilities to a maximum of 50. Increasing the number of facilities beyond a maximum of 50 may adversely impact an individual's ability to fulfill his or her duties as a Class B Operator.

With regard to proposed §334.602(b)(2)(B), TPCA requested that the commission adopt amendments to add additional requirements for "third party" or "unaffiliated or independent" Class B Operators who are designated to provide services to companies or facilities other than their own.

The commission agrees with the comment and has revised proposed §334.602(b)(2)(B) to state that a UST facility owner or operator may designate as its Class B Operator a third party (i.e., an individual who is an independent contractor or consultant and is not affiliated with the facility owner or operator) only if that individual is (in accordance with Chapter 334, Subchapter I and with Chapter 30, Subchapter I) also a licensed UST On-Site Supervisor who holds a current "A" or "A/B" license and who either is, or is employed by, a registered UST Contractor. However, designation of an independent or not affiliated Class B operator

in this manner does not also entitle that individual to be certified as a Class A Operator for a facility.

TPCA requested that the commission adopt amendments to proposed §334.603(a)(2)(B) to allow site-specific emergency procedures to be maintained in an easily accessible location immediately available to a Class C operator at a UST facility instead of requiring the posting of site-specific emergency procedures.

The commission agrees with the comments and adopts the amendment to the proposed §334.603(a)(2)(B) to incorporate the suggested changes.

TPCA stated support of mandated re-training of Class B Operators in proposed §334.605(c) in the event that a facility for which the Class B Operator is designated receives a notice of violation citing, "substantial noncompliance." TPCA also stated that the proposed definition of "substantial noncompliance" was somewhat ambiguous.

The commission agrees and adopts revisions to proposed §334.605(c), which changes the term from "substantial noncompliance" to "significant noncompliance" and defines the new term. Language is also added to limit the additional re-training of Class B Operators to a maximum of once every 12 months when the re-training requirement is triggered as a result of significant noncompliance with applicable TCEQ rule requirements at one or more facilities under the Class B Operator's purview.

Regarding proposed §334.606, TPCA requested that the commission adopt amendments to allow UST owners and operators up to 72 hours to provide training certification documentation upon request of TCEQ.

The commission agrees and adopts an amendment to §334.606 to allow owners and operators of UST facilities who maintain off-site electronic records to provide a clear printed copy of operator training certification documentation to a TCEQ investigator or a TCEQ-authorized investigator within 72 hours of a facility investigation.

SUBCHAPTER C. TECHNICAL STANDARDS

30 TAC §§334.42, 334.45, 334.49, 334.50

STATUTORY AUTHORITY

The amendments are adopted under Texas Water Code (TWC), §5.012, which provides that the commission is the agency responsible for implementing the constitution and laws of the state relating to the conservation of natural resources and protection of the environment; TWC, §5.103, which authorizes the commission 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; TWC, §5.105, which requires the commission to establish and approve, by rule, all general policy of the commission; TWC, §26.011, which requires the commission to control the quality of water by rule; TWC, §26.039, which states that activities which are inherently or potentially capable of causing or resulting in the spillage or accidental discharge of waste or other substances and which pose serious or significant threats of pollution are subject to reasonable rules establishing safety and preventive measures which the commission may adopt or issue; TWC, §26.121, which prohibits persons from committing any other act or engaging in any other activity which in itself or in conjunction with any other discharge or activity causes, continues to cause, or will cause, pollution of any of the water in the state. The amendments are also adopted under TWC, §26.341, which states that it is the policy of this state to maintain and protect the quality of groundwater and surface water resources in the state from certain substances in underground and aboveground storage tanks that may pollute groundwater and surface water resources, and requires the use of all reasonable methods, including risk-based corrective action to implement this policy; TWC, §26.345, which authorizes the commission to develop a regulatory program and to adopt rules regarding underground storage tanks; TWC, §26.3475, which requires underground storage tank systems to comply with commission requirements for tank release detection equipment and spill and overfill equipment; TWC, §26.348, which directs the commission to adopt standards of performance maintaining a leak detection system; and the federal Energy Policy Act of 2005, (Pub.L. 109-58, August 8, 2005, 119 Stat. 294, codified at 42 United States Code, §15801), (Energy Act), which requires states with authorized underground storage tank programs to implement secondary containment requirements.

The adopted amendments implement TWC, §§26.345, 26.3475, and 26.348. The adopted amendments also implement the portions of the Energy Act dealing with secondary containment of underground storage tank systems and underground storage tank operator training.

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 February 25, 2011.

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Kathleen Decker
Director, Litigation Division
Texas Commission on Environmental Quality
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For further information, please call: (512) 239-2548

SUBCHAPTER N. OPERATOR TRAINING

30 TAC §§334.601 - 334.606

STATUTORY AUTHORITY

The new rules are adopted under Texas Water Code (TWC), §5.012, which provides that the commission is the agency responsible for implementing the constitution and laws of the state relating to the conservation of natural resources and protection of the environment; TWC, §5.103, which authorizes the commission 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; TWC, §5.105, which requires the commission to establish and approve, by rule, all general policy of the commission; TWC, §26.011, which requires the commission to control the quality of water by rule; TWC, §26.039, which states that activities which are inherently or potentially capable of causing or resulting in the spillage or accidental discharge of waste or other substances and which pose serious or significant threats of pollution are subject to reasonable rules establishing safety and preventive measures which the commission may adopt or issue; TWC, §26.121, which prohibits persons from committing any other act or engaging in any other activity which in itself

or in conjunction with any other discharge or activity causes, continues to cause, or will cause, pollution of any of the water in the state. The new rules are also adopted under TWC, §26.341, which states that it is the policy of this state to maintain and protect the quality of groundwater and surface water resources in the state from certain substances in underground and aboveground storage tanks that may pollute groundwater and surface water resources, and requires the use of all reasonable methods, including risk-based corrective action to implement this policy; TWC, §26.345, which authorizes the commission to develop a regulatory program and to adopt rules regarding underground storage tanks; TWC, §26.3475, which requires underground storage tank systems to comply with commission requirements for tank release detection equipment and spill and overfill equipment; TWC, §26.348, which directs the commission to adopt standards of performance for maintaining leak detection systems; and the federal Energy Policy Act of 2005, (Pub.L. 109-58, August 8, 2005, 119 Stat. 294, codified at 42 United States Code 15801), (Energy Act), which requires states with authorized underground storage tank programs to implement operator training requirements.

The adopted new sections implement TWC, §§26.345, 26.3475, and 26.348. The adopted new sections also implement the portions of the Energy Act dealing with secondary containment of underground storage tank systems and underground storage tank operator training.

§334.602. Designation and Training of Classes of Operators.

(a) Owners or operators shall identify and designate for each underground storage tank (UST) facility including unmanned facilities, at least one named individual for each class of operator - Class A, Class B, and Class C. All individuals designated as a Class A, B or C operator shall, at a minimum, be trained and certified in accordance with this subchapter. For the purposes of this subchapter, the terms "Class A Operator", "Class B Operator", "Class C Operator", "Certified Operator" or "Designated Operator" are terms specific to the training requirements of this subchapter. The term "operator" used without these descriptors is the same as the term "operator" used in Chapter 334 generally and as specifically defined in §334.2(70) of this title (relating to Definitions).

(1) Owners and operators may designate different individuals for each class of operator, or one individual for more than one of the operator classes.

(2) Any individual designated for more than one operator class shall be trained and certified for each operator class, except that training and certification as a Class B operator also entitles that individual to certification as a Class A operator.

(3) An individual may be designated as a Class A Operator for one or more facilities. An individual may be designated as a Class B Operator for one or more, but not to exceed 50 facilities. An individual Class C operator must be specifically trained for each facility.

(4) During hours of operation, UST facilities must have at least one certified operator (either a Class A, Class B, or Class C operator) present at the UST facility, except when a UST facility is unmanned. A UST facility is considered unmanned when during the normal course of business there is routinely no attendant present at the facility who could respond to alarms or emergencies related to the UST system. (Examples of unmanned UST facilities include, but are not limited to, card lock or card access fueling stations, telecommunication towers or utility transfer stations serviced by emergency generator USTs, and unattended UST systems located at industrial facilities.) Unmanned facilities must have weather resistant signage clearly visible from any dispenser which instructs users with regard to basic safety procedures, provides the customer with a 24-hour telephone contact number monitored by a Class A, B, or C operator for the facility and provides instruction on when to call 911.

(b) The three classes of operators are identified as follows.

(1) Class A Operator.

(A) Functions. A Class A operator of a UST facility is an individual who typically has primary responsibility for ensuring the proper operation and maintenance of the UST systems, particularly in the capacity of managing resources and personnel necessary to achieve and maintain compliance with all UST regulations.

(B) Qualifications and Training. Class A operators must be trained in and have a general knowledge of the requirements of applicable UST regulations, including, but not limited to registration, system components, product compatibility, spill and overfill prevention, corrosion protection, release detection, recordkeeping, notification, release reporting and response, temporary and permanent closure, operator training, and financial responsibility.

(2) Class B Operator.

(A) Functions. A Class B operator of a UST facility is an individual who ensures the implementation of all applicable requirements of these regulations in the field and implements the day-to-day aspects of the operation and maintenance of, and recordkeeping for, UST systems.

(B) Qualifications and Training. Class B operators must be trained in and have detailed knowledge of the requirements of applicable UST regulations, including, but not limited to registration, system components, product compatibility, spill and overfill prevention, corrosion protection, release detection, recordkeeping, notification, release reporting and response, temporary and permanent closure, operator training and financial responsibility. A UST facility owner or operator may designate as its Class B operator a third party (i.e. an individual who is an independent contractor or consultant and is not affiliated with the facility owner or operator) only if that individual is (in accordance with Chapter 334, Subchapter I and with Chapter 30, Subchapter I of this title relating to Underground Storage Tank On-Site Supervisor Licensing and Contractor Registration; and Underground Storage Tank On-Site Supervisor Licensing and Contractor Registration, respectively) also a licensed UST On-Site Supervisor who holds a current "A" or "A/B" license and who either is, or is employed by, a registered UST Contractor. However, designation of an independent or not affiliated Class B operator in this manner does not also entitle that individual to certification as a Class A operator for a facility.

(3) Class C Operator.

(A) Function. A Class C operator of a UST facility is an individual designated by the UST system owner who typically controls the dispensing of fuel at the facility and is responsible for initial response to alarms, releases, spills, overfills or threats to the public or to the environment.

(B) Training. Class C operators must be trained in both general and facility-specific emergency response procedures, such as: the operation of emergency shut-off equipment; the initial response procedures following system alarm warnings; the appropriate first response actions to releases, spills, or overfills; and the notification procedures to emergency responders and to the designated Class A and Class B operators of a UST facility.

§334.603. Acceptable Operator Training and Certification Processes.

(a) Training. Operator training must fulfill the training requirements described for each class of operator in §334.602 of this title (relating to Designation and Training of Classes of Operators). The following is a list of acceptable approaches to meet the operator training requirements.

(1) Acceptable Training for Class A and Class B operators. Class A and Class B operators must complete a Texas Commission on Environmental Quality (TCEQ) approved operator training course or process that includes the information listed in §334.602(b)(1) or (2) of this title, respectively. Courses or processes may include in-person or on-line training performed by, contracted for, or approved by the TCEQ, and must include an evaluation of operator knowledge through testing, practical demonstration, or other tools deemed acceptable by the TCEQ. In order for a non-contracted provider to be approved by the agency, the provider of a training course or process must be sponsored by an association or industry organization recognized nationwide or statewide with regard to its affiliation with regulated petroleum underground storage tank (UST) systems. All providers will also be required to provide training documentation, including on-going maintenance of records of certified operators. Those records will be required to be accessible to the agency on an on-going basis.

(2) Acceptable Training for Class C Operators.

(A) Class B operators must provide training or ensure that the UST facility's Class C operators otherwise complete training in emergency procedures that includes the information listed in §334.602(b)(3) of this title. Class C operator training programs may include in-class, hands-on, on-line, or any other training format deemed acceptable by the Class B operator.

(B) Class A and Class B operators must ensure that site-specific emergency procedures are maintained in an easily accessible location at the UST facility which is immediately available to the Class C operator, and that site-specific notices that include the location of emergency shut-off devices and appropriate emergency contact telephone numbers are posted in a prominent area at the UST facility that is easily visible to the Class C operator. For the purposes of this subsection, the phrase "easily accessible location" means located in a place and manner that allows a Class C Operator quick and immediate access to site-specific emergency procedures.

(b) Certification. Operators are considered certified operators after successfully completing one of the training processes listed in subsection (a) of this section.

(1) Class A and Class B Operators. Approved training providers must provide verification to all Class A and Class B operators who have successfully completed training, in the form of a written or printable electronic training certificate stating the classification and the date it was obtained. Owners and operators must ensure that training certificates are maintained at each facility, with copies of initial or new certificates provided to the TCEQ at the time that annual self certification is required for that facility.

(2) Class C Operators. A designated Class B operator for a given facility must provide the facility owner or operator with signed and dated written verification in the form of a list of all Class C operators who have been trained for that facility, which includes the date of that training. Owners and operators must ensure that a current and correct list of trained Class C operators is maintained at each facility.

§334.605. Operator Training Frequency.

(a) Certified Class A and Class B Operators must be re-trained in accordance with §334.602 and §334.603 of this title (relating to Designation and Training of Classes of Operators; and Acceptable Operator Training and Certification Processes, respectively) within three years of their last training date.

(b) Certified Class C operators must be re-trained in accordance with §334.602 and §334.603 of this title within three years of their last training date. In addition, Class C operator training is only applicable at the specific facility for which the training was provided.

(c) If an underground storage tank (UST) facility receives a notice of violation and the agency determines that the UST facility is in significant noncompliance, the designated Class B operators for that UST facility, must attend either a Texas Commission on Environmental Quality (TCEQ) approved compliance class that addresses the noted noncompliant areas or an acceptable operator training course as specified in §334.603 of this title, within the time frame specified by the TCEQ for that violation. Class B operators are not, however, required to attend such training more than once every 12 months, regardless of the number of their designated facilities found in violation. (For the purposes of this subchapter, "significant noncompliance" is defined as the failure to provide one or more of the following in accordance with applicable TCEQ rule or Environmental Protection Agency Significant Operational Compliance guidelines: release detection, spill/overfill prevention, corrosion protection or financial assurance.)

§334.606. Documentation of Operator Training.

Owners and operators of underground storage tank facilities (except unmanned facilities) must maintain required training certification documentation as described in §334.603(b) of this title (relating to Acceptable Operator Training and Certification Processes) on-site and must provide it upon request to a Texas Commission on Environmental Quality (TCEQ) or TCEQ-authorized investigator. Documentation may be maintained electronically off-site if that facility has the capability of producing a clear printed copy which can be provided to a TCEQ or TCEQ-authorized investigator within 72 hours of the time of the investigation. Owners and operators of unmanned facilities must provide documentation as requested by a TCEQ investigator or TCEQ-authorized investigator.

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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Kathleen Decker
Director, Litigation Division
Texas Commission on Environmental Quality
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For further information, please call: (512) 239-2548

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TITLE 37. PUBLIC SAFETY AND CORRECTIONS

PART 1. TEXAS DEPARTMENT OF PUBLIC SAFETY

CHAPTER 1. ORGANIZATION AND ADMINISTRATION

SUBCHAPTER C. PERSONNEL AND EMPLOYMENT POLICIES

37 TAC §1.44

The Texas Department of Public Safety (the department) adopts new §1.44, concerning Legislative Leave Pool, without changes to the proposed text as published in the December 24, 2010, issue of the *Texas Register* (35 TexReg 11556).

This new section is necessary to implement Texas Government Code, §411.0161, which requires the department to have a legislative leave policy relating to the operation of the legislative leave pool.

No comments were received regarding the adoption of this new section.

The new section is adopted 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; and Texas Government Code, §411.0161 which authorizes the commission to adopt rules and prescribe procedures relating to the operation of the legislative leave pool.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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PART 5. TEXAS BOARD OF PARDONS AND PAROLES

CHAPTER 141. GENERAL PROVISIONS

SUBCHAPTER G. DEFINITION OF TERMS

37 TAC §141.111

The Texas Board of Pardons and Paroles adopts amendments to 37 TAC §141.111, concerning definition of terms. The amendments are adopted without changes to the proposed text as published in the December 31, 2010, issue of the *Texas Register* (35 TexReg 11826). The text of the rule will not be republished.

The amended rule is adopted to include definitions for inmate, preponderance of the evidence, releasee, treatment and revise the definition for offenders.

No public comments were received regarding adoption of the amendments.

The amended rule is adopted under §§508.001, 508.036 and 508.081, Government Code. Section 508.001 defines releasee. Section 508.036 authorizes the board to adopt rules relating to the decision-making processes used by the board and parole panels. Section 508.081 defines inmate.

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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Bettie Wells
General Counsel
Texas Board of Pardons and Paroles
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For further information, please call: (512) 406-5388

CHAPTER 145. PAROLE

SUBCHAPTER A. PAROLE PROCESS

37 TAC §145.12, §145.15

The Texas Board of Pardons and Paroles adopts amendments to 37 TAC §145.12 and §145.15, concerning action upon review and action upon review; extraordinary vote. The amendments to §145.12 and §145.15 are adopted without changes to the proposed text as published in the December 31, 2010, issue of the *Texas Register* (35 TexReg 11827). The text of the rules will not be republished.

The amendments to §145.12 and §145.15 are adopted to utilize new voting option FI-9 R Sex Offender Treatment Program (SOTP-9).

No public comments were received regarding adoption of the amendments.

The amended rules are adopted under §§508.036, 508.0441 and 508.045, Government Code. Section 508.036 authorizes the board to adopt rules relating to the decision-making processes used by the board and parole panels. Sections 508.0441 and 508.045 authorize the Board to adopt reasonable rules as proper or necessary relating to the eligibility of an offender for release to parole or mandatory supervision and to act on matters of release to parole or mandatory supervision.

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 February 18, 2011.

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CHAPTER 149. MANDATORY SUPERVISION

SUBCHAPTER C. HEARING FOR IMPOSITION OF SEX OFFENDER TREATMENT AND/OR SEX OFFENDER REGISTRATION

37 TAC §§149.40 - 149.55

The Texas Board of Pardons and Paroles adopts new rules to 37 TAC §§149.40 - 149.55, concerning a hearing for the imposition of sex offender treatment and/or sex offender registration. New §§149.40 and 149.49 - 149.54 are adopted with changes to the proposed text as published in the December 31, 2010, issue of the *Texas Register* (35 TexReg 11829). The text of the rules will be republished. New §§149.41 - 149.48 and 149.55 are adopted without changes to the proposed text as published. The text of the rules will not be republished. The explanations to these changes are detailed in the responses to the comments received.

BACKGROUND

On December 20, 2005, Raul Meza filed a civil rights lawsuit styled Raul Meza v. Travis County, et al., Cause No. 1:05CV1008, United States District Court, Western District, Austin Division, alleging, in part, that his due process rights were violated when the Texas Board of Pardons and Paroles imposed sex offender treatment conditions on his mandatory supervision release. On March 24, 2009, the court, in its judgment, found that the "State," the Texas Board of Pardons and Paroles and the Texas Department of Criminal Justice, failed to afford Raul Meza "a hearing meeting the requirements of due process" when it imposed sex-offender conditions on Raul Meza.

The State appealed the lower court's judgment to the United States Court of Appeals, Fifth Circuit. On May 20, 2010, the Fifth Circuit affirmed the lower court's judgment as it relates to the due process required in all aspects except the requirement for Meza to have an attorney. On June 4, 2010, the State filed a Petition for Rehearing En Banc. The Fifth Circuit clarified its opinion on October 19, 2010 by stating its opinion did not address the due process requirements for inmates released on the amended version of mandatory supervision (discretionary mandatory supervision) or parole.

The Board has reviewed and prepared responses on the comments received during the comment period on proposed rules in this new Subchapter C. Comments were received from the Texas Criminal Defense Lawyers Association, the Texas Civil Rights Project, the Cohen Law Firm and Habern, O'Neil and Pawgan L.L.P. regarding §§149.40, 149.41, 149.43, 149.45, 149.47, and 149.49 - 149.54.

Comments regarding §149.40, Purpose:

The comments suggest the rule restricts the operation of the new rules only to releasees who were released to mandatory supervision. While this accurately reflects the language used by the Courts, it ignores the fact that the Court's use of this term was the result of in-artful draftsmanship rather than a substantive distinction between the due process rights of those released to parole as opposed to mandatory supervision. Many courts have recognized that the due process rights of those released to parole and to mandatory supervision are identical.

Agency's Response:

The Board has not revised the rule in response to this comment. These rules were promulgated pursuant to the Fifth Circuit's October 19, 2010 clarified opinion in *Meza v. Livingston,* 608 F.3d 392 (5th Cir. 2010) which stated the May 20, 2010 opinion requiring due process for certain inmates released on mandatory supervision did not address inmates released on the amended version of mandatory supervision (discretionary mandatory supervision) or parole. Since there is clearly established law requiring due process for the offenders identified in the court's clarified opinion, the rules were limited to those types of offenders. The Board has revised the new rule to provide further clarification as to the types of offenders who are entitled to a hearing under this subsection.

Comments regarding §149.41, Public Hearings:

The commenters suggest a provision calling for a panel member to conduct the hearings is ill thought out and will create enormous hardship on otherwise overworked voters and will create logistical difficulties. Panel members work extremely hard voting on an overwhelming number of release matters which encompass initial releases, revocation cases and modifications of conditions of supervision. A "Coleman" type hearing can easily be anticipated to last an hour or more. It is unreasonable to expect this obligation to be added to their workloads. Additionally, has anyone thought about where these hearings will be conducted? Will the parole officers, releasees, witnesses and attorneys be required to one of the six Board locations around the State or will the panel member be required to travel to the local District Parole Office, thereby consuming even more of their time? An easier, simpler, more efficient and cost effective solution would be to amend the pertinent provisions in Section 508 of the Government Code to provide for Revocation Hearing Officers to perform this duty. Hearing officers are already trained in what would be a mirror image of a revocation proceeding. The infrastructure already exists as to notices and subpoenas and evidentiary packages. Hearing officer territories and offices are already in existence throughout the state. Hearing officers rarely conduct more than 3 revocation hearings a day and many offices days go by without the hearing officers conducting any hearings. This is a tasks that they are already trained to perform and they have the time to do the job.

Agency's Response:

The Board has not revised the rule in response to this comment. Texas Government Code, §508.281(a) authorizes a designated agent of the Board to conduct hearings relating to revocation, ineligible release or conditional pardon matters only. The Texas Legislature has the authority to enact legislation and the Governor has the authority to sign the bills into law. As a general rule, laws become effective on September 1st in the year the legislative session ends unless otherwise enacted. The Board has an obligation to promulgate rules in a judicious manner once it becomes aware of clearly established law.

Comments regarding §149.43, Ex Parte Consultations:

The commenters indicate the term "consultations" is awkward and should be changed to read "Ex Parte Communications."

Agency's Response:

The Board has not revised the rule in response to this comment. There is an existing rule with the exact same title which governs the current hearing process. Board Rule 147.3 Ex Parte Consultation (Adopted to be effective November 23, 1993).

Comments regarding §149.45(c), Witnesses:

The commenter acknowledges subsection (c) reflects an accurate statement of the law that the right to confront and cross

examine witnesses may be denied if "good cause" exists. The courts have found that the absence of a witness, even when subpoenaed, does not constitute good cause to deny the releasee this most basic constitutional right. Unfortunately, in the context of the parole revocation hearing process, too many hearing officers believe that mere absence of the witness is sufficient cause to allow the introduction of documentary evidence without confrontation and cross examination. The language in subsection (c) invites similar error. A reference in these rules should specifically state that the absence of a witness does not constitute "Good Cause" for denying the offender his constitutional rights to confront and cross examine witnesses. Additionally, if a "good cause" determination is made an additional subsection should be added requiring the panel member to specifically state in the record the grounds upon which such determination is made. This will allow the courts to make an informed decision as to why the offender was denied the right to confront and cross examine witnesses.

The commenter is concerned §149.45(c)'s language is unnecessarily vague. Proposed §149.45(c) does not give specific direction as to what the standard of "good cause" is for a witness missing a hearing and submitting written testimony. In *United States v. Grandlund,* 71 R.3d 507 (5th Cir. 1995), the Fifth Circuit ruled "there must be an explicit, specific finding of good cause, and the reasons should be made a part of the record of the revocation hearing" if a witness is allowed to submit written testimony. *Granlund,* 71 F.3d at 510 (citing *Baker v. Wainwright,* 527 F.2d 372 (5th Cir. 1976)). At minimum, then, the rule should require the panel member to note the reason he/she found "good cause" in allowing such written testimony beyond failure to comply with a subpoena, and that this be recorded as part of the record to preserve it for appeal. More importantly, accepting written testimony for witnesses who fail to respond to a parolees subpoena would obviously deny parolees the right to cross-examine the witnesses. The Fifth Circuit in *Meza* stated cross-examination and confrontation of those providing evidence against the accused were an essential aspect for these hearings where the accused could be subject to "the most serious deprivations." Id. At 406, citing *Pointer v. Texas,* 380 U.S. 400 (1965). While the Fifth Circuit in *Meza* acknowledged there are some justifications for denying inmates the opportunity to cross-examine witnesses in a hearing, they recognized that this justification did not exist for Mr. Meza and anyone else not incarcerated at the time of their parole hearing. *Meza,* 607 F.3d at 210. Nothing in the *Meza* opinion suggest "good cause" would exist when a witness subpoenaed by the parolee fails to respond to the subpoena.

Agency's Response:

The Board has not revised the rule in response to these comments. There is an existing rule with the exact same language which governs the current hearing process with the exception of the term "panel member" was inserted in this rule in place of "hearing officer." Board Rule 147.5(c) Witness (Adopted to be effective November 23, 1995). The language attributed to *Grandlund* by the commentator is actually contained in a footnote from that case, and is a quote from *Baker v. Wainwright,* 527 F.2d 372, at 378; 1976 U.S. App. LEXIS 12728, 5th Circuit, 1976. *Grandlund,* a 1995 case decided after *Baker,* says at page 510: "Grandlund maintains that the trial court committed reversible error by failing to make a specific finding of good cause to abrogate his right of confrontation. That failure may require reversal in most instances, but may be found to be harmless error where good cause exists, its basis is found in the record, and its finding is implicit in the court's rulings. In the case at bar good cause exists, its basis is readily found in the record, and its existence is implicit in the court's relevant rulings."

Comments regarding §149.47, Evidence:

Commenters recommend subsection (f) be amended to acknowledge that the reports are subject to relevant legal objections such as hearsay, confrontation and cross examination and business records act provisions. They suggest failure to do so invites confusions and litigation and clearly conflicts with subsection (c) in this section that provides that the Texas Rules of Evidence shall apply.

The commenter is concerned §149.47 is problematic because it does not explicitly require the staff member attend the hearing as a state's witness and allow the parolee to cross-examine them. If the panel member were to give state's submission of such reports any weight in their decision, then the balancing test (as developed by the Fifth Circuit in *Meza* and *Grandlund)* would require "a" [sic] the member to attend the hearing and submit to cross-examination. *Grandlund* 71 F.3d at 510.

Agency's Response:

The Board has not revised the rule in response to these comments because there is an existing rule with the exact same language which governs the current revocation hearing process. Board Rule 147.25 Staff Reports (Adopted to be effective January 1, 1976).

Comments regarding §149.49, Decisions:

Commenters recommend subsections (a) and (b) can be combined to read, "A final decision shall be made in writing and shall be mailed to all parties." It should also contain language that the conclusion in the decision shall be supported by specific factual findings based upon the admissible evidence contained in the record. They suggest the language in subsection (a), "adverse to any party," is superfluous. A decision will always be adverse to one of the parties. Subsection (b), the language is awkward and unnecessary. Further, in order to comply with language in various Court opinions, this section should contain language that the conclusion in the decision shall be supported by specific factual findings based upon the admissible evidence contained in the record.

The commenter is concerned §149.49 fails to state a report must be issued which sets forth not only the panel decision, but also include the specific evidence relied upon resulting in a finding that the parolee should be labeled a sex offender, as well as the decision makers' reasons for making this decision. These are central elements to such the statement required by *Meza,* 607 at 413. Otherwise, the parolee is left with no basis by which to understand the decision or to challenge any abuse of discretion of the decision maker to place on sex offender supervision. The Supreme Court has stated "minimum due process" requires "a written statement by the factfinders as to the evidence relied on and reasons for revoking parole." *Morrissey v. Brewer,* 408 U.S. 471,471-72 (1972). The written statement requirement provides the record needed for a parolee to prepare an appeal as well as allow an appellate authority to determine if the Board panel abused its discretion. See Mihal Nahri, Due Process and Probation Revocation: The Written Statement Requirement, 56 Fordham L. Rev. 759, 770-771 (1988). The Fifth Circuit held minimum due process requires the Board to provide parolees "a written statement by the as to the evidence on and the reasons it attached sex offender conditions to his mandatory supervision." *Meza,* 607 F.3d at 409. The rule should specify "general conclu-

sory reasons" do not satisfy the written statement requirement. *United v. Lacy,* 638 R.2d 441, 445 (5th Cir. 1981) "Pro forma language and routine phrases will not satisfy the Morrissey requirements of a written statement." *United States v. Martinez,* 650 F.2d 744, 745 (5th Cir. 1981). A constitutionally sound written statement should "explain [ ] the evidence relied upon and the reason for the decision." Black v. Romano, 471 U.S. 606, 616 (1985) (O'Connor, J.). The purpose of the written statement is "to insure accurate factfinding with respect to any alleged violation and provide [ ] an adequate basis for review to determine if the decision rests on permissible grounds supported by the evidence." Id. at 613-14 (citing *Douglas v. Binder,* 412 U.S.430 (1973)). See also *United States v. Kindred,* 918 F.2d 485,488 (5th Cir. 1990) ('The written statement requirement serves both to provide a basis for review and to encourage accuracy in that the factfinding"). "The requirement that the factfinder state the reason for its and the evidence relied upon" ensures sufficient evidentiary support exists to buttress the findings. *Black,* 471 U.S. 614. The Fifth Circuit in *Martinez* specifically condemned probation revocation that "only stated that the 'defendant has violated the terms of probation."' *Martinez,* 650 F.2d at 745.

Agency's Response:

In response to the comments received and based upon the language in the emergency rule and current hearing rules, the Board revised §149.49(a), (b) and §149.53(b) to provide clarification about the final decision and notification.

Comments regarding §149.50, Procedure after Waiver of Hearing:

The commenters indicate that in order for waiver to be knowing and voluntary, the offender must be informed that a waiver of his rights will likely result in his being placed on a Sex Offender caseload. Further, the offender should be furnished, prior to the execution of a waiver, a copy of the conditions and restrictions they will be subject to if placed on such a caseload. Without fully realizing the consequences of their decision and the changes that will result in their conditions of supervision, the waiver is not an informed or voluntary one. Further, offenders with mental impairments, limited intellectual functioning or limited abilities to read, write and comprehend the English language should not be allowed to waive a hearing in such a complex procedure where the adverse consequences are so significant. Appointment of counsel should be required in such situations as is the current requirement in the parole revocation process.

The commenter indicates that this section of the proposed rule is of particular concern because it does not require the Board to inform the parolee of the consequences of being assigned to sex offender supervision a waiver. Parolees waiving a hearing should be informed of the after signing range of consequences of being placed on sex offender supervision. The parolee should be Informed these consequences can include: 1) Registering as a sex for the duration of their term of parole; 2) Being prohibited from going in, on, or within a specified distance of places where children commonly gather; 3) Attending required psychological counseling, which the parolee will be required to pay for; 4) Being prohibited from residing with, contacting or causing to be contacted any person 17 years of age or younger; 5) Being prohibited from owning and operating a computer or using services, fax services or electronic bulletin boards; 6) Being unable to own or operate a camera; 7) Submitting to psychological evaluation and periodic polygraph examinations, at cost to the parolee; 8) Participating in required group sex offender treatment; 9) Informing employers of parole status, including sex offender classification, may prevent finding employment; 10) Prohibiting possession of any literature, magazine, books or video rapes which depict sexually explicit images, communicating with a person for sexually explicit purposes through telecommunications or any other electronic means, including 1-900 services; 11) Prohibiting participation in any program that includes as participants who are 17 years of age or younger; 12) Prohibiting any unsupervised contact with children under 17 years of age, potentially the parolee's own children; 13) Prohibiting residing in specified locations, which may prevent a parolee obtaining housing; and 14) Being assigned to the highest level of supervision, including possible GPS monitoring through an ankle bracelet, for the duration of the term of parole. In the criminal context, courts are required to admonish defendants of the entire range of punishment attached to the offense before accepting a plea of guilty or of nolo contendre. Tex. Code Criminal Procedure 26.13. Similar notice should be required before a parolee can waive right to a hearing which could result in sex offender classification.

Agency's Response:

The Board has not revised the rule in response to these comments. There is an existing rule with similar language which governs the current hearing process. Board Rule 146.4(b)(1) and (2) Procedure after Waiver of Preliminary Hearing (Adopted to be effective December 29, 1997). In addition, the Texas Department of Criminal Justice is responsible for delivering the notice to the offender, the Board of Pardons and Paroles has no legal authority to promulgate rules which govern the operations of the Texas Department of Criminal Justice Parole Division.

Comments regarding §149.51, Scheduling of Hearing:

Commenters suggest the initial statement should clarify who makes the request for the hearing. The initial statement fails to identify who makes the request for the hearing, the releasee or the Division. Need to clarify if the designee is conducting the hearing or performing ministerial duties. The same sentence also says that "...the panel member or his/her designee shall schedule the hearing...". This is the first mention in the proposed rule of a designee acting on behalf of a panel member. It appears that the term panel member applies only to an appointed Board member or a parole commissioner so confusion is being created within this section by the reference to a designee. For instance, will the designee only be responsible for the ministerial duty of actually scheduling a hearing date or is the Board contemplating that a designee of the panel member will actually conduct the hearing itself. The right is §149.51(1) is broader than that embodied in §149.50(2) which is limited to information TDCJ-PD relied upon the releasee as a sex offender. Section 149.51(1) refers to the setting of the hearing no less than seven calendar days from the date the releasee receives notice. Notice is not defined anywhere in the rules. Does the term "notice" refer to the notice that the releasee currently receives regarding the *Coleman* review? Notice should be spelled out in this section as consisting of notice of all the rights referred to in §149.50, Procedure after Waiver of Hearing; but, should also encompass receipt of all evidence the Division intends to introduce at the actual hearing. In addition, the comments suggest the seven calendar days is not enough time to adequately prepare for the defense of a client. This section provides that hearings can be scheduled as soon as seven calendar days from the request. The current notice employed by the Division and the Board gives the offender 30 days to respond to allegations and documents and to submit documents in their own defense. Oftentimes, from a defense standpoint, independent psychological

testing is required and these cannot be reasonably scheduled and performed by the therapists within a seven calendar day window. To continue with such a narrow window for preparation denies the offender effective representation of counsel. Section 149.51(2) provides that a hearing cannot be scheduled unless the releasee has been served with certain written notices. The reason that the Division rules include this language is due to the unfortunate fact that some parole officers refused to provide attorneys with hearing packets, telling the attorneys to get them from their clients. Often clients are not incarcerated in the same geographical location as the attorney and communications with the client prevent the rapid exchange of documents necessary to the client's defense. The same requirement should be embodied in this subsection. Including this language further the interest of justice and prevents possible litigation in this area.

