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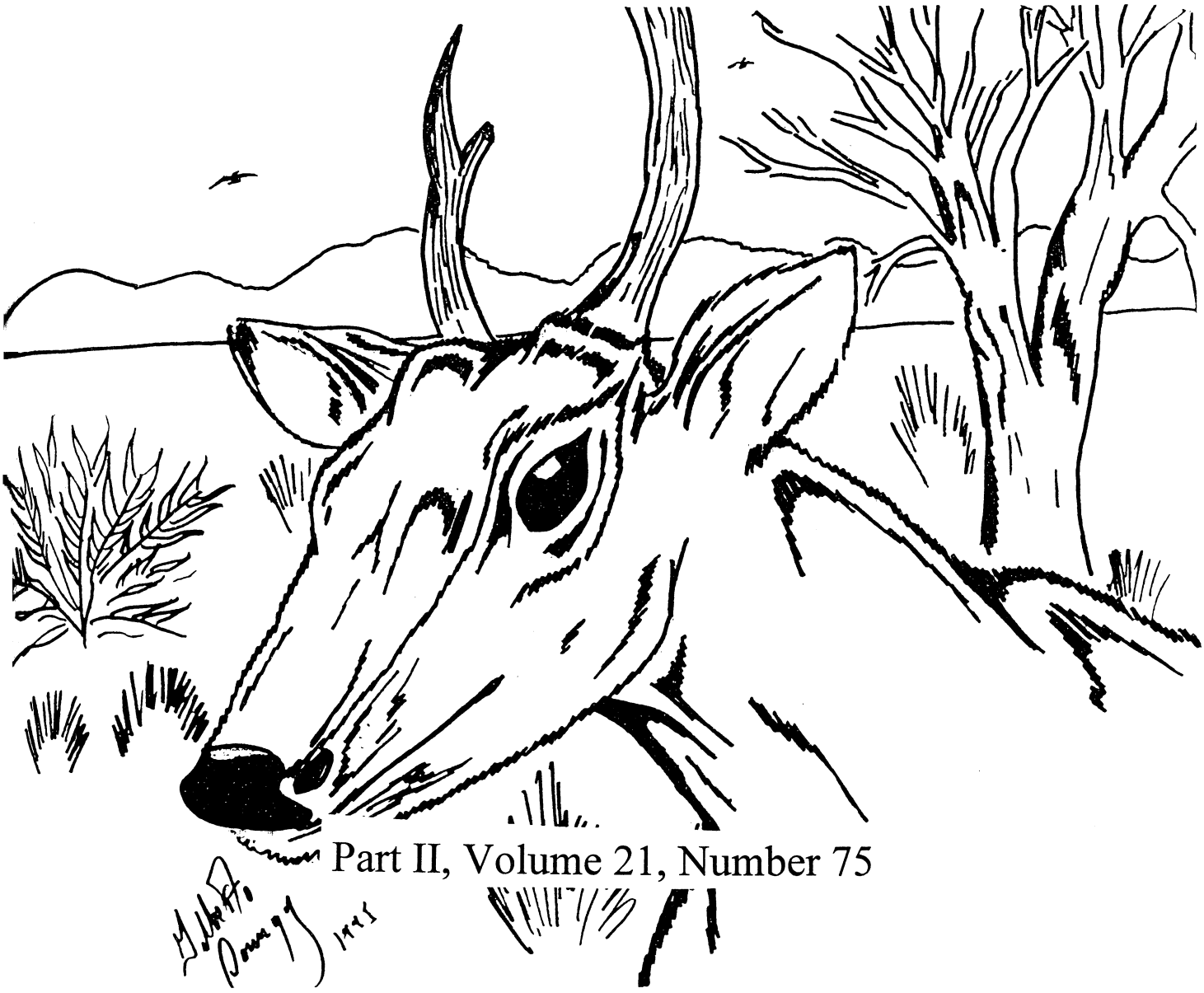

Part II, Volume 21, Number 75

This month's front cover artwork:

Artist: Gilberto Dominguez

8th grade

Central Middle School, Galveston ISD

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

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

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

For more information about the student art project, please call (800) 226-7199.

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IN THIS ISSUE

ADOPTED RULES

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An agency may take final action on a section 30 days after a proposal has been published in the ***Texas Register***. The section becomes effective 20 days after the agency files the correct document with the ***Texas Register***, unless a later date is specified or unless a federal statute or regulation requires implementation of the action on shorter notice.

If an agency adopts the section without any changes to the proposed text, only the preamble of the notice and statement of legal authority will be published. If an agency adopts the section with changes to the proposed text, the proposal will be republished with the changes.

TITLE 4. AGRICULTURE

Part VII. Texas Department of Agriculture

Chapter 30. Texas Agriculture Finance Authority: Young Farmer Loan Guarantee Program

Subchapter A. General Procedures

4 TAC §§30.3, 30.7, 30.10

The Board of Directors of the Texas Agricultural Finance Authority (the Authority) of the Texas Department of Agriculture (the department) adopts amendments to §§30.3, 30.7, and 30.10, concerning the Young Farmer Loan Guarantee Program, without changes to the proposal as published in the August 23, 1996, issue of the *Texas Register* (21 TexReg 7933).

The amendments are made to clarify definitions and related sections and to make the sections consistent with statutory requirements. The amendment to §30.3 changes the definition for the term "first farm and ranch operation" to clarify that the operation must be the applicant's first independent operation, and changes the definition of the term "plan" to make that definition consistent with the enabling statute for the program. The amendment to §30.7 deletes the requirement of filing a completed personal history questionnaire and changes the type of plan required to be filed, to make this section consistent with the amendment to the definition of "plan" found in §30.3. The amendment to §30.10 changes the requirements for filing of financial and cash flow statements by the applicant.

Two comments were received generally in support of the amendments.

The amendments are adopted under the Texas Agriculture Code (the Code), §253.007(e), which provides the Board of Directors of the Texas Agricultural Finance Authority with the same authority in administering the Young Farmer Loan Guarantee Program as it has in administering programs established by the board under Chapter 58 of the Code; §58.023 of the Code, which provides the board with the authority to adopt rules to establish criteria for eligibility of applicants and criteria for lenders; §58.022 of the Code, which provides the board with the authority to adopt rules and procedures for administration of the loan guarantee program; and Texas Government Code, §2001.004, which requires that the Authority adopt rules of practice stating the nature and requirements of all available formal and informal procedures.

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.

Issued in Austin, Texas, on September 30, 1996.

TRD-9614232
Dolores Alvarado Hibbs
Deputy General Counsel
Texas Department of Agriculture
Effective date: October 21, 1996
Proposal publication date: August 23, 1996
For further information, please call: (512) 463–7583

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TITLE 19. EDUCATION

Part II. Texas Education Agency

Chapter 61. School Districts

Subchapter AA. Commissioner's Rules

County Education Districts

19 TAC §61.1001

The Texas Education Agency (TEA) adopts an amendment to §61.1001, concerning county education districts (CEDs), without changes to the proposed text as published in the August 23, 1996, issue of the *Texas Register* (21TexReg 7934). The section establishes definitions, requirements, and procedures related to managing the assets, liabilities, and records of former CEDs.

The amendment specifies the treatment of various revenue sources in determining tax efforts for setting limits on the guaranteed yield program described in the Texas Education Code, Chapter 42, Subchapter F. The amendment is necessary to provide for appropriate recognition of the tax efforts of school districts in the transition to the system of school finance brought about by Senate Bill 7, 73rd Texas Legislature, 1993.

The amendment provides for the payment of additional grant funds to public school districts based on a recognition of tax collections of CEDs in 1992-1993. The change reflects

the settlement agreement in the lawsuit brought by several school districts, styled *Stamford Independent School District v. Commissioner of Education.*

No comments were received regarding adoption of the amendment.

The amendment is adopted under §4.15 of Senate Bill 7, 73rd Texas Legislature, 1993, which authorizes the commissioner of education to adopt rules as necessary to implement statutory requirements concerning abolition of CEDs.

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.

Issued in Austin, Texas, on September 27, 1996.

TRD-9614165
Criss Cloudt
Associate Commissioner, Policy Planning and Research
Texas Education Agency
Effective date: October 18, 1996
Proposal publication date: August 23, 1996
For further information, please call: (512) 463–9701

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Chapter 153. School District Personnel

Subchapter BB. Commissioner's Rules Concerning School District Staff Development

19 TAC §153.1011

The Texas Education Agency (TEA) adopts new §153.1011, concerning school district staff development with changes to the proposed text as published in the August 6, 1996, issue of the *Texas Register* (21 TexReg 7310).

The new section provides guidelines for districts concerning minimum staff development standards for planning, preparation, and improvement. In addition, the new section will impact the campus improvement plan and, ultimately, student achievement.

Senate Bill 1, 74th Texas Legislature, 1995, transferred authority for the information contained in this section from the State Board of Education to the commissioner of education. New §153.1011 is adopted as part of the sunset review process mandated by Senate Bill 1. Section 153.1011 replaces 19 TAC §149.21, General Requirements for Staff Development, which was repealed by the State Board of Education. The following changes have been made to new §153.1011 since the section was published as proposed.

Under subsection (a), language has been added to emphasize explicitly the role the legislature placed on decision-making committees in the area of staff development.

Under subsection (b), language has been revised to clarify recipients of and purpose of staff development opportunities.

Under subsection (c), language has been added to emphasize legislative mandate and to ensure that teachers have input in establishing their individual needs.

Under subsection (d), language has been added to allow districts flexibility in the development of staff development models and to clarify the expectations of the approved staff development program.

Under subsection (e), language has been added to emphasize focus on standards of professional practices.

Under new subsection (f), formerly subsection (e), language has been added to include committees established under the Texas Education Code, §11.251, in the planning process and to clarify the focus of staff development.

The following comments have been received regarding adoption of the new section.

Comment. Representatives from the Association of Texas Professional Educators and the Texas Statewide Systemic Initiative request that the commissioner of education include language in subsection (a) that emphasizes the role the legislature placed on decision-making committees in the area of staff development.

Agency Response. The agency agrees with the comment and has added language to include the recommendation.

Comment. Representatives from the Association of Texas Professional Educators and Region VI Education Service Center request that the commissioner of education include language in subsection (b) that clarifies recipients of and purpose of staff development opportunities.

Agency Response. The agency agrees with the comment and has added language to include the recommendation.

Comment. A representative from the Association of Texas Professional Educators requests that the commissioner of education include language in subsection (c) that emphasizes legislative mandate for campus and district committees.

Agency Response. The agency agrees with the comment and has added language to include the recommendation.

Comment. A representative from the Region VI Education Service Center requests that the commissioner of education include language in subsection (c) to ensure teachers have input.

Agency Response. The agency agrees with the comment and has added language to include the recommendation.

Comment. A representative from the Texas Classroom Teachers Association requests that the commissioner of education add a specific statement of the statutory requirement to subsection (c) that states that staff development be developed and approved by the campus-level committee established under §11.251 of the Texas Education Code.

Agency Response. The agency agrees with the comment and has added language to include the recommendation.

Comment. Members of the Education Service Center Core Group request that the commissioner of education include language in subsection (c) that emphasizes legislative mandate, provides consistency to references for campus and district groups, and establishes the individual needs of teachers and administrators.

Agency Response. The agency agrees with the comment and has added language to include the recommendation.

Comment. A representative of the Texas Statewide Systemic Initiative requests that the commissioner of education include language in subsection (c) that ensures that teachers have input in establishing their individual needs.

Agency Response. The agency agrees with the comment and has added language to include the recommendation.

Comment. A representative from the Association of Texas Professional Educators requests that the commissioner of education include language in subsection (d) that clarifies the expectations of the approved staff development program.

Agency Response. The agency agrees with the comment and has added language to include the recommendation.

Comment. Members of the Education Service Center Core Group request that the commissioner of education include language in subsection (d) that allows districts flexibility in the development of staff development models.

Agency Response. The agency agrees with the comment and has added language to include the recommendation.

Comment. A question was introduced by a representative of the Texas Statewide Systemic Initiative. Should a paragraph of descriptions for the practices listed be added in §153.1011(d)?

Agency Response. The language added in §153.1011(e) provides the requested clarification.

Comment. A representative from the Association of Texas Professional Educators requests that the commissioner of education include language in subsection (e) that includes committees established under the Texas Education Code, §11.251, in the planning process.

Agency Response. The agency agrees with the comment and has added language in new subsection (f), formerly subsection (e), to include the recommendation.

Comment. A representative of the Texas Statewide Systemic Initiative requests that the commissioner of education add a new subsection (f) to state that the staff development program of the district should reflect the standards of professional practices recognized at the state and national levels.

Agency Response. The agency agrees with the comment and has added language in subsection (e) to include the recommendation.

Comment. A representative of the Texas Statewide Systemic Initiative requests that the commissioner of education include language in subsection (e) that clarifies the focus of staff development.

Agency Response. The agency agrees with the comment and has added language with minor wording changes in new subsection (f), formerly subsection (e), to include the recommendation.

Comment. A question was introduced by a representative of the Texas Statewide Systemic Initiative. Would professional development be a better term to use throughout the rule rather than staff development?

Agency Response. The agency disagrees with this comment. The rule is in response to the Texas Education Code, §21.451, which refers to staff development requirements.

The new section is adopted under the Texas Education Code §21.451, which authorizes the commissioner of education to establish minimum staff development standards by a school district for program planning, preparation, and improvement.

§153.1011. Minimum Staff Development Standards.

(a) Each school district shall budget adequate time and financial resources to support a comprehensive staff development program, as approved in accordance with the Texas Education Code, §11.253(e) and §21.451, that promotes learning, promotes collaborating with colleagues, reflects best practices, and is guided by the campus improvement plan developed through the site-based decision making process.

(b) Each school district shall offer the staff development opportunities outlined in the Texas Education Code, §21.451(b), for campus and district staff to maintain skills and be thoroughly prepared to successfully carry out their duties and responsibilities. Each staff development program must address the areas required in the Texas Education Code, §21.451(a).

(c) The campus and district committees established under the Texas Education Code, §11.251, must identify staff development needs for teachers and administrators guided by the strategies and activities of the district and campus improvement plans and individual growth plans; where teachers will have input into the identification of those needs and in the planning of staff development.

(d) The approved staff development program shall provide access to various models of staff development that foster and model effective practices such as:

(1) individually-guided model;

(2) observation/assessment model;

(3) development/improvement process model;

(4) inquiry model;

(5) training model; and

(6) other models meeting local needs.

(e) The staff development program of the district should reflect the standards of professional practices recognized at the state and national levels.

(f) Each committee and school district shall plan for and promote student achievement for all students, with the focus of staff development on standards for student performance in the Texas essential knowledge and skills (TEKS).

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.

Issued in Austin, Texas, on October 2, 1996.