Additional comments received suggest the first sentence "Upon request, the panel member or designee shall schedule the hearing..." fails to identify who is required to make the request. The commenters assume that initially the Parole Division, as is the current practice, initiates the "Coleman" process and therefore would be the moving party. However, given the fact that the legal standard enunciated in the *Coleman* case deals with issues of the releases abilities to control their sexual impulses, it is entirely conceivable that an offender who meets the standard at one point in time, after a period of counseling may no longer meet that definition. In these instances, the rules should contain language allowing the Release to petition for a hearing based upon changed circumstances when supported by a recommendation from their sex offender treatment provider. This sentence is also the first place in the rules where reference is made to a designee acting on behalf of a panel member. The term panel member appears to mean an appointed Board member or parole commissioner, so confusion is created by the inclusion of this term. Section 149.51(1) allows for the hearing to be set as soon as seven days after a release is notified that they are being taken to a hearing. This simply is an unworkable time frame within which to adequately prepare a defense. Current practices allow the release 30 days to respond after being notified and provided with disclosure of the evidence against them. In order to properly prepare a defense on behalf of a client counsel may need to obtain additional documents such as court records, pre-sentence information reports and offense summaries; materials which may not have been previously provided to the release. Additionally, counsel may desire to obtain the services of a sex offender treatment provide to provide an independent evaluation of the client, or have a polygraph examination administered. The services of these professionals cannot be obtained within the proposed seven day time period. Also, purported victims of the offender's alleged conduct may need to be interviewed and they may provide information favorable to the allegations. Section 149.51(2)(B) provides that a hearing may not be scheduled until after the release is notified of certain rights which in this subparagraph states "Notice to the right of full disclosure". This language should be changed to read that the Release "has been furnished with a copy of all evidence which the Division intends to offer against them" rather than just notifying of the right to have such disclosure made. Additionally, §149.51(2) while providing the offender with a right to receive disclosure of the charges and evidence in advance of the hearing, fails to afford the same right to the offender's counsel. The absence of specially requiring the Division to provide disclosure to counsel upon proper request invites situations which our members have encountered in the revocation sphere where parole refuse to provide documents and tell the lawyers to get the information from the clients. Our lawyers routinely represent clients who may be incarcerated hundreds of miles away from where the lawyers live and office. Current Parole Division Administrative Directives, in recognition of this past practice, have been amended requiring parole officers to provide disclosure in a timely manner to the attorney of record and this subsection should mirror that requirement.

The commenter's concerns regarding §149.51 are providing a parolee only seven days notice clearly parolees' right to adequate notice before a hearing. The Texas of Criminal Appeals held that, in a case, a parolee should be given at least 30 days advance notice of a parole hearing in order to give a opportunity to plan a defense on their behalf and submit all relevant materials. *Ex Parte Retzlaff,* S.W.3d 45, 50 (Tex. App. 2004). The court in on the U.S. Supreme Court's decision in *Greenholtz v. Inmates Nebraska Penal and Correctional Complex* which similarly held one month notice to be constitutional. Id. citing 442 U.S. 1 1979). Providing only seven days notice would prevent parolees preparing an adequate defense. It is unlikely a parolee could hire counsel alone within a single week. Because the Board will rely on psychiatric testimony from the State's experts in these hearings, a parolee will need the opportunity to obtain his own psychiatric experts and be examined. Given some parolees may be incarcerated in remote locations when they receive the notice, it would be extremely difficult for an expert to examine the parolee in less than a week. Even 30 days notice provides a parolee a slim opportunity to present a defense. Seven days is likely constitutionally inadequate.

Agency's Response:

The Board has not revised the rule in response to the majority of the comments received. There is an existing rule with similar language for the current hearing process. Board Rule 146.6(a)(1) Scheduling of Preliminary Hearing (Adopted to be effective December 29, 1997) This rule governs the scheduling of the hearing and the references to "designee" is a staff member who will schedule the hearing as designated by the panel member. The Texas Department of Criminal Justice is responsible for delivering the notice and evidence to the offender, the Board of Pardons and Paroles has no legal authority to promulgate rules which govern the operations of the Texas Department of Criminal Justice Parole Division. The Fifth Circuit in *Meza v. Livingston,* 608 F.3d 392 (5th Cir. 2010) identified the specific due process rights required for this process. Based upon the clearly established law in *Meza,* the specific due process rights are included in this rule. This rule does not state the hearing will be held seven days from the date the offender received the notice. The intent of the rule is to prevent the panel member or their designee from scheduling a hearing if less than seven days has lapsed from the date the notice was delivered to the releasee. The Board has revised subsection (b)(1) and (2) to clarify the language based upon the language in the other sections in Chapter 149, Subchapter C and one comment received.

Comments regarding §149.52, Hearing:

Commenters recommend the Board require a clear and convincing standard of proof. Subsection (b) provides for the burden of proof to be established by a preponderance of the evidence. The commenters believe that the burden should be by the "clear and convincing" standard. The Fifth Circuit has analogized the imposition of sex offender therapy to the psychological treatment that the State of Nebraska sought to impose on the plaintiff in *Vitek v. Jones,* 445 U.S. 480 (1980). The Court in *Coleman* found that "...the Due Process Clause, as interpreted in *Vitek*

provides *Coleman* with a liberty interest in freedom from stigma and compelled treatment on which his parole was conditioned.." The Fifth Circuit reasserted the similarity between the legal protections triggered by involuntary commitment in and those triggered by mandatory sex offender therapy in *Coleman II* saying "...the state's imposition of sex offender status and therapy as conditions of Coleman's release fits squarely within the material facts of Vitek..." An individual, facing loss or restriction of a liberty interest when accompanied by the stigma which so concerned the *Coleman* court, is entitled to a higher standard of proof than preponderance of the credible evidence. In *Addington v. Texas,* 441 U.S. 418 (1979), the Supreme Court discussed that the function of a standard of proof is to instruct the factfinder concerning the degree of confidence our society thinks he should have in the correctness of factual conclusions for a particular type of adjudication. The Court identified three standards of proof for different types of cases. A typical dispute involving money is judged by the preponderance standard and criminal cases are judged by a standard of beyond a reasonable doubt. The magnitude of interests of the defendant in a criminal matter demands such an exacting standard so as to "exclude as nearly as possible the likelihood of an erroneous judgment." The intermediate standard of clear and convincing evidence, according to the court, comes into play when "The interests at stake in those cases (such as involving allegations of fraud or some other quasi criminal wrongdoing) are deemed more substantial than mere loss of money and some jurisdictions accordingly reduce the risk to the defendant of having his reputation tarnished erroneously by increasing the plaintiffs burden of proof." The *Addington* court was considering a factual situation dealing with civil commitment and recognized that such civil commitment constitutes a significant deprivation of liberty so as to require due process protection. This is the same right that has been enunciated in *Coleman* and its progeny. The Court talked extensively about the "social consequences" to the individual and the need to minimize the risk of erroneous decisions. The Court concluded that "...the individual's interest in the outcome of a civil commitment proceeding is of such weight and gravity that due process requires the state to justify commitment by proof more substantial than mere preponderance of the evidence." The logic of the *Addington* court is mirrored in the Fifth Circuit concerns as expressed in *Coleman.* The unusual stigmatizing nature of the sex offender label is as tarnishing and damaging to the individual as being viewed as mentally ill. And, while beyond a reasonable doubt is not applicable, something more than a mere preponderance of the evidence is required in this context. The *Addington* court concluded, "To meet due process demands, the standard has to inform the factfinder that the proof must be greater than the preponderance of the evidence standard applicable to other categories of civil cases." The commenters urge the Rules Committee to carefully read these court opinions and to revise the proposed language to require a clear and convincing standard of proof.

The commenters concerns are that the burden of proof in these proceedings should not be by preponderance of the evidence. The burden of proof should be it is in most cases where a liberty interest is interrupted by a or administratively forced mental health treatment by the state: clear and convincing evidence. The Fifth Circuit stated imposing sex offender therapy is analogous to the psychological treatment the state of Nebraska sought to impose on the plaintiff in *Vitek v. Jones,* 445 U.S. 480 (1980). *Coleman v. Dretke,* 395 F.3d 216, 223 (5th Cir. 2004). "Accordingly, the Due Process Clause, as interpreted in Vitek provides [parolees] with a liberty interest in freedom from the stigma and compelled treatment on which [their] parole was conditioned..." Id. The Supreme Court previously held in *Addington v. Texas* that a "clear and convincing" standard of proof was required for a court to rule to involuntary commit an individual with a mental illness. 441 U.S. 418 (U.S. 1979). The Court in *Vitek* recognized an analogous due process violation in the involuntary transfer of a prisoner to a mental health facility and required similar due process protections for any such transferee. *Vitek* 445 U.S. at 491. Since the requirements of due process are to be similarly construed in *Coleman* hearings, then, the Board of Pardons and Parole should apply the "clear and convincing" standard, and not preponderance of the evidence. The Fifth Circuit reasserted the similarity between the legal protections triggered by involuntary commitment in *Vitek* and those triggered by mandatory sex offender therapy as a condition in *Coleman II,* saying "the state's imposition of sex offender status and therapy as conditions of Coleman's release fits squarely within the material facts of Vitek..." *Coleman v. Dretke,* 409 F.3d 668 (5th Cir. 2005). The Supreme Court in *Addington* stated that preponderance of the evidence as a standard of proof is not appropriate in cases, such as *Coleman* hearings, which implicate constitutionally protected liberty interests. *Addington* 441 U.S. at 433. See also, Nancy Gottlieb, Note, *Vitek v. Jones:* Transfer of Prisoners to Mental Institutions, 8 Am. L. and Med. 175,206-207 (1982). Preponderance of the evidence is usually reserved for civil cases concerning monetary disputes between the parties in whose outcome society has a concern." *Addington,* 441 at 423. The outcome of *Coleman* hearings is of more than just "minimal concern" both society and the parolee. The Fifth Circuit in Meza held that "when deprivation of the liberty interest leads to stigmatizing and physically-invasive consequences, the Court grants greater procedural protections." Meza, 607 at 408. Earlier, in *Coleman,* the court stated "we can hardly conceive, of a state's action bearing 'stigmatizing consequences' than the of a prison inmate as a sex offender." *Coleman I,* 395 F.3d 216, 223 n. 27 (citing Neal 131 F.3d. One facing loss or reduction of a liberty interest resulting from undergoing involuntary mental treatment entitles such a person to an evidentiary standard greater than preponderance of the evidence. The Supreme Court and Fifth Circuit have repeatedly recognized the right to be tried under a clear and convincing standard when facing involuntary psychiatric treatment. The Parole Board should not abridge constitutionally protected rights by using preponderance of the evidence in these Coleman/Meza proceedings as such action could lead to additional litigation.

Agency's Response:

The Board has not revised the rule in response to these comments. There is an existing rule with similar language for the current hearing process. Board Rule 146.9(a) Revocation Hearing (Adopted to be effective December 29, 1997). The *Meza* court found, "In sum, we find that on the spectrum of due process rights afforded by the Court in analogous cases, requiring a parolee who has not been convicted of a sex offense to register as a sex offender or participate in sex offender therapy requires more process than was provided to the inmate in Wolff, but less process than was provided in Vitek." *Meza* at 29. The argument to use the *Vitek* standard does not comport with the court's holding in *Meza.*

Comments regarding §149.54, Releasee's Motion to Reopen Hearing:

The commenters recommend subsection (a) "Substantial error does not include the parole panel's decision" should be eliminated. A parole panel decision that is not supported by the

greater weight of credible evidence should not be sustained. A decision not supported by the evidence violates the due process rights of the releasee and can invite litigation. A parole member's summary report may contain errors regarding admissibility of certain types of documentary or testimonial evidence; the member's summary may inaccurately summarize the evidence in the record; the panel member's conclusion or recommendations may not be supported by the record. If the parole panel makes a decision based upon an erroneous summary of the evidence or the unsupported conclusion of the panel member regarding the ultimate issue of fact, the releasee's due process rights are violated. The administrative appellate process should provide for reconsideration for decision not supported by the record. It will give the Board an opportunity to reconsider the decision and minimize the occurrence of litigation in the Courts.

Agency's Response:

The Board revised §149.54(a) to clarify the language in response to the comments received and based upon the language in the current hearing rules. This section of the rule was patterned after procedures used by Colorado.

The new rules are adopted under §§508.036, 508.0441 and 508.045, Government Code. Section 508.036 authorizes the board to adopt rules relating to the decision-making processes used by the board and parole panels. Sections 508.0441 and 508.045 authorize the Board to adopt reasonable rules as proper or necessary relating to the eligibility of an offender for release to mandatory supervision and to act on matters of release to mandatory supervision.

§149.40. Purpose.

This subchapter only applies to releasees not convicted of a sex offense, who were released to mandatory supervision for an offense, that was committed prior to September 1, 1996 and who are currently on supervision.

§149.49. Decisions.

(a) A final decision or order shall be in writing and delivered to the releasee or attorney as required by §149.53 of this title (relating to Final Panel Disposition).

(b) The releasee or attorney shall be notified in writing and provided with a copy of the report of the parole panel and notice of the right to submit a petition to reopen the hearing.

§149.50. Procedure after Waiver of Hearing.

The parole panel of the board may accept a waiver of the hearing provided that a waiver of the hearing includes the following:

(1) information that releasee was served with written notice of the following:

(A) notice of the right to a hearing, the purpose of which is to determine whether sex offender treatment and/or sex offender registration may be imposed as a special condition of the release;

(B) notice of the right to full disclosure of the evidence;

(C) notice that releasee has the opportunity to be heard in person and to present witnesses and documentary evidence;

(D) notice that the releasee has the right to confront and cross-examine witnesses unless the panel member specifically finds good cause is shown;

(E) notice that the matter will be heard by an impartial decision maker; and

(F) opportunity to waive in writing the right to a hearing.

(2) information TDCJ-PD relied upon to identify the releasee as a sex offender.

§149.51. Scheduling of Hearing.

Upon request, the panel member or his/her designee shall schedule the hearing unless:

(1) fewer than seven calendar days have elapsed from the time the releasee received notice; or

(2) information has not been presented to the panel member or his/her designee that the releasee was served with the following:

(A) notice of the right to a hearing, the purpose of which is to determine whether sex offender treatment and/or sex offender registration may be imposed as a special condition of the release;

(B) notice of the right to full disclosure of the evidence;

(C) notice that releasee has the opportunity to be heard in person and to present witnesses and documentary evidence;

(D) notice that the releasee has the right to confront and cross-examine witnesses unless the panel member specifically finds good cause is shown;

(E) notice that the matter will be heard by an impartial decision maker; and

(F) opportunity to waive in writing the right to a hearing.

§149.52. Hearing.

(a) The panel member shall conduct the hearing for the purpose of determining whether sex offender treatment and/or sex offender registration may be imposed as a special condition of release.

(b) The parole panel must determine, as shown by a preponderance of the evidence, the releasee constitutes a threat to society by reason of his/her lack of sexual control.

(c) At the close of the hearing, the panel member shall collect, prepare and forward to the other panel members:

(1) all documents;

(2) a summary report of the hearing with a written statement as to the evidence relied upon to make a finding or no finding that the releasee constitutes a threat to society by reason of his/her lack of sexual control; and

(3) the recording of the hearing.

§149.53. Final Panel Disposition.

(a) After reviewing the evidence in the summary report of the hearing, the parole panel shall make final disposition of the case by taking one of the following actions:

(1) impose sex offender treatment program;

(2) impose sex offender registration;

(3) impose both sex offender treatment and sex offender registration;

(4) deny imposition of sex offender treatment;

(5) deny imposition of sex offender registration; or

(6) deny imposition of both sex offender treatment and sex offender registration.

(b) The releasee or attorney shall be notified in writing and provided a copy of the summary report of the hearing and notice of the right to submit a petition to reopen the hearing.

§149.54. Releasee's Motion To Reopen Hearing.

(a) The releasee or releasee's attorney shall have 30 days from the date of the parole panel's decision to request a reopening of the case for any substantial error in the process.

(b) A request to reopen the hearing submitted later than 30 days from the date of the parole panel's decision will not be considered unless under exceptional circumstances including but not limited to:

(1) judicial order requiring a hearing;

(2) initial decision was made without opportunity for a hearing or waiver.

(c) Any such request for reopening made under this section must be in writing and delivered to the board or placed in the United States mail and addressed to the Texas Board of Pardons and Paroles, General Counsel, 8610 Shoal Creek Blvd., Austin, Texas 78757.

(d) On transmittal, a parole panel designated by the chair other than the original parole panel shall dispose of the motion by:

(1) granting of the motion and ordering that the hearing be reopened for a stated specified and limited purpose;

(2) denial of the motion; or

(3) reversal of the parole panel decision previously entered.

(e) The releasee and attorney, if any, shall be notified in writing of the parole panel's decision.

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 February 18, 2011.

TRD-201100726
Bettie Wells
General Counsel
Texas Board of Pardons and Paroles
Effective date: March 10, 2011
Proposal publication date: December 31, 2010
For further information, please call: (512) 406-5388

PART 13. TEXAS COMMISSION ON FIRE PROTECTION

CHAPTER 427. TRAINING FACILITY CERTIFICATION

SUBCHAPTER C. TRAINING PROGRAMS FOR ON-SITE AND DISTANCE TRAINING PROVIDERS

37 TAC §427.305

The Texas Commission on Fire Protection (the Commission) adopts amendments to Chapter 427, Training Facility Certification, §427.305, concerning Procedures for Testing Conducted by On-Site and Distance Training Providers. The amendments are adopted without changes to the proposed text published in the November 26, 2010, issue of the *Texas Register* (35 TexReg 10435) and will not be republished.

The amendment is adopted to allow a student to achieve an average score of 70% on all required periodic tests and a comprehensive final test with a passing score of 70%. It also requires that if a Fire Investigator course is taught in phases then a comprehensive final test must be administered and a passing score of 70% must be achieved.

The adopted amendment will allow a student more flexibility when taking periodic tests during a training class. It will allow a student to average their periodic test scores to obtain a 70% passing score; but requires the student to pass a final comprehensive score of 70% upon completion of the class.

No comments were received from the public regarding the proposed amendments.

This amendment is adopted under Texas Government Code, §419.022, General Powers Relating to this Subchapter, and §419.028, Training Programs and Instructors.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on February 18, 2011.

TRD-201100716
Gary L. Warren, Sr.
Executive Director
Texas Commission on Fire Protection
Effective date: March 10, 2011
Proposal publication date: November 26, 2010
For further information, please call: (512) 936-3813

CHAPTER 431. FIRE INVESTIGATION

SUBCHAPTER A. MINIMUM STANDARDS FOR ARSON INVESTIGATOR CERTIFICATION

37 TAC §§431.1, 431.3, 431.13

The Texas Commission on Fire Protection (the Commission) adopts amendments to Chapter 431, Fire Investigation, Subchapter A, Minimum Standards for Arson Investigator Certification, §431.1, concerning Minimum Standards for Arson Investigation Personnel, §431.3, concerning Minimum Standards for Basic Arson Investigator Certification, and §431.13, concerning International Fire Service Accreditation Congress (IFSAC) Seal. The amendments are adopted without changes to the proposed text published in the November 26, 2010, issue of the *Texas Register* (35 TexReg 10436) and will not be republished.

The amendments are adopted to require fire protection personnel who are appointed arson investigation duties to possess a current peace officer license from the Texas Commission on Law Enforcement Officer Standards and Education agency or be able to document that he or she is a federal law enforcement officer. Also, these amendments clarify that in order for an individual to be certified as a Basic Arson Investigator they must hold a current license as a peace officer and they must notify the Commis-

sion of the law enforcement agency who is currently holding their peace officer license. These proposed amendments would also allow individuals that hold a current Arson Investigator certification prior to March 10, 2003 to obtain an IFSAC seal as a Fire Investigator by making application and paying applicable fees to the Commission.

The adopted amendment will clarify the Commission's standards regarding Arson Investigator certification.

No comments were received from the public regarding the proposed amendments.

These amendments are adopted under Texas Government Code, §419.022, General Powers Relating to this Subchapter, and §419.032, Appointment of Fire Protection Personnel.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on February 18, 2011.

TRD-201100717
Gary L. Warren, Sr.
Executive Director
Texas Commission on Fire Protection
Effective date: March 10, 2011
Proposal publication date: November 26, 2010
For further information, please call: (512) 936-3813

SUBCHAPTER B. MINIMUM STANDARDS FOR FIRE INVESTIGATOR CERTIFICATION

37 TAC §431.201, §431.211

The Texas Commission on Fire Protection (the Commission) adopts amendments to Chapter 431, Fire Investigation, Subchapter B, Minimum Standards for Fire Investigator Certification, §431.201, concerning Minimum Standards for Fire Investigation Personnel, and §431.211, concerning International Fire Service Accreditation Congress (IFSAC) Seal--Fire Investigator. The amendments are adopted without changes to the proposed text published in the November 26, 2010, issue of the *Texas Register* (35 TexReg 10437) and will not be republished.

The amendments are adopted to require fire protection personnel who receive temporary or probationary appointment to fire investigation duties be certified as a fire investigator within one year of appointment to the duties and that they possess a current structure fire protection personnel certification. The adopted amendments also allow individuals holding a current commission Fire Investigator certification prior to March 10, 2003 to obtain an IFSAC seal as a Fire Investigator by making application and paying applicable fees to the Commission.

The adopted amendments will clarify the Commission's standards regarding Fire Investigation certification.

No comments were received from the public regarding the proposed amendments.

These amendments are adopted under Texas Government Code, §419.022, General Powers Relating to this Subchapter, and §419.032, Appointment of Fire Protection Personnel.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on February 18, 2011.

TRD-201100718
Gary L. Warren, Sr.
Executive Director
Texas Commission on Fire Protection
Effective date: March 10, 2011
Proposal publication date: November 26, 2010
For further information, please call: (512) 936-3813

CHAPTER 435. FIRE FIGHTER SAFETY

37 TAC §435.25

The Texas Commission on Fire Protection (the Commission) adopts new Chapter 435, Fire Fighter Safety, §435.25, Courage to be Safe So Everyone Goes Home Program. The new section is adopted without changes to the proposed text as published in the November 26, 2010, issue of the *Texas Register* (35 TexReg 10438) and will not be republished.

The new section is adopted to require all certified fire protection personnel in the State of Texas to complete the National Fallen Firefighters Foundation's "Courage to be Safe So Everyone Goes Home" program before December 1, 2015. It also requires that all regulated entities report the completion of the training to the Commission through its web-based reporting system.

The adopted new section will ensure that all certified fire protection personnel have taken the program thus improving the safety of all certified fire protection personnel across the state of Texas.

No comments were received from the public regarding the proposed new section.

The new section is adopted under Texas Government Code, §419.022, General Powers Relating to this Subchapter; and §419.032, Appointment of Fire Protection Personnel.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on February 18, 2011.

TRD-201100719
Gary L. Warren, Sr.
Executive Director
Texas Commission on Fire Protection
Effective date: March 10, 2011
Proposal publication date: November 26, 2010
For further information, please call: (512) 936-3813

CHAPTER 437. FEES

37 TAC §§437.1, 437.5, 437.7

The Texas Commission on Fire Protection (the Commission) adopts amendments to Chapter 437, Fees, §437.1, Purpose and Scope; §437.5, Renewal Fees; and §437.7, Standards Manual and Certification Curriculum Manual Fees. The amendments are adopted without changes to the proposed text as published in the November 26, 2010, issue of the *Texas Register* (35 TexReg 10438) and will not be republished.

These amendments are adopted to remove obsolete language requiring the payment of fees for Commission manuals. The Commission no longer provides copies of the manuals. The Commission provides this information free via its web site. It also removes language regarding certification renewal statements for individuals being mailed at a separate time from those of employing entities. The Commission is adopting that certification renewal statements for employing entities and individuals holding certification be mailed at the same time each year.

The adopted amendments will clarify language regarding the time of year the Commission will mail certification renewals; and it also removes obsolete language regarding fees for certification manuals.

No comments were received from the public regarding the proposed amendments.

These amendments are adopted under Texas Government Code, §419.034, Certificate Renewal; and §419.0341, Individual Certificate Holder; Certificate Renewal.

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 February 18, 2011.

TRD-201100720
Gary L. Warren, Sr.
Executive Director
Texas Commission on Fire Protection
Effective date: March 10, 2011
Proposal publication date: November 26, 2010
For further information, please call: (512) 936-3813

TITLE 40. SOCIAL SERVICES AND ASSISTANCE

PART 12. TEXAS BOARD OF OCCUPATIONAL THERAPY EXAMINERS

CHAPTER 376. REGISTRATION OF FACILITIES

40 TAC §376.5

The Texas Board of Occupational Therapy Examiners (TBOTE) adopts an amendment to §376.5, concerning Exemptions to Registration, without changes to the proposed text as published in the December 3, 2010, issue of the *Texas Register* (35 TexReg 10623) and will not be republished.

The amendment will exempt the registration of facilities where Early Childhood Intervention (ECI) takes place.

Two comments were received regarding adoption of the amendment and both were in favor of the proposed amendment.

The amendment is adopted under the Occupational Therapy Act, Title 3, Subtitle H, Chapter 454, Occupations Code, which provides the Texas Board of Occupational Therapy Examiners with the authority of adopt rules consistent with this Act to carry out the duties in administering this Act.

Title 3, Subtitle H, Chapter 454 of the Occupations Code is affected by this amended section.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on February 18, 2011.

TRD-201100714
John P. Maline
Executive Director
Texas Board of Occupational Therapy Examiners
Effective date: March 10, 2011
Proposal publication date: December 3, 2010
For further information, please call: (512) 305-6900

TITLE 43. TRANSPORTATION

PART 1. TEXAS DEPARTMENT OF TRANSPORTATION

CHAPTER 7. RAIL FACILITIES

The Texas Department of Transportation (department) adopts the repeal of §7.1, amendments to §§7.10 - 7.12, the repeal of §7.13 and new §7.13, and amendments to §§7.20 - 7.22 and §§7.30 - 7.42, all concerning rail facilities. The repeal of §7.1 and §7.13, new §7.13, and amendments to §§7.10 - 7.12, 7.20 - 7.22 and 7.30 - 7.42 are adopted without changes to the proposed text as published in the December 3, 2010, issue of the *Texas Register* (35 TexReg 10623) and will not be republished. The effective date for these sections is April 1, 2011.

EXPLANATION OF ADOPTED AMENDMENTS, REPEAL, AND NEW SECTION

The department is amending its rules related to rail facilities to correct statutory citations and to make nonsubstantive changes. Additionally, there are several substantive changes related to contracting with rail operators and leasing.

Section 7.1, Definitions, which contains the definitions of "commission" and "department," is repealed. These terms are defined in each of the subchapters of Chapter 7, so this section is repealed because its provisions are redundant of other provisions in the chapter and therefore, unnecessary.

Amendments to §7.10, Definitions, remove the definitions of terms that are not used in the subchapter.

Amendments to §7.11, Comprehensive Development Agreements, corrects a reference to the heading of 43 TAC Chapter 27, Subchapter A.

Amendments to §7.12, Construction and Maintenance Contracts, remove subsection (a) because the subsection merely repeated statutory language, which is not needed. Further, while the subsection included a reference to requirements for a contract with a rail operator, the commission believes for the purpose of clarity, such requirements should be in another section, §7.13. The subsequent subsections are relettered. The amendments also correct the reference to the §9.15 heading title.

Section 7.13, Leasing of Rail Facilities, is repealed and replaced with new §7.13, Contracts with Rail Operators and Leases. This section provides that the department may contract with a public or private entity to operate or lease a rail facility acquired or constructed by the department. The department must use a competitive process to select the operator or lessee. For the selection of a rail operator, Transportation Code, §91.051 directs the contract be awarded to the lowest responsible bidder that complies with the department's criteria. For the selection of a lessee, the contract will be awarded to the bidder whose proposal offers the apparent best value to the department. The apparent best value standard is the same standard as used by the department to select the bidder for a comprehensive development agreement. When the department seeks an operator or lessee the department must publish a request for proposals and evaluate the proposals based on specified criteria. The department will rank the proposals and attempt to negotiate an agreement with the highest ranked proposer. The executive director will submit a summary of the agreement's terms to the Texas Transportation Commission (commission), and the commission may authorize the agreement's execution if it finds the agreement to be in the best interest of the state and furthers state, regional, and local transportation plans, programs, policies, and goals. The department is not required to use a competitive process when it contracts for rail operator services for 90 days or less, when it contracts with a public entity, or when it leases railroad track that connects to only one railroad line.

The new section retains most of the existing language but clarifies that the department will use a competitive process for both contracts with rail operators and leases, because they may be separate types of contracts. It also adds provisions that exempt the department from the competitive process requirements for certain types of contracts. Engaging in a competitive process with a rail operator for a period of less than 90 days would unduly hinder the department's ability to hire operators for short periods of time. Additionally, Transportation Code, §§91.051, 91.052, and 91.102 exempt the department from competitive bidding requirements when contracting with public entities. Finally, when the department devotes rail resources in a region for a narrow purpose, for example, for the purpose of economic development or safety, it may use its resources to develop a segment and lease it to the adjacent railroad without competition.

Amendments to §7.20, Definitions, remove the definitions of terms that are not used in the subchapter.

Amendments to §7.21, Abandonment of Rail Line by Rural Rail Transportation District, correct a statutory citation and provide an address for the director of the Rail Division. The amendments also clarify the time for submitting an application for abandonment and the contents of that application to ensure districts understand the timeline and necessary documentation.

Amendments to §7.22, Acquisition of Abandoned Rail Facilities, clarify that the department may acquire abandoned rail facilities from a rural rail transportation district and remove redundant wording.

Amendments to §7.30, Definitions, add a definition for the term "department" and change the definition of "division director" to reflect the shift of the responsibility for rail safety from the department's Transportation and Programming Division to the Rail Division.

Amendments to §7.31, Safety Requirements, correct statutory citations and add new federal railroad safety requirements to the list of minimum railroad safety requirements for the state.

Amendments to §7.32, Filing Requirements, correct statutory citations and add new federal filing requirements to the list of items a railroad must file with the department upon request. The amendments also provide a railroad with the option of filing with the department the telephone numbers of either the railroad dispatcher or a supervisor rather than limiting the requirement to the number of the dispatcher. The amendments state that the department prefers that filings be made in electronic digital media format.

Amendments to §7.33, Reports of Accidents/Incidents, replace a reference to the Transportation Planning and Programming Division with a reference to the Rail Division. Additionally, the amendments specify that the department prefers that railroads electronically file copies of Federal Railroad Administration reports requested by the department.

Amendments to §7.34, Hazardous Materials - Telephonic Reports of Incidents, replace a reference to the Transportation Planning and Programming Division with a reference to the Rail Division.

Amendments to §7.35, Hazardous Materials - Written Reports, clarify the contents of a report a railroad must file listing types and classifications of hazardous materials.

Amendments to §7.36, Clearance of Structures Over and Alongside Railway Tracks, replace existing language with a concise statement of the Texas Clearance Law (Texas Civil Statutes, Articles 6559a-6559f). A clear space is required to 22 feet above the top of the rails and 8-1/2 feet from the center line of a railroad track. The changes remove references to provisions the department believes are archaic and no longer used by railroads. The amendments also correct statutory citations.

Amendments to §7.37, Visual Obstructions at Public Grade Crossings, add new definitions for "active warning device" and "passive public grade crossing," for the purpose of clarity. The section concerns preventing visual obstructions, namely standing equipment on the track, vegetation, and permanent structures.

Amendments to §7.38, Wayside Detector, Map, List, or Chart, replace a reference to the Transportation Planning and Programming Division with a reference to the Rail Division.

Amendments to §7.39, Right to Inspect, provide that the department has the authority to inspect railroad facilities equipment, records, and operations relating to the packaging, loading, unloading, or transportation of hazardous materials in accordance with Transportation Code §111.102. Vernon's Civil Statutes Article 6448b, which previously assigned this inspection authority to the Railroad Commission, was codified as Transportation Code §111.102. Section 111.102 transferred this authority to the department.

Amendments to §7.40, Enforcement of Safety Requirements, correct a statutory citation. The amendments clarify that a violation of any Federal Railroad Administration safety requirement may be the subject of enforcement. The amendments also remove the deadlines regarding timeliness of Federal Railroad Administration enforcement action. The provisions that describe timely action have not been used and so have been deleted.

Amendments to §7.41, Rail Safety Program Fee, specify that "interchanged" refers to the transfer of rail cars between railroads. Additionally, the amendments clarify that annual reports submitted to the department will be verified as to their accuracy.

Amendments to §7.42, Administrative Review, replace a reference to the Transportation Planning and Programming Division with a reference to the Rail Division and adds an address for the department.

COMMENTS

No comments on the proposed amendments, repeals, and new section were received.

SUBCHAPTER A. GENERAL PROVISIONS

43 TAC §7.1

STATUTORY AUTHORITY

The repeal is 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, §91.003, which provides the commission with the authority to adopt rules to implement Transportation Code, Chapter 91, relating to rail facilities, and Transportation Code, §111.101, which authorizes the commission to adopt rules to implement federal safety laws.

CROSS REFERENCE TO STATUTE

Transportation Code, Chapter 91 and Chapter 111, Subchapter C.

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 February 25, 2011.

TRD-201100785
Joanne Wright
Deputy General Counsel
Texas Department of Transportation
Effective date: April 1, 2011
Proposal publication date: December 3, 2010
For further information, please call: (512) 463-8683

SUBCHAPTER B. CONTRACTS

43 TAC §§7.10 - 7.13

STATUTORY AUTHORITY

The amendments and new section 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, §91.003, which provides the commission with the authority to adopt rules to implement Transportation Code, Chapter 91, relating to rail facilities, and Transportation Code, §111.101, which authorizes the commission to adopt rules to implement federal safety laws.

CROSS REFERENCE TO STATUTE

Transportation Code, Chapter 91 and Chapter 111, Subchapter C.

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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Joanne Wright
Deputy General Counsel
Texas Department of Transportation
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For further information, please call: (512) 463-8683

43 TAC §7.13

STATUTORY AUTHORITY

The repeal is 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, §91.003, which provides the commission with the authority to adopt rules to implement Transportation Code, Chapter 91, relating to rail facilities, and Transportation Code, §111.101, which authorizes the commission to adopt rules to implement federal safety laws.

CROSS REFERENCE TO STATUTE

Transportation Code, Chapter 91 and Chapter 111, Subchapter C.

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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Joanne Wright
Deputy General Counsel
Texas Department of Transportation
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Proposal publication date: December 3, 2010
For further information, please call: (512) 463-8683

SUBCHAPTER C. ABANDONED RAIL

43 TAC §§7.20 - 7.22

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, §91.003, which provides the commission with the authority to adopt rules to implement Transportation Code, Chapter 91, relating to rail facilities, and Transportation Code, §111.101, which authorizes the commission to adopt rules to implement federal safety laws.

CROSS REFERENCE TO STATUTE

Transportation Code, Chapter 91 and Chapter 111, Subchapter C.

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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Joanne Wright
Deputy General Counsel
Texas Department of Transportation
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Proposal publication date: December 3, 2010
For further information, please call: (512) 463-8683

SUBCHAPTER D. RAIL SAFETY

43 TAC §§7.30 - 7.42

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, §91.003, which provides the commission with the authority to adopt rules to implement Transportation Code, Chapter 91, relating to rail facilities, and Transportation Code, §111.101, which authorizes the commission to adopt rules to implement federal safety laws.

CROSS REFERENCE TO STATUTE

Transportation Code, Chapter 91 and Chapter 111, Subchapter C.

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-201100789
Joanne Wright
Deputy General Counsel
Texas Department of Transportation
Effective date: April 1, 2011
Proposal publication date: December 3, 2010
For further information, please call: (512) 463-8683

CHAPTER 15. FINANCING AND CONSTRUCTION OF TRANSPORTATION PROJECTS

SUBCHAPTER E. FEDERAL, STATE, AND LOCAL PARTICIPATION

43 TAC §15.52

The Texas Department of Transportation (department) adopts amendments to §15.52, Agreements, concerning federal, state, and local participation. The amendments to §15.52 are adopted without changes to the proposed text as published in the December 31, 2010, issue of the *Texas Register* (35 TexReg 11841) and will not be republished.

EXPLANATION OF ADOPTED AMENDMENTS

Amendments to §15.52 expand the application of the rule and modify the current prohibition that prevents the department from entering agreements required by §15.52 (cost participation agreements) that provide for local governments to improve freeway mainlanes of the state highway system. Currently, cost participation agreements are not required for situations in which a local government or reservoir agency voluntarily provides financial assistance for a highway improvement project. The amendments require the department and the local government or reservoir agency to enter into a cost participation agreement in such cases. In addition, the amendments will allow the executive director, or designee, to enter cost participation agreements that include the local government's performance of certain maintenance activities on the freeway mainlanes of the state highway system that do not alter the physical character of the roadway surface, such as sweeping and debris removal.

The change to §15.52(8)(B) adds new clause (ii) that clarifies the meaning of the phrase "projects that improve the freeway mainlanes on the state highway system" as used in paragraph (8)(B) as not including maintenance activities that do not alter the physical character of the roadway surface, such as sweeping and debris removal. The amendments redesignate existing clauses (ii) - (iv) as (iii) - (v), respectively.

COMMENTS

No comments on the proposed amendments were received.

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.

CROSS REFERENCE TO STATUTE

None.

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 February 25, 2011.

TRD-201100790

Joanne Wright
Deputy General Counsel
Texas Department of Transportation
Effective date: March 17, 2011
Proposal publication date: December 31, 2010
For further information, please call: (512) 463-8683

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.

Proposed Rule Reviews

Credit Union Department

Title 7, Part 6

The Texas Credit Union Commission will review and consider for readoption, revision, or repeal Chapter 91, §91.801 (Investments in Credit Union Service Organizations), §91.802 (Other Investments), §91.803 (Investment Limits and Prohibitions), §91.804 (Custody and Safekeeping), §91.805 (Loan Participation Investments), §91.808 (Reporting Investment Activities to the Board of Directors), §91.901 (Reserve Requirements), and §91.902 (Dividends) of Title 7, Part 6 of the Texas Administrative Code in preparation for the Commission's Rule Review as required by §2001.039, Government Code.

An assessment will be made by the Commission as to whether the reasons for adopting or readopting these rules continue to exist. Each rule will be reviewed to determine whether it is obsolete, whether the rule reflects current legal and policy considerations, and whether the rule reflects current procedures of the Credit Union Department.

Comments or questions regarding these rules may be submitted in writing to Credit Union Department, 914 East Anderson Lane, Austin, Texas 78752-1699, or electronically to info@tcud.state.tx.us. The deadline for comments is April 15, 2011.

The Commission also invites your comments on how to make these rules easier to understand. For example:

* Do the rules organize the material to suit your needs? If not, how could the material be better organized?

* Do the rules clearly state the requirements? If not, how could the rule be more clearly stated?

* Do the rules contain technical language or jargon that isn't clear? If so, what language requires clarification?

* Would a different format (grouping and order of sections, use of headings, paragraphing) make the rule easier to understand? If so, what changes to the format would make the rule easier to understand?

* Would more (but shorter) sections be better in any of the rules? If so, what sections should be changed?

Any proposed changes to these rules as a result of the rule review will be published in the Proposed Rules Section of the *Texas Register.* The proposed rules will be open for public comment prior to final adoption by the Commission.

TRD-201100808

Harold E. Feeney
Commissioner
Credit Union Department
Filed: February 28, 2011

♦ ♦ ♦

Adopted Rule Reviews

Texas Department of Licensing and Regulation

Title 16, Part 4

The Texas Department of Licensing and Regulation (Department) filed a notice of intent to review and consider for readoption, revision, or repeal 16 Texas Administrative Code (TAC) Chapter 66, Registration of Property Tax Consultants. The Notice of Intent to Review was published in the November 12, 2010, issue of the *Texas Register* (35 TexReg 10061). A subsequent notice was published in the December 10, 2010, issue of the *Texas Register* (35 TexReg 11077), which extended the public comment period until January 13, 2011.

Texas Government Code §2001.039 requires state agencies to review their rules every four years to determine if the reasons for initially adopting the rules continue to exist. The rules implementing the Registration of Property Tax Consultants program under Texas Occupations Code, Chapter 1152, were scheduled for this four-year review.

The Department has reviewed these rules and has determined that the rules are still essential in implementing the statutory provisions of Texas Occupations Code, Chapter 1152, Registration of Property Tax Consultants. The Department received public comments in response to the Notice of Intent to Review from three (3) interested parties: Institute for Professionals in Taxation (IPT); Harris County Appraisal District; and an individual who is a registered property tax consultant.

One comment advocates changing the one-year renewal period to a two-year period. Another commenter is an education provider that advocates that education is the best means to ensure a high level of professional responsibility. The last commenter advocates changes to the code of ethics under 16 TAC §66.100. These comments will be taken under consideration as part of any possible rule changes in the future.

The Texas Commission of Licensing and Regulation (Commission), the Department's governing body, readopted the rules at 16 TAC Chapter 66, Registration of Property Tax Consultants, at its meeting on January 25, 2011, in their current form. As a result of this review process, the Department may propose amendments in the future that may further clarify or supplement the existing rules. Any future proposed changes to the rules will be published in the Proposed Rules section of the *Texas Register* and will be open for public comment prior to final adoption

by the Commission in accordance with the requirements of the Administrative Procedure Act, Texas Government Code, Chapter 2001.

The rules are readopted by the Commission in accordance with Texas Government Code, §2001.039. This concludes the review of 16 TAC Chapter 66, Registration of Property Tax Consultants.

TRD-201100845
William H. Kuntz, Jr.
Executive Director
Texas Department of Licensing and Regulation
Filed: March 1, 2011

The Texas Department of Licensing and Regulation (Department) filed a notice of intent to review and consider for readoption, revision, or repeal 16 Texas Administrative Code (TAC) Chapter 71, Warrantors of Vehicle Protection Products. The Notice of Intent to Review was published in the November 12, 2010, issue of the *Texas Register* (35 TexReg 10062). A subsequent notice was published in the December 10, 2010, issue of the *Texas Register* (35 TexReg 11078), which extended the public comment period until January 13, 2011.

Texas Government Code §2001.039 requires state agencies to review their rules every four years to determine if the reasons for initially adopting the rules continue to exist. The rules implementing the Warrantors of Vehicle Protection Products program under Texas Occupations Code, Chapter 2306, were scheduled for this four-year review.

The Department has reviewed these rules and has determined that the rules are still essential in implementing the statutory provisions of Texas Occupations Code, Chapter 2306, Warrantors of Vehicle Protection Products. The Department received public comments from one interested party in response to the Notice of Intent to Review. Cal-Tex Protective Coatings, Inc., a company that is registered as a Vehicle Protection Product Warrantor, stated that the statute and rules should remain in place and did not suggest any amendments to the statute or rules at this time. These comments will be taken under consideration as part of any possible rule changes in the future.

The Texas Commission of Licensing and Regulation (Commission), the Department's governing body, readopted the rules at 16 TAC Chapter 71, Warrantors of Vehicle Protection Products, at its meeting on January 25, 2011, in their current form. As a result of this review process, the Department may propose amendments in the future that may further clarify or supplement the existing rules. Any future proposed changes to the rules will be published in the Proposed Rules section of the *Texas Register* and will be open for public comment prior to final adoption by the Commission in accordance with the requirements of the Administrative Procedure Act, Texas Government Code, Chapter 2001.

The rules are readopted by the Commission in accordance with Texas Government Code, §2001.039. This concludes the review of 16 TAC Chapter 71, Warrantors of Vehicle Protection Products.

TRD-201100846
William H. Kuntz, Jr.
Executive Director
Texas Department of Licensing and Regulation
Filed: March 1, 2011

The Texas Department of Licensing and Regulation (Department) filed a notice of intent to review and consider for readoption, revision, or repeal 16 Texas Administrative Code (TAC) Chapter 77, Service Contract Providers and Administrators. The Notice of Intent to Review was published in the November 12, 2010, issue of the *Texas Register* (35 TexReg 10062). A subsequent notice was published in the December 10, 2010, issue of the *Texas Register* (35 TexReg 11078), which extended the public comment period until January 13, 2011.

Texas Government Code §2001.039 requires state agencies to review their rules every four years to determine if the reasons for initially adopting the rules continue to exist. The rules implementing the Service Contract Providers and Administrators program under Texas Occupations Code, Chapter 1304, were scheduled for this four-year review.

The Department has reviewed these rules and has determined that the rules are still essential in implementing the statutory provisions of Texas Occupations Code, Chapter 1304, Service Contract Providers and Administrators. The Department received public comments in response to the Notice of Intent to Review from three interested parties: (1) the Service Contract Industry Council (SCIC), a national trade association; (2) GS Administrators, Inc., a company that is registered as a service contract provider and administrator; and (3) an individual who is a service contract holder.

SCIC submitted comments requesting that the statutory definition of "administrator" also be included in the rules under §77.10. SCIC requested that §77.70(a), which requires the name of the provider to be included on all service contracts and marketing materials, be amended to exempt the marketing materials for service contracts issued by a manufacturer or its subsidiaries on the manufacturer's products. It also suggested that the reference to "sellers" in this provision be deleted to reduce the impact on national retailers. SCIC suggested that §77.70(e) and (f) be amended to include the seller in these requirements and to require that a copy of the service contract and receipt be provided to the service contract holder within 45 days of the date that the provider or administrator receives notice of the purchase, instead of the current 45 days from the date of purchase. SCIC offered comments on §77.70(k), which requires a provider to notify the Department no later than 60 days prior to ceasing operations or not renewing its registration. SCIC stated that this provision is unworkable since a provider may not know 60 days in advance, and it encouraged the Department to simply require providers to notify the Department as soon as possible prior to ceasing operations or deciding to not renew its registration. SCIC offered comments on §77.70(m), which requires a provider to notify its service contract holders no later than 30 days prior to ceasing operations or not renewing its registration. SCIC stated that this provision is unworkable for the same reasons as §77.70(k) and urged that it be deleted. SCIC stated that the notification would be confusing for consumers since a provider that ceases operations in the state is still obligated to perform its obligations to its existing contract holders.

GS Administrators, Inc. suggested amending the provider registration renewal requirements under §77.21 by removing the "no change form" under subsection (c)(4). It proposed that the Department adopt a process where a biographical affidavit is filed only when there has been a material change to what is currently on file with the Department. GS Administrators, Inc. also commented on §77.70(l)(1), which requires submission of the names and the number of the active service contracts affected when a provider ceases operations or does not renew its license. GS Administrators stated that this provision is vague and the information may be difficult to track since providers may market the same form of contract under separate brand names. GS Administrators, Inc. suggested that providing a list of the brand names, the total number of active Texas service contracts, and the customers' names should be sufficient information.

An individual submitted comments suggesting that service contract companies be required to inform consumers regarding how much monetary value is left on a service contract after a repair is made. The individual expressed concern that while the time on his service contract

had not expired, the money on his contract had run out and he did not find out until authorized repairs had been completed. The individual asked that consumers be given the right to be informed regarding the service contract's value after each repair so consumers can make an informed decision.

The public comments summarized above will be taken under consideration as part of any possible rule changes in the future.

The Texas Commission of Licensing and Regulation (Commission), the Department's governing body, readopted the rules at 16 TAC Chapter 77, Service Contract Providers and Administrators, at its meeting on January 25, 2011, in their current form. As a result of this review process, the Department may propose amendments in the future that may further clarify or supplement the existing rules. Any future proposed changes to the rules will be published in the Proposed Rules section of the *Texas Register* and will be open for public comment prior to final adoption by the Commission in accordance with the requirements of the Administrative Procedure Act, Texas Government Code, Chapter 2001.

The rules are readopted by the Commission in accordance with Texas Government Code, §2001.039. This concludes the review of 16 TAC Chapter 77, Service Contract Providers and Administrators.

TRD-201100847
William H. Kuntz, Jr.
Executive Director
Texas Department of Licensing and Regulation
Filed: March 1, 2011

The Texas Department of Licensing and Regulation (Department) filed a notice of intent to review and consider for readoption, revision, or repeal 16 Texas Administrative Code (TAC) Chapter 79, Weather Modification. The Notice of Intent to Review was published in the November 12, 2010, issue of the *Texas Register* (35 TexReg 10063). A subsequent notice was published in the December 10, 2010, issue of the *Texas Register* (35 TexReg 11078), which extended the public comment period until January 13, 2011.

Texas Government Code §2001.039 requires state agencies to review their rules every four years to determine if the reasons for initially adopting the rules continue to exist. The rules implementing the Weather Modification program under Agriculture Code, Chapters 301 and 302, were scheduled for this four-year review.

The Department has reviewed these rules and has determined that the rules are still essential in implementing the provisions of Agriculture Code, Chapters 301 and 302, Weather Modification. The Department received public comments in response to the Notice of Intent to Review from one interested party: SciBlue. The commenter objects to the requirement in hail suppression operations that no part of an operational area be more than eight miles from the limits of the target area. This comment appears to be addressed to a requirement in §301.152(a), Agriculture Code and so is not germane to this rule review. Any comments addressing the statute and not the rules are outside the scope of this rule review.

The commenter suggests that the term "metes and bounds" in the definitions of "operational area" and "target area" in §79.10 is antiquated and should be replaced with "latitude and longitude." The commenter also proposes adding "private company research" to the list of entities in §79.12(a)(3) that are exempt from the license and permit requirements. The commenter objects to the reference to "degree" and other references to education, with respect to the licensing criteria for meteorologists, in §79.13. Another comment suggested that §79.20 be amended to add the right of the public to concur with a permit by signing a petition. The commenter complains that §79.32 does not take into account other technology or methods of weather modification and objects to the requirement in hail suppression operations that no part of an operational area be more than eight miles from the limits of the target area. These public comments will be taken under consideration as part of any possible rules changes in the future.

The Texas Commission of Licensing and Regulation (Commission), the Department's governing body, readopted the rules at 16 TAC Chapter 79, Weather Modification, at its meeting on January 25, 2011, in their current form. As a result of this review process, the Department may propose amendments in the future that may further clarify or supplement the existing rules. Any future proposed changes to the rules will be published in the Proposed Rules section of the *Texas Register* and will be open for public comment prior to final adoption by the Commission in accordance with the requirements of the Administrative Procedure Act, Texas Government Code, Chapter 2001.

The rules are readopted by the Commission in accordance with Texas Government Code, §2001.039. This concludes the review of 16 TAC Chapter 79, Weather Modification.

TRD-201100848
William H. Kuntz, Jr.
Executive Director
Texas Department of Licensing and Regulation
Filed: March 1, 2011

The Texas Department of Licensing and Regulation (Department) filed a notice of intent to review and consider for readoption, revision, or repeal 16 Texas Administrative Code (TAC) Chapter 80, Licensed Court Interpreters. The Notice of Intent to Review was published in the November 12, 2010, issue of the *Texas Register* (35 TexReg 10063). A subsequent notice was published in the December 10, 2010, issue of the *Texas Register* (35 TexReg 11078), which extended the public comment period until January 13, 2011.

Texas Government Code §2001.039 requires state agencies to review their rules every four years to determine if the reasons for initially adopting the rules continue to exist. The rules implementing the Licensed Court Interpreters program under Texas Government Code, Chapter 57, were scheduled for this four-year review.

The Department has reviewed these rules and has determined that the rules are still essential in implementing the provisions of Texas Government Code, Chapter 57. The Department received public comments in response to the Notice of Intent to Review from eight (8) interested parties: Texas Association of Judiciary Interpreters and Translators (TAJIT); six (6) licensed court interpreters; and an individual who is a freelance bilingual court interpreter.

There were two comments that would require statutory changes. One commenter proposed changing the oversight of the regulation of Licensed Court Interpreters from the executive branch of government to the judicial branch. The second commenter proposed that all federally certified court interpreters be exempted from state licensure since the federal licensing standards are stricter than the state standards. These comments are not within the scope of the rules review as published.

Two comments within the scope of the rules review as published proposed increasing the number of continuing education hours while one commenter proposed decreasing the number of hours. Another commenter suggested the addition of a Spanish language component to the written portion of the exam.

TAJIT proposed requiring an orientation session for all examinees prior to examination and a two day training workshop prior to licensure. TAJIT also proposed that agencies that provide "certified" interpreters be licensed to provide those interpreters and to specify that their "certification" is not a state endorsed interpreter license. Another commenter suggested that regulations be expanded to include licensure and sanctions for language agencies that violate administrative rules. Two commenters made general statements that the Department should not lower or relax regulatory standards.

The public comments summarized above will be taken under consideration as part of any possible rule changes in the future.

The Texas Commission of Licensing and Regulation (Commission), the Department's governing body, readopted the rules at 16 TAC Chapter 80, Licensed Court Interpreters, at its meeting on January 25, 2011, in their current form. As a result of this review process, the Department may propose amendments in the future that may further clarify or supplement the existing rules. Any future proposed changes to the rules will be published in the Proposed Rules section of the *Texas Register* and will be open for public comment prior to final adoption by the Commission in accordance with the requirements of the Administrative Procedure Act, Texas Government Code, Chapter 2001.

The rules are readopted by the Commission in accordance with Texas Government Code, §2001.039. This concludes the review of 16 TAC Chapter 80, Licensed Court Interpreters.

TRD-201100849
William H. Kuntz, Jr.
Executive Director
Texas Department of Licensing and Regulation
Filed: March 1, 2011

The Texas Department of Licensing and Regulation (Department) filed a notice of intent to review and consider for readoption, revision, or repeal 16 Texas Administrative Code (TAC) Chapter 82, Barbers. The Notice of Intent to Review was published in the November 12, 2010, issue of the *Texas Register* (35 TexReg 10064). A subsequent notice was published in the December 10, 2010, issue of the *Texas Register* (35 TexReg 11078), which extended the public comment period until January 13, 2011.

Texas Government Code §2001.039 requires state agencies to review their rules every four years to determine if the reasons for initially adopting the rules continue to exist. The rules implementing the Barbers program under Texas Occupations Code, Chapters 1601 and 1603, were scheduled for this four-year review.

The Department has reviewed these rules and has determined that the rules are still essential in implementing the provisions of Texas Occupations Code, Chapter 1601, Barbers, and Chapter 1603, Regulation of Barbering and Cosmetology. The Department received public comments in response to the Notice of Intent to Review from four (4) interested parties: Sport Clips Haircuts; Knockouts LLC; and two (2) individuals who are licensed barbers.

Several comments addressed different statutory requirements. Two comments advocated combining the practices of barbering and cosmetology into one regulated industry. One comment advocated the inclusion in statute of a definition for "qualified instructor". These comments address statutory changes and are not within the scope of the rules review as published. Any comments addressing the statute, and not the rules as published, are outside the scope of this rule review.

The remaining comments address various issues on education, responsibilities of licensees, inspection requirements, health and safety requirements, sanitation requirements, and administrative provisions.

There were several issues on sanitation raised by the commenters. One commenter questions whether daily changing of barbicide is necessary; the only issue to be considered with this disinfectant is if it is clean. The commenter further states that it is not necessary to have a jar of disinfectant at every station. Another commenter advocates that administrative rules should specify the use of disinfectants according to the methods established by manufacturers and approved by the EPA. This commenter also advocates no reduction in hand-washing facilities or practices and favors increasing the health and safety standards overall to reflect greater levels of cleanliness. One commenter favors a rule change requiring one sink, wash basin, or hand sanitizer for ever two chairs or stations. Another commenter is in favor of repealing the rule requiring that chemical supplies not be stored in restrooms.

One comment states that the public doesn't read the posted inspection reports; therefore, it is unnecessary for a rule to require that they be posted. One commenter is in favor of requiring booth rental permits whereas another commenter is not in favor of booth rental permits. Lastly, one commenter is in favor of a rule requiring that each student not receiving instruction in theory have a chair available to practice on customers. These comments will be taken under consideration as part of any possible rule changes in the future.

The Texas Commission of Licensing and Regulation (Commission), the Department's governing body, readopted the rules at 16 TAC Chapter 82, Barbers, at its meeting on January 25, 2011, in their current form. As a result of this review process, the Department may propose amendments in the future that may further clarify or supplement the existing rules. Any future proposed changes to the rules will be published in the Proposed Rules section of the *Texas Register* and will be open for public comment prior to final adoption by the Commission in accordance with the requirements of the Administrative Procedure Act, Texas Government Code, Chapter 2001.

The rules are readopted by the Commission in accordance with Texas Government Code, §2001.039. This concludes the review of 16 TAC Chapter 82, Barbers.

TRD-201100850
William H. Kuntz, Jr.
Executive Director
Texas Department of Licensing and Regulation
Filed: March 1, 2011

The Texas Department of Licensing and Regulation (Department) filed a notice of intent to review and consider for readoption, revision, or repeal 16 Texas Administrative Code (TAC) Chapter 83, Cosmetologists. The Notice of Intent to Review was published in the November 12, 2010, issue of the *Texas Register* (35 TexReg 10064). A subsequent notice was published in the December 10, 2010, issue of the *Texas Register* (35 TexReg 11079), which extended the public comment period until January 13, 2011.

Texas Government Code §2001.039 requires state agencies to review their rules every four years to determine if the reasons for initially adopting the rules continue to exist. The rules implementing the Cosmetologists program under Texas Occupations Code, Chapters 1602 and 1603, were scheduled for this four-year review.

The Department has reviewed these rules and has determined that the rules are still essential in implementing the provisions of Texas Occu-

pations Code, Chapter 1602, Cosmetologists, and Chapter 1603, Regulation of Barbering and Cosmetology.

The Department received public comments in response to the Notice of Intent to Review from thirteen interested parties: Sport Clips Haircuts; Anthem College; Southeast Texas Career Institute; OC Cosmetology; Hands On Therapy School of Massage; Regency Beauty Institute; Texas Department of State Health Services; and six (6) individuals who are licensees.

There were several comments which would require statutory changes such as changing the term "facialist" to "esthetician", ceasing the regulation of weaving, braiding, wig services and cosmetic applications, eliminating the booth rental license, requiring that instructors have more training in teaching methods, and combining the barber and cosmetologist licenses. Two commenters objected to continuing education requirements while a third commenter suggested reducing the hours. Another commenter proposed expanding the time-frame for license renewal to five years. Two commenters suggested that the requirement that a full-time licensed instructor be on duty during business hours be eliminated. These comments are not within the scope of the rules review as published.

Several comments within the scope of the rules review as published included two suggestions that clock hours be replaced with credit hours. Another commenter suggested allowing online classes and apprenticeship hours to complete education. Two commenters considered reciprocity standards too strict and suggested that all licensed cosmetologists "in good standing" from other states be granted licensure in Texas without retesting. One commenter suggested that all Department inspectors be licensed in the occupation or trade they are inspecting. Another recommended simplifying the licensing requirements for moving a salon from one location to another. One commenter recommended adding a definition for "approved program" which would allow education programs that wish to offer specialty training without having to get approval for programs they do not wish to offer. These comments will be taken under consideration as part of any possible rule changes in the future.

The Texas Commission of Licensing and Regulation (Commission), the Department's governing body, readopted the rules at 16 TAC Chapter 83, Cosmetologists, at its meeting on January 25, 2011, in their current form. As a result of this review process, the Department may propose amendments in the future that may further clarify or supplement the existing rules. Any future proposed changes to the rules will be published in the Proposed Rules section of the *Texas Register* and will be open for public comment prior to final adoption by the Commission in accordance with the requirements of the Administrative Procedure Act, Texas Government Code, Chapter 2001.

The rules are readopted by the Commission in accordance with Texas Government Code, §2001.039. This concludes the review of 16 TAC Chapter 83, Cosmetologists.

TRD-201100851
William H. Kuntz, Jr.
Executive Director
Texas Department of Licensing and Regulation
Filed: March 1, 2011

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: 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 through Fiscal Year 2011 [~~fiscal year 2003 and subsequent years~~], the rate per ton must be calculated using the following formula. The minimum fee must be equal to the rate per ton.

Rate per ton = $25.00X(1 - *CO*)X(*CPI*/122.15)

For Fiscal Year 2012 and subsequent years, the rate per ton must be calculated using the following formula. The minimum fee must be equal to the rate per ton.

Rate per ton = $AdjBaseRateX(1 - *CO*)X(*CPI*/122.15)

Where:

AdjBaseRate = an adjustable base rate, equal to $35 for Fiscal Year 2012, and adjusted annually thereafter up to a maximum cap of $45.

CO = carbon monoxide fraction of the fee basis, for all emissions fee payers for the previous Fiscal Year [~~fiscal year~~];

CPI = average of the consumer price index for the 12 months preceding the Fiscal Year [~~fiscal year~~] that a fee is being assessed (as published by the United States Bureau of Labor Statistics, CPI - All Urban Consumers, Not Seasonally Adjusted, base period 1982 - 84 = 100); and

122.15 = average consumer price index for Fiscal Year [~~fiscal year~~] 1989.

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.

Department of Assistive and Rehabilitative Services

Request for Public Comment

The Texas Department of Assistive and Rehabilitative Services (DARS) is soliciting comments from the public on draft proposed rule amendments to Title 40, Texas Administrative Code, Part 2, Chapter 108, Division for Early Childhood Intervention (ECI) Services.

DARS ECI is providing an early opportunity to comment on the draft proposed rules from March 11, 2011 until April 11, 2011. The draft proposed rules are posted on the DARS website at: www.dars.state.tx.us, and written copies are available upon request.

Comments may be submitted by postal mail to:

Texas Department of Assistive and Rehabilitative Services

Division for Early Childhood Intervention

4900 North Lamar Boulevard

Austin, Texas 78751-2399

or by email to:

ECI.policy@dars.state.tx.us.

At a later date DARS will formally propose rule amendments, and public hearings will be conducted around the state in June 2011 allowing additional comment.

TRD-201100771
Sylvia F. Hardman
General Counsel
Department of Assistive and Rehabilitative Services
Filed: February 24, 2011

Office of the Attorney General

Contract Award

This publication is filed pursuant to Texas Government Code, §2254.030. The Request for Proposal was published in the December 24, 2010, issue of the *Texas Register* (35 TexReg 11732).

DESCRIPTION OF ACTIVITIES OF PRIVATE CONSULTANT:

The Office of the Attorney General of Texas (the "OAG") has entered into a major consulting services contract for the following services:

The OAG administers millions of dollars of federal funds for the Child Support (Title IV-D) and Medicaid (Title XIX) programs. The OAG recoups its indirect costs from these federal programs based on rates approved by the United States Department of Health and Human Services ("HHS"). Contractor will review the indirect cost methodologies of the OAG to determine areas of cost recovery which will maximize revenue from the recovery of indirect costs and will develop indirect cost rates throughout the OAG, as appropriate. Contractor will prepare Indirect Cost Allocation Plans for FY10 (based on actual expenditures) and for FY12 (based on budgeted expenditures) in accordance with OMB Circular A-87, for submission to HHS for federal approval and will negotiate approval of those plans with HHS. Contractor will also analyze existing legal billing rates of the OAG for purposes of reconciling those existing rates with actual costs of the OAG in providing the legal services and will provide to the OAG a report of that reconciliation. Contractor will develop the FY12 billing rates for legal services. Contractor will negotiate with HHS for approval of the FY12 billing rates. Finally, Contractor will provide guidance to the OAG in the implementation of these plans and billing rates.

NAME AND BUSINESS ADDRESS OF PRIVATE CONSULTANT:

The private consultant engaged by the OAG for these activities is MGT of America, Inc., whose business address is 502 E. 11th Street, Suite 300, Austin, TX 78701.

TOTAL VALUE AND TERM OF THE CONTRACT:

The total value of the contract is $44,575. The term of the contract began on February 28, 2011, and will terminate on August 31, 2011 or upon completion of work described herein.

DATES ON WHICH REPORTS ARE DUE:

The Indirect Cost Allocation Plans must be submitted to HHS no later than April 30, 2011. The final report regarding the FY12 billing rates for legal services must be submitted to the OAG no later than August 31, 2011.

For information regarding this publication, contact Zindia Thomas, Agency Liaison, at (512) 936-9901.

TRD-201100833
Jay Dyer
Deputy Attorney General
Office of the Attorney General
Filed: March 1, 2011

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. Requests for federal consistency review were deemed administratively complete for the following project(s) during the period of January 27, 2011, through February 3, 2011. 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 extends 30 days from the date published on the Coastal Coordination Council website. The notice was published on the website on March

2, 2011. The public comment period for this project will close at 5:00 p.m. on April 1, 2011

FEDERAL AGENCY ACTIONS:

Applicant: Houston Energy, Inc.; Location: The project is located in wetlands adjacent to East Bay at Wallis Point, east of Smith Point, in Chambers County, Texas. The project can be located on the U.S.G.S. quadrangle map entitled: Lake Stephenson, Texas. Approximate UTM Coordinates in NAD 83 (meters): Zone 15; Easting: 333483.08; Northing: 3268485.31. Project Description: The applicant proposes to place 5,650 cubic yards of fill material into 1.4 acres of wetlands during the construction of a temporary well pad for the exploration of petroleum resources. If resources are found, the applicant will remove temporary fill and construct a permanent 10-foot by 20-foot production pad in uplands and a 10- by 20-foot line heater pad in wetlands. The applicant has minimized impacts to jurisdictional waters by using existing access roads and well pad site. To compensate for wetland impacts, the applicant proposes to construct a 900-square-foot breakwater and plant wetland vegetation within approximately 2,552 square feet of bay bottom, just west of the well pad site. Depending on the productivity of the well, the applicant will directionally drill a pipeline along the footprint of the road to tie-in points, so there will be no additional impacts to jurisdictional areas. CMP Project No.: 11-0231-F1. Type of Application: U.S.A.C.E. permit application #SWG-2010-01019 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. §1344). Note: The consistency review for this project may be conducted by the Railroad Commission of Texas under §401 of the Clean Water Act (33 U.S.C.A. §1344).

Applicant: Denbury Onshore, LLC; Location: The project is located in wetlands adjacent to Oyster Bayou, approximately 11 miles southeast of Anahuac, in Chambers County, Texas. The project can be located on the U.S.G.S. quadrangle map entitled: Oyster Bayou, Texas. Approximate Coordinates in Decimal Degrees: 29.68667, -94.53158. Project Description: The applicant proposes to install and maintain a well pad to drill and produce oil and gas reserves. The drill pad is approximately 350 feet by 350 feet. If the drilling pad is successful, the pad site will be restored to pre-construction contours except for 100 feet by 200 feet which will become the production pad. The project requires a total of 9,211 cubic yards of fill composed of earthen fill material and limestone. There will be 2.81 acres of temporary impact and 0.52 acre of permanent impacts to herbaceous wetlands. To compensate for the 0.52 acre of permanent impacts, the applicant proposes to preserve 31.82 acres of forested wetlands and donate it to the Big Thicket National Preserve. This project will be sharing mitigation with project SWG-2011-0068. CMP Project No.: 11-0249-F1. Type of Application: U.S.A.C.E. permit application #SWG-2010-00728 is being evaluated under §404 of the Clean Water Act (33 U.S.C.A. §1344). Note: The consistency review for this project may be conducted by the Railroad Commission of Texas under §401 of the Clean Water Act (33 U.S.C.A. §1344).

Applicant: Denbury Onshore, LLC; Location: The project is located in wetlands adjacent to Oyster Bayou, approximately 11 miles southeast of Anahuac, in Chambers County, Texas. The project can be located on the U.S.G.S. quadrangle map entitled: Oyster Bayou, Texas. Approximate Coordinates in Decimal Degrees: 29.689225, -94.53139. Project Description: The applicant proposes to install and maintain a well pad to drill and produce oil and gas reserves. The proposed drill pad will be approximately 350 feet by 350 feet. If the drilling pad is successful, the pad site will be restored to pre-construction contours except for 100 feet by 200 feet, which will become the production pad. The project requires a total of 9.211 cubic yards of fill composed of earthen fill material and limestone. There will be 2.81 acres of temporary impact and 0.52 acre of permanent impacts to herbaceous wetlands. To compensate for the 0.52 acre of permanent impacts, the applicant proposes to preserve 31.82 acres of forested wetlands and donate it to the Big Thicket National Preserve. This project will be sharing mitigation with project SWG-2010-00728. CMP Project No.: 11-0250-F1. Type of Application: U.S.A.C.E. permit application #SWG-2011-00068 is being evaluated under §404 of the Clean Water Act (33 U.S.C.A. §1344). Note: The consistency review for this project may be conducted by the Railroad Commission of Texas under §401 of the Clean Water Act (33 U.S.C.A. §1344).

Applicant: Dudley Wood; Location: The project site is located in an artificial canal off of the Gulf Intracoastal Waterway at 13 Kingfish Lane in Freeport, Brazoria County, Texas. The project can be located on the U.S.G.S. quadrangle map titled: Freeport, Texas. Approximate UTM Coordinates in NAD 83 (meters): Zone 15; Easting: 276310; Northing: 3205843. Project Description: The applicant proposes to retain work and structures including dredging a 50-foot by 55-foot upland area and constructing a 51-foot-long by 40-foot-wide boathouse and 91 linear feet of bulkhead. CMP Project No.: 11-0252-F1. Type of Application: U.S.A.C.E. permit application #SWG-2010-00529 is being evaluated under §10 of the Rivers and Harbors Act of 1899 (33 U.S.C.A. §403).