TRD-9614393
Criss Cloudt
Associate Commissioner, Policy Planning and Research
Texas Edication Agency
Effective date: October 23, 1996
Proposal publication date: August 6, 1996

For further information, please call: (512) 463–9701

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TITLE 22. EXAMINING BOARDS

Part IX. Texas State Board of Medical Examiners

Chapter 161. General Provisions

22 TAC §161.1

The Texas State Board of Medical Examiners adopts an amendment to §161.1, without change, to the proposed text as published in the July 5, 1996, issue of the *Texas Register* (21 TexReg 6183).

The section as adopted will enable the Non-Profit Health Organizations Committee and the Ethics Committee to function as standing committees of the board.

The section will function by clarifying the duties and expanding the responsibilities of the two committees.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Medical Practice Act, Texas Civil Statutes, Article 4495b, §2.09(a), which provide the Texas State Board of Medical Examiners with the authority to make rules, regulations and bylaws not inconsistent with this Act as may be necessary for the governing of its own proceedings, the performance of its duties, the regulation of the practice of medicine in this state, and the enforcement of this Act.

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

Issued in Austin, Texas, on September 30, 1996.

TRD-9614264
Bruce A. Levy, M.D., J.D.
Executive Director
Texas State Board of Medical Examiners
Effective date: October 22, 1996
Proposal publication date: July 5, 1996
For further information, please call: (512) 305–7016

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Chapter 163. Licensure

22 TAC §§163.1, 163.6, 163.8

The Texas State Board of Medical Examiners adopts amendments to §163.1, 163.6, and 163.8, with changes, to the proposed text as published in the July 12, 1996, issue of the *Texas Register* (21 TexReg 6407).

The section as adopted will make the licensure process more efficient, acknowledge the validity of the National Board of Osteopathic Medical Examiners examination for purposes of licensure, and promote MD-PhD and DO-PhD programs so as to result in more qualified licensure applicants.

The section will function by clarifying what constitutes a passing score on the COMLEX Level III of the National Board of Osteopathic Medical Examiners examination. The amendment to the rule will also clarify the criteria to be evaluated when considering licensure of graduates of simultaneous MD-PhD or DO-PhD programs.

Comments were received in support of the proposed amendments from the Texas Osteopathic Medical Association and the American Osteopathic Association with suggested nonsubstantive changes which would clarify passing scores on the COMLEX Level III of the National Board of Osteopathic Medical Examiners examination. The changes have been incorporated into the text.

The amendments are adopted under the Medical Practice Act, Texas Civil Statutes, Article 4495b, §2.09(a), which provide the Texas State Board of Medical Examiners with the authority to make rules, regulations and bylaws not inconsistent with this Act as may be necessary for the governing of its own proceedings, the performance of its duties, the regulation of the practice of medicine in this state, and the enforcement of this Act.

§163.1. Definitions.

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

Examinations administered by the board for licensure by examination -To be eligible for licensure by examination an applicant must sit for the required examination administered by the board and pass. A passing score is 75 or better on the USMLE and the Texas medical jurisprudence examinations. A passing score is 75 or better on COMLEX Level III of the NBOME examination or its successor. All steps or components must be passed within seven years. The board shall administer Step 3 of the United States Medical Licensing Examination (USMLE); COMLEX Level III of the National Board of Osteopathic Medical Examiners (NBOME) examination or its successor after September 1, 1997; and the Texas medical jurisprudence examination in writing at times and places as designated by the board.

§163.6. Procedural Rules for Licensure Applicants.

(a) Applicants for licensure:

(1)-(7) (No Change.)

(8) must have the application for licensure complete in every detail 20 days prior to the board meeting in which they are considered for licensure. Applicants may qualify for a Temporary License prior to being considered by the board for licensure, as required by §163.9 of this title (relating to Temporary Licensure-Regular);

(9)-(12) (No change.)

(13) must pass, within seven years all parts of all examinations required for licensure. The board may consider for licensure graduates of simultaneous MD-PhD or DO-PhD programs who have passed all parts of their required examinations no later than two years after their MD or DO degree was awarded.

(b) (No change.)

(c) Applicants for licensure by endorsement:

(1) (No change.)

(2) who have not been examined for licensure in a ten-year period prior to the filing date of the application must pass Day III or Component II of the FLEX prior to June 1988, or SPEX, with a grade of 75 or higher, unless the applicant has obtained:

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

§163.8. Administration of Examinations.

(a) The board shall administer Step 3 of the United States Medical Licensing Examination (USMLE); COMLEX Level III of the National Board of Osteopathic Medical Examiners (NBOME) examination or its successor after September 1, 1997 and the Texas medical jurisprudence examination in writing, at times and places as designated by the board.

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

(e) All NBOME COMLEX Level III questions and answers, with grades attached, shall be preserved for at least one year at the National Board of Osteopathic Medical Examiners offices.

(f) An applicant shall not be eligible to sit for the Texas medical jurisprudence examination until the application is complete and until the applicant has made a personal appearance to have his or her required original documents inspected by a representative of the board.

(g) an applicant shall not be eligible to sit for the USMLE Step 3 examination until:

(1) the application is complete;

(2) the applicant has passed:

(A) the USMLE Step 1 and USMLE Step 2 examinations with a grade of 75 or better on each step within three attempts; or

(B) FLEX Component I with a grade of 75 or better within three attempts; or

(C) the 1991 NSBME Comprehensive I and USMLE Step 2 examinations with a grade of 75 or better on each step and part within three attempts; and

(3) the applicant has made a personal appearance to have his or her required original documents inspected by a representative of the board.

(h) an applicant shall not be eligible to sit for the NBOME COMLEX Level III examination until:

(1) the application is complete;

(2) the applicant has passed the NBOME Part I and NBOME Part II examinations with a passing grade of 75 or better on each part within three attempts; and

(3) the applicant has made a personal appearance to have his or her required original documents inspected by a representative of the board.

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

Issued in Austin, Texas, on September 30, 1996.

TRD-9614265
Bruce A. Levy, M.D., J.D.
Executive Director
Texas State Board of Medical Examiners
Effective date: October 22, 1996
Proposal publication date: July 5, 1996
For further information, please call: (512) 305–7016

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Chapter 177. Certification of Non-Profit Organizations

22 TAC §§177.9–177.15

The Texas State Board of Medical Examiners adopts repeals to §§177.9-177.15, without changes, to the proposed text as published in the July 5, 1996, issue of the *Texas Register* (21 TexReg 6184).

The repeals as adopted will allow for extensive revisions and rewrite.

The repeals will function by reorganization of the sections for clarification.

No comments were received regarding adoption of the repeals.

The repeals are adopted under the Medical Practice Act, Texas Civil Statutes, Article 4495b, §2.09(a), which provide the Texas State Board of Medical Examiners with the authority to make rules, regulations and bylaws not inconsistent with this Act as may be necessary for the governing of its own proceedings, the performance of its duties, the regulation of the practice of medicine in this state, and the enforcement of this Act.

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

Issued in Austin, Texas, on September 30, 1996.

TRD-9614266
Bruce A. Levy, M.D., J.D.
Executive Director
Texas State Board of Medical Examiners
Effective date: October 22, 1996
Proposal publication date: July 5, 1996
For further information, please call: (512) 305–7016

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The Texas State Board of Medical Examiners adopts new §177.9-177.15, without changes, to the proposed text as published in the July 5, 1996, issue of the *Texas Register* (21 TexReg 6184).

The sections as adopted will clarify and expand the requirements for approval of certification of non-profit health organizations under the Medical Practice Act, §5.01(b). Extensive reorganization of the sections will also help in clarifying requirements for certification under different sections of the Medical Practice Act.

The sections as adopted will more clearly define the procedure for the approval for certification of migrant, community, or homeless health centers organized and operated under the authority of and in compliance with 42 U.S.C. §§254b, 254c, or 256, or federally qualified health centers under 42 U.S.C.

§§1396d(1)(2)(B), who are non-profit corporations under the Texas Non-Profit Corporation Act, Article 1396-1.01, Vernon's Texas Civil Statutes, and the Internal Revenue Code, section 501(c)(3).

No comments were received regarding adoption of the new sections.

The new sections are adopted under the Medical Practice Act, Texas Civil Statutes, Article 4495b, §2.09(a), which provide the Texas State Board of Medical Examiners with the authority to make rules, regulations and bylaws not inconsistent with this Act as may be necessary for the governing of its own proceedings, the performance of its duties, the regulation of the practice of medicine in this state, and the enforcement of this Act.

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

Issued in Austin, Texas, on September 30, 1996.

TRD-9614267
Bruce A. Levy, M.D., J.D.
Executive Director
Texas State Board of Medical Examiners
Effective date: October 22, 1996
Proposal publication date: July 5, 1996
For further information, please call: (512) 305–7016

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Chapter 183. Acupuncture

22 TAC §§183.2–183.4, 183.14

The Texas State Board of Medical Examiners adopts amendments to §§183.2-183.4 and 183.14, without changes, to the proposed text as published in the July 5, 1996, issue of the *Texas Register* (21 TexReg 6186). Due to an error in the original publication, the entire text is being republished for clarification.

The sections as adopted will better inform the public where they can make a complaint regarding licensed acupuncturists and clarify various requirements for licensure.

The sections as adopted will function by properly defining a school of acupuncture which is substantially equivalent to a Texas acupuncture school, revising the committee structure to have one licensure committee, further defining the requirements regarding English competency, amending the required number of undergraduate hours, and revising the complaint procedure notification to reflect the board's new address.

No comments were received regarding adoption of these amendments.

The amendments are adopted under the Medical Practice Act, Texas Civil Statutes, Article 4495b, §2.09(a), which provide the Texas State Board of Medical Examiners with the authority to make rules, regulations and bylaws not inconsistent with this Act as may be necessary for the governing of its own proceedings, the performance of its duties, the regulation of the practice of medicine in this state, and the enforcement of this Act.

§183.2. Definitions.

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

Substantially equivalent to a Texas acupuncture school-A school or college of acupuncture located outside the United States or Canada must be an institution of higher learning designed to select and educate acupuncture students; provide students with the opportunity to acquire a sound basic acupuncture education through training; to develop programs of acupuncture education to produce practitioners, teachers, and researchers; and to afford opportunity for postgraduate and continuing medical education. The school must provide resources, including faculty and facilities, sufficient to support a curriculum offered in an intellectual and practical environment that enables the program to meet these standards. The faculty of the school shall actively contribute to the development and transmission of new knowledge. The school of acupuncture shall contribute to the advancement of knowledge and to the intellectual growth of its students and faculty through scholarly activity, including research. The school of acupuncture shall include, but not be limited to, the following characteristics:

(A)-(C) (No changes.)

(D) the curriculum shall be of at least 1800 hours in duration.

§183.3. Meetings.

(a)-(f) (No change.)

(g) The following are standing and permanent committees of the acupuncture board. The responsibilities and authority of these committees shall include those duties and powers as set forth below and such other responsibilities and authority which the acupuncture board may from time to time delegate to these committees.

(1) Licensure Committee:

(A) draft and review proposed rules regarding licensure by reciprocal endorsement, and make recommendations to the acupuncture board regarding changes or implementation of such rules;

(B) draft and review proposed application forms for licensure by endorsement, and make recommendations to the acupuncture board regarding changes or implementation of such rules;

(C) oversee the application process for licensure by endorsement;

(D) receive and review applications for licensure by endorsement in the event the eligibility for licensure of an applicant is in question;

(E) present the results of reviews of applications for licensure by endorsement and make recommendations to the acupuncture board regarding licensure of applicants whose eligibility is in question;

(F) draft and review proposed rules regarding licensure by examination, and make recommendations to the acupuncture board regarding changes or implementation of such rules;

(G) draft and review proposed rules pertaining to the overall licensure process, and make recommendations to the acupuncture board regarding changes or implementation of such rules;

(H) oversee and make recommendations to the acupuncture board regarding any aspect of the examination process

including the approval of an appropriate licensure examination and the administration of such an examination;

(I) draft and review proposed rules regarding any aspect of the examination;

(J) receive and review applications for licensure by examination in the event the eligibility for licensure of an applicant is in question;

(K) present the results of reviews of applications for licensure by examination, and make recommendations to the acupuncture board regarding licensure of applicants whose eligibility is in question; and

(L) make recommendations to the acupuncture board regarding matters brought to the attention of the Licensure Committee.

(2) Discipline and Ethics Committee:

(A) draft and review proposed rules regarding the discipline of acupuncturists and enforcement of Subchapter F of the Act;

(B) oversee the disciplinary process and give guidance to the acupuncture board and staff regarding methods to improve the disciplinary process and more effectively enforce Subchapter F of the Act;

(C) monitor the effectiveness, appropriateness, and timeliness of the disciplinary process;

(D) make recommendations regarding resolution and disposition of specific cases and approve, adopt, modify, or reject recommendations from staff or representatives of the acupuncture board regarding actions to be taken on pending cases. Approve dismissals of complaints and closure of investigations;

(E) draft and review proposed ethics guidelines and rules for the practice of acupuncture, and make recommendations to the acupuncture board regarding the adoption of such ethics guidelines and rules;

(F) make recommendations to the acupuncture board and staff regarding policies, priorities, budget, and any other matters related to the disciplinary process and enforcement of Subchapter F of the Act; and

(G) make recommendations to the acupuncture board regarding matters brought to the attention of the Discipline and Ethics Committee.

(3) Education Committee:

(A) draft and propose rules regarding educational requirements for licensure in Texas and make recommendations to the acupuncture board regarding changes or implementation of such rules;

(B) draft and propose rules regarding training required for licensure in Texas and make recommendations to the acupuncture board regarding changes or implementation of such rules;

(C) draft and propose rules regarding tutorial program requirements for licensure in Texas and make recommendations to the acupuncture board regarding changes or implementation of such rules;

(D) draft and propose rules regarding continuing education requirements for renewal of a Texas license and make recommendations to the acupuncture board regarding changes or implementation of such rules;

(E) draft and propose rules regarding educational requirements for degrees granted upon graduation in Texas and make recommendations to the acupuncture board regarding changes or implementation of such rules;

(F) consult with the Texas Higher Education Coordinating Board regarding educational requirements for schools of acupuncture, oversight responsibilities of each entity, degrees which may be offered by schools of acupuncture;

(G) maintain communication with acupuncture schools;

(H) plan and make visits to acupuncture schools at specified intervals, with the goal of promoting opportunities to meet with the students so they may become aware of the board and its functions;

(I) develop information regarding foreign acupuncture schools in the areas of curriculum, faculty, facilities, academic resources, and performance of graduates;

(J) draft and propose rules which would set the requirements for degree programs in acupuncture;

(K) be available for assistance with problems relating to acupuncture school issues which may arise within the purview of the board;

(L) offer assistance to the Examination and Endorsement Committees in determining eligibility of graduates of foreign acupuncture schools for licensure by endorsement or examination;

(M) study and make recommendations regarding documentation and verification of records from foreign acupuncture schools;

(N) make recommendations to the acupuncture board regarding matters brought to the attention of the Education Committee.