Applicant: CGG Veritas; Location: The project is located within a 203.25 square mile area encompassing wetlands, uplands, bayous, and open water habitat adjacent to East Galveston Bay in Chambers, Jefferson, and Galveston Counties, Texas. The project can be located on the U.S.G.S. quadrangle maps entitled: High Island, Smith Point, Lake Stephenson, Frozen Point, Mud Lake, and Whites Ranch, Texas. Approximate UTM Coordinates in NAD 27 (meters): Zone 15; Easting: 357839; Northing: 3276892. Project Description: The applicant is proposing to amend Department of the Army Permit No. SWG-2009-01025, issued to CGG Veritas, Inc., on 23 April 2010, to expand the project area. The applicant proposes to conduct work within Section 404 and Section 10 waters of the United States using shothole operational methodology as a source of energy for a three-dimensional (3-D) seismic survey. This project would result in approximately 13 acres of additional temporary wetland impacts. The Corps will be conditioning the permit with measures to ensure that impacts are temporary and to minimize any long-term effects from this project. Points will be offset for the protection of structures (i.e., homes, wells, etc.) and sensitive species/resources (i.e., bird rookeries, oyster beds, cultural/historical sites, etc.) in accordance with industry-accepted guidelines and regulatory agency requirements. CMP Project No.: 11-0254-F1. Type of Application: U.S.A.C.E. permit application #SWG-2009-01025(Amd.) 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. §1344). Note: The consistency review for this project may be conducted by the Railroad Commission of Texas under §401 of the Clean Water Act (33 U.S.C.A. §1344).

Applicant: Exelon; Location: The project site is comprised of approximately 11,500 acres of land and is located approximately 13 miles south of the City of Victoria and southwest of the town of Bloomington in Victoria County, Texas. The northwest corner of the site boundary lies adjacent to U.S. Highway 77. The northeast site boundary winds through Linn Lake and along a portion of the lower Guadalupe River to the southeast corner of the site. The southeast site boundary runs parallel to the Union Pacific railway. Approximate coordinates are 26 degrees 33 minutes 0 seconds North and 96 degrees 59 minutes 0 seconds West for the proposed Victoria County Station and 28 degrees 30 minutes 0 seconds North and 96 degrees 53 minutes 0 seconds West for the proposed intake canal and pump station. Project Description: The applicant submitted an Early Site Permit to the U.S. Nuclear Regulatory Commission (NRC) for proposed construction and operation of a

station in Victoria County. The proposed station site is located outside of the CMP boundary. However, the facility's makeup water intake canal and pumphouse, as well as a portion of the associated conveyance pipeline, would be located within the coastal zone. Additionally, several new transmission lines would be required in conjunction with the proposed station and could be located within the coastal zone. Makeup water to the cooling basin would be drawn from the Guadalupe River at a new raw water makeup (RWMU) system intake structure, canal, and pumping station. The new pumping station is approximately 0.6 miles southwest of the Guadalupe-Blanco River Authority saltwater barrier on the Guadalupe River and approximately 11 miles southeast of the site. Three possible routes for the makeup water pipeline are under consideration. The area associated with construction of the intake piping would range between 119 acres to 159 acres, mainly cropland and pastureland and once the pipe is installed, most of the area could be restored to its former uses. The total temporarily disturbed area within the CMP boundary associated with the RWMU system infrastructure construction is estimated to be approximately 53.5 acres. A portion of the disturbance associated with pipeline construction would be temporary, resulting in a total permanent disturbance of less than or equal to 45 acres. CMP Project No.: 11-0270-F1. Type of Application: Early Site Permit NP-11-0002.

Applicant: Texas Department of Transportation; Location: The project is located on State Highway 35 (Lyndon B. Johnson Causeway) Bridge over Copano Bay approximately four miles north-northeast of Fulton in Aransas County, Texas. Project Description: The applicant is proposing to replace the existing two-lane, 9,232 foot long bridge with a new four lane, approximately 11,010 foot long bridge. The centerline of the new bridge would be approximately 40 feet east of the centerline of the existing bridge. CMP Project No.: 11-0271-F1. Type of Application: U.S. Coast Guard Bridge Permit CSJs 0180-03-035 and 0180-04-083.

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 or activity 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, including a copy of the consistency certifications or consistency determinations for inspection may be obtained from Ms. Kate Zultner, Consistency Review Specialist, Coastal Coordination Council, P.O. Box 12873, Austin, Texas 78711-2873, or via email at kate.zultner@glo.texas.gov. Comments should be sent to Ms. Zultner at the above address or by email.

TRD-201100805
Larry L. Laine
Chief Clerk/Deputy Land Commissioner, General Land Office
Coastal Coordination Council
Filed: February 28, 2011

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Concho Valley Workforce Development Board

Public Notice

The Concho Valley Workforce Development Board is issuing a Request for Qualifications (RFQ) for Evaluators for a Request for Proposal (RFP) for Workforce and Child Care Services. If interested, a copy of the RFQ is available at http://www.cvworkforce.org/rfp.asp.

TRD-201100843
Johnny Griffin
Executive Director
Concho Valley Workforce Development Board
Filed: March 1, 2011

♦ ♦ ♦

Office of Consumer Credit Commissioner

Notice of Rate Ceilings

The Consumer Credit Commissioner of Texas has ascertained the following rate ceilings by use of the formulas and methods described in §§303.003, 303.005, 303.008, 303.009, 304.003, and 346.111, Texas Finance Code.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 03/07/11 - 03/13/11 is 18% for Consumer[1] /Agricultural/Commercial[2] credit through $250,000.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 03/07/11 - 03/13/11 is 18% for Commercial over $250,000.

The monthly ceiling as prescribed by §303.005 and §303.009[3] for the period of 03/01/11 - 03/31/11 is 18% for Consumer/Agricultural/Commercial credit through $250,000.

The monthly ceiling as prescribed by §303.005 and §303.009 for the period of 03/01/11 - 03/31/11 is 18% for Commercial over $250,000.

The standard quarterly rate as prescribed by §303.008 and §303.009 for the period of 04/01/11 - 06/30/11 is 18% for Consumer/Agricultural/Commercial credit through $250,000.

The standard quarterly rate as prescribed by §303.008 and §303.009 for the period of 04/01/11 - 06/30/11 is 18% for Commercial over $250,000.

The retail credit card quarterly rate as prescribed by §303.009[1] for the period of 04/01/11 - 06/30/11 is 18% for Consumer/Agricultural/Commercial credit through $250,000.

The lender credit card quarterly rate as prescribed by §346.111 Texas Finance Code[1] for the period of 04/01/11 - 06/30/11 is 18% for Consumer/Agricultural/Commercial credit through $250,000.

The standard annual rate as prescribed by §303.008 and §303.009[4] for the period of 04/01/11 - 06/30/11 is 18% for Consumer/Agricultural/Commercial credit through $250,000.

The standard annual rate as prescribed by §303.008 and §303.009 for the period of 04/01/11 - 06/30/11 is 18% for Commercial over $250,000.

The retail credit card annual rate as prescribed by §303.009[1] for the period of 04/01/11 - 06/30/11 is 18% for Consumer/Agricultural/Commercial credit through $250,000.

The judgment ceiling as prescribed by §304.003 for the period of 03/01/11 - 03/31/11 is 5.00% for Consumer/Agricultural/Commercial credit through $250,000.

The judgment ceiling as prescribed §304.003 for the period of 03/01/11 - 03/31/11 is 5.00% for Commercial over $250,000.

[1]Credit for personal, family or household use.

[2]Credit for business, commercial, investment or other similar purpose.

[3]For variable rate commercial transactions only.

[4]Only for open-end credit as defined in §301.002(14), Texas Finance Code.

TRD-201100812

Leslie L. Pettijohn
Commissioner
Office of Consumer Credit Commissioner
Filed: March 1, 2011

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Court of Criminal Appeals

IN THE COURT OF CRIMINAL APPEALS

Misc. Docket No. 11-001

AMENDMENTS TO THE TEXAS RULES OF APPELLATE PROCEDURE AND TEMPLATES FOR LOCAL RULES GOVERNING ELECTRONIC COPIES AND ELECTRONIC FILINGS IN THE COURTS OF APPEALS

ORDERED that:

1. Pursuant to Section 22.108 of the Texas Government Code, the Court of Criminal Appeals amends Rules 9.2 and 9.3 of the Texas Rules of Appellate Procedure, as follows.

9.2. **Filing**

. . . .

(c) *Electronic Filing.* Documents may be permitted or required to be filed, signed, or verified by electronic means by order of the Supreme Court or the Court of Criminal Appeals, or by local rule of a court of appeals. A technical failure that precludes a party's compliance with electronic-filing procedures cannot be a basis for disposing of any case.

9.3. **Number of Copies; Electronic Copies**

(a) *Courts of Appeals.*

(1) Paper Copies in General. A party must file:

(A) the original and three copies of all documents in an original proceeding;

(B) the original and two copies of all motions in an appellate proceeding; and

(C) the original and five copies of all other documents.

(2) Local Rules. A court of appeals may by local rule require:

(A) the filing of more or fewer paper copies of any document other than a petition for discretionary review; and

(B) an electronic copy of a document filed in paper form.

(b) *Supreme Court and Court of Criminal Appeals.*

(1) Paper Copies of Document Filed in Paper Form. A party must file the original and 11 copies of any document addressed to either the Supreme Court or the Court of Criminal Appeals, except that in the Supreme Court, only an original and one copy must be filed of any motion, response to the motion, and reply in support of the motion, and in the Court of Criminal Appeals, only the original must be filed of a motion for extension of time or a response to the motion, or a pleading under Code of Criminal Procedure article 11.07.

(2) Electronic Copies of Document Filed in Paper Form. An electronic copy of a document filed in paper form may be required by order of the Supreme Court or the Court of Criminal Appeals.

(3) Paper Copies of Electronically Filed Document. Two paper copies of each document that is electronically filed with the Supreme Court or the Court of Criminal Appeals must be mailed or hand-delivered to the Supreme Court or the Court of Criminal Appeals, as appropriate, within one business day after the document is electronically filed.

(c) *Exception for Record.* Only the original record need be filed in any proceeding.

2. The Court of Criminal Appeals also promulgates the attached templates for local rules governing electronic copies and electronic filings in the courts of appeals.

a. A court of appeals' local rule requiring electronic copies of documents must be in the form of Appendix A with modifications only as permitted by the Court of Criminal Appeals. The local rule must be approved by Order of the Court of Criminal Appeals.

b. A court of appeals' local rule permitting the electronic filing of documents must be in the form of Appendix B with modifications only as permitted by the Court of Criminal Appeals. The local rule must be approved by Order of the Court of Criminal Appeals.

c. The procedures prescribed by the local rules apply in lieu of those prescribed by the Texas Rules of Appellate Procedure to the extent there are differences between the procedures; otherwise, the Rules of Appellate Procedure continue to apply with full force and effect.

3. Amended Rules 9.2 and 9.3 of the Texas Rules of Appellate Procedure, with any modifications made after public comments are received, take effect June 30, 2011. Comments regarding the amended rules may be submitted to the Supreme Court in writing on or before May 31, 2011. Comments should be directed to Kennon L. Peterson, Rules Attorney, at P.O. Box 12248, Austin, TX 78711, or kennon.peterson@txcourts.gov.

4. Courts of appeals may proceed immediately with submitting proposed local rules in accordance with this Order for the Court of Criminal Appeals' consideration.

5. The Clerk of the Court of Criminal Appeals is directed to:

a. file a copy of this Order with the Secretary of State;

b. cause a copy of this Order to be published in the Texas Bar Journal; and

c. submit a copy of the Order for publication in the Texas Register.

Dated: February 28, 2011.

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Sharon Keller, Presiding Judge

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Lawrence E. Meyers, Judge

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Tom Price, Judge

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Paul Womack, Judge

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Cheryl Johnson, Judge

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Michael E. Keasler, Judge

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Barbara Parker Hervey, Judge

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Cathy Cochran, Judge

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APPENDIX A

Local Rule ___. Electronic Copies of Documents Filed in Paper Form.

(a) Electronic copies of documents required. For the convenience of the court, attorneys, parties, and the public, an attorney for a party must email to the court an electronic copy of every document filed with the court, except a document under seal or subject to a motion to seal. A party who is not represented by an attorney is encouraged to email to the court an electronic copy of every document filed with the court, except a document under seal or subject to a motion to seal. [Courts may add exceptions for attorneys and unrepresented parties.]

(b) Filing required. An electronic copy does not constitute a filing. Documents must continue to be filed as provided by the Texas Rules of Appellate Procedure[, except that only the original and [insert number] copies must be filed of any document other than a petition for discretionary review. A party must file the original and 11 copies of a petition for discretionary review].

(c) Time to email electronic copy. The electronic copy must be emailed to the court at [insert applicable email address] on the same day the original document is filed. Also on that day, the electronic copy must be emailed to each other party's lead counsel for whom the filing attorney has an email address.

(d) Identification of document. The email subject line must identify the document by case number and by name. The electronic copy must be named as follows: [insert court's desired naming conventions here].

(e) Redaction of electronic copies. An electronic copy must be substantively identical to the original document filed with the court, except it must not contain a social security number; a birth date; a home address; the name of any person who was a minor when the underlying suit was filed; a driver's license number, passport number, tax identification number, or similar government-issued personal identification number; or a bank account number, credit card number, or other financial account number. The attorney emailing the electronic copy must redact all such information in accordance with the redaction guidelines posted by the Supreme Court's Clerk on the Supreme Court's website; however, the electronic copy may contain a reference to this information as long as the reference does not include any part of the actual information (e.g., "passport number"). For good cause, the court may order redaction of additional information.

(f) Certification of counsel. The submission of an electronic copy constitutes a certification by all attorneys of record for the party filing the document that the electronic copy complies with paragraph (e).

(g) Posting of electronic copies. The clerk may post electronic copies of documents in a case on the court's website. By letter to the clerk, a party to the case may request that electronic copies posted on the court's website be redacted further or removed altogether. The request must identify with particularity the document(s) to be removed or the information to be redacted and state specific reasons for the request. If the request is for further redaction, the party must email a copy of the requested version of the document.

(h) Format of electronic copies. An electronic copy must be formatted as follows:

(1) An electronic copy must be in text-searchable portable document format (PDF) compatible with the latest version of Adobe Reader.

(2) Except as otherwise provided by this rule, an electronic copy of a document created by a word processing program must not be a scan of the original but must instead be converted from the original directly into a PDF file using Adobe Acrobat, a word processing program's PDF conversion utility, or another software program.

(3) Records filed in original proceedings and appendix materials may be scanned if necessary, but scanning creates larger file sizes with images of lesser quality and should be avoided when possible. An appendix must be combined into one computer file with the document it is associated with, unless the resulting computer file would exceed the size limits in paragraph (i). If a record filed in an original proceeding or an appendix contains more than one item, it should include a table of contents and either bookmarks to assist in locating each item or separator pages with the title of the item immediately following and any number or letter associated with the item in the table of contents.

(4) A scanned document must be made searchable using optical-character-recognition software, such as Adobe Acrobat, and have a resolution of 300 dots per inch (dpi).

(5) An electronic copy may contain hyperlinks to another part of the same document, an external source cited in the document, an appendix item associated with the document, an embedded case, or a record cite. Hyperlinks within an appendix item are also permitted.

(6) An electronic copy must not contain a virus or malware. The submission of an electronic copy constitutes a certification by all attorneys of record for the party filing the document that the electronic copy has been checked for viruses and malware.

(7) An electronic copy need not be signed.

(i) Size of electronic copies. A electronic copy must not exceed 20 megabytes. Electronic copies larger than 20 megabytes must be divided into smaller files.

(j) Communications with the clerk. An attorney who emails an electronic copy of a document must supply the clerk with an email address to which the clerk may send notices or other communications about the case in lieu of mailing paper documents. If the attorney's email address changes, the attorney must provide the clerk with the new email address within one business day of the change. Lead counsel must register for Casemail and follow the instructions for receiving notices for cases in which they represent a party.

APPENDIX B

Local Rule ___. Electronic Filings of Documents.

(a) Electronic filing permitted. A party may electronically file (e-file) any document that may be filed with the court in paper form, except a document under seal or subject to a motion to seal.

(b) E-filing mechanism. E-filing must be done through Texas.gov, the portal established by the Texas Legislature. Directions for its use may be found on its website. This is a summary. A person must first register with an Electronic Filing Service Provider (EFSP). A list of approved EFSPs is on the Texas.gov website. The EFSP will provide the registrant with a confidential, secure username and password to use when e-filing a document. This username and password will also function as a signature on each e-filed document, and will authorize payment of all filing fees and service fees. A document to be e-filed must be transmitted to the EFSP, which will send the document to Texas.gov, which in turn will send the document to the clerk. The e-filer will receive by email an immediate acknowledgment of the e-filing, a confirmation of the clerk's acceptance of the filing, and a file-stamped copy of the document. Fees charged by Texas.gov for the e-filing of a document are in addition to any filing fees and are costs of court.

(c) Electronic service. A party who has registered to e-file documents through an EFSP may electronically serve (e-serve) documents through that EFSP on any other party who has consented to e-service by registering for the e-service option with an EFSP or by setting up a complimentary account with Texas.gov. Directions may be found on the Texas.gov website.

(1) Service through an EFSP is complete on transmission to the e-served person's EFSP or complimentary Texas.gov account. The e-filer's EFSP will send proof of service to the e-filer. Fees that an EFSP charges for e-service are not costs of court.

(2) If an e-filer must serve a copy of a document on a party who has not consented to e-service, the e-filer must comply with the service requirements in Texas Rule of Appellate Procedure 9.5 and, on the same day the document is e-filed, must send the document to:

(A) the party's lead counsel by email if the e-filer has an email address for the lead counsel; or

(B) if the party is not represented by counsel, to the party by email if the e-filer has the party's email address.

(d) Redaction of information in e-filed document.

(1) Unless the court orders otherwise, an e-filed document must not contain a social security number; a birth date; a home address; the name of any person who was a minor when the underlying suit was filed; a driver's license number, passport number, tax identification number, or similar government-issued personal identification number; or a bank account number, credit card number, or other financial account number. The e-filer must redact all of this information in accordance with the redaction guidelines posted by the Supreme Court's Clerk on the Supreme Court's website; however, the e-filed document may contain a reference to this information as long as the reference does not include any part of the actual information (e.g., "passport number"). For good cause, the court may order redaction of additional information.

(2) The e-filing of a document constitutes a certification by all attorneys of record for the party filing the document that the document complies with paragraph (1) of this rule.

(3) If an e-filer believes any information described in paragraph (1) of this rule is essential to an e-filed document or that the e-filed document would be confusing without the information, the e-filer may submit the information to the court in a reference list that is in paper form and under seal. The reference list must specify an appropriate identifier that corresponds uniquely to each item listed. Any reference in the e-filed document to a listed identifier will be construed to refer to the corresponding item of information. If the e-filer provides a reference list pursuant to this rule, the front page of the e-filed document must indicate that the reference list has been, or will be, provided.

(4) On its own initiative, the court may order a sealed reference list in any case. The court may also order that a document be filed under seal in paper form, without redaction. The court may later unseal the document or order the filer to provide a redacted version of the document for the public record.

(e) Format of e-filed document. An e-filed document must be formatted as follows:

(1) An e-filed document must be formatted in accordance with Texas Rule of Appellate Procedure 9.4(b)-(e). The "paper" requirements in Rule 9.4(b)-(c) apply equally to a "page" of the e-filed document.

(2) An e-filed document must be in text-searchable portable document format (PDF) compatible with the latest version of Adobe Reader. An EFSP will convert each e-filed document from its original form into a PDF file that complies with this rule.

(3) Records filed in original proceedings and appendix materials may be scanned if necessary, but scanning creates larger file sizes with images of lesser quality and should be avoided when possible. An appendix must be combined into one computer file with the document it is associated with, unless the resulting computer file would exceed Texas.gov's size limits for the document. If a record filed in an original proceeding or an appendix contains more than one item, it should include a table of contents and either bookmarks to assist in locating each item or separator pages with the title of the item immediately following and any number or letter associated with the item in the table of contents.

(4) A scanned document must be made searchable using optical-character-recognition software, such as Adobe Acrobat, and have a resolution of 300 dots per inch (dpi).

(5) An e-filed document may contain hyperlinks to another part of the same document, an external source cited in the document, an appendix item associated with the document, an embedded case, or a record cite. Hyperlinks within an appendix item are also permitted.

(6) An e-filed document must not contain a virus or malware. The e-filing of a document constitutes a certification by the e-filer that the document has been checked for viruses and malware.

(7) The court may strike an e-filed document for nonconformance with this rule.

(f) Signatures on e-filed documents.

(1) Except as otherwise provided by this rule, the confidential, secure username and password that the e-filer must use to e-file a document constitute the e-filer's signature on the document, in compliance with signature requirements in the Texas Rules of Appellate Procedure. When a signature is provided in this manner, the e-filer must also include either an "/s/" and the e-filer's name typed in the space where the e-filer's signature would otherwise appear or an electronic image of the e-filer's signature, which may take the form of a public key-based digital signature or a scanned image of the e-filer's signature. The e-filer must not allow the e-filer's username or password to be used by anyone other than an agent who is authorized by the e-filer.

(2) If a document must be notarized, sworn to, or made under oath, the e-filer must e-file the document as a scanned image containing the necessary signature(s).

(3) If a document requires the signature of an opposing party, the e-filer must e-file the document as a scanned image containing the opposing party's signature.

(4) When an e-filer e-files a scanned image of a document pursuant to paragraph (2) or (3) of this rule, the e-filer must retain the original document from which the scanned image was made until the case in which the document was filed is resolved. If the original document is in another party's possession, that party must retain the original document until the case in which the document was filed is resolved.

(5) If an e-served document was also e-filed and the person who completes a certificate of service under Texas Rule of Appellate Procedure 9.5(e) is different from the person who e-filed the document, the person who completes the certificate of service must sign the certificate by including either an "/s/" and his or her name typed in the space where his or her signature would otherwise appear or an electronic image of his or her signature.

(g) Time of e-filing. A document will be considered filed timely if it is e-filed at any time before midnight (in the court's time zone) on the date on which the document is due.

(1) An e-filed document is deemed filed when the e-filer transmits the document to the e-filer's EFSP, unless the document is transmitted on a Saturday, Sunday, or legal holiday or requires a motion and an order allowing its filing.

(2) If a document is transmitted on a Saturday, Sunday, or legal holiday, it will be deemed filed on the next day that is not a Saturday, Sunday, or legal holiday.

(3) If a document requires a motion and an order allowing its filing, it will be deemed filed on the date the motion is granted.

(4) If an e-filed document is untimely due to a technical failure or a system outage, the e-filer may seek appropriate relief from the court.

(h) Paper copies.

OPTION 1: An e-filer is not required to file any paper copies of an e-filed document, except that paper copies of a petition for discretionary review must still be filed in accordance with Rule 9 of the Texas Rules of Appellate Procedure within one business day after the petition is e-filed.

OPTION 2: An e-filer must file 11 paper copies of an e-filed petition for discretionary review and [insert number] paper copies of any other e-filed document in accordance with Rule 9 of the Texas Rules of Appellate Procedure within one business day after the document is e-filed.

(i) Email address requirements and communications with the clerk. An e-filed document must include the e-filer's email address, in addition to any other information required by the Texas Rules of Appellate Procedure. If the e-filer's email address changes, the e-filer must provide the clerk and the e-filer's EFSP with the new email address within one business day of the change. If there is a change in the email address of a party who has consented to receive e-service, the party must provide Texas.gov or, if applicable, the party's EFSP with the new email address within one business day of the change. The clerk may send notices or other communications about a case to an attorney's email address in lieu of mailing paper documents.

(j) Casemail registration. Lead counsel must register for Casemail and follow the instructions for receiving notices for cases in which they represent a party.

(k) Construction of rules. This rule must be liberally construed so as to avoid undue prejudice to any person who makes a good-faith effort to comply with requirements in this rule.

TRD-201100837
Louise Pearson
Clerk of the Court
Court of Criminal Appeals
Filed: March 1, 2011

♦ ♦ ♦

East Texas Council of Governments

Request for Qualifications

The East Texas Council of Governments (ETCOG), as the administrative unit for the local Workforce Solutions East Texas Board (WSETB) herein referred to as the Board, is soliciting proposals for a total of four independent reviewers to prepare an analysis of the proposals received by the Board for management and operation of the Workforce Solutions East Texas centers. The Board is also soliciting facilitator services to be provided by one of the four independent reviewers selected. This individual will also be responsible for providing the results of the independent reviewers and assisting the Workforce Centers Committee in the process of reviewing the proposals.

This review process requires that the panel of independent reviewers be on site at a location in the ETCOG region for a period of two to four days depending upon the number of proposals and the complexity of the procurement. This group is expected to convene beginning on Tuesday, April 26, 2011. The facilitator who is selected will be expected to come for two additional days to meet with the Workforce Centers Committee on May 3, 2011 and the Workforce Solutions East Texas Board on May 12, 2011. The projected dates for the review and facilitation are subject to change.

Persons wanting to receive a Request for Qualifications (RFQ) package should submit a request by letter, fax, or email to the East Texas Council of Governments, 3800 Stone Road, Kilgore, Texas 75662, Attn: Amanda Garner. The fax number for ETCOG is (903) 983-1440 or email amanda.garner@etcog.org. Questions concerning the RFP process should be addressed by email or fax to Amanda Garner (see above) or Gary Allen, gary.allen@etcog.org or fax (903) 983-1440.

The Request for Qualifications package will not be released prior to March 2, 2011. The deadline for receipt of proposals is Tuesday, March 22, 2011 at 5:00 p.m. CDT.

Historically Underutilized Businesses (HUBs) are encouraged to apply. All programs and employers under the auspices of the Workforce Solutions East Texas Board are in compliance with EEO. Auxiliary aids and services are available, upon request, to individuals with disabilities.

TRD-201100862
David Cleveland
Executive Director
East Texas Council of Governments
Filed: March 2, 2011

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Employees Retirement System of Texas

Request for Proposal Texas Employees Group Benefits Program Medicare Advantage Plan

In accordance with Texas Insurance Code, Chapter 1551, the Employees Retirement System of Texas ("ERS") is issuing a Request for Proposal ("RFP") seeking a qualified Medicare Advantage Carrier ("MA Carrier"), to provide an MA Plan with a statewide Preferred Provider Organization to members and their spouses eligible for Medicare. The MA Plan would provide health care administration (claim processing, network management and utilization review services) benefits and/or services under the Texas Employees Group Benefits Program ("GBP") beginning January 1, 2012 through December 31, 2012. The MA Carrier shall provide administrative services for the level of benefits required in the RFP and meet other requirements that are in the best interest of ERS, the GBP, its Participants or the state of Texas, and shall be required to execute a Contractual Agreement ("Contract") provided by, and satisfactory to, ERS.

An MA Carrier wishing to respond to this request shall: 1) maintain its principal place of business and provide all products and/or services including, but not limited to: call center, billing, eligibility, and programming, etc. within the United States of America, and shall have a Certificate of Authority and/or license to do business in Texas as an MA Carrier from the Texas Department of Insurance and Centers for Medicare and Medicaid Services, and 2) have been providing administrative, claim processing, network management and utilization review services for organizations with a membership of no less than 50,000 or an aggregate of 1,000,000 covered lives for a minimum of three (3) years, and 3) reflect a provider network capable of servicing no less than 85% of GBP Medicare eligible Participants as of January 31, 2011; and 4) have a current net worth of $100 million as evidenced by a 2010 audited financial statement.

The RFP will be available in early March from ERS' website and will include documents for the MA Carrier's review and response. To access the secured portion of the RFP website, interested MA Carriers shall email their request to the attention of IVendor Mailbox at: ivendorquestions@ers.state.tx.us. The email request shall reflect the MA Carrier's legal name, street address, phone and fax numbers, and email

address for the organization's direct point of contact. Upon receipt of this information, a user ID and password will be issued to the requesting organization that will permit access to the secured RFP.

General questions concerning the RFP and/or ancillary bid materials should be sent to the IVendor Mailbox where the responses, if applicable, are updated frequently. Submission deadline for all RFP questions submitted to the IVendor mailbox are due by 4:00 p.m. CT on March 30, 2011.

To be eligible for consideration, the MA Carrier is required to submit a total of six (6) sets of the Proposal in a sealed container. One (1) printed original shall be labeled as an "Original" and include fully executed documents, as appropriate, ***signed in blue ink*** **and without amendment or revision. Three (3) additional duplicates of the Proposal, including all required exhibits, shall be provided in printed format. Finally, two (2) complete copies shall be submitted on CD-ROMs in Excel or Word format. No PDF documents (with the exception of sample GBP-specific marketing and audited financial materials) may be reflected on the CD-ROMs. All materials shall be received by ERS no later than 12:00 Noon (CT) on May 4, 2011.**

ERS will base its evaluation and selection of an MA Carrier on factors including, but not limited to the following, which are not necessarily listed in order of priority: compliance with the RFP, operating requirements, provider network, and experience serving large group programs, past experience, administrative quality, program fees and other relevant criteria. Each Proposal will be evaluated both individually and relative to the Proposal of other qualified MA Carriers. Complete specifications will be included with the RFP.

ERS reserves the right to reject any and/or all Proposals and/or call for new Proposals if deemed by ERS to be in the best interests of ERS, the GBP, its Participants or the state of Texas. ERS also reserves the right to reject any Proposal submitted that does not fully comply with the RFP's instructions and criteria. ERS is under no legal requirement to execute a Contract on the basis of this notice or upon issuance of the RFP and will not pay any costs incurred by any entity in responding to this notice or in connection with the preparation thereof. ERS reserves the right to vary all provisions set forth at any time prior to execution of a Contract where ERS deems it to be in the best interest of ERS, the GBP, its Participants or the state of Texas.

TRD-201100842
Paula A. Jones
General Counsel and Chief Compliance Officer
Employees Retirement System of Texas
Filed: March 1, 2011

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Texas Commission on Environmental Quality

Agreed Orders

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on the listed Agreed Orders (AOs) in accordance with Texas Water Code (the Code), §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 proposed orders and 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 **April 11, 2011.** 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 indicate that consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the commission's jurisdiction or 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 C, 1st Floor, Austin, Texas 78753, (512) 239-2545 and at the applicable regional office listed as follows. Written comments about an AO should be sent to the enforcement coordinator designated for each AO at the commission's central office at P.O. Box 13087, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on April 11, 2011.** Written comments may also be sent by facsimile machine to the enforcement coordinator at (512) 239-2550. The commission enforcement coordinators are available to discuss the AOs and/or the comment procedure at the listed phone numbers; however, §7.075 provides that comments on the AOs shall be submitted to the commission in **writing.**

(1) COMPANY: ALAMO RECYCLE CENTERS, LLC; DOCKET NUMBER: 2010-1438-MSW-E; IDENTIFIER: RN101628410; LOCATION: San Antonio, Bexar County; TYPE OF FACILITY: asphalt shingle and mulch recycling; RULE VIOLATED: 30 Texas Administrative Code (TAC) §328.5(c), by failing to provide a closure cost estimate at least 90 days prior to receipt of materials; and 30 TAC §37.921(b)(1)(A) and §328.5(d), by failing to demonstrate financial assurance for closure of the facility; PENALTY: $2,393; ENFORCEMENT COORDINATOR: Michael Meyer, (512) 239-4492; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(2) COMPANY: Austin Equipment Company, LC; DOCKET NUMBER: 2010-1395-MLM-E; IDENTIFIER: RN104543780; LOCATION: Williamson County; TYPE OF FACILITY: rock quarry; RULE VIOLATED: 30 TAC §213.4(a)(1) and (j) and Water Pollution Abatement Plan (WPAP) Number 11-05022201B, Standard Condition Number 4, by failing to obtain approval of a modification to an Edwards Aquifer WPAP prior to beginning a regulated activity over the Edwards Aquifer recharge zone; 30 TAC §327.5(a), by failing to immediately abate and contain spills or discharges of petroleum products; Texas Health and Safety Code (THSC), §361.451 and 30 TAC §328.13, by failing to properly dispose of lead-acid batteries; and 30 TAC §335.4, by failing to properly store industrial solid waste which resulted in a discharge of industrial solid waste into or adjacent to waters in the state; PENALTY: $17,060; ENFORCEMENT COORDINATOR: Evette Alvarado, (512) 239-2573; REGIONAL OFFICE: 2800 S IH 35, Suite 100 Austin, Texas 78704-5712, (512) 339-2929.

(3) COMPANY: Belvan Corp.; DOCKET NUMBER: 2010-1453-AIR-E; IDENTIFIER: RN100214022; LOCATION: Crockett County; TYPE OF FACILITY: natural gas processing plant; RULE VIOLATED: 30 TAC §116.115(c), 40 Code of Federal Regulations (CFR) §60.642(b), THSC, §382.085(b), General Operating Permit (GOP) Number 514, Site-wide Requirements (b)(7)(B), and New Source Review (NSR) Permit Number 9824A, Special Conditions (SC) Numbers 1B, 7, and 10, by failing to comply with the allowable mass emissions rates and minimum sulfur recovery efficiencies; and 30 TAC §122.145(2)(C), THSC, §382.085(b), GOP Number 514, Site-wide Requirements (b)(2), by failing to report deviations; PENALTY: $119,360; ENFORCEMENT COORDINATOR: Audra Benoit, (409) 899-8799; REGIONAL OFFICE: 622 South Oakes, Suite K, San Angelo, Texas 76903-7013, (325) 655-9479.

(4) COMPANY: Cibolo Waste, Incorporated dba Bexar Waste Recycling Facility; DOCKET NUMBER: 2010-2044-MSW-E; IDENTIFIER: RN103196424; LOCATION: Selma, Comal County;

TYPE OF FACILITY: waste recycling; RULE VIOLATED: 30 TAC §328.5(c)(1), by failing to provide a written closure cost estimate showing the cost of hiring a third party to close the facility by disposition of all processed and unprocessed materials, while storing combustible material outdoors; and 30 TAC §37.921 and §328.5(f)(3), by failing to obtain acceptable financial assurance for closure of the facility; PENALTY: $2,354; ENFORCEMENT COORDINATOR: Wallace Myers, (512) 239-6580; REGIONAL OFFICE: 14250 Judson Road San Antonio, Texas 78233-4480, (512) 490-3096.