(h)-(m) (No changes.)

§183.4. Licensure.

(a) Licensure by examination from an acceptable, approved school of acupuncture. An applicant must present satisfactory proof to the acupuncture board that the applicant:

(1)-(4) (No changes.)

(5) has taken and passed, within three attempts, the full NCCA examination; and

(6) (No changes.)

(7) is able to communicate in English. This may be demonstrated by passage of:

(A) the NCCA examination taken in English; or

(B) TOEFL (Test of English as a Foreign Language) with a score of 550 or more; or

(C) TSE (Test of Spoken English) with a score of 220 or more; or

(D) TOEIC (Test of English for International Communication); or

(E) at the discretion of the acupuncture board, any other similar, validated exam testing English competency given by a testing service with results reported directly to the acupuncture board.

(b) Licensure by examination from an acceptable, unapproved school of acupuncture. An applicant must present satisfactory proof to the acupuncture board that the applicant:

(1)-(4) (No changes.)

(5) has taken and passed, within three attempts, the full NCCA examination; and

(6) (No changes.)

(7) is able to communicate in English. This may be demonstrated by passage of:

(A) the NCCA examination taken in English; or

(B) TOEFL (Test of English as a Foreign Language) with a score of 550 or more; or

(C) TSE (Test of Spoken English) with a score of 220 or more; or

(D) TOEIC (Test of English for International Communication); or

(E) at the discretion of the acupuncture board, any other similar, validated exam testing English competency given by a testing service with results reported directly to the acupuncture board.

(c) Licensure by endorsement for graduates of acceptable approved and unapproved schools of acupuncture. An applicant, to be eligible for licensure by endorsement, must present satisfactory proof to the acupuncture board that the applicant:

(1)-(4) (No changes.)

(5) has taken and passed, within three attempts, the full NCCA examination;

(6) is able to communicate in English. This may be demonstrated by passage of:

(A) the NCCA examination taken in English; or

(B) TOEFL (Test of English as a Foreign Language) with a score of 550 or more; or

(C) TSE (Test of Spoken English) with a score of 220 or more; or

(D) TOEIC (Test of English for International Communication); or

(E) at the discretion of the acupuncture board, any other similar, validated exam testing English competency given by a testing service with results reported directly to the acupuncture board;

(7) has taken and passed the CCAOM CNT course and practical examination; and

(8) holds a license in another state or province, that is substantially equivalent to licensure in Texas;

(9) is endorsed by another state or province on a form provided by this state. The endorsement must state that the applicant's license is current and in full force and has not been restricted, canceled, revoked, or suspended.

(d) Licensure by endorsement for graduates of unapproved foreign acupuncture schools. An applicant, to be eligible for licensure by endorsement, must present satisfactory proof to the acupuncture board that the applicant:

(1) is at least 21 years of age;

(2) is of good professional character as defined in § 183.2 of this title (relating to Definitions);

(3) has successfully completed 60 semester hours of general academic college level courses, other than in acupuncture school, that are not remedial and would be acceptable at the time they were completed for credit on an academic degree at a two or four year institution of higher education within the United States accredited by an agency recognized by the Higher Education Coordinating Board or its equivalent in other states as a regional accrediting body. Substantially equivalent coursework completed as a part of a degree program in Oriental medicine granted by a school located outside the United States may be accepted by the board on a case-by-case evaluation;

(4) is a graduate of a school whose curriculum meets the requirements for an acceptable unapproved school as determined by a committee of experts selected by the Texas State Board of Acupuncture Examiners, subject to approval by the Texas State Board of Medical Examiners;

(5) is a graduate of an acceptable unapproved acupuncture school that is substantially equivalent to a Texas school of acupuncture;

(6) has taken and passed, within three attempts, the full NCCA examination;

(7) holds a license in another state or province, that is substantially equivalent to licensure in Texas;

(8) is endorsed by another state or province, on a form provided by this state. The endorsement must state that the acupuncturist's license is current and in full force and has not been restricted, canceled, revoked, or suspended;

(9) is eligible for legal practice and/or licensure in the country of graduation;

(10) is able to communicate in English. This may be demonstrated by passage of:

(A) the NCCA examination taken in English; or

(B) TOEFL (Test of English as a Foreign Language) with a score of 550 or more; or

(C) TSE (Test of Spoken English) with a score of 220 or more; or

(D) TOEIC (Test of English for International Communication); or

(E) at the discretion of the acupuncture board, any other similar, validated exam testing English competency given by a testing service with results reported directly to the acupuncture board;

(11) has supplied all additional information that the board may require concerning the applicant's school of acupuncture.

(e) (No changes.)

(f) Licensure Documentation.

(1) (No changes.)

(2) Documentation required of all applicants for licensure.

(A)-(F) (No changes.)

(G) Preacupuncture School Transcript. Each applicant must submit a copy of the record of their undergraduate education. Transcripts must show courses taken and grades obtained. If determined that the documentation submitted by the applicant is not sufficient to show proof of the completion of 60 semester hours of college courses other than in acupuncture school, which courses would be acceptable, at the time of completion, to The University of Texas at Austin for credit on a bachelor of arts degree or a bachelor of science degree, the applicant may be requested to contact the Office of Admissions at The University of Texas at Austin for course work verification.

(H)-(J) (No changes.)

(3)-(6) (No changes.)

§183.14. Complaint Procedure Notification.

(a) (No changes.)

(b) Approved English Notification Statement. The following notification statement in English is approved by the acupuncture board for purposes of these rules and the Act, § 2.09(s)(2), and is a sample of the type print reference in subsection (a) of this section.
(See Figure: 22 TAC § 183.14(b))

(c) Approved Spanish Notification Statement. The following notification statement in Spanish is approved by the acupuncture board for purposes of these rules and the Act, §2.09(s)(2), and is a sample of the type print reference in subsection (a) of this section. Figure 2: 22 TAC §183.14(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.

Issued in Austin, Texas, on September 30, 1996.

TRD-9614268
Bruce A. Levy, M.D., J.D.
Executive Director
Texas State Board of Medical Examiners
Effective date: October 22, 1996
Proposal publication date: July 5, 1996
For further information, please call: (512) 305–7016

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Chapter 185. Physician Assistants

22 TAC §185.6, §185.22

The Texas State Board of Medical Examiners adopts amendments to §185.6 and §185.22, without changes, to the proposed text as published in the July 5, 1996, issue of the *Texas Register* (21 TexReg 6189).

The section as adopted will allow physician assistants to have ample opportunity to complete the requirements for continuing medical education with no disruption of medical services to the citizens of Texas. The section will also update the board's new address on the complaint procedure notification.

The section will function by clarifying the board's new address for the purpose of filing complaints regarding physician assistants and outlining the guidelines for completion of continuing medical education requirements.

No comments were received regarding adoption of the amendments.

The amendments are adopted under the Medical Practice Act, Texas Civil Statutes, Article 4495b, §2.09(a), which provide the Texas State Board of Medical Examiners with the authority to make rules, regulations and bylaws not inconsistent with this Act as may be necessary for the governing of its own proceedings, the performance of its duties, the regulation of the practice of medicine in this state, and the enforcement of this Act, and the Physician Assistant Licensing Act, Texas Civil Statutes, Article 4495b-1, §23 which authorizes the Texas State Board of Physician Assistant Examiners to adopt reasonable and necessary rules 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.

Issued in Austin, Texas, on September 30, 1996.

TRD-9614269
Bruce A. Levy, M.D., J.D.
Executive Director
Texas State Board of Medical Examiners
Effective date: October 22, 1996
Proposal publication date: July 5, 1996
For further information, please call: (512) 305–7016

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Chapter 187. Procedure

Subchapter A. General Provisions

22 TAC §187.12

The Texas State Board of Medical Examiners adopts an amendment to §187.12, without changes, to the proposed text as published in the July 5, 1996, issue of the *Texas Register* (21 TexReg 6190).

The section as adopted will ensure that proper and adequate notification is given regarding nonrulemaking proceedings.

The section will function by outlining the procedure for giving notification in nonrulemaking proceedings.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Medical Practice Act, Texas Civil Statutes, Article 4495b, §2.09(a), which provide the Texas State Board of Medical Examiners with the authority to make rules, regulations and bylaws not inconsistent with this Act as may be necessary for the governing of its own proceedings, the performance of its duties, the regulation of the practice of medicine in this state, and the enforcement of this Act.

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

Issued in Austin, Texas, on September 30, 1996.

TRD-9614270
Bruce A. Levy, M.D., J.D.
Executive Director
Texas State Board of Medical Examiners
Effective date: October 22, 1996
Proposal publication date: July 5, 1996
For further information, please call: (512) 305–7016

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Part XV. Texas State Board of Pharmacy

Chapter 283. Licensing Requirements for Pharmacists

22 TAC §283.10

The Texas State Board of Pharmacy adopts an amendment to §283.10, concerning rules governing penalties against a license, without changes to the proposed text published in the April 16, 1996, issue of the *Texas Register*. This amendment clarifies that a person who has not practiced pharmacy within the last two years in another state and whose Texas pharmacist license has expired for more than ten years must apply for licensure by examination and complete a 1,500 hour board-approved internship program.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Texas Pharmacy Act (Article 4542a-1, Texas Civil Statutes) Section 24 (f), License Renewal, which states that a person may not renew a pharmacist license, if the license has been expired for one year or more. This section allows the Board to set the education and practice conditions whereby an applicant may apply for a new license.

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.

Issued in Austin, Texas, on September 27, 1996.

TRD-9614170
Fred S. Brinkley, Jr., R.Ph., M.B.A.
Executive Director/Secretary
Texas State Board of Pharmacy
Effective date: October 18,1996
Proposal publication date: April 16, 1996
For further information, please call: (512) 305–8027

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TITLE 25. HEALTH SERVICES

Part I. Texas Department of Health

Chapter 157. Emergency Medical Care

25 TAC §157.25

(Editor's note: The following section submitted by the Texas Department of Health on September 25, 1996, was inadvertently omitted from the October 4, 1996, issue of the Texas Register. This section contained figures which were published in the October 4, 1996 issue. However, for clarification, the figures are being re-published in this issue in the tables and graphics section. The effective of this new rule is October 16, 1996.)

The Texas Department of Health (department) adopts new §157.25, concerning Out-of-Hospital Do Not Resuscitate (DNR) Order, with changes to the proposed text as published in the July 16, 1996, issue of the *Texas Register* (21TexReg 6557).

This section implements Health and Safety Code, Chapter 674 which requires the department to establish a formal procedure for physicians working with a terminal patient to follow if the patient does not want resuscitation attempts made in the event of their death.

This section establishes a "Do Not Resuscitate" process that standardizes protocols and procedures for physicians, and out-of-hospital healthcare professionals to follow when a terminally ill person requests that no resuscitation efforts be initiated in the event of their death. This section establishes specific procedures that are to be withheld. A form has been established which will serve as the physician's DNR order when appropriately completed. Specifications have been established for a bracelet and necklace which may be used as identification devices. A process for recordkeeping is outlined.

The following comments were received concerning the proposed new section.

COMMENT: Concerning §157.25, a commenter suggested that a subsection be added to specify that designated procedures as listed in subsection (c)(1) cannot be withheld from a person known to be pregnant. The commenter also asks that the DNR order form in speaking to pregnant persons, replace CPR with the words "life sustaining treatment".

RESPONSE: The department agrees with the comment and has added subsection (g) to address the pregnancy issue; and has changed the wording on the DNR order form to read "above designated procedures" instead of "CPR".

COMMENT: Concerning §157.25(b), a commenter expressed concern with the last sentence of paragraph (b), mentioning that it could be misconstrued to mean that an individual does not have the right to refuse water or nutrition.

RESPONSE: The sentence in question has been removed from the rule.

COMMENT: Concerning §157.25(c)(2), one commenter suggested that a wallet card be used as a third identification device, and that the presence of one of the three identification devices be mandated in addition to the DNR order.

RESPONSE: The department disagrees. The process was established with the intent to maintain simplicity. An identification device was included that would provide immediate recognition of the DNR patient, since the DNR order may not be as readily available. A wallet card would be no more quickly available than the DNR order.

COMMENT: Concerning §157.25(d)(2), a commenter suggested changing the wording to say that the DNR order stay with the patient until death; because if a patient is admitted to the hospital, the DNR order would become part of the medical record and can get lost and not go with the patient at the point of discharge.

RESPONSE: The department disagrees, because subsections (d)(2) and (3) adequately define retention of the DNR order. The example given could be solved more appropriately with an education program.

COMMENT: Concerning §157.25(d)(4), one commenter asked that the annual reporting form be kept very simple in order to conserve limited healthcare dollars.

RESPONSE: The department agrees. That is the intent.

COMMENT: Concerning §157.25(e), a commenter would like this subsection deleted stating that it would be too much responsibility for the field medic.

RESPONSE: The department disagrees. Persons living in other states should not be penalized for coming to Texas by not allowing them equivalent health options. This subsection does restrict available DNR identification options for persons from out of state, in that medics are not allowed to accept any form of identification other than the written DNR order. Additionally, Section 674.024 of Chapter 674, validates the acceptance of out-of-state DNR orders.

COMMENT: Concerning §157.25(h), one commenter asked that nursing homes be added to the list of distribution points for the DNR order form.

RESPONSE: The department agrees and has added nursing homes and hospices to the list.

COMMENT: Concerning §157.25, one commenter questioned whether or not a subsection should be added to formally accept the department approved identification device.

RESPONSE: The department agrees and has added subsection (i) detailing specifications for the identification devices has been added.

COMMENT: Concerning the DNR order form, one commenter is concerned that those who have to sign the form are required to sign twice.

RESPONSE: The department disagrees with changing the signature lines since they are legislatively mandated.

COMMENT: Concerning the DNR order form, a commenter stated that the instructions on the form should be made more specific. One comment suggested a change in wording for the phrase "...instructing Emergency Medical personnel and other healthcare professionals to forego resuscitation attempts". The commenter wants to add the word "certain", so the phrase would read "forego certain resuscitation attempts". Secondly, rather that saying "Measures not to be initiated..." the commenter suggests a change in wording to "The only measures not...". Thirdly he suggests deleting the words "emergency care including comfort" and adding the word "any" before the word "other". The sentence would then read,"This order does not effect the provision of any other care. And finally, the commenter wanted to add a sentence which would read,"For example, this order does not effect the provision of water or nutrition and care designed to provide comfort or to alleviate pain."

RESPONSE: The department disagrees with these suggested wording changes. The instructions on the DNR order form are adequate and define the intent of the rule. Resuscitation measures are emergency measures. The DNR order does not become an issue, until the patient has lost life signs. The DNR order form addresses what actions will or will not be taken in the event of death; rather than the care of a dying patient. The section and the order form clearly define which measures will be withheld. The form already states that the order does not affect the provision of other emergency care to include comfort care. Subsection (b) speaks to comfort measures and specifically mentions not withholding water and nutrition which is consistent with the definition of life sustaining measures in Chapter 674.