(5) COMPANY: City of Cranfills Gap; DOCKET NUMBER: 2009-1288-MWD-E; IDENTIFIER: RN101916492; LOCATION: Bosque County; TYPE OF FACILITY: domestic wastewater treatment system; RULE VIOLATED: 30 TAC §305.125(1) and (5) and Texas Pollutant Discharge Elimination System (TPDES) Permit Number WQ0014169001, Operational Requirements Number 4, by failing to provide adequate safeguards to prevent the discharge of untreated or inadequately treated wastewater in the event of an electrical power failure by means of alternate power sources, standby generators, and/or retention of inadequately treated wastewater; PENALTY: $4,625; ENFORCEMENT COORDINATOR: Jeremy Escobar, (512) 239-1460; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(6) COMPANY: City of Houston; DOCKET NUMBER: 2010-1953-PST-E; IDENTIFIER: RN105624258; LOCATION: Houston, Harris County; TYPE OF FACILITY: fire station with underground storage tanks (USTs); RULE VIOLATED: 30 TAC §334.50(b)(1)(A) and the Code, §26.3475(c)(1), by failing to monitor the USTs for releases at a frequency of at least once every month; PENALTY: $2,250; ENFORCEMENT COORDINATOR: Cara Windle, (512) 239-2581; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(7) COMPANY: City of Troy; DOCKET NUMBER: 2010-1780-MWD-E; IDENTIFIER: RN102844321; LOCATION: Bell County; TYPE OF FACILITY: wastewater treatment plant; RULE VIOLATED: the Code, §26.121(a)(1), 30 TAC §305.125(1), and TPDES Permit Number WQ0011263001, Effluent Limitations and Monitoring Requirements Numbers 1 and 2, by failing to comply with permitted effluent limits for flow, ammonia nitrogen (NH_3N), and chlorine; PENALTY: $6,880; ENFORCEMENT COORDINATOR: Steve Villatoro, (512) 239-4930; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(8) COMPANY: E & S, Incorporated dba In and Out Diamond Shamrock; DOCKET NUMBER: 2010-1823-PST-E; IDENTIFIER: RN102881901; LOCATION: Tomball, Harris County; TYPE OF FACILITY: convenience store with retail sale of gasoline; RULE VIOLATED: 30 TAC §115.242(1)(C) and THSC, §382.085(b), by failing to upgrade the Stage II equipment to onboard refueling vapor recovery (ORVR) compatible systems; and 30 TAC §115.245(2) and THSC, §382.085(b), by failing to verify proper operation of the Stage II equipment, vapor space manifolding, and dynamic back pressure at least once every 36 months or upon major system replacement or modification, whichever occurs first; PENALTY: $3,151; ENFORCEMENT COORDINATOR: Rajesh Acharya, (512) 239-0577; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(9) COMPANY: Eddie Courtney; DOCKET NUMBER: 2011-0254-WOC; IDENTIFIER: RN106047137; LOCATION: Diboll, Angelina County; TYPE OF FACILITY: licensing; RULE VIOLATED: 30 TAC §30.5(a), by failing to obtain a required occupational license; PENALTY: $210; ENFORCEMENT COORDINATOR: Heather Podlipny, (512) 239-2603; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(10) COMPANY: Edward Pustka; DOCKET NUMBER: 2011-0255-WOC-E; IDENTIFIER: RN106052020; LOCATION: Hallettsville, Lavaca County; TYPE OF FACILITY: licensing; RULE VIOLATED: 30 TAC §30.5(a), by failing to obtain a required occupational license; PENALTY: $210; ENFORCEMENT COORDINATOR: Heather Podlipny, (512) 239-2603; REGIONAL OFFICE: 6300 Ocean Drive, Suite 1200, Corpus Christi, Texas 78412-5503, (361) 825-3100.

(11) COMPANY: Enterprise Products Operating, LLC; DOCKET NUMBER: 2010-1831-AIR-E; IDENTIFIER: RN102323268; LOCATION: Mont Belvieu, Chambers County; TYPE OF FACILITY: chemical plant; RULE VIOLATED: 30 TAC §116.115(b)(2)(F), THSC, §382.085(b), and NSR Permit Number 6798, General Conditions Number 8, by failing to prevent unauthorized emissions; and 30 TAC §101.201(b)(1)(G) and THSC, §382.085(b), by failing to include the compound descriptive types in the final report; PENALTY: $6,251; Supplemental Environmental Project (SEP) offset amount of $2,500 applied to Barbers Hill Independent School District - Alternative Fueled Vehicle and Equipment Program; ENFORCEMENT COORDINATOR: Allison Fischer, (512) 239-2574; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(12) COMPANY: Equistar Chemicals, LP; DOCKET NUMBER: 2010-1794-AIR-E; IDENTIFIER: RN100210319; LOCATION: La Porte, Harris County; TYPE OF FACILITY: industrial polyethylene manufacturing plant; RULE VIOLATED: 30 TAC §116.115(c), Air Permit Number 4477, SC Number 1, and THSC, §382.085(b), by failing to prevent unauthorized emissions; PENALTY: $10,000; SEP offset amount of $4,000 applied to Barbers Hill Independent School District - Alternative Fueled Vehicle and Equipment Program; ENFORCEMENT COORDINATOR: Nadia Hameed, (713) 767-3629; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(13) COMPANY: Hamilton Holdings, L.P.; DOCKET NUMBER: 2010-1431-PST-E; IDENTIFIER: 101839082; LOCATION: San Angelo, Tom Green County; TYPE OF FACILITY: inactive USTs; RULE VIOLATED: 30 TAC §334.49(a) and the Code, §26.3475(d), by failing to ensure that the corrosion protection system is maintained in a manner that will ensure continuous corrosion protection to all underground metal components of the UST system; and 30 TAC §334.49(b)(2) and the Code, §26.3475(d), by failing to maintain all components of the corrosion protection system electrically isolated from corrosive elements of the surrounding soil, backfill, groundwater or any other water, and from other metallic components; PENALTY: $2,550; ENFORCEMENT COORDINATOR: Theresa Hagood, (512) 239-2540; REGIONAL OFFICE: 622 South Oakes, Suite K, San Angelo, Texas 76903-7035, (325) 655-9479.

(14) COMPANY: Harris County Water Corporation dba Lincoln Square Subdivision Public Water Supply (PWS); DOCKET NUMBER: 2010-1776-UTL-E; IDENTIFIER: RN101199008; LOCATION: Harris County; TYPE OF FACILITY: PWS; RULE VIOLATED: 30 TAC §290.39(o)(1) and §291.162(a) and (j) and the Code, §13.1395(b)(2), by failing to adopt and submit to the executive director for approval by March 1, 2010, an emergency preparedness plan that demonstrates the facility's ability to provide emergency operations; PENALTY: $408; ENFORCEMENT COORDINATOR: Rebecca Johnson, (361) 825-3420; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(15) COMPANY: HUDSON BEND GROCERY INCORPORATED; DOCKET NUMBER: 2010-2067-PST-E; IDENTIFIER: RN101435725; LOCATION: Austin, Travis County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.50(b)(1)(A) and the Code, §26.34754(c)(1),

by failing to monitor the UST for releases at a frequency of at least once per month; PENALTY: $1,875; ENFORCEMENT COORDINATOR: Bridgett Lee, (512) 239-2565; REGIONAL OFFICE: 2800 S IH 35, Suite 100, Austin, Texas 78704-5712, (512) 339-2929.

(16) COMPANY: HUDSON PRODUCTS CORPORATION; DOCKET NUMBER: 2010-1988-IWD-E; IDENTIFIER: RN101864924; LOCATION: near Beasley, Fort Bend County; TYPE OF FACILITY: industrial products manufacturing plant; RULE VIOLATED: the Code, §26.121(a), 30 TAC §305.125(1), and TPDES Permit Number WQ0003985000, Effluent Limitations and Monitoring Requirements Number 1 for Outfall 101, by failing to comply with permitted effluent limits for biochemical oxygen demand (BOD) and total suspended solids (TSS); PENALTY: $4,320; ENFORCEMENT COORDINATOR: Jeremy Escobar, (361) 825-3422; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(17) COMPANY: Inwood Heritage Oaks, Limited; DOCKET NUMBER: 2010-1846-EAQ-E; IDENTIFIER: RN105818181; LOCATION: San Antonio, Bexar County; TYPE OF FACILITY: construction site; RULE VIOLATED: 30 TAC §213.4(a) and (j)(4) and Edwards Aquifer Protection Plan (EAPP) Number 13-09101401, Standard Conditions Number 5, by failing to obtain approval of a modification to a Sewer Collection System (SCS) Plan prior to beginning construction activities; and 30 TAC §213.5(f)(1)(A) and EAPP Number 13-09101401, SC Number 6, by failing to provide written notification no later than 48 hours prior to the commencement of construction activities; PENALTY: $4,000; ENFORCEMENT COORDINATOR: Cheryl Thompson, (817) 588-5886; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(18) COMPANY: LOCAL C STORE, LLC dba MS Express 701; DOCKET NUMBER: 2010-1570-PST-E; IDENTIFIER: RN101828457; LOCATION: Houston, Harris County; TYPE OF FACILITY: convenience store; RULE VIOLATED: 30 TAC §334.50(b)(2) and the Code, §26.3475(a), by failing to provide a method of release detection for the piping associated with the UST system; PENALTY: $2,632; ENFORCEMENT COORDINATOR: Michael Meyer, (512) 239-4492; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(19) COMPANY: Marc Roger Meeker; DOCKET NUMBER: 2010-1717-MWD-E; IDENTIFIER: RN101512291; LOCATION: Montgomery County; TYPE OF FACILITY: wastewater treatment; RULE VIOLATED: the Code, §26.121(a)(1), 30 TAC §305.125(1), and TPDES Permit Number WQ0013601001, Effluent Limitations and Monitoring Requirements Number 1, by failing to comply with permitted effluent limitations for BOD and TSS; 30 TAC §305.125(1) and (17) and TPDES Permit Number WQ0013601001, Monitoring and Reporting Requirements Number 1, by failing to timely submit effluent monitoring results at the intervals specified in the permit; and 30 TAC §305.125(1) and (17) and TPDES Permit Number WQ0013601001, Sludge Provisions, by failing to timely submit the annual sludge report at the intervals specified in the permit; PENALTY: $14,678; ENFORCEMENT COORDINATOR: Marty Hott, (512) 239-2587; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(20) COMPANY: Mohamed Amin Baniabbasi dba Amin's Texaco; DOCKET NUMBER: 2010-1936-PST-E; IDENTIFIER: RN102793387; LOCATION: Pasadena, Harris County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.8(c)(4)(A)(vii) and (5)(B)(ii), by failing to timely renew a previously issued UST delivery certificate by submitting a properly completed UST registration and self-certification form at least 30 days before the expiration date; and 30 TAC §334.8(c)(5)(A)(i) and the Code, §26.3467(a), by failing to make available to a common carrier a valid, current TCEQ delivery certificate before delivery of a regulated substance into the USTs; PENALTY: $4,310; ENFORCEMENT COORDINATOR: Michael Meyer, (512) 239-4492; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(21) COMPANY: Newell Recycling Company of El Paso, L.P.; DOCKET NUMBER: 2010-1665-AIR-E; IDENTIFIER: RN100581768; LOCATION: El Paso, El Paso County; TYPE OF FACILITY: semi-precious metal recycling plant; RULE VIOLATED: 30 TAC §106.262(a)(1) and THSC, §382.085(b), by failing to maintain the minimum required distance for a stockpile of 100 feet from the nearest off-plant receptor; 30 TAC §101.4 and THSC, §382.085(b), by failing to prevent a nuisance condition; PENALTY: $5,300; ENFORCEMENT COORDINATOR: Trina Grieco, (210) 403-4006; REGIONAL OFFICE: 401 East Franklin Avenue, Suite 560, El Paso, Texas 79901-1206, (915) 834-4949.

(22) COMPANY: North Alamo Water Supply Corporation; DOCKET NUMBER: 2010-1864-MWD-E; IDENTIFIER: RN102340056; LOCATION: Monte Alto, Hidalgo County; TYPE OF FACILITY: wastewater treatment; RULE VIOLATED: the Code, §26.121(a)(1), 30 TAC §305.125(1), and TPDES Permit Number WQ0013747004, Effluent Limitations and Monitoring Requirements Numbers 1 and 3, by failing to comply with permitted effluent limitations for pH and TSS; PENALTY: $4,500; ENFORCEMENT COORDINATOR: Marty Hott, (512) 239-2587; REGIONAL OFFICE: 1804 West Jefferson Avenue, Harlingen, Texas 78550-5247, (409) 898-3838.

(23) COMPANY: PAVE/LOCK/PLUS, LLC; DOCKET NUMBER: 2010-1182-AIR-E; IDENTIFIER: RN105936660; LOCATION: Rosenberg, Fort Bend County; TYPE OF FACILITY: portable concrete batch plant; RULE VIOLATED: 30 TAC §116.110(a) and THSC, §382.0518(a) and §382.085(b), by failing to obtain authorization prior to operation; PENALTY: $20,000; ENFORCEMENT COORDINATOR: Allison Fischer, (512) 239-2574; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(24) COMPANY: Ray Serna and Joe Trejo; DOCKET NUMBER: 2010-1820-MLM-E; IDENTIFIER: RN105906440; LOCATION: near Littlefield, Lamb County; TYPE OF FACILITY: storage lot used for unauthorized burning; RULE VIOLATED: 30 TAC §111.201 and THSC, §382.085(b), by failing to comply with the general prohibition on outdoor burning; and 30 TAC §335.4, by failing to prevent the storage or disposal of industrial solid waste at an unauthorized facility; PENALTY: $4,992; ENFORCEMENT COORDINATOR: Andrea Park, (512)239-4575; REGIONAL OFFICE: 5012 50th Street, Suite 100, Lubbock, Texas 79414-3421, (806) 353-9251.

(25) COMPANY: Raymond Wong dba Satsuma Park Villa Mobile Home Park; DOCKET NUMBER: 2010-1763-UTL-E; IDENTIFIER: RN101268597; LOCATION: Houston, Harris County; TYPE OF FACILITY: PWS; RULE VIOLATED: 30 TAC §290.39(o)(1) and §291.162(a) and (j) and the Code, §13.1395(b)(2), by failing to adopt and submit to the executive director for approval by March 1, 2010, an emergency preparedness plan that demonstrates the facility's ability to provide emergency operations; PENALTY: $420; ENFORCEMENT COORDINATOR: Jordan Jones, (512) 239-2569; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(26) COMPANY: SAFETY-KLEEN SYSTEMS, INCORPORATED; DOCKET NUMBER: 2010-1690-IHW-E; IDENTIFIER: RN100215441; LOCATION: Denton, Denton County; TYPE OF FACILITY: hazardous waste shipment and disposal; RULE VIOLATED:

30 TAC §335.2(b), by having caused, suffered, allowed, or permitted the shipment of industrial solid waste to an unauthorized facility; PENALTY: $5,000; ENFORCEMENT COORDINATOR: Rajesh Acharya, (512) 239-0577; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(27) COMPANY: Texas Industries, Incorporated; DOCKET NUMBER: 2010-2008-WR-E; IDENTIFIER: RN104081617; LOCATION: Jack County; TYPE OF FACILITY: reservoir; RULE VIOLATED: the Code, §11.121 and 30 TAC §297.11, by failing to obtain authorization for impounding water of the state; PENALTY: $765; ENFORCEMENT COORDINATOR: Evette Alvarado, (512) 239-2573; REGIONAL OFFICE: 1977 Industrial Boulevard, Abilene, Texas 79602-7833, (325) 698-9674.

(28) COMPANY: Texas Youth Commission; DOCKET NUMBER: 2010-1751-PST-E; IDENTIFIER: RN101541654; LOCATION: Gainesville, Cooke County; TYPE OF FACILITY: fleet refueling; RULE VIOLATED: 30 TAC §334.50(b)(2) and the Code, §26.3475(b), by failing to provide proper release detection for the suction piping associated with the UST; PENALTY: $2,300; ENFORCEMENT COORDINATOR: Clinton Sims, (512) 239-6933; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(29) COMPANY: Valero Refining-Texas, L.P.; DOCKET NUMBER: 2010-1836-AIR-E; IDENTIFIER: RN100238385; LOCATION: Texas City, Galveston County; TYPE OF FACILITY: oil and gas refinery; RULE VIOLATED: 30 TAC §116.715(a), Flexible Permit Numbers 39142 and PSD-TX-822M2, SC Number 1, and THSC, §382.085(b), by failing to comply with permitted emissions limits during an emissions event; PENALTY: $10,000; SEP offset amount of $4,000 applied to Texas Association of Resource Conservation and Development Areas, Inc. - Clean School Buses; ENFORCEMENT COORDINATOR: James Nolan, (512) 239-6634; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(30) COMPANY: Webb County; DOCKET NUMBER: 2010-1283-MLM-E; IDENTIFIER: RN102698719; LOCATION: Laredo, Webb County; TYPE OF FACILITY: PWS; RULE VIOLATED: 30 TAC §290.46(d)(2)(B) and §290.110(b)(2) and (4), by failing to maintain a minimum disinfectant residual of 0.5 milligrams per liter total chlorine in each finished water storage tank and throughout the distribution system at all times, 30 TAC §290.46(f)(2), (3)(B)(vi) and (E)(iv), by failing to maintain all of the facility's operating records and make those records accessible for review during an inspection, 30 TAC §290.111(h), by failing to properly complete the Surface Water Monthly Operating Reports submitted to the commission, 30 TAC §290.121(a) and (b)(4), by failing to maintain an up-to-date chemical and microbiological monitoring plan, 30 TAC §290.43(e), by failing to enclose all water storage tanks within an intruder-resistant fence; 30 TAC §290.46(m), by failing to perform maintenance practices which will ensure the good working condition of the facility's equipment; and 30 TAC §291.93(3) and the Code, §13,139(d), by failing to submit to the executive director a planning report that clearly explains how the facility, which has reached 85% of its capacity, will provide for the expected service demands to the remaining areas within the boundaries of its certificated area; PENALTY: $1,730; ENFORCEMENT COORDINATOR: Rebecca Clausewitz, (210) 403-4012; REGIONAL OFFICE: 707 East Calton Road, Suite 304, Laredo, Texas 78041-3887, (956) 791-6611.

TRD-201100810
Kathleen C. Decker
Director, Litigation Division
Texas Commission on Environmental Quality
Filed: March 1, 2011

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Notice of District Petition

Notice issued February 22, 2011.

TCEQ Internal Control No. 12062010-D01; The East Central Special Utility District of Bexar County (the "District") filed an application with the Texas Commission on Environmental Quality (TCEQ) for authority to levy an impact fee of $2,450 per equivalent single-family connection for water facilities. The impact fee is based on the number of service units expected to be developed within the next ten years and the total cost of future capital improvements required to meet the growth during the same ten-year period. The District files this application under the authority of Chapter 395 of the Local Government Code, 30 Texas Administrative Code Chapter 293, and the procedural rules of the TCEQ. The purpose of impact fees is to generate revenue to recover the costs of water capital improvements or facility expansions made necessary by and attributable to serving new development in the District's service area. At the direction of the District, a registered engineer has prepared a capital improvements plan for the system that identifies the capital improvements or facility expansions and their costs for which the impact fees will be assessed. The impact fee application and supporting information are available for inspection and copying during regular business hours in the Utilities and Districts Section of the Water Supply Division, Third Floor of Building F (in the TCEQ Park 35 Office Complex located between Yager and Braker Lanes on North IH-35), 12100 Park 35 Circle, Austin, Texas 78753. The capital improvements plan is available for inspection and copying at the District's office during regular business hours.

INFORMATION SECTION

To view the complete issued notice, view the notice on our web site at www.tceq.state.tx.us/comm_exec/cc/pub_notice.html or call the Office of the Chief Clerk at (512) 239-3300 to obtain a copy of the complete notice. When searching the web site, type in the issued date range shown at the top of this document to obtain search results.

The TCEQ may grant a contested case hearing on the petition 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. Requests for a contested case hearing must be submitted in writing to the Office of the Chief Clerk at the address provided in the information section below. The Executive Director may approve the petition unless a written request for a contested case hearing is filed within 30 days after the newspaper publication of this notice. If a hearing request is filed, the Executive Director will not approve the petition and will forward the petition and hearing request to the 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, at the same address. For additional information, individual members of the general public may contact the Districts Review Team at (512) 239-4691. Si desea información en Español, puede llamar al (512) 239-0200. General information regarding TCEQ can be found at our web site at www.tceq.state.tx.us.

TRD-201100856
LaDonna Castañuela
Chief Clerk
Texas Commission on Environmental Quality
Filed: March 2, 2011

Notice of Opportunity to Comment on Agreed Orders of Administrative Enforcement Actions

The Texas Commission on Environmental Quality (TCEQ or 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 **April 11, 2011.** 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 indicate that consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the commission's jurisdiction or 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. Written 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 April 11, 2011.** 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 shall be submitted to the commission in **writing.**

(1) COMPANY: Arthur E. Longron dba Texas Hog Wallow; DOCKET NUMBER: 2009-1383-MLM-E; TCEQ ID NUMBER: RN105450621; LOCATION: 2084 Private Road 7073, Deweyville, Newton County; TYPE OF FACILITY: real property; RULES VIOLATED: 30 TAC §111.201 and Texas Health and Safety Code (THSC), §382.085(b), by failing to prevent the unauthorized burning of municipal solid waste (MSW) for the purpose of disposal; and 30 TAC §330.15(c) and TWC, §26.121, by failing to prevent the unauthorized disposal of MSW, resulting in an unauthorized discharge into or adjacent to water in the state; PENALTY: $2,499; STAFF ATTORNEY: Peipey Tang, Litigaiton Division, MC 175, (512) 239-0654; REGIONAL OFFICE: Beaumont Regional Office, 3870 Eastex Freeway, Beaumont, Texas 77703-1830, (409) 898-3838.

(2) COMPANY: City of Mathis; DOCKET NUMBER: 2010-1043-MLM-E; TCEQ ID NUMBER: RN101388130; LOCATION: 1096 Freeman Street, Number 1068, Mathis, San Patricio County; TYPE OF FACILITY: municipal public water system; RULES VIOLATED: 30 TAC §330.15(c) and TWC, §26.121(a)(1), by failing to properly dispose MSW from the surface water treatment plant at an authorized facility; 30 TAC §290.42(f)(1)(E)(ii)(IV), by failing to provide separate containment facilities for chemicals that are incompatible; 30 TAC §290.42(d)(11)(F)(i), by failing to backwash the filters with filtered water; 30 TAC §290.111(d)(2)(B), by failing to ensure that the disinfection contact time used by the facility is based on tracer study data or a theoretical analysis approved by the executive director and the actual flow rate that is occurring at the time that monitoring occurs; 30 TAC §290.110(d)(2), by failing to measure the chloramine residual within the distribution system using the amperometric titration method, ferrous titration method, or a diethyl-p-phenylendiamine colorimetric method which measures the free chlorine residual to a minimum accuracy of plus or minus 0.1 milligrams per liter (mg/L); 30 TAC §290.121(a) and (b), by failing to make available for commission review a complete up-to-date chemical and microbiological monitoring plan that identifies all sampling locations, describes the sampling frequency, and specifies the analytical procedures and laboratories that the facility will use to comply with the monitoring requirements; 30 TAC §290.44(h)(1)(A), by failing to ensure that a backflow prevention assembly or an air gap is installed at all residences and establishments where an actual or potential contamination hazard exists; 30 TAC §290.111(f)(3)(D), by failing to design the recorder so that the operator can accurately determine the value of the readings at the monitoring interval approved by the executive director; 30 TAC §290.46(s)(2)(B)(i), by failing to restandardize the secondary standards each time the benchtop turbidimeter is calibrated with primary standards; 30 TAC §290.46(s)(1), by failing to calibrate the flow measuring devices and rate-of-flow controllers at least once every twelve months; 30 TAC §290.111(h)(2), by failing to submit properly completed Surface Water Monthly Operating Reports (SWMORs); 30 TAC §290.46(e)(6)(C) and THSC, §341.033(a), by failing to employ at least one Class "C" or higher surface water operator on duty at the facility when it is in operation or provide the facility with continuous turbidity and disinfectant residual monitors with automatic facility shutdown and alarms to summon operators so as to ensure that the water produced continues to meet the commission's drinking water standards during periods when the facility is not staffed; and 30 TAC §290.109(c)(2)(A)(ii), by failing to collect routine distribution coliform samples at regular time intervals throughout the month; PENALTY: $9,980, Supplemental Environmental Project (SEP) offset amount of $9,980 applied to Texas Association of Resource Conservation and Development Areas, Inc (RC&D) - Water or Wastewater Treatment Assistance; STAFF ATTORNEY: Kari Gilbreth, Litigation Division, MC 175, (512) 239-1320; REGIONAL OFFICE: Corpus Christi Regional Office, NRC Building, Suite 1200, 6300 Ocean Drive, Unit 5839, Corpus Christi, Texas 78412-5839, (361) 825-3100.

(3) COMPANY: City of Odem; DOCKET NUMBER: 2010-1208-MWD-E; TCEQ ID NUMBER: RN104188594; LOCATION: approximately 200 feet from the end of County Road 49 and approximately 1.8 miles southeast of the intersection of United States Highway 77 and Farm-to-Market (FM) Road 631, Odem, San Patricio County; TYPE OF FACILITY: domestic wastewater treatment plant; RULES VIOLATED: TWC, §26.121(a), 30 TAC §305.125(1), and Texas Pollutant Discharge Elimination System (TPDES) Permit Number WQ0010237002, Effluent Limitations and Monitoring Requirements Numbers 1 and 3, by failing to comply with permitted effluent limits for the monitoring period ending February 28, 2010; TWC, §26.121(a), 30 TAC §305.125(1), TPDES Permit Number WQ0010237002, Effluent Limitations and Monitoring Requirements Number 1, by failing to comply with permitted effluent limits during the period of November 2009 and March 2010; and 30 TAC §305.125(17) and §319.7(d) and TPDES Permit Number WQ0010237002, Monitoring and Reporting Requirements Number 1, by failing to submit a complete discharge monitoring report (DMR); PENALTY: $5,495, SEP offset amount of $5,495 applied to San Patricio County - San Antonio-Nueces River Basin; STAFF ATTORNEY: Peipey Tang, Litigation Division, MC 175, (512) 239-0654; REGIONAL OFFICE: Corpus Christi Regional

Office, NRC Building, Suite 1200, 6300 Ocean Drive, Unit 5839, Corpus Christi, Texas 78412-5839, (361) 825-3100.

TRD-201100841
Kathleen C. Decker
Director, Litigation Division
Texas Commission on Environmental Quality
Filed: March 1, 2011

Notice of Opportunity to Comment on Default Orders of Administrative Enforcement Actions

The Texas Commission on Environmental Quality (TCEQ or 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 or requests a hearing and fails to participate at the hearing. Similar to the procedure followed with respect to Agreed Orders entered into by the executive director 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 **April 11, 2011.** 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 that consent to the proposed DO is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the commission's jurisdiction, or the commission's 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. Written 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 April 11, 2011.** 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, §7.075 provides that comments on the DOs shall be submitted to the commission in **writing.**

(1) COMPANY: Excel Golf, LLC and GP Golf, LLLP dba Highland Lakes Golf Course at Highland Lakes Country Club; DOCKET NUMBER: 2009-1623-WR-E; TCEQ ID NUMBER: RN105789747; LOCATION: 20552 Highland Lake Drive, Lago Vista, Travis County; TYPE OF FACILITY: golf course; RULES VIOLATED: TWC, §11.121 and 30 TAC §297.11, by failing to obtain authorization to impound, divert, or use state water; PENALTY: $41,500; STAFF ATTORNEY: Jim Sallans, Litigation Division, MC 175, (512) 239-2053; REGIONAL OFFICE: Austin Regional Office, 2800 South Interstate Highway 35, Suite 100, Austin, Texas 78704-5712, (512) 339-2929.

(2) COMPANY: Microgy, Inc.; DOCKET NUMBER: 2009-1546-IWD-E; TCEQ ID NUMBER: RN103144622; LOCATION: west side of Farm-to-Market Road 219 at the intersection of Farm-to-Market Road 219 and County Road 404 approximately eight miles northwest of Stephenville, Erath County; TYPE OF FACILITY: livestock manure composting; RULES VIOLATED: 30 TAC §205.4(a)(5) and TWC, §26.040, by failing to obtain authorization to discharge wastewater from livestock manure compost operations or commit another act that has caused or will cause pollution of any water in the state; PENALTY: $2,440; STAFF ATTORNEY: Jim Sallans, Litigation Division, MC 175, (512) 239-2053; REGIONAL OFFICE: Dallas-Fort Worth Regional Office, 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

TRD-201100840
Kathleen C. Decker
Director, Litigation Division
Texas Commission on Environmental Quality
Filed: March 1, 2011

Notice of Opportunity to Request a Public Meeting for a New Municipal Solid Waste Facility Registration Application No. 43031

APPLICATION. Brunson's Investment L.L.C., 15605 Horizon Boulevard, El Paso, Texas 79928, has applied to the Texas Commission on Environmental Quality (TCEQ) for a proposed Registration (No. 43031) to construct and operate a Type V municipal solid waste liquid waste processing facility. The proposed facility, Brunson's Waste Management, will be located at 15605 Horizon Boulevard, El Paso, Texas 79928, in El Paso County. This facility is requesting authorization to process municipal solid waste which includes sewer sludge, grease trap, grit trap waste from commercial car washes, and septage waste. The registration application is available for viewing and copying at the Horizon Regional Municipal Utility District located at 14100 Horizon Blvd, Horizon City, Texas 79928 and may be viewed online at http://www.123triadpro.com/triad10/brunson_pump/version-2.

PUBLIC COMMENT/PUBLIC MEETING. Written public comments or written requests for a public meeting must be submitted to the Office of Chief Clerk at the address included in the information section below. Comments may also be received if a public meeting is held on the facility. A public meeting will be held by the executive director if requested by a member of the legislature who represents the general area where the development is to be located, or if there is a substantial public interest in the proposed development. The purpose of the public meeting is for the public to provide input for consideration by the commission, and for the applicant and the commission staff to provide information to the public. A public meeting is not a contested case hearing. The executive director will review and consider public comments and written requests for a public meeting submitted prior to the notice of final determination. The executive director is not required to file a response to comments.

EXECUTIVE DIRECTOR ACTION. The executive director shall, after review of an application for registration, determine if the application will be approved or denied in whole or in part. If the executive director acts on an application, the chief clerk shall mail or otherwise transmit notice of the action and an explanation of the opportunity to file a motion to reconsider the executive director's decision. The chief clerk shall mail this notice to the owner and operator, the public interest counsel, to adjacent landowners as shown on the required land ownership map and landowners list, and to other persons who timely filed public comment in response to public notice. Not all persons on the mailing list for this notice will receive the notice letter from the Office of the Chief Clerk.

INFORMATION. Written public comments or requests to be placed on the permanent mailing list for this application should be submitted to the Office of the Chief Clerk, MC 105, TCEQ, P.O.

Box 13087, Austin, TX 78711-3087 or electronically submitted to http://www10.tceq.state.tx.us/epic/ecmnts/. 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. Further information may also be obtained from Brunson's Investment, L.L.C., at the address stated above or by calling Mr. Hector Villa, Project Manager, Dorado Engineering, Inc., at (915) 562-0002.

TRD-201100858
LaDonna Castañuela
Chief Clerk
Texas Commission on Environmental Quality
Filed: March 2, 2011

Notice of Public Hearings on Proposed Revisions to 30 TAC Chapter 101

The Texas Commission on Environmental Quality (TCEQ) will conduct public hearings to receive testimony regarding proposed revisions to 30 TAC Chapter 101. This revision is proposed under the requirements of Texas Health and Safety Code, §§382.011, General Powers and Duties, 382.017, Rules, and 382.0621, Operating Permit Fee; and 42 United States Code, §7661a, Federal Clean Air Act, §502, concerning emissions fee requirements for federal operating (Title V) permit programs.

Beginning in Fiscal Year (FY) 2012, emissions fee revenue is projected to be insufficient to adequately fund the operating costs associated with the Title V permit program. The proposed amendment will increase the base rate from $25 per ton to $35 per ton, or as needed, in the emissions fee calculation for FY 2012 and allow annual adjustments of the base rate, as required for adequate fee revenue up to a predetermined cap of $45 per ton. The proposal will also solicit comments on removing the carbon monoxide fraction discount from the fee assessment equation.

The commission will hold public hearings on this proposal in Houston on April 4, 2011, at 1:00 p.m. at the Houston-Galveston Area Council, Room A, 3555 Timmons and in Austin on April 7, 2011, at 2:00 p.m. in Building F, Room 2210, at the commission's central office located at 12100 Park 35 Circle. The hearings are structured for the receipt of oral or written comments by interested persons. Individuals may present oral statements when called upon in order of registration. Open discussion will not be permitted during the hearings; however, commission staff members will be available to discuss the proposal 30 minutes prior to each hearing.

Persons planning to attend the hearing, who have special communication or other accommodation needs, should contact Sandy Wong, Texas Register Team at (512) 239-1802. Requests should be made as far in advance as possible.

Comments may be submitted to Charlotte Horn, MC 205, Office of Legal Services, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087, or faxed to (512) 239-4808. Electronic comments may be submitted at *http://www5.tceq.texas.gov/rules/ecomments.* File size restrictions may apply to comments submitted through the eComments system. All comments should reference Rule Project Number 2011-006-101-EN. The comment period closes April 11, 2011. To view rules, please visit *http://www.tceq.texas.gov/nav/rules/propose_adopt.html.* For further information or questions concerning this proposal, please contact Kathy Pendleton, P.E., Emissions Assessment Section, at (512) 239-1936.

TRD-201100782
Robert Martinez
Director, Environmental Law Division
Texas Commission on Environmental Quality
Filed: February 25, 2011

Notice of Public Meeting and a Proposed Amendment and Renewal of a General Permit Authorizing the Discharge of Storm Water

The Texas Commission on Environmental Quality (TCEQ) proposes to amend and renew a general permit, the Texas Pollutant Discharge Elimination System Multi Sector General Permit (MSGP), Permit No. TXR050000, authorizing the discharge of storm water and certain non-storm water discharges to surface water in the state. The proposed general permit applies to the entire state of Texas. General permits are authorized by §26.040 of the Texas Water Code.

PROPOSED GENERAL PERMIT. The executive director has prepared a draft renewal with amendments of the existing general permit that authorizes the discharge of storm water and certain types of non-storm water from industrial activities that are grouped into thirty (30) similar sectors based on Standard Industrial Classification (SIC) Codes and Industrial Activity Codes. The proposed changes to the general permit are included in the proposed general permit and described in the fact sheet.

The general permit specifies which facilities must obtain permit coverage, which are eligible for a conditional exclusion based on no exposure of industrial activity to storm water, which are designated as eligible for coverage without submitting a notice of intent, and which must obtain individual permit coverage. Non-storm water discharges that are not specifically listed in the general permit are not authorized by the general permit. No significant degradation of high quality waters is expected and existing water uses will be maintained and protected.

Operators of the following facilities are hereby notified that the proposed general permit will provide coverage for storm water runoff from the following facilities without submittal of a notice of intent, provided that certain permit requirements are met and that there is no exposure of industrial activity to storm water: activities described by Standard Industrial Classification Code 4225 (General Warehousing and Storage) that do not conduct vehicle maintenance or equipment cleaning activities; industrial activities regulated under the general permit that occur within a residential home, shopping mall, or office building; and publishing and designing facilities that do not conduct printing activities.

The executive director has reviewed this action for consistency with the goals and policies of the Texas Coastal Management Program (CMP) according to Coastal Coordination Council (CCC) regulations, and has determined that the action is consistent with applicable CMP goals and policies.

A copy of the proposed general permit and fact sheet are available for viewing and copying at the TCEQ Office of the Chief Clerk located at the TCEQ's Austin office, at 12100 Park 35 Circle, Building F. These documents are also available at the TCEQ's sixteen (16) regional offices and on the TCEQ website at http://www.tceq.texas.gov/nav/permits/sw_permits.html.