COMMENT: Concerning §157.25, 18 commenters were concerned that only CPR can be done to resuscitate a pregnant person who has a DNR order.

RESPONSE: The department disagrees for the same reasons given in the previous response. However, clarifying language has been added to allay concerns.

COMMENT: Concerning the DNR order form, one commenter said that the wording changes suggested for the purpose section of the form would make the form too difficult to understand and confusing to the patient, their families and emergency personnel. The commenter stated that her association supports the form as it stands.

RESPONSE: The department agrees for reasons already stated.

The following organizations, associations, or providers commented on the rule: Greater Austin Right to Life; Texas Chapter of Emergency Physicians; Texas Medical Association; Texas Hospital Association; Texas Association for Home Care; Texas Hospice Organization; Arlington Fire Department; Austin EMS and Travis County EMS. The commenters were generally in favor of the rules as proposed, but offered recommendations for change.

The new section is adopted under the Health and Safety Code, Chapter 773, which provides the Board of Health with the authority to adopt rules to implement the Emergency Medical Services Act; and §12.001, which provides the Texas Board of Health with the authority to adopt rules for the performance of every duty imposed by law on the Texas Board of Health, the Texas Department of Health, and the Commissioner of Health

§157.25. Out-of-Hospital Do Not Resuscitate (DNR) Order.

(a) Purpose. The purpose of this section shall be to establish a statewide DNR protocol as required in the Health & Safety Code, Title 8, Chapter 674.

(b) DNR order. A DNR order may be issued by an attending physician for a patient who has been diagnosed as having a terminal condition. That attending physician has responsibility for ensuring that the form is filled out in its entirety and that the information regarding the existence of a DNR order is entered into the patient's medical record.

(c) Protocol development. A DNR protocol in accordance with this section, shall apply to all out-of-hospital settings including cardiac arrests which occur during interfacility transport. The protocol shall include the following:

(1) a copy of the Texas Department of Health (department) standardized DNR form listing the designated procedures that shall be withdrawn or withheld. Those procedures shall be:

(A) cardiopulmonary resuscitation;

(B) endotracheal intubation or other advanced airway management;

(C) artificial ventilation;

(D) defibrillation;

(E) transcutaneous cardiac pacing; and

(F) administration of cardiac resuscitation medications;

(2) an explanation of the patient identification process to include an option to use a department-standardized identification device such as a necklace or bracelet; and

(3) an on-site DNR dispute resolution process which includes contacting an appropriate physician.

(d) Recordkeeping. Records shall be maintained on each incident in which an out-of-hospital DNR order or DNR identification device is encountered by responding healthcare professionals, and the number of cases where there is an on-site revocation of the DNR order shall be recorded.

(1) The data documented should include:

(A) an assessment of patient's physical condition;

(B) whether an identification device or a DNR form was used to confirm DNR status and patient identification number;

(C) any problems relating to the implementation of the DNR order;

(D) the name of the patient's attending physician; and

(E) the full name, address, telephone number, and relationship to patient of any witness used to identify the patient.

(2) If the patient is transported, the original DNR order shall be kept with the patient.

(3) Copies of the original DNR order may be put on file with concerned parties, and the original order shall remain in the possession of the patient, a legal guardian, or the healthcare facility responsible for the patient's care. The original DNR order shall be filed as a part of the permanent patient care record at the facility where the patient dies.

(4) Annually, the out-of-hospital provider shall submit a report to the Bureau of Emergency Management with the following information:

(A) number of times personnel have been presented with DNR documentation;

(B) number of times there was a problem and the DNR order could not be honored; and

(C) any problems that were encountered using the standardized form.

(e) Out-of-State DNR Orders. Personnel may accept an out-of-hospital DNR order that has been executed in any other state, if there is no reason to question the authenticity of the order. Personnel may not accept any out-of-state identifying devices to include bracelets or necklaces. If there is any question of validity of the DNR order, the responding healthcare professional shall attempt to contact medical control.

(f) Failure to honor a DNR order. If there are any indications of unnatural or suspicious circumstances, the provider shall begin resuscitation efforts until such time as a physician directs otherwise.

(g) Pregnant persons. A person may not withhold the designated procedures listed in section (c)(1) from a person known by responding healthcare professionals to be pregnant.

(h) DNR Form. The Bureau of Emergency Management or their appointees shall furnish DNR forms to physicians, clinics, hospitals, nursing homes, hospices and home health agencies throughout the state upon request;

(1) The form shall contain all the information as prescribed in the Health and Safety Code, Chapter 674;

(2) The form shall be 8 1/2 inches by 14 inches, printed front and back, and in the format specified by the board as follows: Figure 1: 25 TAC, §157.25(g)(2)

(i) Identification devices. A vendor under contract with the Texas Department of Health shall make the identification bracelet and necklace according to the following specifications:

(1) The bracelet shall be made of stainless steel in 8" length with an engravable section which is 1 5/8" long, 5/8" wide and 1/32" thick, with an easy opening attachment clasp. The statewide standardized DNR logo will be on the front in red, white, and black colors as specified;

(2) The necklace shall be made of stainless steel 1" in diameter and 1/32" thick. There will be a 16"-18" stainless steel chain permanently attached without a clasp. The statewide standardized DNR logo will be on the front in red, white, and black colors as specified.

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.

Issued in Austin, Texas, on September 25, 1996.

TRD-9614047
Susan K. Steeg
General Counsel
Texas Department of Health
Effective date: October 16, 1995
Proposal publication date: July 16, 1996
For further information, please call: (512) 458–7236

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TITLE 28. INSURANCE

Part I. Texas Department of Insurance

Chapter 5. Property and Casualty

Subchapter D. Fired and Allied Lines Insurance

Underserved Areas for Residential Property Insurance

28 TAC §5.3700

(Editor's note: The following section submitted by the Texas Department of Insurance on September 24, 1996, was inadvertently omitted from the October 4, 1996, issue of the Texas Register. This section contained figures which were published in the October 4, 1996 issue. However, for clarification, the figures are being re-published in this issue in the tables and graphics section. The effective of this new rule is October 15, 1996.)

The Commissioner of Insurance adopts new section §5.3700, concerning the designation of geographic areas as underserved for residential property insurance for purposes of the Insurance Code, Articles 5.35-3 and 21.49-12, with changes to the proposed text as published in the August 6, 1996, issue of the *Texas Register* (21 TexReg 7337). The new section was considered by the Commissioner of Insurance in a public hearing on September 5, 1996, Docket Number 2248.

The new section is necessary to designate the areas determined by the Commissioner of Insurance (Commissioner) to be underserved areas for purposes of the Property Protection Program in Article 5.35-3 and the areas determined to be underserved for purposes of the Market Assistance Program in Article 21.49-12. Both statutes specifically contemplate geographic designations will be made by the Commissioner. The new section identifies the factors considered by the Commissioner in determining these areas to be underserved. Article 5.35-3, §1(a) (Acts 1995, 74th Legislature, chapter 415, §3, effective August 28, 1995) provides that in determining which areas will be designated as underserved, the Commissioner shall consider whether residential property insurance is not reasonably available to a substantial number of owners of insurable property in the underserved area and any other relevant factors as determined by the Commissioner. Upon the determination of such areas, all insurers authorized to write property or casualty insurance in this state and writing residential property insurance in this state, including those insurers licensed under Chapters 18 and 19 of the Insurance Code, are authorized to write insurance in these areas on the forms promulgated pursuant to Article 5.35-3 (Commissioner's Order Number 95-1285, December 8, 1995). Article 21.49-12 (Acts 1995, 74th Legislature, page 3008, chapter 415 §5, effective August 28, 1995) requires the Commissioner to establish a voluntary market assistance program (MAP) to assist consumers in obtaining residential property insurance coverage in underserved areas that are to be determined and designated by the Commissioner by rule using the standards specified in Article 5.35-3, §1. Upon the determination of such areas, the Texas Department of Insurance (Department) will operate the MAP, pursuant to the MAP plan of operation, to provide assistance to consumers residing in the designated underserved areas in obtaining residential property insurance from voluntarily participating insurers in the admitted market. The notice of the adoption of the MAP plan of operation (§§5.10001-5.10015 of this title) was published in the September 10, 1996, issue of the *Texas Register* (21 TexReg 8715).

The section will function to fulfill the Commissioner's statutory responsibilities to develop the Property Protection Program (PPP), pursuant to Article 5.35-3, and the Market Assistance Program (MAP), pursuant to Article 21.49-12, which improve availability of residential property insurance to owners of insurable property. The PPP will enable residents of the most severely underserved areas, Class 1, to obtain coverage under new policy forms which were designed to encourage insurers to provide coverage to structures not previously eligible for insurance. The PPP also provides additional tax incentives and Texas Catastrophe Property Insurance Association (TCPIA) assessment incentives to encourage insurers to write the alternative PPP policy forms. Under the MAP plan of operation, eligible applicants, who are residents of Class 2 areas, will be placed on an electronic bulletin board available to all participating insurers, and thus are more likely to be able to access an insurer willing to write the coverage sought. Otherwise qualified residents of Class 1 underserved areas are eligible for participation in the MAP, in addition to eligibility for the PPP.

In commenting on the selected factors and methodology used by the Department to designate underserved areas, many commenters have acknowledged that there is no perfect ordained set of factors. While keeping in mind the clear statutory directive to establish geographically underserved areas, the Commissioner has endeavored both to use direct measures of unavailability and other measures which are likely indicators. Under the statutory language of Article 5.35-1, §1(a), which permits the consideration of "any other relevant factors," (emphasis added) the Commissioner clearly has discretion to use these direct and other likely indicator measures. The designations in this rule are the initial designations under Articles 5.35-3 and 21.49-12 and, as such, must be made before the PPP and MAP are actually operational. The Commissioner, therefore, will consider the need to refine the factors in light of new data, and intends to assess the data collected as the result of the operation of the MAP and the PPP prior to the one-year anniversary date of the rule. Nevertheless, the factors utilized are rational, are based upon a logical analysis, and are well within the Commissioner's discretion. Further, the factors themselves have been modified in light of public comment, and have been revised to incorporate as much of the information gathered during the rulemaking process as possible.

The factors and methodology outlined in subsection (e) enable the Commissioner to determine whether residential property insurance is not currently reasonably available or is potentially not reasonably available to a substantial number of owners of insurable property in specific geographic areas of the state. This determination was necessary to enable the Commissioner to designate such areas as underserved for purposes of Articles 5.35-3 and 21.49-12. The Department's process of developing the selected factors and scoring methodology was quite extensive and was undertaken to assure that the process of determining selection criteria for designating underserved areas was objective and relevant to availability problems. This process included the review of extensive insurance data, and economic and demographic data and included the following: (i) The Department made a careful review of insurers' underwriting guidelines. (ii) The Department reviewed the hearing transcript of the February 8, 1996, hearing in Arlington, Texas; this hearing was called by the Commissioner for the purpose of

hearing from consumers, agents, and insurers on residential property insurance availability problems in the Tarrant County-Dallas County area. (iii) Beginning in the fall of 1995 at the initiation of the Department's development of its designation process, the Department staff discussed availability issues and measurement concepts with the executive committee of the Market Assistance Program, which is composed of insurers, agents and public members, during several of the committee's public meetings. Many other interested parties, including representatives of Consumers Union and the Office of Public Insurance Counsel, and legislative staff, attended the meetings of the MAP Executive Committee at which the Department solicited ideas and suggestions for methods of determining underserved areas for purposes of the MAP and the PPP. As a result of these discussions, the executive committee members submitted a letter to the Commissioner in February 1996 which expressed their thoughts and recommendations. In this letter, the executive committee stated that it is the committee's belief that underserved areas occur for a variety of reason, many of which may be unrelated, and that the committee does not believe there is any "litmus test" that defines and differentiates all underserved areas, but rather, "there are many factors that come together in particular parts of the state and create availability problems for consumers. The exact mix may vary from region to region and we believe that it is important to develop an approach that will allow for that fact. We believe that an objective and reasonable determination of underserved areas might be made by looking to the following factors: The replacement cost of the structures sought to be insured and the relationship of that replacement cost to the actual market value of structures sought to be insured in a geographically defined area; the income level of residents; the proportion of houses built prior to 1950; the existing number of homeowners policies relative to the number of houses that are owner occupied; loss/premium ratios for specific perils in a geographically defined area that are higher than the statewide average; theft, burglary and crime statistics in a geographically defined area; the number and location of agent's offices. In rural areas, the ratio of excess and surplus lines coverage to coverage secured through standard markets; a regression analysis of average premium cost in a geographically defined area in both license and surplus lines markets; the distribution of deductibles relative to risk amount for Clause 2; and Home Mortgage Disclosure Act data for loan denials for owner occupied home purchases." The Department incorporated many of the suggestions of the MAP Executive Committee in establishing the factors ultimately adopted. (iv) The Department discussed availability issues and measurement concepts with Representative Harold Dutton and Senator Rodney Ellis, the legislative sponsors of the law that enacted Articles 5.35-3 and 21.49-12 of the Insurance Code requiring the Commissioner to designate areas as underserved for purposes of residential property insurance. The Department also met with Representative Dutton's and Senator Ellis' staff. (v) The Department discussed availability issues with insurance agents and the agents' association. (vi) Prior to finalizing the proposal, the Department received input from the City of Dallas, the Dallas Homeowners League (an umbrella organization for about sixty neighborhood and homeowners associations within the City of Dallas) and State Senator Royce West who represents part of the City of Dallas regarding availability in the city of Dallas and their desire for the city of Dallas to be eligible for the Market Assistance Program. The Department utilized this input in determining how to designate the City of Dallas underserved areas. (vii) The Department discussed the issues of availability and measurement concepts with Dr. Robert Klein, then director of research at the National Association of Insurance Commissioners, and solicited his ideas for ways to define and identify underserved areas. Dr. Klein has experience in determining factors for the designation of underserved areas for residential property insurance and worked in this area on behalf of various committees of the National Association of Insurance Commissioners. As a result of this extensive review and many discussions, the Department became aware that there was no single simple comprehensive measure of residential property insurance availability, and also as a result of this extensive review and many discussions, the Department developed the selected factors and scoring methodology in subsection (e) of this rule.

Because there is no single comprehensive measure of whether residential property insurance is or is not reasonably available to a substantial number of owners of insurable property either on a statewide basis or in any particular area of the state, the Commissioner, in addition to any direct measures of availability, identified characteristics of particular geographic areas which are likely to be associated with greater difficulty by consumers in obtaining residential property insurance. The Commissioner considered underwriting restrictions and requirements of insurers writing residential property insurance in Texas that would limit availability of residential property insurance coverages to a greater extent in some geographic areas than in others. Many underwriting guidelines (the rules used by insurers to determine whether or not to sell an insurance policy to a particular consumer and what, if any, restrictions will be placed on the policy issued) have a differential geographic impact. These guidelines include weather-related loss exposure, type of dwelling, age of dwelling, minimum dwelling value, financial stability of consumers, employment status of consumers, length of continuous employment, occupation, and length of continuous residency. Based upon the review of insurer underwriting guidelines and the Commissioner's authorization under Article 5.35-3 and the Commissioner's mandate under Article 21.49-12 to establish programs to increase the availability of residential property insurance in designated underserved areas as well as the structure and methods of operation of the PPP and the MAP, specific factors for analysis by ZIP Code area or county were developed, and a scoring or point system was applied to each of the factors. If the factor for a specific ZIP Code indicated actual or potential difficulty for consumers in obtaining residential property insurance, the ZIP Code was assigned one point. If the factor for a specific ZIP Code indicated especially significant actual or potential difficulty for consumers in obtaining residential property insurance, the ZIP Code was assigned two points. ZIP Codes not receiving one or two points received zero points for the specific factor. The factors considered are: low median household income, low median value of owner-occupied homes, older median age of homes, high percentage of dwelling to homeowners policies, high theft losses per policy, number of surplus lines policies. Based on the factors and points assigned to each factor, the number of points assigned were totaled by ZIP Code. Areas with three or more points were identified as the most underserved or potentially most underserved and gen-

erally designated as Class 1 underserved areas. Areas with two points were identified as underserved or potentially underserved and generally designated as Class 2 underserved areas. Generally, areas with zero or one point were not designated as underserved areas. The designated areas resulting from these general rules are modified on the following bases as specified in subsection (e)(4): (i) Geographically contiguous areas of two or more points are generally designated as Class 2 underserved areas while geographically isolated areas with two or more points are not designated as underserved to avoid identifying a random result; and groupings of ZIP Codes with two or more points but with very few policies are not designated as underserved areas to enable participating insurers to dedicate their initial commitment of resources to underserved areas with the greatest potential impact. (ii) Certain areas with zero or one point are designated as Class 2 underserved areas because of additional information available to the Department regarding availability problems in certain areas. (iii) Certain areas with two points, which are geographically contiguous with areas of three or more points, are designated as Class 1 underserved areas in Harris and Bexar counties and Bexar counties to create a geographically contiguous area of eligibility for the Property Protection Program. (iv) Certain areas in the City of Dallas with three or more points are designated as Class 2 underserved areas to test for the effectiveness of the Market Assistance Program alone in addressing insurance availability problems. The Department's scoring system allows several factors to determine the outcome of the analysis. The scoring system requires that either more than one factor be present for an area to achieve an underserved availability ranking or that one factor shows by itself such severity that an area earns an underserved availability ranking. This type of methodology is fairly standard in a variety of fields, including insurance underwriting. Some insurers use a scoring system for underwriting – the presence or absence of certain characteristics are assigned points and a certain point total determines whether the insurer will or will not write the policy.

Both Class 1 and Class 2 underserved areas are divided into three subgroups in order to implement the MAP and PPP in a three-step phase-in at 90-day intervals. The changes to subsections (c) and (d) – the reduction in the number of designated areas and the three-step phase-in of the designations, were made in response to the concerns of commenters that insurers would have difficulty applying scarce resources to all the underserved areas originally proposed for designation. In this context, underserved areas means a grouping of ZIP Codes designated by the Commissioner as underserved.

In response to comments several changes were made to the section. Changes were made to subsections (c) and (d) and the ZIP Code areas to be designated as Class 1 and Class 2 underserved areas. Subsections (c) and (d) were changed, respectively, to add new paragraphs (1), (2) and (3) to divide the ZIP Code areas that have been designated as the Class 1 underserved areas into three unique subgroups and to divide the Class 2 ZIP Codes into three unique subgroups, and then to phase in the implementation of each subgroup into the MAP and PPP at three-month intervals so that all ZIP Code areas in Class 1 and Class 2 will be phased in within six months. Paragraph (1) in subsections (c) and (d) was added to designate the Class 1 and Class 2 ZIP Code areas that will become effective October 15, 1996, which are more particularly described as all or portions of the City of Houston, the City of San Antonio, the county of Tarrant and the southernmost area of Texas – Brooks, Cameron, Duval, Hidalgo, Jim Hogg, Jim Wells (Class 2 only), Kennedy, Starr (Class 1 only), Webb, Willacy and Zapata counties. Paragraph (2) in subsections (c) and (d) was added to designate the Class 1 and Class 2 ZIP Code areas that will be phased in on January 15, 1997, which are more particularly described as all or portions of the seacoast area, including the county of Aransas, the county of Nueces (Class 2 only), the county of Galveston (Class 2 only), the county of Jefferson (Class 2 only), the county of Newton, the City of El Paso, the City of Austin and the north-central area of Texas – Armstrong (Class 2 only), Briscoe, Childress (Class 2 only), Collingsworth, Cottle (Class 1 only), Dickens, Donley (Class 1 only), Fisher, Foard (Class 2 only), Gray (Class 1 only), Hall, Hardeman, Haskell, Jones (Class 2 only), Kent, King, Knox, Lamb (Class 2 only), Lubbock, Motley (Class 1 only), Stonewall, Wheeler, Wichita and Willbarger (Class 2 only) counties. Paragraph (3) in subsections (c) and (d) was added to designate the Class 1 and Class 2 ZIP Code areas that will be phased in on April 15, 1997, which are more particularly described as all or portions of south Texas – Dimmit, Frio and Zavala counties, northeast Texas – Camp, Fannin (Class 1 only), Hunt (Class 2 only), Lamar, Red River, and Titus (Class 2 only) counties, and central Texas – Brown (Class 2 only), Callahan (Class 2 only), Coleman, Eastland, Hamilton, Limestone (Class 1 only), Lampasas (Class 2 only), Mason, McCullough, McLennan (Class 1 only), Menard (Class 1 only), Mills, Palo Pinto, Runnels (Class 2 only), Robertson (Class 1 only), San Saba, Shackelford (Class 1 only), Stephens (Class 1 only), and Taylor (Class 2 only) counties. The specific details concerning the geographic areas and counties and the dates on which they will be phased in are contained in the lists of ZIP Codes in subsections (c) and (d) of the rule.

Language was added to subsection (e)(1) in response to comments to clarify that the Commissioner, in determining whether to designate an area as underserved, considered both direct measures of residential property insurance availability, such as number of surplus lines policies, and other identified characteristics of particular geographic areas which are likely to be associated with greater difficulty by consumers in obtaining residential property insurance. Language regarding the weight placed on the potential for residential property insurance not being reasonably available was deleted from subsection (e)(1) as redundant. In subsection (e)(3)(B) relating to the factor of low median value of owner occupied homes the language "to a greater extent" was added to clarify that underwriting guidelines relating to minimum coverage requirements would be more likely to affect consumers in areas with lower median housing values than consumers in other areas. In subsection (e)(3)(C) relating to older median age of homes the language "to a greater extent" was added to clarify that underwriting guidelines relating to dwelling age would be more likely to affect consumers in areas with older median housing age than consumers in other areas. The Department has changed paragraph (3)(D) relating to high percentages of dwelling to homeowners policies to explain that the Department included this factor in its methodology based on the premise that a high percentage of dwelling policies to homeowners policies in an

area is a possible indicator that insurers are restricting their writing of homeowners policies in the area. The Department also changed paragraph (3)(D) to lessen the weight of the "dwelling to total policies" factor in the scoring system by increasing the amount necessary to generate one point for the ZIP Code to more than 50% and eliminating the two point award for this factor entirely. Language was added to subsection (e)(4)(A) relating to modifications of geographically contiguous underserved areas, to exclude grouping of ZIP Codes with two or more points but with very few policies from designation as an underserved area. This change results in a fewer number of geographic groupings of designated ZIP Codes and, in conjunction with the phase-in of designations, enables insurers participating in the MAP and PPP to more effectively participate in the MAP and PPP. The language in subsection (e)(4)(A) was further changed in the second sentence from "with two points" to "with two or more points" because the same logic which maintains that geographically-isolated areas with two points should not be designated as an underserved area is also valid for an area with more than two points. In addition, the change to delete additional geographically isolated ZIP Codes is responsive to comments that the number of underserved areas in the proposal may be too great for insurers to effectively participate initially. This reduction in the number of areas (defined as clusters of one or more underserved ZIP Codes) along with the three step phase-in, should serve to mitigate insurer problems in initial participation. Language was added to subsection (e)(4)(B) relating to the reasons that certain areas in the City of Dallas and Tarrant County with zero or one point are designated as Class 2 underserved areas, to clarify the source of the additional information that was relied upon in making these designations. The source of the information relied upon was either testimony from public hearings on residential property insurance availability problems or from information provided by insurers as preparation for these public hearings. In subsection (e)(4)(C), relating to certain areas with two points that are designated as Class 1 underserved areas because they are geographically contiguous with areas of three or more points, the designation of Tarrant County as one of these areas was deleted due to the change in the dwelling factor. As a result of the change in one of the factors – percentage dwelling to total policies – the scoring system point totals changed for certain ZIP Codes in Tarrant County with the result that there are no longer ZIP Codes with two points where the exception of subsection (e)(4)(C) applies. Under the scoring as proposed, three Class 1 ZIP Codes in Tarrant County were geographically contiguous to other areas with two points. Under the adopted scoring system, the Class 1 ZIP Codes are now geographically isolated and are removed from designation. The reference to portions of Bexar County as an underserved area in subsection (e)(4)(D) which consists solely of Class 1 designations has been deleted. As a result of the change in one of the factors – percentage dwelling to total policies – the scoring system point totals change for certain ZIP Codes in Bexar County with the result that both Class 1 and Class 2 areas are designated in Bexar County.

In subsection (f), relating to changes in Class 1 and Class 2 designations, paragraphs (1)(A) and (1)(B) have been deleted. Other changes include the deletion of the words "Class 2 underserved areas" and the addition of the words "1 or Class" to paragraph (2). The effect of these changes is to remove the requirement in the proposal that Class 1 designations could not be withdrawn for three years and to allow any changes to Class 1 designations to be adopted at any time. These changes were made in response to comments that the three-year restriction on withdrawal of Class 1 designations was unnecessary and that more flexibility was needed in withdrawing Class 1 designations. The Department proposed the three-year restriction to encourage insurers to participate in the PPP, which provides premium tax credit and TCPIA assessment incentives; as a result of comments on the proposal, the Department became aware that insurers disagreed that such restrictions were necessary to encourage participation.

Several changes in designations of underserved areas have resulted from the changes in methodology to the section as proposed. The primary change was a reduction in the weight assigned to one factor, the ratio of dwelling policies in an area to the total number of homeowner and dwelling policies in the area. As a result of this change, and the addition of Class 2 areas in Bexar County, the designations of 35 ZIP Codes have been changed from Class 1 to Class 2. Based on the changes to the weight applied to the dwelling policy ratios and to the manner of identifying geographically isolated areas, 51 ZIP Codes previously designated as Class 1 areas and 37 ZIP Codes previously designated as Class 2 areas are no longer designated as underserved. One previously-undesignated Bexar County ZIP Code acquired a Class 2 designation based on the decision to add Class 2 areas in Bexar County.

To correct errors in application of the proposed methodology, or clerical errors, 10 ZIP Codes previously designated as Class 1 areas and two ZIP Codes previously designated as Class 2 areas are no longer designated as underserved, and seven ZIP Codes initially not designated as underserved are designated as Class 2 areas. To correct clerical errors, the following additional corrections have been made: ZIP 75287 (county name changed from Dallas to Collin); ZIP 75487 (county name changed from Franklin to Titus); ZIP 76020 (county name changed from Parker to Tarrant); ZIP 78241 (city name changed from Kelly AFB to San Antonio); ZIP 78588 (city name changed from An Benito to San Benito).

As a result of the changes, the total number of ZIP Codes designated as underserved has decreased from 517 to 427. The total number of ZIP Codes designated as Class 1 areas has decreased from 259 to 163 and the total number of ZIP Codes designated as Class 2 areas has increased from 258 to 264.

As a result of the changes, the policies in areas designated as underserved account for approximately 21.96% of total 1995 written premium instead of approximately 22.60% for the policies in the areas originally proposed for designation. Class 1 areas account for approximately 3.45% of the total premiums in the state (down from 4.54%), and Class 2 areas account for 18.51% (slightly higher than the 18.06% figure in the initial proposal). The 1995 written premium for policies in the areas designated as Class 1 is approximately $89.1 million as compared to $117.1 million for policies in areas originally proposed for Class 1 designation.

As a result of the changes, the share of 1995 policies written in areas designated as underserved compared to the statewide total policies is approximately 22.24%, instead of 22.91% for the areas originally proposed for designation. The share of 1995 policies written in areas designated as Class 1 is approximately 3.93% of the total number of policies in the state, down from 5.16% in the areas originally proposed for Class 1 designation. The share of 1995 policies written in areas designated as Class 2 is approximately 18.31%, up from 17.75% in the areas originally proposed for Class 2 designation.

In determining the factors and methodology outlined in subsection (e), The Department relied upon 1990 Census data for determination of areas with low median household income, low value of owner occupied homes and older median age of homes. Analysis of the percentage of dwelling policies to homeowners policies and theft losses per policy was based on 1994 and 1995 data collected by the Department's residential property statistical agent in the Department's Residential Property Statistical Plan. The number of surplus lines policies was based on a Surplus Lines Special Data Call issued by the Department in December 1995 for policy information for 1994 and 1995. The Department also relied on materials included in the record of the September 5 hearing on the proposed rule as part of the testimony of Birny Birnbaum, who was then the Department's Chief Economist. These materials included: (1) A July 23, 1996, letter from Senator Royce West to the Commissioner, requesting that underserved areas in the City of Dallas be designated Class 2, to act as a test of the MAP; (2) the transcript of the Department's February 8, 1996, public hearing on availability of residential property insurance held in Arlington, Texas; (3) a February 1, 1996, letter from G. Ron Nichols, Chair of the MAP Executive Committee, suggesting a number of factors that the Commissioner could consider to determine underserved areas (a list of the members of the MAP Executive Committee also was included as part of the record); (4) report of the Office of Public Insurance Counsel (OPIC), February 14, 1996, entitled A Review of Homeowners Insurance Underwriting Guidelines Used in Texas; (5) an editorial in the National Underwriter on page 24 of the August 5, 1996, issue regarding the July 1995 conciliation agreement between State Farm, the United States Department of Housing and Urban Development (HUD), the National Fair Housing Alliance (NFHA) and the Toledo Fair Housing Alliance (TFHA); (6) an article in the August 8, 1996, issue of the Journal of Commerce on Allstate's decision to eliminate certain underwriting guidelines relating to homeowners insurance; (7) an August 14, 1996, article in the Wall Street Journal on Allstate's decision to alter certain of its underwriting guidelines relating to homeowners insurance; (8) the July 1995 Conciliation Agreement between State Farm, HUD, NFHA and TFHA (Numbers 05-94-1351-8, 05-94-1352-8); (9) the transcript of the December 16, 1994, public hearing held by the Department on the proposed rule designating underserved areas for the purposes of establishing credits and incentives for voluntary sale of automobile insurance; and (10) information in spreadsheet evidencing, for certain Texas ZIP Codes, amounts of premium collected on homeowners and dwelling policies and number of homeowners and dwelling policies. The Department reviewed insurer underwriting guidelines in selecting factors used in determining underserved areas, while protecting the confidentiality of guidelines used by specific insurers as required by the Insurance Code, Article 1.24D. The details of the process and results of this review were presented by Mr. Birnbaum at the September 5 hearing on the adoption of the rule. The Department has utilized information from consumers, community leaders, and legislators; has obtained input from the MAP Executive Committee; and has held public hearings across the state (Houston and Big Spring in 1994 and Arlington in 1995).