PUBLIC COMMENT AND PUBLIC MEETING. You may submit public comments about this general permit in writing or orally at the public meeting held by the TCEQ. The purpose of a public meeting is to provide an opportunity to submit comments and to ask questions about the general permit. A public meeting is not a contested case hearing. The public comment period will end at the conclusion of the public meeting.

The public meeting will be held as follows:

2:00 p.m., April 12, 2011, TCEQ, 12100 Park 35 Circle, Building E, Room 201S, Austin, Texas 78753

Written public comments must be received by the Office of the Chief Clerk, MC 105, TCEQ, P.O. Box 13087, Austin, TX 78711-3087 or electronically at www.tceq.texas.gov/about/comments.html by the end of the public comment period on April 12, 2011.

APPROVAL PROCESS. After the comment period, the executive director will consider all the public comments and prepare a written response. The response will be filed with the TCEQ Office of the Chief Clerk at least 10 days before the scheduled Commission meeting at which the commission will consider approval of the general permit. The commission will consider all public comments in making its decision and will either adopt the executive director's response or prepare its own response to the comments. The commission will issue its written response to the public comments on the general permit at the same time the commission issues or denies the general permit. A copy of the issued general permit and response to comments will be made available to the public for inspection at the agency's Austin and regional offices. A notice of the commissioners' action on the proposed general permit and a copy of its response to comments will be mailed to each person who made a comment. Also, a notice of the commission's action on the proposed general permit and the text of its response to comments will be published in the *Texas Register.*

MAILING LISTS. In addition to submitting public comments, you may ask to be placed on a mailing list to receive future public notices mailed by the Office of the Chief Clerk. You may request to be added to: (1) the mailing list for this specific general permit; (2) the permanent mailing list for a specific county; or both. Clearly specify the mailing lists to which you wish to be added and send your request to the TCEQ Office of the Chief Clerk at the address above. Unless you otherwise specify, you will be included only on the mailing list for this specific general permit.

INFORMATION. If you need more information about the proposed permit or the permitting process, please call the TCEQ Office of Public Assistance, toll free, at 1-800-687-4040. General information about the TCEQ can be found at our web site at: www.tceq.texas.gov.

Further information may also be obtained by calling the TCEQ's Water Quality Division, Storm Water and Pretreatment Team, at (512) 239-4671.

Si desea información en español, puede llamar al 1-800-687-4040.

TRD-201100815
LaDonna Castañuela
Chief Clerk
Texas Commission on Environmental Quality
Filed: March 1, 2011

Notice of Water Quality Applications

The following notice was issued on February 18, 2011 through February 25, 2011.

The following require the applicants to publish notice in a newspaper. Public comments, 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 THE NOTICE.

INFORMATION SECTION

AEP TEXAS NORTH COMPANY, which operates Paint Creek Power Station, has applied for a renewal of TPDES Permit No. WQ0000963000, which authorizes the discharge of once-through cooling water and previously monitored effluent (cooling tower blowdown via Outfall 101) at a daily average flow not to exceed 253,800,000 gallons per day via Outfall 001 and low volume wastewater on a flow variable basis via Outfall 002. The facility is located approximately two miles south of the east end of Farm-to-Market Road 2082, on the northeast side of Lake Stamford, Haskell County, Texas 79521.

RHODIA INC., which operates Rhodia Vernon Guar Plant, has applied for a renewal of TPDES Permit No. WQ0002537000, which authorizes the discharge of treated process wastewater, domestic wastewater, utility wastewater, and first flush storm water at a daily average flow not to exceed 1,300,000 gallons per day via Outfall 001; and storm water on an intermittent and flow variable basis via Outfall 002. The proposed permit will authorize the discharge of treated process wastewater, utility wastewater, and first flush storm water at a daily average flow not to exceed 1,300,000 gallons per day via Outfall 001; and storm water on an intermittent and flow variable basis via Outfall 002. The facility is located at 201 Harrison Street, approximately 0.2 miles north of U.S. Highway 287, and approximately one mile east of the intersection of U.S. Highway 287 and U.S. Highway 70 in the City of Vernon, Wilbarger County, Texas 76384.

CITY OF SAN ANTONIO, TEXAS DEPARTMENT OF TRANSPORTATION, and SAN ANTONIO WATER SYSTEM, which operate the San Antonio municipal separate storm sewer system (MS4), have applied for a minor amendment of TPDES Permit No. WQ0004284000 to add a monitoring point downstream from the City of San Antonio Zoo. The existing permit authorizes storm water discharges from the San Antonio MS4. The MS4 is located in the City of San Antonio, 78002, 78006, 78008, 78015, 78023, 78039, 78052, 78069, 78073, 78101, 78109, 78112, 78124, 78148, 78150, 78152, 78154, 78201 through 78242, 78244, 78245, 78247 through 78254, 78257 through 78261, 78263, 78264, 78266, and 78284, Bexar County, Texas.

METROPLEX QUARRY'S INC., which operates a facility that quarries stone, sand, gravel, aggregate and soil and produces block stone and dimension stone within one mile of the John Graves Scenic Riverway and 100-year flood plain, has applied for a major amendment to TPDES Permit No. WQ0004820000 to authorize the discharge of wastewater and storm water on an intermittent and variable basis via Outfalls 001, 002, 003, 004, 005, 006, and 007, and the addition of Outfall 008.

CITY OF CORPUS CHRISTI has applied for a new permit, Proposed Texas Pollutant Discharge Elimination System (TPDES) Sludge Permit No. WQ0004934000 to authorize the surface disposal of water treatment plant sludge products on 36 acres of land. The sludge disposal facility will be located at the existing City of Corpus Christi Pollywog Ponds disposal area, which is 3,230 feet east of the intersection of Interstate Highway 37 and State Highway 77 and 620 feet northeast of the intersection of Up River Road and Sharpsburg Road in Nueces County, Texas 78410.

CITY OF LONGVIEW has applied for a renewal of TPDES Permit No. WQ0010589002 which authorizes the discharge of treated domestic wastewater at an annual average flow not to exceed 21,000,000 gallons per day. The facility is located approximately 2,500 feet west of the crossing of Grace Creek by Farm-to-Market Road 1845, approximately 4,000 feet south of the intersection of Farm-to-Market Roads 1845 and 2087 in Gregg County, Texas 75603.

CITY OF COMO has applied for a renewal of TPDES Permit No. WQ0011313001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 100,000 gallons per

day. The facility is located on the west side of Carroll Creek, approximately 2,400 feet west of the intersection of Farm-to-Market Road 69 and State Highway 11 in Hopkins County, Texas 75431.

CITY OF NEW LONDON has applied for a renewal of TPDES Permit No. WQ0012376001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 100,000 gallons per day. The facility is located approximately 7,500 feet northwest of the intersection of the State Highway 323 and Farm-to-Market Road 838 and approximately 5,000 feet east of Farm-to-Market Road 2089 in Rusk County, Texas 75682.

UNION GROVE INDEPENDENT SCHOOL DISTRICT has applied for a renewal of TPDES Permit No. WQ0013416001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 15,000 gallons per day. The facility is located at 10920 Union Grove road, approximately 3.5 miles northeast of the intersection of U.S. Highway 271 and U.S. Highway 80 in Gladewater in Upshur County, Texas 75647.

MARTIN REALTY & LAND, Inc. has applied for a renewal of TPDES Permit No. WQ0014081001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 450,000 gallons per day. The facility is located at 19348 Amy Lane, approximately 1.2 miles east-northeast of the intersection of Portland Road and Farm-to-Market Road 1314 and 2.5 miles northwest of the intersection of Farm-to-Market Road 1314 and U.S. Highway 59, in Porter in Montgomery County, Texas 77365.

If you need more information about these permit applications or the permitting process, please call the TCEQ Office of Public Assistance, Toll Free, at 1-800-687-4040. General information about the TCEQ can be found at our web site at www.TCEQ.state.tx.us. Si desea información en Español, puede llamar al 1-800-687-4040.

TRD-201100857
LaDonna Castañuela
Chief Clerk
Texas Commission on Environmental Quality
Filed: March 2, 2011

Notice of Water Rights Application

Notice issued February 18, 2011.

APPLICATION NO. 12581; Central Texas Highway Constructors, LLC, 1914 Borchert Drive, Lockhart, Texas 78644, Applicant, has applied for a temporary water use permit to divert and use not to exceed 50 acre-feet of water from York Creek, Guadalupe River Basin, within a period of two years for industrial purposes in Guadalupe County. More information on the application and how to participate in the permitting process is given below. The application and partial fees were received on April 7, 2010. Additional information and fees were received on June 11, 23, July 19, and July 20, 2010. The application was declared administratively complete and filed with the Office of the Chief Clerk on July 21, 2010. The TCEQ Executive Director has completed the technical review of the application and prepared a draft permit. The draft permit, if granted, would contain special conditions, including but not limited to, stream flow restrictions. The application, technical memoranda, and Executive Director's draft permit are available for viewing and copying at the Office of the Chief Clerk, 12100 Park 35 Circle, Building F, Austin, TX 78753. Written public comments and requests for a public meeting should be submitted to the Office of Chief Clerk, at the address provided in the information section below, by March 11, 2011.

INFORMATION SECTION

To view the complete issued notice, view the notice on our web site at www.tceq.state.tx.us/comm_exec/cc/pub_notice.html or call the Office of the Chief Clerk at (512) 239-3300 to obtain a copy of the complete notice. When searching the web site, type in the issued date range shown at the top of this document to obtain search results.

A public meeting is intended for the taking of public comment, and is not a contested case hearing.

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. Si desea información en Español, puede llamar al 1-800-687-4040.

TRD-201100855
LaDonna Castañuela
Chief Clerk
Texas Commission on Environmental Quality
Filed: March 2, 2011

Texas Facilities Commission

Request for Proposals #303-1-20276

The Texas Facilities Commission (TFC), on behalf of the Department of Assistive and Rehabilitative Services, announces the issuance of Request for Proposals (RFP) #303-1-20276. TFC seeks a five or ten years lease of approximately 6,051 square feet of office space in San Antonio, Bexar County, Texas.

The deadline for questions is March 30, 2011, and the deadline for proposals is April 6, 2011, at 3:00 p.m. The target award date is June 15, 2011. TFC reserves the right to accept or reject any or all proposals submitted. TFC is under no legal or other obligation to execute a lease on the basis of this notice or the distribution of an RFP. Neither this notice nor the RFP commits TFC to pay for any costs incurred prior to the award of a grant.

Parties interested in submitting a proposal may obtain information by contacting TFC Contract Specialist Sandy Williams at (512) 475-0453 or sandy.williams@tfc.state.tx.us. Any addendum to the original RFP will be posted to the Electronic State Business Daily. A copy of the RFP may be downloaded from the Electronic State Business Daily at *http://esbd.cpa.state.tx.us/bid_show.cfm?bidid=93327.*

TRD-201100806
Kay Molina
General Counsel
Texas Facilities Commission
Filed: February 28, 2011

Texas Forest Service

Renewal of a Major Consulting Contract

In accordance with the provisions of Texas Government Code, Chapter 2254, the Texas Forest Service has renewed an existing consulting contract for an enterprise GIS Implementation plan and system design. The consultant will provide a formal planning process to develop an implementation plan and system design that can be integrated through an entire organization so that a large number of users can manage and share spatial data information.

The Name and Address of Consultant is as follows: Data Transfer Solutions, Inc., 3680 Avalon Park Boulevard, Suite 200, Orlando, Florida 32828.

The Texas Forest Service will pay an amount of $147,000.00. The contract will begin on February 15, 2011 and terminate on June 14, 2011.

If any, the consultant will submit documents, films, recordings, or reports compiled by the consultant under the contract to the Texas Forest Service, no later than three months after completion of services.

Any questions regarding this posting should be directed to: Alan Degelman, Purchasing Department Head/HUB Coordinator, Purchasing Department, John B. Connally Building, 301 Tarrow Street, Suite 419, College Station, Texas 77840.

TRD-201100773
Don Barwick
HUB and Procurement Manager, Texas A&M University System
Texas Forest Service
Filed: February 24, 2011

Texas Health and Human Services Commission

Public Notice

The Texas Health and Human Services Commission (HHSC) intends to submit to the Centers for Medicare and Medicaid Services (CMS) a request for an amendment to the Deaf Blind with Multiple Disabilities (DBMD) waiver program, under the authority of §1915(c) of the Social Security Act. The DBMD waiver program is currently approved for the five-year period beginning March 1, 2008, and ending February 28, 2013. The proposed effective date for the amendment is September 1, 2010.

The program is designed to serve individuals statewide who are deafblind, function as deafblind or have a condition that will result in deafblindness, and have an additional disability that limits independent functioning. The program serves individuals in the community who would otherwise require care in an intermediate care facility for persons with mental retardation.

As a result of a legislative appropriation, HHSC identified a cost savings plan to reduce intermediate care facility for persons with mental retardation rates by one percent in September 2010 and by another two percent in February 2011. The individual cost limit for an individual in the DBMD waiver is a percentage of the rate that would be paid for that individual's care in an intermediate care facility for persons with mental retardation. As such, the three percent rate reductions for intermediate care facilities for persons with mental retardation lowered the DBMD waiver individual cost limit by three percent, and individuals at or near the current cost ceiling may subsequently lose eligibility for the DBMD waiver. To ensure no individuals lose their DBMD eligibility, the DBMD individual cost limit will be adjusted. This amendment will not impose a negative impact to the individuals in this waiver program.

HHSC is requesting that the waiver amendment be approved for the period beginning September 1, 2010, through February 28, 2013. This amendment maintains cost neutrality for waiver years 2010 through 2013.

To obtain copies of the proposed waiver amendment, interested parties may contact Christine Longoria by mail at Texas Health and Human Services Commission, P.O. Box 85200, mail code H-370, Austin, Texas 78708-5200, phone (512) 491-1152, fax (512) 491-1957, or by email at Christine.Longoria@hhsc.state.tx.us.

TRD-201100767
Steve Aragon
Chief Counsel
Texas Health and Human Services Commission
Filed: February 24, 2011

Department of State Health Services

Licensing Actions for Radioactive Materials

LICENSING ACTIONS FOR RADIOACTIVE MATERIALS

The Department of State Health Services 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 TX" 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
Bryan	G.E. Osmonics, Inc.	L06251	Bryan	00	02/08/11
Houston	Zilkha Biomass Crockett, L.L.C.	L06381	Houston	00	02/02/11
Pasadena	PMC Hospital, L.L.C. dba St. Luke's Patients Medical Center	L06384	Pasadena	00	02/04/11
Throughout TX	Water Remediation Technology, L.L.C.	L06316	Wheat Ridge, CO	00	02/01/11

AMENDMENTS TO EXISTING LICENSES ISSUED:

Location	Name	License #	City	Amend-ment #	Date of Action
Abilene	Cardinal Health dba National Central Pharmacy	L04781	Abilene	30	02/01/11
Alice	Christus Spohn Health System Corporation dba Christus Spohn Hospital-Alice	L02390	Alice	45	02/11/11
Austin	Austin Texas Radiation Oncology Group, P.A. dba Austin Cancer Centers	L01761	Austin	66	01/31/11
Austin	Texas Oncology, P.A.	L05108	Austin	23	02/07/11
Beaumont	Wayne S. Margolis, M.D., P.A.	L06049	Beaumont	03	02/09/11
Brownwood	Brownwood Hospital, L.P. dba Brownwood Regional Medical Center	L02322	Brownwood	58	02/01/11
Channelview	Lyondell Chemical Company	L04439	Channelview	26	02/04/11
Clifton	Goodall Witcher Healthcare Foundation	L03427	Clifton	19	01/28/11
Corpus Christi	Driscoll Children's Hospital	L04606	Corpus Christi	34	02/01/11
Dalhart	Dallam-Hartley Counties Hospital District dba Coon Memorial Hospital	L06365	Dalhart	01	02/03/11
Dallas	IBA Molecular North America, Inc. dba IBA Molecular	L06174	Dallas	07	02/07/11
Eagle Pass	Fort Duncan Medical Center	L05640	Eagle Pass	09	02/01/11
Fairfield	East Texas Medical Center-Fairfield	L05195	Fairfield	08	02/02/11
Fort Worth	University of North Texas Health Science Center-Fort Worth	L02518	Fort Worth	39	02/07/11
Fort Worth	Fort Worth Heart, P.A.	L05480	Fort Worth	35	02/11/11
Fort Worth	Fort Worth Surgicare Partners, Ltd. dba Baylor Surgical Hospital at Fort Worth	L05668	Fort Worth	09	02/09/11
Fort Worth	Darren Lackan, M.D., P.A. dba Diabetes and Thyroid Center of Fort Worth	L06074	Fort Worth	03	02/08/11
Houston	Texas Children's Hospital	L04612	Houston	51	01/25/11
Houston	Betabatt, Inc.	L05961	Houston	05	01/31/11
Houston	Cardiac Nuclear Imaging, Inc.	L05962	Houston	05	02/01/11
Houston	Advanced Nuclear Consultants	L06167	Houston	05	02/01/11
Houston	The Methodist Hospital Research Institute	L06331	Houston	03	01/28/11
Kingsville	Christus Spohn Health System dba Christus Spohn Hospital Kleberg	L02917	Kingsville	49	02/11/11
Llano	Llano County Hospital Authority dba Llano Memorial Healthcare System	L04438	Llano	29	02/08/11
Lubbock	Rosa of the South Plains, L.L.P. dba Rosa of the South Plains	L05484	Lubbock	17	02/01/11

AMENDMENTS TO EXISTING LICENSES ISSUED (Continued):

Lubbock	Cardinal Health Nuclear Pharmacy Services	L06290	Lubbock	04	02/09/11
Nacogdoches	Nacogdoches Heart Clinic	L04382	Nacogdoches	16	01/25/11
Pasadena	University Cancer Center Huntsville Brenham, Inc.	L06070	Pasadena	03	02/02/11
Plano	Medical Edge Healthcare Group, P.A. dba Heart First	L05555	Plano	31	01/26/11
Port Arthur	Motiva Enterprises, L.L.C.	L05211	Port Arthur	13	02/02/11
Richardson	The University of Texas at Dallas	L02114	Richardson	58	02/02/11
Rockdale	Rockdale Blackhawk, L.L.C. dba Richards Memorial Hospital	L06092	Rockdale	03	02/07/11
San Antonio	VHS San Antonio Partners, L.L.C. dba Baptist Health System	L00455	San Antonio	206	02/09/11
San Antonio	Texas Biomedical Research Institute dba SW Foundation for Biomedical Research	L00468	San Antonio	55	02/07/11
San Antonio	Methodist Healthcare System of San Antonio Ltd., L.L.P.	L00594	San Antonio	284	02/0711
San Antonio	VHS San Antonio Imaging Partners, L.P. dba Baptist M&S Imaging Centers	L04506	San Antonio	77	02/02/11
San Antonio	Central Cardiovascular Institute of San Antonio	L04892	San Antonio	22	02/07/11
San Antonio	U.T. Medicine San Antonio	L05410	San Antonio	15	02/08/11
The Woodlands	Memorial Hermann Hospital System dba Memorial Hermann Hospital The Woodlands	L03772	The Woodlands	84	02/03/11
The Woodlands	St. Luke's Community Health Services dba St. Luke's The Woodlands Hospital	L06370	The Woodlands	01	02/07/11
Throughout TX	Desert Industrial X-Ray, L.P.	L04590	Abilene	114	02/10/11
Throughout TX	Qal-Tek Associates, L.L.C.	L05965	Austin	08	02/04/11
Throughout TX	Professional Service Industries	L04939	Corpus Christi	16	02/01/11
Throughout TX	Component Sales and Service, Inc.	L02243	Houston	30	01/27/11
Throughout TX	Hi-Tech Testing Service, Inc.	L05021	Longview	88	01/31/11
Throughout TX	Cottons Inspection Service, Inc.	L02869	Odessa	19	02/01/11
Throughout TX	Ludlum Measurements, Inc.	L01963	Sweetwater	91	01/25/11
Tyler	Mother Frances Hospital Regional Health Care Center	L01670	Tyler	164	02/01/11
Tyler	Mother Frances Hospital Regional Health Care Center	L01670	Tyler	165	02/07/11
Wichita Falls	United Regional Health Care System, Inc.	L00350	Wichita Falls	110	02/01/11
Wichita Falls	Kell West Regional Hospital, L.L.C.	L05943	Wichita Falls	09	02/01/11

RENEWAL OF LICENSES ISSUED:

Location	Name	License #	City	Amend-ment #	Date of Action
Corpus Christi	McTurbine, Inc.	L04341	Corpus Christi	12	02/02/11
Texas City	Valero Refining Company	L02578	Texas City	35	01/27/11

TERMINATIONS OF LICENSES ISSUED:

Location	Name	License #	City	Amend-ment #	Date of Action
Harlingen	Cardiac Imaging Associates, L.L.P.	L05845	Harlingen	07	01/31/11
Pasadena	Patients Medical Center	L06066	Pasadena	04	02/04/11
San Antonio	San Antonio Heart Associates, P.A.	L04860	San Antonio	24	02/07/11
Throughout TX	City of Fort Worth Housing Department	L05420	Fort Worth	5	02/01/11
Throughout TX	Environmental Resources Mgmt. SW, Inc.	L05877	Houston	08	02/03/11

In issuing new licenses, amending and renewing existing licenses, or approving license exemptions, the Department of State Health Services (department), Radiation Safety Licensing Branch, has determined that the applicant has complied with the applicable provisions of Title 25 Texas Administrative Code (TAC) Chapter 289, regarding radiation control. In granting termination of licenses, the department has determined that the licensee has complied with the applicable decommissioning 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 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 person affected may request a hearing by writing Richard A. Ratliff, Radiation Program Officer, Department of State Health Services, Radiation Material Licensing - Mail Code 2835, P.O. Box 149347, Austin, TX 78714-9347. For information call (512) 834-6688.

TRD-201100839
Lisa Hernandez
General Counsel
Department of State Health Services
Filed: March 1, 2011

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Texas Department of Insurance, Division of Workers' Compensation

Correction of Error

The Texas Department of Insurance, Division of Workers' Compensation adopted amendments to 28 TAC §§133.10, 133.500, and 133.501 and new §133.502 in the February 18, 2011, issue of the *Texas Register* (36 TexReg 929). The following errors appeared in the rule adoption notice.

Page 933, first column, second paragraph: The reference to "§133.500(b)" should be to "§133.550(c)". The corrected paragraph reads as follows:

"Adopted §133.502(c) sets out Texas-specific data elements required for all professional, institutional, and dental electronic medical bills submitted on or after January 1, 2012, that are in addition to the data requirements adopted under §133.500(c) of this title."

Page 941, §133.500(c)(5): The last word of the paragraph should be "005010X221A1" instead of "005010X224A1". The corrected paragraph reads as follows:

"(5) Remittance--the ASC X12 Standards for Electronic Data Interchange Technical Report Type 3, Health Care Claim Payment/Advice (835), April 2006, ASC X12, 005010X221, and Type 3 Errata to Health Care Claim Payment/Advice (835), June 2010, ASC X12, 005010X221A1."

Page 943, §133.502(c): The reference to "§133.500(b)" in the last line should be to "§133.500(c)". The corrected text should read as follows:

"(c) In addition to the data requirements contained in the standards adopted under §133.500(c) of this title, all professional, institutional/hospital, and dental electronic medical bills submitted on or after January 1, 2012 must contain:"

TRD-201100874

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Texas Lottery Commission

Instant Game Number 1312 "Hot $100,000"

1.0 Name and Style of Game.

A. The name of Instant Game No. 1312 is "HOT $100,000". The play style is "key symbol with doubler".

1.1 Price of Instant Ticket.

A. Tickets for Instant Game No. 1312 shall be $5.00 per ticket.

1.2 Definitions in Instant Game No. 1312.

A. Display Printing - That area of the instant game ticket outside of the area where the Overprint and Play Symbols appear.

B. Latex Overprint - The removable scratch-off covering over the Play Symbols on the front of the ticket.

C. Play Symbol - The printed data under the latex on the front of the instant ticket that is used to determine eligibility for a prize. Each Play Symbol is printed in Symbol font in black ink in positive except for dual-image games. The possible black play symbols are: CLOVER SYMBOL, GOLD BAR SYMBOL, DIAMOND SYMBOL, BOOT SYMBOL, MONEY BAG SYMBOL, HAT SYMBOL, GIFT SYMBOL, ICE CREAM CONE SYMBOL, ROSE SYMBOL, 7 SYMBOL, STAR SYMBOL, APPLE SYMBOL, BELL SYMBOL, LEMON SYMBOL, CHERRY SYMBOL, BANANA SYMBOL, GRAPES SYMBOL, MELON SYMBOL, CROWN SYMBOL, PINEAPPLE SYMBOL, POT OF GOLD SYMBOL, STACK OF BILLS SYMBOL, CHIPS SYMBOL, COIN SYMBOL, HORSESHOE SYMBOL, WISHBONE SYMBOL, CLOUDS SYMBOL, LIGHTNING SYMBOL, MOON SYMBOL, WATCH SYMBOL, RING SYMBOL, BOOK SYMBOL, SAFE SYMBOL, $5.00, $10.00, $15.00, $20.00, $50.00, $100, $500, $1,000 and $100,000. The possible red play symbols are: CLOVER SYMBOL, GOLD BAR SYMBOL, DIAMOND SYMBOL, BOOT SYMBOL, MONEY BAG SYMBOL, HAT SYMBOL, GIFT SYMBOL, ICE CREAM CONE SYMBOL, ROSE SYMBOL, 7 SYMBOL, STAR SYMBOL, APPLE SYMBOL, BELL SYMBOL, LEMON SYMBOL, CHERRY SYMBOL, BANANA SYMBOL, GRAPES SYMBOL, MELON SYMBOL, CROWN SYMBOL, PINEAPPLE SYMBOL, POT OF GOLD SYMBOL, STACK OF BILLS SYMBOL, CHIPS SYMBOL, COIN SYMBOL and HORSESHOE SYMBOL.

D. Play Symbol Caption - The printed material appearing below each Play Symbol which explains the Play Symbol. One caption appears under each Play Symbol and is printed in caption font in black ink in positive. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:

Figure 1: GAME NO. 1312 - 1.2D

Figure 1: GAME NO. 1312 - 1.2D

PLAY SYMBOL	CAPTION
CLOVER (black)	CLOVER
GOLD BAR (black)	BAR
DIAMOND (black)	DIAMOND
BOOT (black)	BOOT
MONEY BAG (black)	MONEY BAG
HAT (black)	HAT
GIFT (black)	GIFT
ICE CREAM CONE (black)	ICE CREAM
ROSE (black)	ROSE
7 SYMBOL (black)	SEVEN
STAR (black)	STAR
APPLE (black)	APPLE
BELL (black)	BELL
LEMON (black)	LEMON
CHERRY (black)	CHERRY
BANANA (black)	BANANA
GRAPES (black)	GRAPES
MELON (black)	MELON
CROWN (black)	CROWN
PINEAPPLE (black)	PINEAPPLE
POT OF GOLD (black)	PTGD
STACK OF BILLS (black)	BILLS
CHIPS (black)	CHIPS
COIN (black)	COIN
HORSESHOE (black)	WIN
CLOVER (red)	CLOVER
GOLD BAR (red)	BAR
DIAMOND (red)	DIAMOND
BOOT (red)	BOOT
MONEY BAG (red)	MONEY BAG
HAT (red)	HAT
GIFT (red)	GIFT
ICE CREAM CONE (red)	ICE CREAM
ROSE (red)	ROSE
7 SYMBOL (red)	SEVEN
STAR (red)	STAR
APPLE (red)	APPLE
BELL (red)	BELL
LEMON (red)	LEMON
CHERRY (red)	CHERRY
BANANA (red)	BANANA
GRAPES (red)	GRAPES
MELON (red)	MELON
CROWN (red)	CROWN
PINEAPPLE (red)	PINEAPPLE
POT OF GOLD (red)	PTGD

STACK OF BILLS (red)	BILLS
CHIPS (red)	CHIPS
COIN (red)	COIN
HORSESHOE (red)	DOUBLE
WISHBONE (black)	WISHBONE
CLOUDS (black)	CLOUDS
LIGHTING (black)	LIGHTING
MOON (black)	MOON
WATCH (black)	WATCH
RING (black)	RING
BOOK (black)	BOOK
SAFE (black)	SAFE
$5.00 (black)	FIVE$
$10.00 (black)	TEN$
$15.00 (black)	FIFTN
$20.00 (black)	TWENTY
$50.00 (black)	FIFTY
$100 (black)	ONE HUND
$500 (black)	FIV HUND
$1,000 (black)	ONE THOU
$100,000 (black)	HUN THOU

E. Serial Number - A unique 14 (fourteen) digit number appearing under the latex scratch-off covering on the front of the ticket. There will be a four (4)-digit "security number" which will be individually boxed and randomly placed within the number. The remaining ten (10) digits of the Serial Number are the Validation Number. The Serial Number is positioned beneath the bottom row of play data in the scratched-off play area. The Serial Number is for validation purposes and cannot be used to play the game. The format will be: 00000000000000.

F. Low-Tier Prize - A prize of $5.00, $10.00, $15.00 or $20.00.

G. Mid-Tier Prize - A prize of $50.00, $100 or $500.

H. High-Tier Prize - A prize of $5,000 or $100,000.

I. Bar Code - A 24 (twenty-four) character interleaved two (2) of five (5) bar code which will include a four (4) digit game ID, the seven (7) digit pack number, the three (3) digit ticket number and the ten (10) digit Validation Number. The bar code appears on the back of the ticket.

J. Pack-Ticket Number - A 14 (fourteen) digit number consisting of the four (4) digit game number (1312), a seven (7) digit pack number, and a three (3) digit ticket number. Ticket numbers start with 001 and end with 075 within each pack. The format will be: 1312-0000001-001.

K. Pack - A pack of "HOT $100,000" Instant Game tickets contains 75 tickets, packed in plastic shrink-wrapping and fanfolded in pages of one (1). One will show the front of ticket 001 and back of 075 while the other fold will show the back of ticket 001 and front of 075.

L. Non-Winning Ticket - A ticket which is not programmed to be a winning ticket or a ticket that does not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government Code, Chapter 466), and applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC Chapter 401.

M. Ticket or Instant Game Ticket, or Instant Ticket - A Texas Lottery "HOT $100,000" Instant Game No. 1312 ticket.

2.0 Determination of Prize Winners. The determination of prize winners is subject to the general ticket validation requirements set forth in Texas Lottery Rule §401.302, Instant Game Rules, these Game Procedures, and the requirements set out on the back of each instant ticket. A prize winner in the "HOT $100,000" Instant Game is determined once the latex on the ticket is scratched off to expose 43 (forty-three) Play Symbols. If a player reveals a BLACK HORSESHOE play symbol, the player wins the PRIZE shown. If a player reveals RED HORSESHOE play symbol, the player wins DOUBLE the prize shown. BONUS GAME: If a player reveals 3 identical play symbols, the player wins $50. No portion of the display printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Instant Game.

2.1 Instant Ticket Validation Requirements.

A. To be a valid Instant Game ticket, all of the following requirements must be met:

1. Exactly 43 (forty-three) Play Symbols must appear under the latex overprint on the front portion of the ticket;

2. Each of the Play Symbols must have a Play Symbol Caption underneath, unless specified, and each Play Symbol must agree with its Play Symbol Caption;

3. Each of the Play Symbols must be present in its entirety and be fully legible;

4. Each of the Play Symbols must be printed in black ink except for dual image games;

5. The ticket shall be intact;

6. The Serial Number, Retailer Validation Code and Pack-Ticket Number must be present in their entirety and be fully legible;

7. The Serial Number must correspond, using the Texas Lottery's codes, to the Play Symbols on the ticket;

8. The ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted or tampered with in any manner;

9. The ticket must not be counterfeit in whole or in part;

10. The ticket must have been issued by the Texas Lottery in an authorized manner;

11. The ticket must not have been stolen, nor appear on any list of omitted tickets or non-activated tickets on file at the Texas Lottery;

12. The Play Symbols, Serial Number, Retailer Validation Code and Pack-Ticket Number must be right side up and not reversed in any manner;

13. The ticket must be complete and not miscut, and have exactly 43 (forty-three) Play Symbols under the latex overprint on the front portion of the ticket, exactly one Serial Number, exactly one Retailer Validation Code, and exactly one Pack-Ticket Number on the ticket;

14. The Serial Number of an apparent winning ticket shall correspond with the Texas Lottery's Serial Numbers for winning tickets, and a ticket with that Serial Number shall not have been paid previously;

15. The ticket must not be blank or partially blank, misregistered, defective or printed or produced in error;

16. Each of the 43 (forty-three) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures;

17. Each of the 43 (forty-three) Play Symbols on the ticket must be printed in the Symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the ticket Serial Numbers must be printed in the Serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Pack-Ticket Number must be printed in the Pack-Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;

18. The display printing on the ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and

19. The ticket must have been received by the Texas Lottery by applicable deadlines.

B. The ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Instant Game ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the ticket. In the event a defective ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective ticket with another unplayed ticket in that Instant Game (or a ticket of equivalent sales price from any other current Instant Lottery game) or refund the retail sales price of the ticket, solely at the Executive Director's discretion.

2.2 Programmed Game Parameters.

A. Consecutive non-winning tickets will not have identical play data, spot for spot.

B. The "BLACK HORSESHOE" (auto win) and "RED HORSESHOE" (doubler) play symbols will only appear as dictated by the prize structure.

C. There will be a minimum of 4 and a maximum of 12 red play symbols on every ticket unless otherwise restricted by the prize structure.

D. No more than four (4) duplicate non-winning prize symbols will appear on a ticket.

E. No duplicate non-winning play symbols on a ticket regardless of color.

F. Non-winning prize symbols will never be the same as the winning prize symbol(s).

G. The top prize symbol will appear on every ticket unless otherwise restricted.

2.3 Procedure for Claiming Prizes.

A. To claim a "HOT $100,000" Instant Game prize of $5.00, $10.00, $15.00, $20.00, $50.00, $100 or $500, a claimant shall sign the back of the ticket in the space designated on the ticket and present the winning ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, if appropriate, make payment of the amount due the claimant and physically void the ticket; provided that the Texas Lottery Retailer may, but is not required to pay a $50.00, $100 or $500 ticket. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and Section 2.3.C of these Game Procedures.

B. To claim a "HOT $100,000" Instant Game prize of $5,000 or $100,000, the claimant must sign the winning ticket and present it at one of the Texas Lottery's Claim Centers. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning ticket for that prize upon presentation of proper identification. When paying a prize of $600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. As an alternative method of claiming a "HOT $100,000" Instant Game prize, the claimant must sign the winning ticket, thoroughly complete a claim form, and mail both to: Texas Lottery Commission, Post Office Box 16600, Austin, Texas 78761-6600. The risk of sending a ticket remains with the claimant. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

D. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct a sufficient amount from the winnings of a person who has been finally determined to be:

1. delinquent in the payment of a tax or other money collected by the Comptroller, the Texas Workforce Commission, or Texas Alcoholic Beverage Commission;

2. delinquent in making child support payments administered or collected by the Attorney General;

3. delinquent in reimbursing the Texas Health and Human Services Commission for a benefit granted in error under the food stamp program or the program of financial assistance under Chapter 31, Human Resources Code;

4. in default on a loan made under Chapter 52, Education Code; or

5. in default on a loan guaranteed under Chapter 57, Education Code.

E. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

2.4 Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;

B. if there is any question regarding the identity of the claimant;

C. if there is any question regarding the validity of the ticket presented for payment; or

D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.D of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5 Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize of less than $600 from the "HOT $100,000" Instant Game, the Texas Lottery shall deliver to an adult member of the minor's family or the minor's guardian a check or warrant in the amount of the prize payable to the order of the minor.

2.6 If a person under the age of 18 years is entitled to a cash prize of more than $600 from the "HOT $100,000" Instant Game, the Texas Lottery shall deposit the amount of the prize in a custodial bank account, with an adult member of the minor's family or the minor's guardian serving as custodian for the minor.

2.7 Instant Ticket Claim Period. All Instant Game prizes must be claimed within 180 days following the end of the Instant Game or within the applicable time period for certain eligible military personnel as set forth in Texas Government Code, §466.408. Any prize not claimed within that period, and in the manner specified in these Game Procedures and on the back of each ticket, shall be forfeited.

2.8 Disclaimer. The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed. An Instant Game ticket may continue to be sold even when all the top prizes have been claimed.

3.0 Instant Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of an Instant Game ticket in the space designated, a ticket shall be owned by the physical possessor of said ticket. When a signature is placed on the back of the ticket in the space designated, the player whose signature appears in that area shall be the owner of the ticket and shall be entitled to any prize attributable thereto. Notwithstanding any name or names submitted on a claim form, the Executive Director shall make payment to the player whose signature appears on the back of the ticket in the space designated. If more than one name appears on the back of the ticket, the Executive Director will require that one of those players whose name appears thereon be designated by such players to receive payment.

B. The Texas Lottery shall not be responsible for lost or stolen Instant Game tickets and shall not be required to pay on a lost or stolen Instant Game ticket.

4.0 Number and Value of Instant Prizes. There will be approximately 6,000,000 tickets in the Instant Game No. 1312. The approximate number and value of prizes in the game are as follows:

Figure 2: GAME NO. 1312 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in**
$5	800,000	7.50
$10	460,000	13.04
$15	120,000	50.00
$20	80,000	75.00
$50	85,000	70.59
$100	25,500	235.29
$500	1,000	6,000.00
$5,000	100	60,000.00
$100,000	6	1,000,000.00

*The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed.

**The overall odds of winning a prize are 1 in 3.82. The individual odds of winning for a particular prize level may vary based on sales, distribution, testing, and number of prizes claimed.

A. The actual number of tickets in the game may be increased or decreased at the sole discretion of the Texas Lottery Commission.

5.0 End of the Instant Game. The Executive Director may, at any time, announce a closing date (end date) for the Instant Game No. 1312 without advance notice, at which point no further tickets in that game may be sold.

6.0 Governing Law. In purchasing an Instant Game ticket, the player agrees to comply with, and abide by, these Game Procedures for Instant Game No. 1312, the State Lottery Act (Texas Government Code, Chapter 466), applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC Chapter 401, and all final decisions of the Executive Director.

TRD-201100793
Kimberly L. Kiplin
General Counsel
Texas Lottery Commission
Filed: February 25, 2011

North Central Texas Council of Governments

Notice of Vendor Contract Award

Pursuant to the provisions of Government Code, Chapter 2254, the North Central Texas Council of Governments publishes this notice of vendor contract award. The vendor request for qualifications and interest appeared in the January 21, 2011, issue of the *Texas Register* (36 TexReg 185). The selected vendor will perform technical and professional work to complete in-plant transit vehicle inspection services to support transportation services related to Federal Transit Administration grant programs.

The vendor selected for this project is First Transit Inc., 600 Vine Street, Suite 1400, Cincinnati, Ohio 45202. The amount of the contract is not to exceed $12,084.

TRD-201100863
R. Michael Eastland
Executive Director
North Central Texas Council of Governments
Filed: March 2, 2011

Notice of Vendor Contract Award

The North Central Texas Council of Governments publishes this notice of vendor contract award. The vendor proposal request appeared in the October 15, 2010, issue of the *Texas Register* (35 TexReg 9169). The selected vendor will perform technical and professional work to design, manufacture, and deliver quality transit vehicles to support transportation services related to Federal Transit Administration grant programs.

The vendor selected for this project is Lasseter Bus and Mobility, 820 Office Park Circle, Lewisville, Texas 75057. The amount of the award is not to exceed $2,596,259.

TRD-201100864
R. Michael Eastland
Executive Director
North Central Texas Council of Governments
Filed: March 2, 2011

Public Utility Commission of Texas

Announcement of Application for Amendment to a State-Issued Certificate of Franchise Authority

The Public Utility Commission of Texas received an application on February 22, 2011, to amend a state-issued certificate of franchise authority (CFA), pursuant to §§66.001 - 66.016 of the Public Utility Regulatory Act (PURA).

Project Title and Number: Application of Buford Media Group, L.L.C. for Amendment to a State-Issued Certificate of Franchise Authority, Project Number 39174.

The requested amendment is to reduce the service area footprint to remove Naples and Omaha, Texas.

Information on the application may be obtained by contacting 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 (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) (800) 735-2989. All inquiries should reference Project Number 39174.

TRD-201100796
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: February 25, 2011

Announcement of Application for Amendment to a State-Issued Certificate of Franchise Authority

The Public Utility Commission of Texas received an application on February 24, 2011, to amend a state-issued certificate of franchise authority (CFA), pursuant to §§66.001 - 66.016 of the Public Utility Regulatory Act (PURA).

Project Title and Number: Application of Northland Cable Properties, Inc. for Amendment to a State-Issued Certificate of Franchise Authority, Project Number 39180.

The requested amendment is to expand the service area footprint to include Splendora, Texas.

Information on the application may be obtained by contacting 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 (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) (800) 735-2989. All inquiries should reference Project Number 39180.

TRD-201100834
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: March 1, 2011

Announcement of Application for Amendment to a State-Issued Certificate of Franchise Authority

The Public Utility Commission of Texas received an application on February 24, 2011, to amend a state-issued certificate of franchise authority (CFA), pursuant to §§66.001 - 66.016 of the Public Utility Regulatory Act (PURA).

Project Title and Number: Application of PRIDE Network, Inc. for Amendment to a State-Issued Certificate of Franchise Authority, Project Number 39184.

The requested amendment is to expand the service area footprint to include the municipalities of Abernathy, Hale Center, Littlefield, Meadow, New Deal, Ropesville, and Wilson, the unincorporated community of Whitharral, and the portions of the City of Brownfield, Texas, as depicted on the map attached to the application.

Information on the application may be obtained by contacting 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 (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) (800) 735-2989. All inquiries should reference Project Number 39184.

TRD-201100835
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: March 1, 2011

Announcement of Application for Amendment to a State-Issued Certificate of Franchise Authority

The Public Utility Commission of Texas received an application on February 25, 2011, to amend a state-issued certificate of franchise authority (CFA), pursuant to §§66.001 - 66.016 of the Public Utility Regulatory Act (PURA).

Project Title and Number: Application of Time Warner Cable for Amendment to a State-Issued Certificate of Franchise Authority, Project Number 39190.

The requested amendment is to expand the service area footprint to include the City of Lakeside City, Texas.

Information on the application may be obtained by contacting 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 (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) (800) 735-2989. All inquiries should reference Project Number 39190.

TRD-201100836
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: March 1, 2011

Notice of Application for a Service Provider Certificate of Operating Authority

Notice is given to the public of the filing with the Public Utility Commission of Texas of an application on February 23, 2011, for a service provider certificate of operating authority (SPCOA), pursuant to §§54.151 - 54.156 of the Public Utility Regulatory Act (PURA).

Docket Title and Number: Application of Avenger Telecom, LLC for a Service Provider Certificate of Operating Authority, Docket Number 39178.

Applicant intends to provide facilities-based and resale telecommunications services.

Applicant's requested SPCOA geographic area comprises the entire State of Texas.

Persons who wish to comment upon the action sought should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at 1-888-782-8477 no later than March 18, 2011. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or toll free at 1-800-735-2989. All comments should reference Docket Number 39178.

TRD-201100794
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: February 25, 2011

Notice of Application for Service Area Exception

Notice is given to the public of the filing with the Public Utility Commission of Texas of an application on February 22, 2011, for an amendment to certificated service area for a service area exception within Moore County, Texas.

Docket Style and Number: Application of Southwestern Public Service Company to Amend a Certificate of Convenience and Necessity for Electric Service Area Exception within Moore County. Docket Number 39168.

The Application: Southwestern Public Service Company (SPS) filed an application for a service area boundary exception to allow SPS to provide service to a specific customer located within the certificated service area of Rita Blanca Electric Cooperative, Inc. (RBEC). RBEC has provided a letter of concurrence for the proposed change.

Persons wishing to comment on the action sought or intervene should contact the Public Utility Commission of Texas no later than March 23, 2011 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 39168.

TRD-201100795
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: February 25, 2011

Notice of Petition for Emergency Rulemaking

Notice is given to the public of the filing with the Public Utility Commission of Texas (commission) of a petition for emergency rulemaking filed on February 25, 2011.

Project Style and Number: Electric Reliability Council of Texas, Inc.'s Petition for Emergency Rulemaking to Remove Ninety (90) Day Notice Requirement and Modify EILS Contract Periods Pursuant to P.U.C. Substantive Rule §25.507. Project Number 39191.

Summary of Petition: The Electric Reliability Council of Texas (ERCOT) filed a petition for adoption of emergency rulemaking to amend P.U.C. Substantive Rule §25.507(a)(2) by removing the 90-day notice requirement before announcing a change to the contract period sched-

ule. One of the contract periods set out in the rule is February through May. ERCOT requests an additional contract period for April 1 through May 31, 2011 to contract for additional EILS resources after deploying all resources for the maximum duration allowed under the rule during the load-shedding event on February 2, 2011. ERCOT requests that the commission adopt the emergency rule amendment on or before the Open Meeting scheduled for March 24, 2011 so that it may enter into contracts for EILS resources by April 1, 2011.

Comments may be filed by submitting 16 copies to the Filing Clerk, Public Utility Commission of Texas, 1701 North Congress Avenue, Austin, Texas 78711-3326. Initial comments may be submitted by Monday, March 14, 2011 and reply comments may be submitted by Wednesday, March 16, 2011. All comments should reference Project Number 39191.

Questions concerning Project Number 39191 should be referred to Mr. Evan Rowe, Competitive Markets Division, at (512) 936-7401 or Mr. Jason Haas, Legal Division, at (512) 936-7295. 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 Project Number 39191.

TRD-201100852
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: March 2, 2011

Request for Comments on Amendments to Documents for Electric Transmission Certificate of Convenience and Necessity Applications

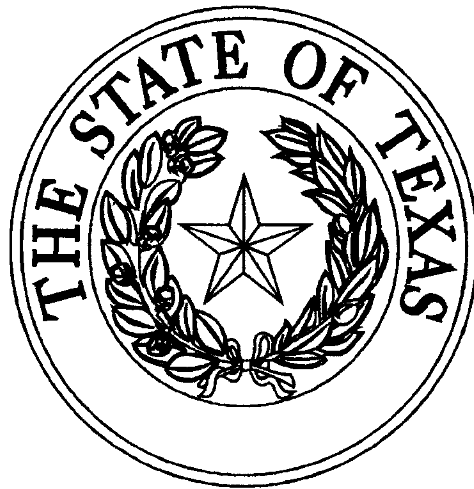
The Public Utility Commission of Texas (commission) requests comments on proposed amendments to documents for electric transmission certificate of convenience and necessity (CCN) applications. The amendments would eliminate references to a preferred route, emphasize the importance of intervening in order to fully participate in the commission's decision on where to locate the transmission line, add the requirement to provide information to Texas Parks and Wildlife to the non-CREZ CCN application, and make other related changes. The CCN application form for a transmission line for a competitive renewable energy zone (CREZ) currently requires the applicant to provide a copy of the environmental impact assessment to the Texas Parks and Wildlife Department. The amendments to the CCN application form for non-CREZ transmission lines would include the same requirement. Project Number 39125 is assigned to this proceeding.

Comments on the amendments may be submitted to the Filing Clerk, Public Utility Commission of Texas, 1701 North Congress Avenue, P.O. Box 13326, Austin, Texas 78711-3326. Sixteen copies of comments on the amendments are required to be filed. Initial comments are due by March 31, 2011 and reply comments are due by April 4, 2011. All comments should refer to Project Number 39125.

Questions concerning Project Number 39125 should be referred to Brian Almon, Infrastructure and Reliability Division, (512) 936-7355, or Scottie Aplin, Legal Division, (512) 936-7289. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136.

Landowners and Transmission Line Cases at the PUC

Public Utility Commission of Texas



1701 N. Congress Avenue
P.O. Box 13326
Austin, Texas 78711-3326
(512) 936-7261
www.puc.state.tx.us

Effective: December 8, 2010

Purpose of This Brochure

This brochure is intended to provide landowners with information about proposed new transmission lines and the Public Utility Commission's ("PUC" or "Commission") process for evaluating these proposals. At the end of the brochure is a list of sources for additional information.

The following topics are covered in this brochure:

- How the PUC evaluates whether a new transmission line should be built,
- How you can participate in the PUC's evaluation of a line, and
- How utilities acquire the right to build a transmission line on private property.

You are receiving the enclosed formal notice because one or more of the routes for a proposed transmission line may require an easement or other property interest across your property, or the centerline of the proposed project may come within 300 feet of a house or other habitable structure on your property. This distance is expanded to 500 feet if the proposed line is greater than 230 kilovolts (kV). For this reason, your property is considered **directly affected land.** This brochure is being included as part of the formal notice process.

If you have questions about the proposed routes for a transmission line, you may contact the applicant. The applicant also has a more detailed map of the proposed routes for the transmission line and nearby habitable structures. The applicant may help you understand the routing of the project and the application approval process in a transmission line case but cannot provide legal advice or represent you. ***The applicant*** ~~***It is important for an affected landowner to intervene because the utility is not obligated to keep landowners informed of the proceedings and***~~ ***cannot predict which route may or may not be approved by the PUC***~~***Commission***~~***. The PUC decides which route to use for the transmission line, and the applicant is under not obligated to keep you nformed of the PUC's proceedings. The only way to fully participate in the PUC's decision on where to locate the transmission line is to intervene, which is discussed below.***

The PUC is sensitive to the impact that transmission lines have on private property. At the same time, transmission lines deliver electricity to millions of homes and businesses in Texas, and new lines are sometimes needed so that customers can obtain reliable, economical power.

The PUC's job is to decide whether a transmission line application should be approved and on which route the line should be constructed. The PUC values input from landowners and encourages you to participate in this process by intervening in the docket.

PUC Transmission Line Case

Texas law provides that most utilities must file an application with the PUC to obtain or amend a Certificate of Convenience and Necessity (CCN) in order to build a new transmission line in Texas.
The law requires the PUC to consider a number of factors in deciding whether to approve a proposed new transmission line.

The PUC may approve an application to obtain or amend a CCN for a transmission line after considering the following factors:

- Adequacy of existing service;
- Need for additional service;
- The effect of approving the application on the applicant and any utility serving the proximate area;
- Whether the route utilizes existing compatible rights-of-way, including the use of vacant positions on existing multiple-circuit transmission lines;
- Whether the route parallels existing compatible rights-of-way;
- Whether the route parallels property lines or other natural or cultural features;
- Whether the route conforms with the policy of prudent avoidance (which is defined as the limiting of exposures to electric and magnetic fields that can be avoided with reasonable investments of money and effort); and
- Other factors such as community values, recreational and park areas, historical and aesthetic values, environmental integrity, and the probable improvement of service or lowering of cost to consumers in the area.

If the PUC decides an application should be approved, it will grant to the applicant a CCN or CCN amendment to allow for the construction and operation of the new transmission line.

2.

Application to Obtain or Amend a CCN:

An application to obtain or amend a CCN describes the proposed line and includes a statement from the applicant describing the need for the line and the impact of building it. ~~The application also includes a route designated by the applicant as a "preferred route"; *however, any of the proposed routes may be selected by the Commission.*~~ During the course of a CCN case, the possibility exists that additional routes may be developed that could affect property in a different manner than the original routes proposed by the applicant.

The PUC conducts a case to evaluate the impact of the proposed line and to decide which route should be approved. Landowners who would be affected by a new line can ~~participate in the case in the following ways~~:

- informally~~, by filing~~file a protest, or
- formally~~, by intervening~~participate in the ~~PUC~~ case as an intervenor.

Filing a Protest (informal comments):

If you do not wish to intervene and participate in a hearing in a CCN case, you may file **comments.** An individual or business or a group who files only comments for or against any aspect of the transmission line application is considered a "protestor."

Protestors make a written or verbal statement in support of or in opposition to the utility's application and give information to the PUC staff that they believe supports their position.

Protestors are ***not*** parties to the case, however, and ***do not have the right to***:

- Obtain facts about the case from other parties;
- Receive notice of a hearing, or copies of testimony and other documents that are filed in the case;
- Receive notice of the time and place for negotiations; ~~or~~
- File testimony and/or cross-examine witnesses~~.~~; or
- Submit evidence at the hearing.

If you want to make comments, you may either send written comments stating your position, or you may make a statement on the first day of the hearing. If you have not intervened, however, you will not be able to participate as a party in the hearing. Only parties may submit evidence and ***the PUC must base its decision on the evidence.*** ~~Although comments are *not* treated as evidence, they help inform the PUC and its staff of concerns and identify issues to be explored. The PUC welcomes such participation in its cases.~~

Intervening in a Case:

To become an intervenor, you must file a statement with the PUC, no later than the date specified in the notice letter sent to you with this brochure, requesting intervenor status (also referred to as a party). This statement should describe how the proposed transmission line would affect your property. Typically, intervention is granted only to directly affected landowners. However, any landowner may request to intervene and obtain a ruling on his or her specific fact situation and concerns. A sample form for intervention and the filing address are attached to this brochure, and may be used to make your filing. A letter requesting intervention may also be used in lieu of the sample form for intervention.

If you decide to intervene and become a party in a case, you will be required to follow certain procedural rules:

- You are required to respond to requests from other parties who seek information about your position.
- If you file testimony, you must appear at a hearing to be cross-examined.
- If you file testimony or any letters or other documents in the case, you must send copies of the documents to every party in the case and you must file multiple copies with the PUC.
- Failure to comply with these procedural rules may serve as grounds for you to be dismissed as an intervenor in the case.

Intervenors may represent themselves or have an attorney to represent them in a CCN case. If you intervene in a case, you may want an attorney to help you understand the PUC's procedures and the laws and rules that the PUC applies in deciding whether to approve a transmission line. The PUC encourages landowners to intervene and become parties.

3.

Stages of a CCN Case:

If there are persons who intervene in the case and oppose the approval of the line, the PUC may refer the case to an administrative law judge (ALJ) at the State Office of Administrative Hearings (SOAH) to conduct a hearing, or the Commission may elect to conduct a hearing itself. The hearing is a formal proceeding, much like a trial, in which testimony is presented. In the event the case is referred to SOAH, the ALJ makes a recommendation to the PUC on whether the application should be approved and where and how the line should be routed.

There are several stages of a CCN case:

- The ALJ holds a prehearing conference (usually in Austin) to set a schedule for the case.
- Parties to the case have the opportunity to conduct discovery; that is, obtain facts about the case from other parties.
- A hearing is held (usually in Austin), and parties have an opportunity to cross-examine the witnesses.
- Parties file written testimony before the date of the hearing. Parties that do not file written testimony or statements of position by the deadline established by the ALJ may not be allowed to participate in the hearing on the merits.
- Parties may file written briefs concerning the evidence presented at the hearing, but are not required to do so.
- In deciding where to locate the transmission line and other issues presented by the application, the ALJ and Commission rely on factual information submitted as evidence at the hearing by the parties in the case. In order to submit factual information as evidence (other than through cross-examination of other parties' witnesses), a party must have intervened in the docket and filed written testimony on or before the deadline set by the ALJ.
- The ALJ makes a recommendation, called a **proposal for decision**, to the Commission regarding the case. Parties who disagree with the ALJ's recommendation may file exceptions.
- The Commissioners discuss the case and decide whether to approve the application. The Commission may approve the ALJ's recommendation, approve it with specified changes, send the case back to the ALJ for further consideration, or deny the application. The written decision rendered by the Commission is called a **final order**. Parties who believe that the Commission's decision is in error may file motions for rehearing, asking the Commission to reconsider the decision.
- After the Commission rule on the motion for rehearing, parties have the right to appeal the decision to district court in Travis County.
-

Right to Use Private Property

The Commission is responsible for deciding whether to approve a CCN application for a proposed transmission line. If a transmission line route is approved that impacts your property, the electric utility must obtain the right from you to enter your property and to build, operate, and maintain the transmission line. This right is typically called an easement.

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HOW TO OBTAIN MORE INFORMATION

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- Select "Filings/Interchange."
- Select "Filing Retrieval."
- Select "Login."
- Enter 5-digit Control (Docket) Number. *No other information is necessary.*
- Select "Search Now." *All of the filings in the docket will appear in order of date filed.*
- Scroll down to select desired filing.
- Click on a blue "Item" number at left.
- Click on a "Download" icon at left.

Documents may also be purchased from and filed in Central Records. For more information on how to purchase or file documents, call Central Records at the PUC at 512-936-7180.

PUC Substantive Rule 25.101, Certification Criteria, addresses transmission line CCNs and is available on the PUC's website, or you may obtain copies of PUC rules from Central Records.

Always include the docket number on all filings with the PUC. You can find the docket number on the enclosed formal notice. Send documents to the PUC at the following address.

Public Utility Commission of Texas
Central Records
Attn: Filing Clerk
1701 N. Congress Avenue
P.O. Box 13326
Austin, TX 78711-3326

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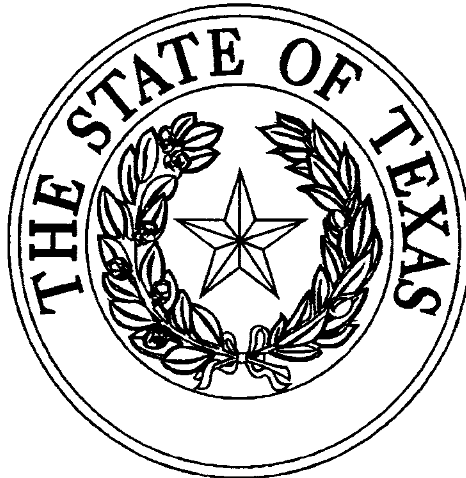
Communicating with Decision-Makers

Do not contact the ALJ or the Commissioners by telephone or email. They are not allowed to discuss pending cases with you. They may make their recommendations and decisions only by relying on the evidence, written pleadings, and arguments that are presented in the case.

Landowners and Transmission Line Cases at the PUC Competitive Renewable Energy Zone (CREZ) Projects

Public Utility Commission of Texas



1701 N. Congress Avenue
P.O. Box 13326
Austin, Texas 78711-3326
(512) 936-7261
www.puc.state.tx.us
Effective: December 8, 2010

Purpose of This Brochure

This brochure is intended to provide landowners with information about proposed new transmission lines associated with the Competitive Renewable Energy Zones (CREZ) and the Public Utility Commission's ("PUC" or "Commission") process for evaluating these proposals. The PUC has pre-approved the need for these transmission lines. At the end of the brochure is a list of sources for additional information.

The following topics are covered in this brochure:

- How the PUC evaluates whether a new CREZ transmission line should be built,
- How you can participate in the PUC's evaluation of a line, and
- How utilities acquire the right to build a transmission line on private property.

You are receiving the enclosed formal notice because one or more of the routes for a proposed CREZ transmission line may require an easement or other property interest across your property, or the centerline of the proposed project may come within 300 feet of a house or other habitable structure on your property. This distance is expanded to 500 feet if the proposed line is greater than 230 kilovolts (kV). For this reason, your property is considered **directly affected land.** This brochure is being included as part of the formal notice process.

If you have questions about the proposed routes for a CREZ transmission line, you may contact the applicant. The applicant also has a more detailed map of the proposed routes for the transmission line and nearby habitable structures. The applicant may help you understand the routing of the project and the application approval process in a transmission line case but cannot provide legal advice or represent you. ***The applicant cannot predict which route may or may not be approved by the PUC. The PUC decides which route to use for the transmission line, and the applicant is not obligated to keep you informed of the PUC's proceedings. The only way to fully participate in the PUC's decision on where to locate the transmission line is to intervene, which is discussed below.***

The PUC is sensitive to the impact that transmission lines have on private property. At the same time, transmission lines deliver electricity to millions of homes and businesses in Texas, and new lines are sometimes needed so that customers can obtain reliable, economical power. The PUC has determined that the CREZ transmission line projects are needed to enable consumers to receive the benefits of new renewable energy.

The PUC's job is to decide whether a transmission line application should be approved and on which route the line should be constructed. The PUC values input from landowners and encourages you to participate in this process by intervening in the docket.

PUC Transmission Line Case

Texas law provides that most utilities must file an application with the PUC to obtain or amend a Certificate of Convenience and Necessity (CCN) in order to build a new transmission line in Texas.
The law requires the PUC to consider a number of factors in deciding whether to approve a proposed new CREZ transmission line.

The PUC may approve an application to obtain or amend a CCN for a CREZ transmission line after considering the following factors:

- The effect of approving the application on the applicant and any utility serving the proximate area;
- Whether the route utilizes existing compatible rights-of-way, including the use of vacant positions on existing multiple-circuit transmission lines;
- Whether the route parallels existing compatible rights-of-way;
- Whether the route parallels property lines or other natural or cultural features;
- Whether the route conforms with the policy of prudent avoidance (which is defined as the limiting of exposures to electric and magnetic fields that can be avoided with reasonable investments of money and effort); and
- Other factors such as community values, recreational and park areas, historical and aesthetic values, environmental integrity, and the probable improvement of service or lowering of cost to consumers in the area.

If the PUC decides an application should be approved, it will grant to the applicant a CCN or CCN amendment to allow for the construction and operation of the new transmission line.

Application to Obtain or Amend a CCN:

An application to obtain or amend a CREZ CCN describes the proposed line and includes a statement from the applicant describing the need for the line and the impact of building it. Commission Substantive Rule 25.174(c)(5) states that a CCN application for a transmission project intended to serve a CREZ is not required to address the need criteria in PURA §37.056(c)(1) and (2). ~~The application also includes a route designated by the applicant as a "preferred route"; *however, any of the proposed routes may be selected by the Commission.*~~ During the course of a CCN case, the possibility exists that additional routes may be developed that could affect property in a different manner than the original routes proposed by the applicant.

The PUC conducts a case to evaluate the impact of the proposed CREZ line and to decide which route should be approved. Landowners who would be affected by a new line can~~ participate in the case in the following ways~~:

- informally~~, by filing~~file a protest, or
- formally~~, by intervening~~ participate in the ~~PUC~~ case as an intervenor.

Filing a Protest (informal comments):

If you do not wish to intervene and participate in a hearing in a CCN case, you may file **comments.** An individual or business or a group who files only comments for or against any aspect of the transmission line application is considered a "protestor."

Protestors make a written or verbal statement in support of or in opposition to the utility's application and give information to the PUC staff that they believe supports their position.

Protestors are ***not*** parties to the case, however, and ***do not have the right to***:

- Obtain facts about the case from other parties;
- Receive notice of a hearing, or copies of testimony and other documents that are filed in the case;
- Receive notice of the time and place for negotiations; ~~or~~
- File testimony and/or cross-examine witnesses; or
- Submit evidence at the hearing..

If you want to make comments, you may either send written comments stating your position, or you may make a statement on the first day of the hearing. If you have not intervened, however, you will not be able to participate as a party in the hearing. Only parties may submit evidence and ***the PUC must base its decision on the evidence.*** ~~Although comments are *not* treated as evidence, they help inform the PUC and its staff of concerns and identify issues to be explored. The PUC welcomes such participation in its cases.~~

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- Parties file written testimony before the date of the hearing. In CREZ cases, the applicant includes its written testimony with the application. Parties that do not file written testimony or statements of position by the deadline established by the ALJ may not be allowed to participate in the hearing on the merits.
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5.

Standard Format for Landowner Notice

Application of (applicant name) to Obtain or Amend a Certificate of Convenience and Necessity for a Proposed Transmission Line in (county name), Texas

PUBLIC UTILITY COMMISSION OF TEXAS (PUC) DOCKET NO. _________

Your land may be directly affected in this docket. If ~~the applicant's preferred route or~~ one of the applicant's ~~alternate~~ routes is approved by the Public Utility Commission of Texas (Commission or PUC), the applicant will have the right to build a facility which may directly affect your land. This docket will not determine the value of your land or the value of an easement if one is needed by the applicant to build the facility. If you have questions about the transmission line, you may contact (name of applicant contact) at (applicant contact telephone number).

The enclosed brochure entitled "Landowners and Transmission Line Cases at the PUC" provides basic information about how you may participate in this docket, and how you may contact the PUC. Please read this brochure carefully. The brochure includes sample forms for making comments and for making a request to intervene as a party in this docket. ***The only way to fully participate in the PUC's decision on where to locate the transmission line is to intervene in the docket. It is important for an affected person to intervene because the utility is not obligated to keep affected persons informed of the PUC's proceedings and cannot predict which route may or may not be approved by the PUC.***

In addition to the contacts listed in the brochure, you may call the PUC's Customer Assistance Hotline at (888) 782-8477. Hearing- and speech-impaired individuals with text telephones (TTY) may contact the PUC's Customer Assistance Hotline at (512) 936-7136 or toll free at (800) 735-2989. If you wish to participate in this proceeding by becoming an intervenor, the deadline for intervention in the proceeding is (date 45 days after the date the application was filed with the PUC), and the PUC should receive a letter from you requesting intervention by that date. Mail the request for intervention and 10 copies of the request to:

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Central Records
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1701 N. Congress Ave.

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Austin, Texas. 78711-3326

Persons who wish to intervene in the docket must also mail a copy of their request for intervention to all parties in the docket and all persons that have pending motions to intervene, at or before the time the request for intervention is mailed to the PUC. In addition to the intervention deadline, other important deadlines may already exist that affect your participation in this docket. You should review the orders and other filings already made in the docket. The enclosed brochure explains how you can access these filings.

Standard Format for Landowner Notice

Application of (applicant name) to Obtain or Amend a Certificate of Convenience and Necessity for a Proposed CREZ Transmission Line in (county name), Texas

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Standard Format for Published Notice

Application of (applicant name) to Obtain or Amend a Certificate of Convenience and Necessity for a Proposed Transmission Line in (county name) County, Texas

PUBLIC UTILITY COMMISSION OF TEXAS (PUC) DOCKET NO. ________

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Effective: February 3, 2009

Standard Format for Published Notice

Application of (applicant name) to Obtain or Amend a Certificate of Convenience and Necessity for a Proposed CREZ Transmission Line in (county name) County, Texas
PUBLIC UTILITY COMMISSION OF TEXAS (PUC) DOCKET NO. _________

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APPLICATION FOR A

CERTIFICATE OF CONVENIENCE AND NECESSITY

FOR A PROPOSED TRANSMISSION LINE

DOCKET NO.___________

Submit seven (7) copies of the application and all attachments to:

Public Utility Commission of Texas
Attn: Filing Clerk
1701 N. Congress Ave.
Austin, Texas 78711-3326

Application For A Certificate of Convenience and Necessity

For A Proposed Transmission Line

---

1. **Applicant (Utility) Name:** ____________________

   Certificate Number: ____________________

   Street Address: ____________________

   ____

   Mailing Address: ____________________

   ____

2. **Person to Contact:** ____________________

   Title/Position: ____________________

   Phone Number: ____________________

   Mailing Address: ____________________

   ____

   Email Address: ____________________

   Alternate Contact: ____________________

   Title/Position: ____________________

   Phone Number: ____________________

   Mailing Address: ____________________

   ____

   Email Address: ____________________

   Legal Counsel: ____________________

   Phone Number: ____________________

   Mailing Address: ____________________

   ____

   ____

   Email Address: ____________________

Application For A Certificate of Convenience and Necessity For A Proposed Transmission Line

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3. Project Description:

Name or Designation of Project ______________________

Design Voltage Rating (kV) ______________________

Operating Voltage Rating (kV) ______________________

Normal Peak Operating Current Rating (A) ______________________

4. Conductor and Structures:

Conductor Size and Type ______________________

Type of Structures ______________________

Height of Typical Structures ______________________

Explain why these structures were selected; include such factors as landowner preference, engineering considerations, and costs comparisons to alternate structures that were considered.

Provide dimensional drawings of the typical structures to be used in the project.

5. Right-of-way:

Miles of Right-of-Way ______________________

Miles of Circuit ______________________

Width of Right-of-Way ______________________

Percent of Right-of-Way Acquired ______________________

For each of the items listed above, provide a range for all of the routes. Provide a brief description of the area traversed by the proposed transmission line. Include a description of the general land uses in the area and the type of terrain crossed by the proposed line.

6. Substations or Switching Stations:

List the name of all existing substations or switching stations that will be associated with the proposed new transmission line. ______________________

List the name of all new substations or switching stations that will be associated with the proposed new transmission line. ______________________

7. Estimated Schedule:

Estimated Date of:	**Start**	**Completion**
Right-of-way Acquisition		
Construction of Facilities		
Energize Facilities	------------------------------	

Application For A Certificate of Convenience and Necessity

For A Proposed Transmission Line

8. Counties:

List all counties in which ~~preferred or alternate~~ routes are proposed to be constructed.

9. Municipalities:

List all municipalities in which ~~preferred or alternate~~ routes are proposed to be constructed.

Attach a copy of the franchise, permit or other evidence of the city's consent held by the utility. If franchise, permit, or other evidence of the city's consent has been previously filed, provide only the docket number of the application in which the consent was filed.

10. Affected Utilities:

Identify any other electric utility served by or connected to facilities proposed in this application. Include any utilities sharing proposed facilities (double circuit structures, substation equipment) or right-of-way.

Describe how any other electric utility will be affected and the extent of the other utilities' involvement in the construction of this project.

11. Financing:

Describe the method of financing this project. If the applicant is to be reimbursed for this project, or a portion of this project, identify the source and the amount of the contribution in aid of construction.

12. Estimated Costs: <u>Provide cost estimates for the proposed project in the following table. For each of the categories listed below, provide a range for all of the routes presented in this application. Provide a breakdown of "Other" costs by major cost category and amount. Include the same type of information for each route in an attachment to this application.</u>

	Transmission Facilities	**Substation Facilities**
Right-of-way (Easement and Fees)		
Material and Supplies		
Labor and Transportation (Utility)		
Labor and Transportation (Contract)		
Stores		
Engineering and Administration (Utility)		
Engineering and Administration (Contract)		
Estimated Total Cost		

13. Need for the Proposed Project:

Describe the need for the proposed construction. Describe the existing transmission system and conditions addressed by this application. Provide historical load data and load projections for at least five years to justify projects planned to accommodate load growth. State how the proposed facilities will meet the projected demand and provide a written description of the steady state load flow analysis that justifies the project. Provide any documentation of the review and recommendation of a PURA §39.151 organization. Provide any documentation showing the proposed facilities are needed to provide service to a new transmission service customer.