Subsection (a) specifies the purpose and scope of the new section. Subsection (b) defines terms used in the section. Subsection (c) designates ZIP Code areas as Class 1 underserved areas, and subsection (d) designates ZIP Code areas as Class 2 underserved areas. Subsections (c) and (d) specify the ZIP Code areas to be phased in a three-step process. Subsection (e) outlines the factors and methodology used in determining which areas are designated as underserved. Subsection (f) outlines the procedures for changing the Class 1 and Class 2 designations. Subsection (g) provides that the Department shall, upon request, provide a quarterly listing of the number of residential property insurance policies in force by type of policy by company by ZIP code or the number of residential property insurance policies written by type of policy by company by ZIP code.

Subsections (c) and (d) designate two categories of underserved areas–Class 1 underserved areas and Class 2 underserved areas. As defined in subsection (b), Class 1 underserved areas are those areas in which owners of insurable property would be eligible for both the Property Protection Program pursuant to Article 5.35-3 (which provides for a cafeteria-type approach to selection of policy forms and endorsements) and the MAP pursuant to Article 21.49-12. This definition is consistent with §5.10004 of this title. As specified in §5.10004 of the MAP plan of operation (also §5.10004 of this title), the policy forms and types of coverage that could be provided in these areas are basic fire and extended coverage; named perils; broad form named perils; additional named perils, either separately or in combination; all risk coverage; and any other coverage available under policy forms and endorsements promulgated pursuant to Articles 5.35 or 5.35-3 of the Insurance Code or filed by an individual insurer pursuant to Article 5.35 and approved by the Commissioner. Article 5.35-3, §3 requires that the policy forms adopted for use in the Property Protection Program include a basic policy covering fire and allied lines perils with endorsements providing additional coverages at the option of the insured (i.e., cafeteria-type approach to selection of policy forms and endorsements). Article 5.35-3, §4 provides that the rates for these policies shall be determined in accordance with the provisions of the Insurance Code applicable to each insurer. Pursuant to Article 5.35-3, §5, in the areas designated as underserved, insurers shall make available to their agents and all agents shall offer all insureds the full range of coverages promulgated under Article 5.35-3 subject to the applicable rates and underwriting guidelines of each insurer. In Class 1 designated underserved areas, consumers could purchase such coverage either directly from the agent or obtain assistance in purchasing such coverage through the MAP. Pursuant to Article 5.35-3, §6, the premium on all policies written pursuant to Article 5.35-3 (i.e., policies promulgated pursuant to Article 5.35-3 and written in areas designated as underserved pursuant to Article 5.35-3) will not be subject to tax under Article 4.10 of the Insurance Code. Pursuant to Article 5.35-3, §7, the premium

on all policies written pursuant to this article will not be considered net direct premiums under the provisions of Article 21.49, §3(g) of the Insurance Code (Catastrophe Property Insurance Pool Act).

As defined in subsection (b), Class 2 designated underserved areas are those areas in which owners of insurable property would be eligible for the MAP pursuant to Article 21.49-12. This definition is consistent with §5.10004 of this title. As specified in §5.10004 of the MAP plan of operation, the policy forms and types of coverage that could be provided in these areas are basic fire and extended coverage; named perils; broad form named perils; all risk coverage; and any other coverage available under policy forms and endorsements promulgated pursuant to Article 5.35 of the Insurance Code or filed by an individual insurer pursuant to Article 5.35 and approved by the Commissioner. The cafeteria-type approach to selection of policy forms and endorsements provided in Article 5.35-3 would not be available to consumers in Class 2 underserved areas. Those consumers with availability problems in these underserved areas would be eligible for assistance in obtaining residential property insurance coverage from insurers participating in the MAP. Such coverage would be provided through the standard promulgated residential property insurance policies and endorsements.

Consumers Union, City of Dallas, Texas Neighborhoods Together, and Dallas Homeowners League. For with changes: Office of Public Insurance Counsel. Against: Allstate Insurance Company, American Insurance Association (AIA), Association of Fire and Casualty Companies in Texas (AFACT), National Association of Independent Insurers (NAII), Texas Insurance Organization (TIO), and United Services Automobile Association and USAA Casualty Insurance Company (USAA). No position with changes: Alliance of American Insurers.

Thirteen commenters submitted written comments and/or presented oral comments at the September 5 hearing on the proposal. Two consumer groups and the City of Dallas expressed support for the rule as proposed. One consumer group expressed overall support for adoption of the proposal with one change. One insurer trade association did not express support for or against the proposal but recommended one change. Seven commenters, including three individual insurers and four trade associations, expressed opposition to the adoption of the rule as proposed with three of these commenters recommending that the rule be withdrawn and reworked. The other four commenters proposed substantial revision of the rule with two of these proposing an alternative rule that specifies different criteria from the published rule. These two commenters requested that the designated areas be revised consistent with their proposed alternative criteria. Three of the commenters expressing opposition to the proposal indicated support of the MAP and PPP concepts; one of these commenters indicated that they will participate in the PPP and the MAP, and one commenter indicated they will participate in MAP. One commenter commended the Department for tireless efforts in creating and developing the MAP and stated that the MAP plan of operation is both fair and workable.

1. Statutory Standard

Six commenters stated that the proposal does not appear to comply with the statutory standard for determination of underserved areas in Article 5.35-3, §1.

Comment: Five commenters expressed concern that the proposal does not appear to objectively determine areas where residential property insurance is not reasonably available to a substantial number of owners of insurable property, and instead relies only on the statutory standard of "other relevant factors." One of these commenters stated that the two statutory standards should receive equal consideration, but the Department has relied almost entirely on "other relevant factors." Another commenter stated that the "other relevant factors" must be relevant to the nondiscretionary standard of reasonable availability to a substantial number of owners of insurable property, and therefore, any "other relevant factors" considered must be shown to be related to the result of residential property insurance not being reasonably available to a substantial number of owners of insurable property. According to this commenter, the proposed rule rationale fails to do this and therefore does not comply with the standard required by Article 5.35-3, §1. Two commenters stated that the proposal does not comply with the statutory standard because it is based on potentialities, speculation and likelihoods, as opposed to hard evidence of current availability.

Response: The Department disagrees. It is the Department's position that the rule does not rely only on the statutory standard of "other relevant factors" and the Commissioner did adequately consider both elements of the statutory standard. The Commissioner's analysis and application of the statutory standard is as follows: (i) The Commissioner first considered the standard of whether residential property insurance is or is not reasonably available to a substantial number of owners of insurable property in the underserved area, and the Commissioner determined that there is no single comprehensive measure of whether residential property insurance is or is not reasonably available to a substantial number of owners of insurable property either on a statewide basis or in any particular area of the state. (ii) The Commissioner identified two direct measures of unavailability– the number of surplus lines policies in an area and the evidence gleaned from testimony of consumers, agents, and insurers at a public hearing held earlier this year in Arlington, Texas. (iii) After determining that the two direct measures were not sufficient in and of themselves to make the determination of areas with unavailability, the Commissioner identified other factors of particular geographic areas which are likely to be associated with greater difficulty by consumers in obtaining residential property insurance. The Commissioner also considered the purpose, structure, and intent of the PPP and the MAP to determine additional relevant factors. The other relevant factors include low median household income, low median value of owner-occupied homes, older median age of homes, and high theft losses per policy and percentage of dwelling policies in an area in relation to total dwelling and homeowners policies in the area. This analysis is set forth in subsection (e) of the rule. It is the Department's position that this analysis complies with the statutory standard, and that the "other relevant factors" considered by the Commissioner are closely related to lack of availability of residential property insurance and do not exceed the discretion granted to the Commissioner. Underwriting guidelines represent the rules used by insurers to determine

whether or not to write a particular policy and, if written, on what terms. Thus, the Department's review of underwriting guidelines also provides a means of identifying factors for measuring insurance availability. Many underwriting guidelines have greater impact on consumers in some geographic areas than upon consumers in other geographic areas. The position that some underwriting guidelines have differential geographic impact is supported by Allstate's recent decision, as quoted in the August 14, 1996, Wall Street Journal, to eliminate certain underwriting guidelines. Allstate, the state's third largest residential property insurer in the state, in 1995, wrote approximately 500,000 residential property policies in the state, which constitutes 12% of all such policies written in Texas in 1995. Allstate notes that by eliminating age of home and minimum value restrictions, Allstate will write more business in inner cities. This is precisely the logic employed in the rule. Thus, the commenters are incorrect that the Department did not consider or rely upon any direct measures of whether insurance is not reasonably available to a substantial number of owners of insurable properties. The statute allows the Commissioner to consider "other relevant factors" without any restrictions on what those factors might be or how those factors might be used. The Department relied upon certain factors–geographically-contiguous and geographically-isolated–to better ensure the success of the PPP and the MAP for which the designations are being made. It is both reasonable and proper to rely upon other factors to respond to the needs of insurers who will participate in the two programs as well as to the needs of consumers for whom each program is targeted.

Comment: One commenter stated that the proposed rule and discussion does not address the element of "substantial number of owners of insurable property" in the statutory standard. According to this commenter, there is no discussion or disclosure of the number of uninsured properties in any proposed ZIP code, or comparison of the number of residential properties and number of residential property policies in force, which would have direct bearing and relevance on the determination which the Commissioner is required to make. One commenter stated that while the Commissioner has some discretionary authority in designating underserved areas, the law circumscribes his discretion to areas where a substantial number of owners cannot reasonably obtain residential property insurance. According to the commenter, the notion that a "substantial number" of the 4,778,280 residents living in the 500 plus ZIP Codes designated as underserved areas cannot reasonably obtain residential property insurance is prima facie implausible, implying that the proposed rule may exceed the Commissioner's authority under the law.

Response: The Department disagrees. It is the Department's position that Article 5.35-3, §1 grants the Commissioner the discretion to make the determination of what constitutes "substantial number of owners of insurable property." The legislature did not define "substantial" as used in Article 5.35-3, §1, and thereby recognized the fact that it is not an absolute standard and may vary from area to area. For example, in a densely populated inner city area, "substantial" may mean a small percentage of owners of insurable property, but in a sparsely populated rural area, "substantial" may mean a much larger percentage. It is the Department's position that whether the "substantial" standard is met cannot be applied on a statewide basis as the commenter has done, but must be determined on an area-by-area basis as supported by the Department's analysis. The Department believes that the factors considered and the methodology employed indicate that in each of the designated ZIP Codes residential property insurance is not available to a substantial number of consumers. The Department did examine insurance data on insured properties by ZIP Code and did compare these data to Census data on residential properties by ZIP Code and found the data unreliable. The Census data reflected 1990 experience, while insurance data reflected 1993 through 1995 experience. The difference in time of evaluation makes the comparison unreliable. Moreover, the Census data reports all properties, even uninsurable properties. The Department considered and rejected this approach because of the absence of reliable statewide data. The statute does not place a limit on the number of areas the Commissioner may designate as underserved as long as the Commissioner meets the statutory requirements. The commenter provides no reason why the designation of 500 ZIP Codes is prima facie implausible nor does the commenter provide a number that would be prima facie plausible. The Commissioner considered appropriate factors and used a reasonable methodology. If the results of such an analysis indicate 500 ZIP Codes, then 500 ZIP Codes are not only prima facie plausible, but reasonable.

Comment: Two commenters stated that the statute does not contemplate a rule based on a rationale of "potentially not reasonably available." One of these commenters stated that the statute uses present tense, and therefore, the standard is where there are currently availability problems, and the proposal goes beyond what the statute calls for. One commenter stated that the proposal, however, is very unclear as to what standard is employed because it does state that the Commissioner places great weight on the potential for residential property insurance not being reasonably available to a substantial number of owners of insurable property.

Response: The Department disagrees. It is the Department's position that the methodology used in the rule complies with the statutory standard. The statutory standard in Articles 5.35-3 and 21.49-12 of the Insurance Code provides that in determining which areas will be designated as underserved, the Commissioner shall consider whether residential property insurance is not reasonably available to a substantial number of owners of insurable property in the underserved area and any other relevant factors as determined by the Commissioner. It is the Department's position that this statutory standard grants the Commissioner authority to consider direct measures of unavailability, and if, upon consideration of these direct measures, the Commissioner determines that there is no single comprehensive measure of whether residential property insurance is or is not reasonably available, the Commissioner may consider other relevant factors. Other relevant factors employed by the Commissioner include factors that are indicative of a strong potential for residential property insurance not being reasonably available–low median household income, low median value of owner-occupied homes, older median age of homes, and high theft losses per policy–and factors specifically related to the purpose and intent of the PPP and the MAP–such as high percentage of dwelling policies. It is the Department's position that the legislature did not intend to require the Commissioner to consider only direct measures of unavailability if the Commis-

sioner determined that there were few or no reliable or adequate direct measures of unavailability; further the statutory language in Article 5.35-3, §1 supports this interpretation.

2. Fiscal Note and Costs Analysis

Comment: Five commenters expressed concerns that the proposal appears to contain no consideration of the fiscal impact that the proposal will have on the state. These commenters stated that there are fiscal considerations that the Department is obligated to assess in order to proceed with any proposal to designate underserved territories, and that the proposal may not comply with Article 1.03B of the Insurance Code and §2001.024(4) of the Government Code. One commenter stated that the broad designation of underserved areas has fiscal implications that will result from the rule's adoption, enforcement or administration. The commenter contends that these implications are not disclosed and are not the result of legislative enactment. According to this commenter, designating 259 ZIP Codes as Class 1 underserved areas will have a larger fiscal impact upon the tax revenue of the state than if different criteria or a higher point total were used and this different methodology resulted in a reduction in the number of ZIP Codes being designated. The commenter stated that due to the exercise of the discretionary authority granted in Article 5.35-3, the fiscal implication of reduced tax revenue to the state should be stated.