14. Alternatives to Proposed Project:

Describe alternatives to the construction of this project (not routing options). Include an analysis of distribution alternatives, upgrading voltage or bundling of conductors of existing facilities, adding transformers, and for utilities that have not unbundled, distributed generation as alternatives to the proposed project. Explain how the proposed project overcomes the insufficiencies of the other options that were considered.

15. Schematic or Diagram:

Provide a schematic or diagram of the applicant's transmission system in the proximate area of the proposed project. Show the location and voltage of existing transmission lines and substations, and the location of the proposed construction. Locate any taps, ties, meter points, or other facilities involving other utilities on the system schematic.

16. Routing Study:

Provide a brief summary of the routing study that includes a description of the process of selecting the study area, identifying routing constraints, selecting potential line segments, and the selection of the ~~preferred and alternate~~ routes. Provide a copy of the complete routing study conducted by the applicant~~utility~~ or its consultant. State which route the applicant recommends be approved.

17. Public Meeting or Public Open House:

Provide the date and location for each public meeting or public open house that was held in accordance with Procedural Rule §22.52. Provide a summary of each public meeting or public open house including the approximate number of attendants, and a copy of any survey provided to attendants and a summary of the responses received. Provide a description of the method of notice, a copy of any notices, and the number of notices that were mailed and/or published.

18. Routing Maps:

Base maps should be a full scale (one inch = one mile) highway map of the county or counties involved, or a U.S.G.S. 7-minute topographical map, or other map of comparable scale with sufficient cultural and natural features to permit location of the proposed route in the field. Provide a map (or maps) that shows the study area, routing constraints, and all routes or line segments that were considered prior to the selection of the ~~preferred and alternate~~ routes. Identify the ~~preferred and alternate~~ routes and any existing facilities to be interconnected or coordinated with the proposed project. Locate any taps, ties, meter points, or other facilities involving other utilities on the routing map. Show all existing transmission facilities located in the study area. Include the location of the habitable structures, radio transmitters and other electronic installations, airstrips, irrigated pasture or cropland, parks and recreational areas, historical and archeological sites, and any environmentally sensitive areas.

19. Permits:

List any permits or approvals required by other governmental agencies for the construction of the proposed project. Indicate whether or not permits have been obtained.

20. Habitable structures:

List all single-family and multi-family dwellings and related structures, mobile homes, apartment buildings, commercial structures, industrial structures, business structures, churches, hospitals, nursing homes, schools, or other structures normally inhabited by humans or intended to be inhabited by humans on a daily or regular basis within 300 feet of the centerline of a transmission project of 230kV or less, or within 500 feet of the centerline of a transmission project greater than 230kV. Provide a general description of each habitable structure and its distance from the centerline of the proposed project. In cities, towns or rural subdivisions, houses can be identified in groups. Provide the number of habitable structures in each group and list the distance from the centerline to the closest habitable structure in the group. Locate all listed habitable structures or groups of structures on the routing map.

21. Electronic Installations:

List all commercial AM radio transmitters located within 10,000 feet of the center line of the proposed project; and all FM radio transmitters, microwave relay stations or other similar electronic installations located within 2,000 of the center line of the proposed project. Provide a general description of each installation and its distance from the center line of the project. Locate all listed installations on a routing map.

22. Airstrips:

List all known private airstrips within 10,000 feet of the center line of the project. List all airports registered with the Federal Aviation Administration (FAA) with at least one runway more than 3,200 feet in length that are located within 20,000 feet of the center line of the proposed project. Indicate whether any transmission structures will exceed a 100:1 horizontal slope (one foot in height for each 100 feet in distance) from the closest point of the closest runway. List all listed airports registered with the FAA having no runway more than 3,200 feet in length that are located within 10,000 feet of the center line of the proposed project. Indicate whether any transmission structures will exceed a 50:1 horizontal slope from the closest point of the closest runway. List all heliports located within 5,000 feet of the center line of the proposed project. Indicate whether any transmission structures will exceed a 25:1 horizontal slope from the closest point of the closest landing and takeoff area of the heliport. Provide a general description of each private airstrip, registered airport, and registered heliport; and state the distance of each from the center line of the proposed transmission line. Locate all airstrips, airports, and heliports on a routing map.

23. Irrigation Systems:

Identify any pasture or cropland irrigated by traveling irrigation systems (rolling or pivot type) that will be traversed by the proposed project. Provide a description of the irrigated land and state how it will be affected by the proposed project (number and type of structures etc.). Locate any such irrigated pasture or cropland on a routing map.

24. Notice:

Notice is to be provided in accordance with Procedural Rule §22.52.

A. Provide a copy of the written direct notice to owners of directly affected land. Attach a list of the names and addresses of the owners of directly affected land receiving notice.

B. Provide a copy of the written notice to utilities that are located within five miles of the proposed transmission line.

C. Provide a copy of the written notice to county and municipal authorities.

D. Provide a copy of the notice that is to be published in newspapers of general circulation in the counties in which the proposed facilities are to be constructed. Attach a list of the newspapers that will publish the notice for this application. After the notice is published, provide the publisher's affidavits and tear sheets.

25. Parks and Recreation Areas:

List all parks and recreational areas owned by a governmental body or an organized group, club, or church located within 1,000 feet of the center line of the project. Provide a general description of each area and its distance from the center line. Identify the owner of the park or recreational area (public agency, church or club). List the sources used to identify the parks and recreational areas. Locate the listed sites on a routing map.

26. Historical and Archeological Sites:

List all historical and archeological sites known to be within 1,000 feet of the center line of the proposed project. Include a description of the site and its distance to the center line of the project. List the sources (national, state or local commission or societies) used to identify the sites. Locate all historical sites on a routing map. For the protection of the sites, archeological sites need not be shown on maps.

27. Coastal Management Program:

Indicate whether the proposed project is located, either in whole or in part, within the coastal management program boundary as defined in 31 T.A.C. §503.1. If the project is, either in whole or in part, in the coastal management program, indicate whether if any part of the proposed facilities are seaward of the Coastal Facilities Designation Line as defined in 31 T.A.C. §19.2(a)(21). Identify the type(s) of Coastal Natural Resource Area(s) using the designations in 31 T.A.C. §501.3(b) impacted by any part of the proposed facilities.

28. Environmental Impact:

Provide copies of any environmental impact studies or assessments of the project. If no formal study was conducted for this project, explain how the routing and construction of this project will impact the environment. List the sources used to identify the existence or absence of sensitive environmental areas. Locate any environmentally sensitive areas on routing map. In some instances, the location of the environmentally sensitive areas or the location of protected or endangered species should not be included on maps to insure preservation of the areas or species. After filing the application for the proposed project, provide a copy of each environmental impact study and/or assessment to the Texas Parks and Wildlife Department (TPWD) for its review at the address below. Include with this application a copy of the letter of transmittal with which the studies/assessments were or will be sent to the TPWD. Provide an affidavit within nine days after filing the application confirming that the letter of transmittal and studies/assessments were sent to TPWD.

Wildlife Habitat Assessment Program
Wildlife Division
Texas Parks and Wildlife Department
4200 Smith School Road
Austin, Texas 78744

Application For A Certificate of Convenience and Necessity

For A Proposed Transmission Line

AFFIDAVIT

Attach a sworn affidavit from a qualified individual authorized by the applicant to verify and affirm that to the best of knowledge; all information provided, statements made, and matters set forth in this application and attachments are true and correct.

APPLICATION FOR A

CERTIFICATE OF CONVENIENCE AND NECESSITY

FOR A PROPOSED TRANSMISSION LINE

PURSUANT TO P.U.C. SUBST. R. 25.174

DOCKET NO.____________

Submit seven (7) copies of the application and all attachments including all direct testimony supporting the application to:

Public Utility Commission of Texas
Attn: Filing Clerk
1701 N. Congress Ave.
Austin, Texas 78711-3326

Application For A Certificate of Convenience and Necessity For A Proposed Transmission Line Pursuant To P.U.C. Subst. R. 25.174

Note: As used herein, the term "joint application" refers to an application for proposed transmission facilities for which ownership will be divided. All applications for such facilities should be filed jointly by the proposed owners of the facilities.

1. **Applicant (Utility) Name: For joint applications, provide all information for each applicant.**

   Certificate Number: ______________________

   Street Address: ______________________

   ____

   Mailing Address: ______________________

2. **Please identify all entities that will hold an ownership interest or an investment interest in the proposed project but which are not subject to the Commission's jurisdiction.**

   ____

3. **Person to Contact: For joint applications, provide all information for each applicant.**

   Title/Position: ______________________

   Phone Number: ______________________

   Mailing Address: ______________________

   Email Address: ______________________

   Alternate Contact: ______________________

   Title/Position: ______________________

   Phone Number: ______________________

   Mailing Address: ______________________

   ____

   Email Address: ______________________

   Legal Counsel: ______________________

   Phone Number: ______________________

   Mailing Address: ______________________

   Email Address: ______________________

4. Project Description:

Name or Designation of Project______________________________________

Provide a general description of the project, including the design voltage rating (kV), the operating voltage (kV), the CREZ Zone(s) (if any) where the project is located (all or in part), any substations and/or substation reactive compensation constructed as part of the project, and any series elements such as sectionalizing switching devices, series line compensation, etc. For HVDC transmission lines, the converter stations should be considered to be project components and should be addressed in the project description.

If the project will be owned by more than one party, briefly explain the ownership arrangements between the parties and provide a description of the portion(s) that will be owned by each party. Provide a description of the responsibilities of each party for implementing the project (design, Right-Of-Way acquisition, material procurement, construction, etc.).

Identify and explain any deviation in transmission project components from the original transmission specifications in ERCOT's CREZ Transmission Optimization (CTO) Study.

5. Conductor and Structures:

Conductor Size and Type: ______________________________________

Number of conductors per phase: ____________________________________

Continuous Summer Static Current Rating (A): ___________________________

Continuous Summer Static Line Capacity at Operating Voltage (MVA): _______________

Continuous Summer Static Line Capacity at Design Voltage (MVA): ________________

Type and composition of Structures: _________________________________

Height of Typical Structures: _____________________________________

Explain why these structures were selected; include such factors as landowner preference, engineering considerations, and costs comparisons to alternate structures that were considered. Provide dimensional drawings of the typical structures to be used in the project.

For joint applications, provide and separately identify the above-required information regarding structures for the portion(s) of the project owned by each applicant.

6. Right-of-way:

Miles of Right-of-Way: ____

Miles of Circuit: ____

Width of Right-of-Way: ____

Percent of Right-of-Way Acquired: __________________________________

For joint applications, provide and separately identify the above-required information for each proposed ~~alternative~~ route ~~(including the preferred route)~~ for the portion(s) of the project owned by each applicant. ____

Provide a brief description of the area traversed by the proposed transmission line. Include a description of the general land uses in the area and the type of terrain crossed by the proposed line.____

7. Substations or Switching Stations:

List the name of all existing HVDC converter stations, substations or switching stations that will be associated with the proposed new transmission line. Provide documentation showing that the owner(s) of the existing HVDC converter stations, substations and/or switching stations have agreed to the installation of the required project facilities.

List the name of all new HVDC converter stations, substations or switching stations that will be associated with the proposed new transmission line. Provide documentation showing that the owner(s) of the new HVDC converter stations, substations and/or switching stations have agreed to the installation of the required project facilities.

8. Estimated Schedule:

Estimated Dates of:	Start	Completion
Right-of-way and Land Acquisition		
Engineering and Design		
Material and Equipment Procurement		
Construction of Facilities		
Energize Facilities	---------------------------	

9. Counties:

For each proposed ~~alternative~~ route ~~(including the preferred route)~~ list all counties in which the route is proposed to be constructed.

10. Municipalities:

For each proposed ~~alternative~~ route ~~(including the preferred route)~~ list all municipalities in which the route is proposed to be constructed. ______________________

For each applicant, attach a copy of the franchise, permit or other evidence of the city's consent held by the utility. If franchise, permit, or other evidence of the city's consent has been previously filed, provide only the docket number of the application in which the consent was filed. Each applicant should provide this information only for the portion(s) of the proposed project which will be owned by the applicant. ______________________

11. Affected Utilities:

Identify any other electric utility served by or connected to facilities proposed in this application.

____

Describe how any other electric utility will be affected and the extent of the other utilities' involvement in the construction of this project. Include any other utilities whose existing facilities will be utilized for the project (vacant circuit positions, ROW, substation sites and/or equipment, etc.) and provide documentation showing that the owner(s) of the existing facilities have agreed to the installation of the required project facilities. ______________________

12. **Financing:**

Describe the method of financing this project. For each applicant that is to be reimbursed for all or a portion of this project, identify the source and amount of the reimbursement (actual amount if known, estimated amount otherwise) and the portion(s) of the project for which the reimbursement will be made. ______________________

13. **Estimated Costs:** Provide cost estimates for the proposed project in the following table ~~for the preferred route and for each alternative route presented in this application.~~ For each of the categories listed below, provide a range for all of the routes presented in this application. Provide a breakdown of "Other" costs by major cost category and amount. Include the same type of information for each route in an attachment to this application.

	Transmission Facilities	**Substation Facilities**
Right-of-way and Land Acquisition		
Engineering and Design (Utility)		
Engineering and Design (Contract)		
Procurement of Material and Equipment (including stores)		
Construction of Facilities (Utility)		
Construction of Facilities (Contract)		
Other (all costs not included in the above categories)		
Estimated Total Cost		

For joint applications, provide and separately identify the above-required information for the portion(s) of the project owned by each applicant. ______________________

14. **Need for the Proposed Project:**

Provide a specific reference to the pertinent portion(s) of an appropriate commission CREZ order specifying that the facilities are needed. ______________________

15. Routing Study:

Provide a brief summary of the routing study that includes a description of the process of selecting the study area, identifying routing constraints, selecting potential line segments, and the selection of the ~~preferred and alternate~~ routes. Provide a copy of the complete routing study conducted by the utility or consultant. State which route the applicant recommends be approved.

16. Public Meeting or Public Open House:

Provide the date and location for each public meeting or public open house that was held in accordance with P.U.C. PROC. R. 22.52. Provide a summary of each public meeting or public open house including the approximate number of attendants, and a copy of any survey provided to attendants and a summary of the responses received. For each public meeting or public open house provide a description of the method of notice, a copy of any notices, and the number of notices that were mailed and/or published.

17. Routing Maps:

Base maps should be a full scale (one inch = not more than one mile) highway map of the county or counties involved, or other maps of comparable scale denoting sufficient cultural and natural features to permit location of all proposed ~~alternative~~ routes ~~(including the preferred route)~~ in the field. Provide a map (or maps) showing the study area, routing constraints, and all routes or line segments that were considered prior to the selection of the ~~preferred and alternate~~ routes. Identify the ~~preferred and alternate~~ routes and any existing facilities to be interconnected or coordinated with the proposed project. Identify any taps, ties, meter points, or other facilities involving other utilities on the routing map. Show all existing transmission facilities located in the study area. Include the locations of radio transmitters and other electronic installations, airstrips, irrigated pasture or cropland, parks and recreational areas, historical and archeological sites, and any environmentally sensitive areas.

Provide aerial photographs of the study area displaying the date that the photographs were taken or maps that show (1) the location of each proposed ~~alternative~~ route ~~(including the preferred route)~~ with each route segment identified, (2) the locations of all major public roads including, as a minimum, all federal and state roadways, (3) the locations of all known habitable structures or groups of habitable structures (see Question 18 below) on properties directly affected by any route, and (4) the boundaries (approximate or estimated according to best available information if required) of all properties directly affected by any route .

For each proposed ~~alternative~~ route ~~(including the preferred route)~~, cross-reference each habitable structure (or group of habitable structures) and directly affected property identified on the maps or photographs with a list of corresponding landowner names and addresses and indicate which route segment affects each structure/group or property.

18. Permits:

List any and all permits and/or approvals required by other governmental agencies for the construction of the proposed project. Indicate whether each permit has been obtained.

19. Habitable structures:

For each proposed ~~alternative~~ route ~~(including the preferred route)~~ list all single-family and multi-family dwellings and related structures, mobile homes, apartment buildings, commercial structures, industrial structures, business structures, churches, hospitals, nursing homes, schools, or other structures normally inhabited by humans or intended to be inhabited by humans on a daily or regular basis within 300 feet of the centerline if the proposed project will be constructed for operation at 230kV or less, or within 500 feet of the centerline if the proposed project will be constructed for operation at greater than 230kV. Provide a general description of each habitable structure and its distance from the centerline of the ~~alternative~~ route. In cities, towns or rural subdivisions, houses can be identified in groups. Provide the number of habitable structures in each group and list the distance from the centerline of the ~~alternative~~ route to the closest and the farthest habitable structure in the group. Locate all listed habitable structures or groups of structures on the routing map.

20. Electronic Installations:

For each proposed ~~alternative~~ route ~~(including the preferred route)~~, list all commercial AM radio transmitters located within 10,000 feet of the center line of the ~~alternative~~ route, and all FM radio transmitters, microwave relay stations, or other similar electronic installations located within 2,000 of the center line of the ~~alternative~~ route. Provide a general description of each installation and its distance from the center line of the ~~alternative~~ route. Locate all listed installations on a routing map.

21. Airstrips:

For each proposed ~~alternative~~ route ~~(including the preferred route)~~, list all known private airstrips within 10,000 feet of the center line of the project. List all airports registered with the Federal Aviation Administration (FAA) with at least one runway more than 3,200 feet in length that are located within 20,000 feet of the center line of any ~~alternative~~ route. For each such airport, indicate whether any transmission structures will exceed a 100:1 horizontal slope (one foot in height for each 100 feet in distance) from the closest point of the closest runway. List all listed

airports registered with the FAA having no runway more than 3,200 feet in length that are located within 10,000 feet of the center line of any ~~alternative~~ route. For each such airport, indicate whether any transmission structures will exceed a 50:1 horizontal slope from the closest point of the closest runway. List all heliports located within 5,000 feet of the center line of any ~~alternative~~ route. For each such heliport, indicate whether any transmission structures will exceed a 25:1 horizontal slope from the closest point of the closest landing and takeoff area of the heliport. Provide a general description of each listed private airstrip, registered airport, and heliport; and state the distance of each from the center line of each ~~alternative~~ route ~~(including the preferred route)~~. Locate and identify all listed airstrips, airports, and heliports on a routing map.

22. Irrigation Systems:

For each proposed ~~alternative~~ route ~~(including the preferred route)~~ identify any pasture or cropland irrigated by traveling irrigation systems (rolling or pivot type) that will be traversed by the ~~alternative~~ route. Provide a description of the irrigated land and state how it will be affected by each ~~alternative~~ route (number and type of structures etc.). Locate any such irrigated pasture or cropland on a routing map.

23. Notice:

Notice is to be provided in accordance with P.U.C. PROC. R. 22.52.

A. Provide a copy of the written direct notice to owners of directly affected land. Attach a list of the names and addresses of the owners of directly affected land receiving notice.

B. Provide a copy of the written notice to utilities that are located within five miles of the proposed transmission line.

C. Provide a copy of the written notice to county and municipal authorities.

D. Provide a copy of the notice that is to be published in newspapers of general circulation in the counties in which the proposed facilities are to be constructed. Attach a list of the newspapers that will publish the notice for this application. After the notice is published, provide the publisher's affidavits and tear sheets.

In addition to the requirements of P.U.C. PROC. R. §22.52 the applicant shall, not less than twenty-one (21) days before the filing of the application, submit to the Commission staff a "generic" copy of each type of proposed published and written notice for review. Staff's comments, if any, regarding the proposed notices will be provided to the applicant not later than seven days after receipt by Staff of the proposed notices, Applicant may take into consideration any comments made by Commission staff before the notices are published or sent by mail.

24. Parks and Recreation Areas:

For each proposed ~~alternative~~ route ~~(including the preferred route)~~, list all parks and recreational areas owned by a governmental body or an organized group, club, or church and located within 1,000 feet of the center line of the ~~alternative~~ route. Provide a general description of each area and its distance from the center line. Identify the owner of the park or recreational area (public agency, church, club, etc.). List the sources used to identify the parks and recreational areas. Locate the listed sites on a routing map.

25. Historical and Archeological Sites:

For each proposed ~~alternative~~ route ~~(including the preferred route)~~, list all historical and archeological sites known to be within 1,000 feet of the center line of the ~~alternative~~ route. Include a description of each site and its distance from the center line. List the sources (national, state or local commission or societies) used to identify the sites. Locate all historical sites on a routing map. For the protection of the sites, archeological sites need not be shown on maps.

26. Coastal Management Program:

For each proposed ~~alternative~~ route ~~(including the preferred route)~~, indicate whether the ~~alternative~~ route is located, either in whole or in part, within the coastal management program boundary as defined in 31 T.A.C. §503.1.

If any proposed ~~alternative~~ route ~~(including the preferred route)~~ is, either in whole or in part, within the coastal management program boundary, indicate whether any part of the proposed route is seaward of the Coastal Facilities Designation Line as defined in 31 T.A.C. §19.2(a)(21). Using the designations in 31 T.A.C. §501.3(b), identify the type(s) of Coastal Natural Resource Area(s) impacted by any part of the proposed route and/or facilities.

27. Environmental Impact:

Provide copies of any and all environmental impact studies and/or assessments of the proposed project. If no formal study was conducted for this project, explain how the routing and construction of this project will impact the environment. List the sources used to identify the existence or absence of sensitive environmental areas. Locate any environmentally sensitive areas on a routing map. In some instances, the location of the environmentally sensitive areas or the location of protected or endangered species should not be included on maps to ensure preservation of the areas or species. Within seven days after filing the application for the proposed project, provide a copy of each environmental impact study and/or assessment to the Texas Parks and Wildlife Department (TPWD) for its review at the address below. Include with this application a copy of the letter of transmittal with which the studies/assessments were or will be sent to the

TPWD. Provide an affidavit within nine days after filing the application confirming that the letter of transmittal and studies/assessments were sent to TPWD.

Wildlife Habitat Assessment Program
Wildlife Division
Texas Parks and Wildlife Department
4200 Smith School Road
Austin, Texas 78744

AFFIDAVIT

Attach a sworn affidavit from a qualified individual authorized by the applicant to verify and affirm that, to the best of knowledge, all information provided, statements made, and matters set forth in this application and attachments are true and correct.

TRD-201100800
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: February 28, 2011

To Provide Relay Access Services

RFP Number: 473-11-00193

Deadline for proposal submission: 4:00 p.m., Central Daylight Time, April 8, 2011

The Public Utility Commission of Texas (PUCT or commission) is issuing a Request for Proposals (RFP) for an entity to provide relay access services. These services provide telephone interpreting service for hearing, deaf, hard of hearing, deaf-blind, and speech-disabled persons. The provider selected must provide access to the telecommunications network in Texas equivalent to the access provided to other customers. These services are compensated from the Texas Universal Service Fund, administered by the PUCT. The statutes that establish the telecommunications relay service (TRS) can be found here: http://www.statutes.legis.state.tx.us/Docs/UT/htm/UT.56.htm#56.101. The PUCT's rules concerning TRS are found at: http://www.puc.state.tx.us/rules/subrules/telecom/26.414/26.414.pdf.

Eligible proposers must be experienced in providing access service similar to that described in Attachment A, Statement of Work, of the RFP.

The complete RFP is on the PUC website at: http://www.puc.state.tx.us/about/procurement/currentrfps.cfm

To obtain a copy of the RFP, contact Mike Schurwon, purchaser at (512) 936-7069; michael.schurwon@puc.state.tx.us; or Public Utility Commission of Texas, P.O. Box 13326, Austin, Texas 78711-3326.

TRD-201100774
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: February 24, 2011

Texas Title Insurance Guaranty Association

Request for Proposal

Notice of Request for Proposals from Certified Public Accountants to provide audit and other professional services for the Texas Title Insurance Guaranty Association ("TTIGA").

Requesting the Proposal: A complete copy of the Request for Proposal ("RFP") may be obtained by writing Reed Bates, Mitchell Williams, 106 E. 6th St., Suite 300, Austin, Texas 78701, telephone number (512) 474-1587, or via email at contact@ttiga.org.

Schedule of Events: To be considered for this engagement, your firm must meet the qualifications and satisfy the requirements set forth in the RFP. All inquiries concerning the RFP must be received by deadline. Please indicate your intent to submit a proposal by submitting a written Notification of Interest. The Notification of Interest is a pre-requisite to submitting a proposal. The Notification may be sent to Reed Bates at fax number (512) 322-0301 or via email at contact@ttiga.org by April 1, 2011.

Further Information: Firms that wish to submit a proposal and wish to obtain additional information related to the TTIGA and its operations should contact Reed Bates at (512) 474-1587 to obtain an information packet, including the governing statutes and rules, December 31, 2010 financials, and related documents.

Deadline for Receipt of Proposals: A completed proposal must be received by 5:00 p.m. (CST) on April 15, 2011. Please limit your proposal to twenty (20) pages, including any appendices that you deem pertinent.

Evaluation and Award Procedure: All proposals will be subject to evaluation by the Board of Directors of the TTIGA. The selection and awarding of a contract will be based on criteria and procedures set forth in the RFP, including ability to provide the requested services, demonstrated competence, qualifications, and experience, and the reasonableness of the proposed fees. The Board of Directors reserves the right to accept or reject any or all proposals submitted and is under no legal obligation to execute any contracts based on this notice or the distribution of any RFP. The Board of Directors shall pay no costs incurred by any entity responding to this Notice or the RFP. It is anticipated that the selection of a firm will be made by the Board of Directors at its April 25, 2011 meeting. Certain firms may be interviewed at that time. You will be notified in advance if your company is required to make a presentation.

TRD-201100838
Burnie Burner
General Counsel
Texas Title Insurance Guaranty Association
Filed: March 1, 2011

Texas Department of Transportation

Aviation Division - Request for Proposal for Professional Engineering Services

Terrell County, through its agent the Texas Department of Transportation (TxDOT), intends to engage an aviation professional engineering firm for services pursuant to Government Code, Chapter 2254, Subchapter A. TxDOT Aviation Division will solicit and receive proposals for professional aviation engineering design services described below.

The following is a listing of proposed projects at Terrell County Airport during the course of the next five years through multiple grants.

Current Project: Terrell County. TxDOT CSJ No.: 1106DRYDN. Scope: Provide engineering/design services to replace low intensity runway lights with medium intensity runway lights at Runway 13-31; replace rotating beacon and tower and install emergency generator.

The HUB goal for the current project is 4% TxDOT Project Manager is Ed Mayle.

Future scope work items for engineering/design services within the next five years may include the following:

1. Rehabilitate and mark Runway 4-22 and Runway 13-31
2. Rehabilitate apron and stub Taxiway
3. Construct turnarounds at Runway 4-22 and Runway 13-31
4. Apron expansion and overlay

Terrell County reserves the right to determine which of the above scope of services may or may not be awarded to the successful firm and to initiate additional procurement action for any of the services above.

To assist in your proposal preparation the criteria, 5010 drawing, project description, and most recent Airport Layout Plan are available online at www.txdot.gov/avn/avninfo/notice/consult/index.htm by

selecting "Terrell County Airport." The proposal should address a technical approach for the current scope only. Firms shall use page 4, Recent Airport Experience, to list relevant past projects for both current and future scope.

Interested firms shall utilize the latest version of Form AVN-550, titled "Aviation Engineering Services Proposal." The form may be requested from TxDOT Aviation Division, 125 East 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 at http://www.txdot.gov/business/projects/aviation.htm. The form may not be altered in any way. All printing must be in black on white paper, except for the optional illustration page. Firms must carefully follow the instructions provided on each page of the form. Proposals may not exceed the number of pages in the proposal format. The proposal format consists of seven pages of data plus two optional pages consisting of an illustration page and a proposal summary page. A prime provider may only submit one proposal. If a prime provider submits more than one proposal, that provider will be disqualified. Proposals shall be stapled but not bound in any other fashion. PROPOSALS WILL NOT BE ACCEPTED IN ANY OTHER FORMAT.

ATTENTION: To ensure utilization of the latest version of Form AVN-550, firms are encouraged to download Form AVN-550 from the TxDOT website as addressed above. Utilization of Form AVN-550 from a previous download may not be the exact same format. Form AVN-550 is a .pdf Template.

Please note:

Six completed, unfolded copies of Form AVN-550 **must be received** by TxDOT Aviation Division at 150 East Riverside Drive, 5th Floor, South Tower, Austin, Texas 78704 no later than April 5, 2011, 4:00 p.m. Electronic facsimiles or forms sent by email will not be accepted. Please mark the envelope of the forms to the attention of Becky Vick.

The consultant selection committee will be composed of local government members. The final selection by the committee will generally be made following the completion of review of proposals. The committee will review all proposals and rate and rank each. The criteria for evaluation of engineering proposals can be found at http://www.txdot.gov/business/projects/aviation.htm. All firms will be notified and the top rated firm will be contacted to begin fee negotiations. The selection committee does, however, reserve the right to conduct interviews for the top rated firms if the committee deems it necessary. If interviews are conducted, selection will be made following interviews.

Please contact TxDOT Aviation for any technical or procedural questions at 1-800-68-PILOT (74568). For procedural questions, please contact Becky Vick, Grant Manager. For technical questions, please contact Ed Mayle, Project Manager.

TRD-201100861
Joanne Wright
Deputy General Counsel
Texas Department of Transportation
Filed: March 2, 2011

Public Hearing Notice - Update to the 2010 Unified Transportation Program

The Texas Department of Transportation (department) will hold a public hearing on Monday, March 28, 2011 at 9:00 a.m. in the Ric Williamson Hearing Room of the DeWitt C. Greer State Highway Building, 125 East 11th Street, Austin, Texas to receive public comments on an update to the 2010 Unified Transportation Program (UTP).

The UTP is a 10-year program that guides the development and authorizes construction of transportation projects and projects involving aviation, public transportation, and the state's waterways and coastal waters. The Texas Transportation Commission recently adopted new rules located in Title 43, Texas Administrative Code, Chapter 16, governing the planning and development of transportation projects, which include guidance regarding public involvement related to adoption of the UTP and approval of any updates to the program.

Any interested person may appear at the hearing and offer comments or testimony, either orally or in writing; however, questioning of those making presentations will be reserved exclusively to the presiding officer as may be necessary to ensure a complete record. While any person with pertinent comments or testimony will be granted an opportunity to present them during the course of the hearing, the presiding officer reserves the right to restrict testimony in terms of time or repetitive content. A person may not assign a portion of his or her time to another speaker. Organizations, associations, or groups are encouraged to present their commonly-held views, and same or similar comments, through a representative member where possible. Presentations must remain pertinent to the subject matter of the hearing.

Persons with disabilities who plan to attend the hearing and who may need auxiliary aids or services such as interpreters for persons who are deaf or hearing impaired, readers, large print or Braille, are requested to contact Brent Dollar, Government and Public Affairs Division, at 125 East 11th St., Austin, Texas 78701-2383, or (512) 463-8955 at least two working days prior to the hearing so that appropriate arrangements can be made. Every reasonable effort will be made to accommodate the needs.

Information regarding the update to the 2010 UTP will be available at the department's Finance Division, 150 East Riverside Drive, Austin, Texas 78704, or (512) 486-5043, and on the department's web site at: http://www.txdot.gov/public_involvement/2010_utp.htm.

Interested parties who are unable to attend the hearing may submit written comments to the Texas Department of Transportation, Attention: Brian Ragland, P.O. Box 149217, Austin, Texas 78714-9217. The deadline for receipt of written comments is 5:00 p.m. on April 11, 2011.

TRD-201100859
Joanne Wright
Deputy General Counsel
Texas Department of Transportation
Filed: March 2, 2011

Request for Proposal - Private Consultant Services

The Texas Department of Transportation (department) announces a Request for Proposal (RFP) for private consultant services pursuant to Government Code, Chapter 2254, Subchapter B. The term of the contract will be from project initiation to May 31, 2012. The department will administer the contract. The RFP will be released on March 11, 2011, and is contingent on the finding of necessity from the Governor's Office.

Purpose: Texas Department of Transportation is seeking an outside professional change management firm for the development of a comprehensive, enterprise-wide implementation strategy and plan, as well as for the actual oversight of the implementation. The effort will involve review of the TxDOT Restructure Council Report, as well as the Grant Thornton Report and recommendations relative to the management and organizational structure of administration, divisions, districts, and offices of the department. Based on the recommendations of TxDOT Restructure Council and Grant Thornton, the Consultant

shall provide the planning, design, implementation, and management of this comprehensive, enterprise-wide strategic plan. The strategic plan should include critical path recommendations for organizational modernization and performance improvement throughout the department, which includes, Leadership and Culture; Implementing Change; Organizational Structure; Financial Management; Informational Technology; Human Resources; Communications; Plan, Design, Build; and Procurement.

Eligible Applicants: Eligible applicants include, but are not limited to, organizations that provide private consulting services.

Program Goal: The completion of a comprehensive, enterprise-wide implementation strategy and plan, as well as the actual oversight of the implementation.

Review and Award Criteria: Each application will first be screened for completeness and timeliness. Proposals that are deemed incomplete or arrive after the deadline will not be reviewed. A team of reviewers from the department will evaluate the proposals as to the private consultant's competence, knowledge, and qualifications and as to the reasonableness of the proposed fee for the services. The criteria and review process are further described in the RFP.

Deadlines: The department must receive proposals prepared according to instructions in the RFP package on or before March 25, 2011 at 3:00 p.m.

To Obtain a Copy of the RFP: Requests for a copy of the RFP should be submitted to Janice Mullenix, 125 East 11th Street, Austin, Texas 78701-2483. Email: Janice.Mullenix@txdot.gov, telephone number (512) 374-5120 and Fax (512) 374-5121. Copies will also be available on the Electronic State Business Daily (ESBD) at http://esbd.cpa.state.tx.us/.

TRD-201100860
Joanne Wright
Deputy General Counsel
Texas Department of Transportation
Filed: March 2, 2011

How to Use the Texas Register

Information Available: The 14 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 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.

Transferred Rules- notice that the Legislature has transferred rules within the *Texas Administrative Code* from one state agency to another, or directed the Secretary of State to remove the rules of an abolished agency.

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 36 (2011) is cited as follows: 36 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 "36 TexReg 2 issue date," while on the opposite page, page 3, in the lower right-hand corner, would be written "issue date 36 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 at: 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 website information, call the Texas Register at (512) 463-5561.

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 and Parts (using Arabic 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 (800-356-6548), and West Publishing Company (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 ***Index of Rules***. The *Index of Rules* is published cumulatively in the blue-cover quarterly indexes to the ***Texas Register***. If a rule has changed during the time period covered by the table, the rule's ***TAC*** number will be printed with the ***Texas Register*** page number and a notation indicating the type of filing (emergency, proposed, withdrawn, or adopted) as shown in the following example.

TITLE 1. ADMINISTRATION
Part 4. Office of the Secretary of State
Chapter 91. Texas Register
40 TAC §3.704..950 *(P)*