Response: The Department disagrees. It is the Department's position that, as stated in the proposal, any fiscal implications to state government are the result of the legislative enactment of Articles 5.35-3 and 21.49-12, and not from the adoption or enforcement of this rule. This position is based on the following reasons: (i) The premium tax credit provided in Article 5.35-3 was enacted by the legislature and not by the Commissioner in adopting this rule. (ii) The premium tax credit applies only to those policies that are promulgated pursuant to Article 5.35-3 (PPP policies) and that are written in areas designated as underserved pursuant to Article 5.35-3 (Class 1 areas). Although insurers must provide to their agents and the agents must offer the PPP policies and endorsements, there is no requirement in statute or rule that insurers write PPP policies; the writing of these policies is purely at the option of insurers, and insurers may use their own underwriting guidelines in determining whether to issue PPP policies. The Department has no way of knowing how many insurers will write these policies, or the number of policies that will be written by individual insurers–it could be many hundreds of policies or none. (iii) There is no legal requirement that the Commissioner consider the amount of the premium tax exemption in designating underserved areas. (iv) The legislature in enacting Article 5.35-3 did not place any cap or ceiling on premium tax credits. Accordingly, the legislature determined that however few or however many PPP policies are written, each policy will be subject to a premium tax credit, regardless of the fiscal impact on the state's general revenue. The Department, however, estimates the potential maximum impact on state revenues resulting from the premium tax credits for PPP writings as follows: In 1995, total premium written in areas designated as Class 1 under the adopted rule and eligible for PPP policies was approximately $89 million. Based on the maximum statutory premium tax rate of 3.5% (applicable to all insurers), and every policy currently written in the Class 1 areas being converted to PPP policies, and including an average premium per policy increase of 15% per year, the potential impact on state revenues in each of the first five years the section is in effect will be $4.2 million, $4.8 million, $5.5 million, $6.3 million and $7.3 million, respectively. The minimum impact on state revenue will be zero if no existing policies are converted to PPP policies. Given that the actual average premium tax rate is 1.8%, that likely only a fraction of all policies written in Class 1 areas will be PPP policies and that average premium increases are likely to be less than 10% annually, the impact of Article 5.35-3 premium tax credits on state revenues is likely to be less than $3 million in each of the first five years the new section will be in effect. The Commissioner, however, does not anticipate that any insurers will convert existing residential property policies to PPP policies for the purpose of receiving premium tax credit. The Commissioner's expectation is based on the following: (i) Insurers are unlikely to convert existing residential property policies to PPP policies as a means of reducing taxes owed to the state at the expense of reducing coverage to some of their policyholders. (ii) Such conversions by insurers defeats the purpose of designating underserved areas for the writing of PPP policies, which are specifically designed for individuals unable to purchase standard policies. (iii) Such conversions could impose additional costs on insurers due to the need to review existing policies and issue new PPP policy forms in lieu of the existing policies. If the PPP results in insurers writing more policies in Class 1 areas than they would have written absent the PPP, insurers, of course, would be entitled to premium tax credit on these new policies. However, premium taxes collected because of any new policies written on risks not previously insured will result in no loss to the general revenue because these new policies never would have been written without the PPP. It is the Department's position that the number of ZIP Codes is not the relevant measure for purposes of determining the level of fiscal impact. The number of ZIP Codes designated as Class 1 does not have a direct relationship with the amount of tax revenue lost because of the premium tax credits of Article 5.35-3. Premium tax revenue is a function of premium written, which, in turn, is a function of the number of policies written and the amount of coverage and premium per policy. Thus, one ZIP code in an urban area could account for 1000 times as much premium and premium tax as one ZIP code in a sparsely-populated area. Ten ZIP Codes could represent more premium tax revenue than 100 ZIP Codes, depending upon the population and value of housing in the respective ZIP Codes.

Comment: One commenter stated that the proposed rule appears to have failed to state the economic costs to persons complying with the proposed section as it relates to the non-consideration of premiums written in Class 1 underserved areas from net direct premiums under the provisions of §3(g) of Article 21.49 of the Insurance Code. The commenter stated that designating 259 ZIP Codes as Class 1 underserved areas will have a larger economic cost resulting from the non-consideration of premium for TCPIA assessment liabilities than if different criteria were selected or a higher point total were used which would result in a fewer number of ZIP Codes being designated as Class 1 underserved areas. According to the commenter, due to the exercise of the discretionary authority granted in Article 5.35-3, the economic costs of reducing assessment revenues or shifting of TCPIA assessment

liabilities should be stated to comply with Article 1.03B of the Insurance Code and §2001.024(4) of the Government Code. The commenter stated that if overly large areas of the state are designated as Class 1, an unintended incentive or disincentive may be created which may encourage insurers to reduce writings in coastal areas resulting in further reduction in assessment revenues or a disproportionate assessment obligation being imposed upon insurers who continue to offer coverage in the coastal areas.

Response: The Department disagrees. It is the Department's position that any fiscal impact on TCPIA assessments caused by the non-consideration of premiums on all policies written pursuant to Article 5.35-3 are the result of the legislative enactment of Articles 5.35-3 and 21.49-12, and not from the adoption or enforcement of this rule. This position is based on the following reasons: (i) The non-consideration of premiums on all policies written pursuant to Article 5.35-3 for purposes of determining TCPIA assessment obligations was enacted by the legislature and not by the Commissioner in adopting this rule. (ii) The non-consideration of premiums for purposes of determining TCPIA assessment obligations are provided only for those policies that are promulgated pursuant to Article 5.35-3 (PPP policies) and that are written in areas designated as underserved pursuant to Article 5.35-3 (Class 1 areas). Although insurers must provide to their agents and the agents must offer the PPP policies and all endorsements, there is no requirement in statute or rule that insurers write PPP policies; the writing of these policies is purely at the option of insurers, and insurers may use their own underwriting guidelines in determining whether to issue PPP policies. The Department has no way of knowing how many insurers will write these policies, or the number of policies that will be written by individual insurers–it could be many hundreds of policies or none. (iii) Article 5.35-3 does not require the Commissioner to consider the impact to individual insurers' TCPIA assessment obligations in designating underserved areas. (iv) The legislature in enacting Article 5.35-3 did not place any cap or ceiling on premium tax credits. Accordingly, the legislature determined that however few or however many PPP policies are written, each policy will be subject to a premium tax credit, regardless of the fiscal impact on the state's general revenue. Moreover, the fiscal impact on the TCPIA will be zero because the Article 5.35-3 credits against TCPIA loss assessments will not alter the total amount of those loss assessments. The Article 5.35-3 credits may shift the distribution of the credits among insurers, but will not affect the total amount of the assessment. In addition, the potential impact on individual insurers of the Article 5.35-3 premium tax credit is difficult to estimate. The impact on TCPIA loss assessments is completely a function of the amounts of PPP premium one insurer writes relative to other insurers and such amounts are very difficult to estimate. Any incentives or disincentives resulting from the designation of underserved areas are the result of legislative enactment of Article 5.35-3 and not the result of the adoption, enforcement or administration of this section. The legislature clearly intended that the provision in Article 5.35-3 for credits against TCPIA loss assessments would provide incentives to insurers to write PPP policies. The commenter provides no explanation of why "an overly large area" would provide disincentives, nor what level of designation would not be overly broad, nor why any amount of PPP writings would provide a new disincentive to write in the TCPIA area. Further, the Department believes that the commenters' disincentive objection is without merit because insurers currently are already reducing writings in coastal areas. Therefore, the Department does not believe that the PPP will have any substantial impact on further reduction of writings by the voluntary market in coastal areas.

Comment: One commenter stated that the proposed rule also appears to have failed to consider the economic costs to persons, i.e., consumers, agents, and insurers, complying with the proposed section as it relates to the creation and functional responsibilities of the Market Assistance Program, created pursuant to Article 21.49-12. Staff of the Department and other resources will be necessary to carry out the functions and monitoring of the Market Assistance Program. According to the commenter, due to the exercise of the discretionary authority granted in Article 5.35-3, the economic costs of administering and monitoring of the Market Assistance Program should be stated to comply with Article 1.03B of the Insurance Code and §2001.024(4) of the Government Code.

Response: The Department disagrees. It is the Department's position, as stated in the proposal, that any possible costs to any person complying with this rule or to the Department are the result of the legislative enactment of Article 21.49-12 and not as a result of the adoption of this rule. No one is required by statute or by rule to participate in the MAP; the MAP is a purely voluntary program for insurers and agents. The Department specified all costs for persons (consumers, agents, and insurers) who opt to participate in the MAP in the proposal of the MAP plan of operation (28 TAC §§5.10001-5.10015), which was published prior to this rule proposal (and has since been adopted). It is the Department's position that it is not appropriate or necessary to repeat these same costs in the proposal of this rule. To do so in any meaningful way would require providing an incredible amount of detail as to how the MAP will operate; the MAP plan of operation consists of 70 pages. As is clear from the preamble to this proposal, the designation in this rule of the underserved areas pertaining to MAP can only be implemented under the MAP plan of operation. This rule addresses only that part of Article 21.49-12 that authorizes the Commissioner to designate underserved areas by rule using the standards specified in Article 5.35-3, §1. As to the costs to the Department, the Department will carry out its responsibilities for the PPP and MAP within the Department's existing budget and will not seek additional funds for these purposes. The expenses for development, promotion, and the operations of the electronic systems for the MAP are fixed costs, including dedicated staff, software development, and computer costs. A portion of the Department's costs for operating the MAP varies with the number of applicants, so changes in the number of underserved areas could have a minor impact on the Department's costs.

3. Subsection (e) - Factors and Methodology

a. General

Comment: Three commenters objected to the adoption of the proposal because the methodology and designations are overly broad. One commenter stated that the factors and methodology used to designate more than 500 Texas ZIP Codes as underserved areas are flawed because it is not

reasonable to believe that 29% of the state's land area, 26% of the state population, and 26% of the housing units – areas including entire cities – are underserved areas. This same commenter stated that the designated underserved areas are geographically enhanced over what was expected. A fourth commenter stated that it is the commenter's general impression that the size and scope of the underserved areas selected may be too broad, but the commenter does not feel that the use of different criteria would likely result in significant changes to the overall program.

Response: The Department has changed the section as proposed in subsection (e)(4)(A) to provide that geographically isolated ZIP Codes with more than two points (in lieu of only two points as proposed) are not designated as Class 1 or Class 2 areas and to provide that groupings of ZIP Codes with two or more points but with very few policies are not designated as Class 1 or Class 2 underserved areas. These changes are made to enable insurers participating in the MAP and PPP to dedicate their initial commitment of resources to underserved areas with the greatest potential impact. These two changes reduce the number of geographically distinct areas that are scattered over great distances around the state. These changes in conjunction with other changes to the proposed rule result in 61 ZIP Codes changed from Class 1 to no designation; 37 ZIP Codes changed from Class 2 to no designation. Total ZIP Codes changed from 517 as proposed to 427 ZIP Codes in the adopted rule. The Department does not believe that the designations in the rule as adopted are overly broad. To the contrary, the Department believes that the designations are based on a sound, reasonable methodology that employs very specific quantitative measures. In addition, the Department does not agree that an analysis based on the number of ZIP Codes designated as underserved, or the state's land area, population, or number of housing units, is a valid means of gauging the extent or scope of the designated underserved areas. Because the number of policies written in one ZIP code may be 1000 times the number written in another, a count of ZIP Codes is a poor indicator of the scope or extent of the designations under this rule. Similarly, because policies per square mile or per thousand people may vary dramatically by ZIP Code, these measures also do not meaningfully reflect the scope of the designations. It is the Department's position that the most appropriate measure of the scope or extent of the designations is the percentage of residential property policies in designated areas to the total number of residential property policies in the state. Another appropriate measure is the share of residential property insurance premium in designated areas compared to the total residential property insurance premium written in the state. The following table, which is based on these two types of comparative measures, illustrates the number of ZIP Codes, premium amount, and percentage of policies in the adopted rule compared to the rule as proposed:

Class 1 ZIPs As Adopted 163 As Proposed 259

Class 2 ZIPs As Adopted 264 As Proposed 258

Total ZIPs As Adopted 427 As Proposed 517

Class 1 Premium As Adopted 3.45% ($89.1 M) As Proposed 4.54% ($117.1M)

Class 2 Premium As Adopted 18.51% As Proposed 18.06%

Total Premium As Adopted 21.96% As Proposed 22.60%

Class 1 Policies As Adopted 3.93% As Proposed 5.16%

Class 2 Policies As Adopted 18.31% As Proposed 17.75%

Total Policies As Adopted 22.24% As Proposed 22.91%

It is the Department's position that a valid analysis of whether the designated underserved areas are reasonable may be made by comparing these areas to those underserved areas designated pursuant to 28 TAC §5.206 for purposes of private passenger automobile insurance. Voluntary market automobile policies written in the underserved areas designated under 28 TAC §5.206 are eligible for credits against an insurer's quota in the Texas Automobile Insurance Plan Association. Voluntary market PPP policies written in Class 1 areas are eligible for premium tax credit and for credits against an insurer's loss assessment for the TCPIA. Insurers participating in the MAP receive no tax credits or other incentives. The Department believes that an appropriate and reasonable analysis of the breadth and scope of the designated underserved areas under this rule is to compare the percentage of the state's private passenger automobile policies in the underserved areas designated under §5.206, which is 22.7%, to the percentage of the state's residential property policies in the Class 1 designated underserved areas under this rule, which is 3.93%. However, even if the §5.206 designations are compared to the combined total of Class 1 and Class 2 designations under this section, the percentage of automobile policies in the designated §5.206 areas, 22.7%, is still higher than the combined percentage of residential property insurance policies in Class 1 and Class 2 areas, 22.24%. The Department believes that these comparisons support the Department's position that the commenters' objections to the designations as "overly broad" are without merit.

Comment: One commenter expressed concern that a broad designation of underserved areas ignores the accomplishments of the Commissioner, Department, and the insurance industry in making insurance more available in Texas in recent years.

Response: The Department disagrees. The designation of the underserved areas for purposes of residential property insurance is authorized by Article 5.35-3 for purposes of the Property Protection Program and is mandated in Article 21.49-12 for purposes of the voluntary Market Assistance Program. The rule as adopted is changed and the number of areas designated as underserved have decreased from 517 ZIP Codes in the proposal to 427 ZIP Codes in the adopted rule. The Department believes that the adopted designations will complement the other efforts by the Commissioner and the Department (such as the adoption of large deductibles) and the insurance industry (such as loosening of underwriting restrictions by some large insurers) that are currently underway. These initiatives, however, have not been in effect for a sufficient period of time to enable the Department to determine any impact on residential property insurance availability.

Comment: One commenter also expressed concern that the designation of major portions of Texas as underserved will be taken out of context and misused by some as evidence of insurance industry "redlining." The commenter requested that the proposed text be clarified to indicate that the ZIP Codes identified "may" include areas that are underserved.

Response: The Department disagrees. It is the Department's position that the designation of underserved areas in this rule is not a legitimate basis for allegations of "redlining." The size of the areas designated in Harris County, Tarrant County, and Dallas County should indicate that equating designation with redlining is fallacious. It is the Department's position that the designation in this rule will actually discourage any claims of redlining. It is also the Department's position that the alleged potential that these designations will be taken out of context and misused is not a valid public policy reason for not making the designations, so long as the designations are based on sound methodology. Any action undertaken by the Commissioner could be taken out of context and misused, if one were so inclined. The Department believes that the relevant standards for judging the reasonableness of the adopted designations is not the potential for misuse of this information, but the quality, logic and evidence supporting the designations. The Department disagrees that the rule should be changed to indicate that the ZIP Codes "may" include areas that are underserved, because such a change would not comply with the statutory standard in Article 5.35-3, which provides that the Commissioner may determine and designate areas as underserved areas for residential property insurance, and in Article 21.49-12, which requires the Commissioner to establish a voluntary market assistance program to assist insureds in Texas in obtaining residential property insurance in underserved areas which shall be determined and designated by the Commissioner by rule using the standards specified in Article 5.35-3, §1.

Comment: Three commenters stated that analysis of consumer complaints and comments would provide a less subjective way for the Department to identify underserved areas. One of these commenters, who disagreed with the relevant factor methodology used by the Department to determine which areas to designate as underserved, expressed surprise that the proposal failed to take into account any of the information and data the Department has compiled in communicating with actual consumers. In the commenter's view, plotting a map of areas where the comments and complaints have been most frequent should be one of the starting points in determining areas where residential property insurance is not reasonably available to a substantial number of owners of insurable property. The commenter stated that if the data on hand at the Department were not sufficient, a consumer survey or survey of legislative and municipal leaders throughout Texas could also help define the areas in need of assistance. The commenter stated that actual consumer complaints and comments provide a better measure of the place where true availability problems are occurring. A fourth commenter stated that, in contrast to the "other factors" regarded by the Department as the only viable alternative for designating underserved areas, credible, scientifically viable means of determining the availability of property insurance do exist. They are the market research tools employed every day across the country by thousands of businesses bent on finding out whether there is an underserved market for their products. Standard market research techniques–polls, focus groups, intercepts, consumer and agent surveys–could readily be employed by the Department to estimate more accurately whether or not a given ZIP code is underserved.

Response: The Department disagrees that the proposal's reliance on statistical data, rather than relying solely on information from actual consumers and community leaders, is an improper approach. It is the Department's position that the approach used by the Department for designating underserved areas for purposes of Articles 5.35-3 and 21.49-12 is an objective and non-arbitrary approach for which there is a rational basis. The Department's approach is objective in that it relies on actual factors that are rooted in how insurers actually operate to deny insurance to certain risks, rather than on personal feelings or prejudice. The Department's approach is non-arbitrary and rational in that the Department did not select any of the factors forming the basis of the determination process at random, and in fact, all of the factors, were selected because they are or are very likely to be associated with greater difficulty by consumers in obtaining residential property insurance. The scoring system applied to these factors by the Department in developing an initial availability ranking for each ZIP Code is a reasonable method to allow several factors to determine the outcome of the analysis. The scoring system requires that either more than one factor be present for an area to achieve an underserved availability ranking or that one factor shows by itself such severity that an area earns an underserved availability ranking. The methodology is fairly standard in a variety of fields, including insurance underwriting. Some insurers use a scoring system for underwriting – the presence or absence of certain characteristics are assigned points and a certain point total determines whether the insurer will or will not write the policy. While the Department has utilized information from consumers, community leaders, and legislators; has obtained input from the MAP Executive Committee; and has held public hearings across the state (Houston and Big Spring in 1994 and Arlington in 1995), the Department disagrees that consumer comments and complaints would provide a less subjective, more reliable measure of availability problems than the methodology employed by the Department. The Department did not rely solely upon on consumer surveys because the Department's experience in recent months with surveys of consumers and their automobile insurance purchases indicates that the results of such surveys produce a limited ability to draw inferences to broader populations. The Department has also learned through these surveys that many consumers do not know certain technical aspects of their insurance policies and are not aware of distinctions in types of rates and insurers–i.e., preferred, standard or non-standard rates; regulated, non-rate regulated or non-admitted insurers–and of the scope of responsibilities of agents versus those of insurers. Moreover, the size and cost of a consumer survey to evaluate insurance availability throughout Texas would have been prohibitive. The purpose of a survey is to obtain information and results which can then be inferred to the population at large. Inferences from a sample to the population require a certain sample size. Even assuming a survey might have produced useable results, the size of a sample necessary to determine insurance availability in the approximately 2,500 Texas ZIP Codes would have been in the hundreds of thousands. The Department also disagrees that a review of complaints, a survey or a poll is a less subjective approach to determining insurance availability than the methodology employed by the Department. The Department's methodology is grounded in verifiable facts – actual theft losses, actual median age of homes, actual underwriting guidelines used by insurers, actual median housing

value, actual surplus lines policies issued. In contrast, the commenter suggests the Department rely upon conversations with consumers when the results of the conversations can depend upon a variety of subjective factors. Scientifically, such a sample is not valid for drawing inferences to the population at large. In addition, the number of relevant consumer complaints numbers about 1,000 for the past two years. This relatively small number is inadequate for drawing inferences to a population in about 2,500 Texas ZIP Codes. The results of a consumer survey can be very subjective in that its results can turn on the manner that the question or questions are phrased. It is likely that the survey itself would be a source of conflict and disagreement as each interested party sought to interpret the results of the survey in the party's own best interests. In sum, while the Department relied upon input from consumers to supplement the basic fact-based, objective methodology, the Department does not agree with the commenter that such input alone should determine underserved areas. The Department also disagrees that utilization of market research tools such as polls, focus groups, intercepts, consumer and agent surveys would constitute a viable alternative for designating underserved areas. The cost would be significant and the benefit would be highly questionable. In particular, the validity and statistical reliability of the data that would be obtained from the utilization of such tools is questionable due to the sample base that would be used to obtain the data. The Department believes that the information obtained from the use of these tools would be more subjective than objective and does not believe that it is appropriate to use these type of tools for the initial designation of the underserved areas.

b. Selected Factors

All seven commenters opposing the adoption of the proposal objected to the use of the selected factors in subsection (e) to determine the underserved areas.

Comment: Six commenters stated that the Department had provided either insufficient or no data to support the Department's contention that the factors specified in subsection (e) to determine underserved areas actually are relevant to such a determination. These commenters stated that the selected factors were either arbitrary or irrelevant or both.

Response: The Department disagrees. The relevance of the chosen factors is discussed in subsection (e) of the proposed rule in paragraphs (1)-(3). A plain reading of these paragraphs indicates why these factors were chosen, how they were chosen, and how they are related to lack of availability, limiting of availability, or difficulty in obtaining residential property insurance. It is the Department's position that the selected factors are not arbitrary and are certainly relevant to availability of residential property insurance. The approach used by the Department for designating underserved areas for purposes of Articles 5.35-3 and 21.49-12 is an objective and non-arbitrary approach for which there is a rational basis. The Department's approach is objective in that it relies on actual factors that are rooted in how insurers actually operate to deny insurance to certain risks and not on subjective factors such as personal feelings or prejudice. The Department's approach is non-arbitrary and rational in that none of the factors were selected at random, and in fact, all of the factors, which form the basis of the determination process, were selected because they are likely to be associated with greater difficulty by consumers in obtaining residential property insurance. Three of the factors–low median household income, low median value of owner-occupied homes, and older median age of homes–are underwriting guidelines used by many insurers to decline coverage for certain risks. The guidelines of all insurers writing residential property insurance in Texas are on file with the Department; these guidelines are confidential by law. The Department has reviewed these underwriting guidelines and based on that review has determined that many insurers use these three factors to decline coverage for certain risks. The Department's position that these three factors are relevant to availability is supported by the following: (i) The Office of Public Insurance Counsel released a report in February 1994 entitled A Review of Homeowners Insurance Underwriting Guidelines Used in Texas. That report shows that insurers writing over 90% of the market in Texas have minimum coverage guideline restrictions, claims guideline restrictions, age guideline restrictions–88% of the insurers have guidelines relating to age of homes; 60% have guidelines relating to location of homes; 53% have guidelines relating to occupation; 29% have guidelines relating to lifestyle; 22% have guidelines relating to credit; and 19% have guidelines relating to employment stability. This report clearly shows that there are a large number of insurers that use underwriting guidelines that were the subject of the Department's factors relating to low median household income, low median value of owner-occupied homes, and older median age of homes. (ii) In addition, the Department can point to recent actions by some of the larger insurers. . State Farm, the largest residential property insurer in the state, in 1995 wrote approximately 1.35 million policies in the state, which constitutes 31.5% of all residential property policies written in Texas in 1995. State Farm has entered into a conciliation agreement with the National Fair Housing Alliance and the Toledo Fair Housing Center and the Department of Housing and Urban Development in which State Farm voluntarily agrees to eliminate minimum coverage eligibility amounts, to eliminate eligibility requirements linked to construction date cutoffs, and agrees that any decision to decline coverage for an individual will not be based solely on information in credit reports. Under the conciliation agreement, State Farm agreed to discontinue its practice of not declining coverage solely because another company did so or because the property was insured under a state FAIR Plan. State Farm agreed to modify its eligibility guidelines to lessen subjective terminology, including but not necessarily limited to elimination of pride of ownership. These agreed actions by State Farm clearly support the Department's position that the selected factors of low median household income, low median value of owner-occupied homes, and older median age of homes relate to insurance availability. (iii) Also, the selection of these three factors is supported by actions taken by Allstate which are explained in an August 14, 1996, article in the Wall Street Journal, entitled "Allstate Relaxes Standards on Selling Homeowners Policies in Poor Areas." This article states that the company, which insures one of every eight houses in the U.S., quietly began phasing in certain revisions in its underwriting restrictions in April. According to this article, Allstate is scrapping restrictions in urban areas that generally prohibit sale of policies for homes valued at less than $40,000 or older than 40 years. In this article, Allstate has said that it makes good business sense to scrap the underwriting guidelines related to value and age of homes and that they will sell more policies in urban areas as a

result of that. Allstate, the state's third largest residential property insurer in the state, in 1995, wrote approximately 500,000 residential property policies in the state, which constitutes 12% of all such policies written in Texas in 1995. It is the Department's position that the other three selected factors–high theft losses per policy, high percentage of dwelling to homeowners policies, and number of surplus lines policies– are relevant measures of results brought about by consumers having difficulty in obtaining residential property insurance. The theft loss factor is based on the premise that because of insurers' perception of high theft losses in certain areas, insurers are reluctant to sell policies which include theft coverage. Most insurers' underwriting guidelines specifically address theft losses either because of frequency or severity of loss. The fact that theft losses are part of most insurers' underwriting guidelines is an indication that insurers are concerned with theft exposure. Any areas with theft losses above the statewide average are likely to be areas that insurers will invoke underwriting restrictions. Consumers in high theft areas, therefore, have less availability of all kinds of coverage. The Department considers this factor particularly significant for purposes of the PPP under which policies may be sold without theft coverage, thereby creating the potential for greater availability of all types of homeowners coverage in areas with high theft losses. It is the Department's position that while the percentage of dwelling policies factor is not a perfect indicator of availability, it is of some significance because if insurers write coverage for low value dwellings they often write dwelling policies (rather than homeowners) which do not always provide all of the coverage that the consumer wants or needs (no liability coverage, for instance). The PPP which provides a cafeteria-type approach to selection of policy forms and endorsements allows more flexibility for consumers in designing coverages that they need and can afford and allows more flexibility for insurers to write coverages which they are willing to write in certain areas. Thus, the PPP is likely to be most effective in areas where there are a large number of dwelling policies. However, because the Department agrees with those commenters who stated that the dwelling factor carries too much weight in the scoring system, the Department has changed the rule as proposed to lessen the weight of this factor by increasing to 50% or more the percentage of dwelling to total policies necessary to generate one point and is eliminating the assignment of two points from this factor. It is the Department's position that the number of surplus lines policies factor is a direct measure of residential property insurance availability because consumers who are unable to obtain coverage in the regulated or admitted market have to obtain coverage in the unlicensed surplus lines market. By statute, Article 1.14-2, §5(a), a surplus lines policy cannot be issued unless coverage cannot be procured after a diligent effort to do so has been made. The surplus lines policies may provide less coverage than the promulgated policy forms of regulated insurers for much higher premium costs. The Department's process of developing the selected factors and scoring methodology was quite extensive and was undertaken to assure that the process of determining selection criteria for designating underserved areas was objective and relevant to availability problems. This process included the review of extensive insurance data, and economic and demographic data and included the following: (i) The Department made a careful review of insurers' underwriting guidelines. (ii) The Department reviewed the hearing transcript of the February 8, 1996, hearing in Arlington, Texas; this hearing was called by the Commissioner for the purpose of hearing from consumers, agents, and insurers on residential property insurance availability problems in the Tarrant County-Dallas County area. (iii) Beginning in the fall of 1995 at the initiation of the Department's development of its designation process, the Department staff discussed availability issues and measurement concepts with the executive committee of the Market Assistance Program, which is composed of insurers, agents and public members, during several of the committee's public meetings. Many other interested parties, including representatives of Consumers Union and the Office of Public Insurance Counsel, and legislative staff, attended the meetings of the MAP Executive Committee at which the Department solicited ideas and suggestions for methods of determining underserved areas for purposes of the MAP and the PPP. As a result of these discussions, the executive committee members submitted a letter to the Commissioner in February 1996 which expressed their thoughts and recommendations. In this letter, the executive committee stated that it is the committee's belief that underserved areas occur for a variety of reason, many of which may be unrelated, and that the committee does not believe there is any "litmus test" that defines and differentiates all underserved areas, but rather, "there are many factors that come together in particular parts of the state and create availability problems for consumers. The exact mix may vary from region to region and we believe that it is important to develop an approach that will allow for that fact. We believe that an objective and reasonable determination of underserved areas might be made by looking to the following factors: The replacement cost of the structures sought to be insured and the relationship of that replacement cost to the actual market value of structures sought to be insured in a geographically defined area; the income level of residents; the proportion of houses built prior to 1950; the existing number of homeowners policies relative to the number of houses that are owner occupied; loss/premium ratios for specific perils in a geographically defined area that are higher than the statewide average; theft, burglary and crime statistics in a geographically defined area; the number and location of agent's offices. In rural areas, the ratio of excess and surplus lines coverage to coverage secured through standard markets; a regression analysis of average premium cost in a geographically defined area in both license and surplus lines markets; the distribution of deductibles relative to risk amount for Clause 2; and Home Mortgage Disclosure Act data for loan denials for owner occupied home purchases." (iv) The Department discussed availability issues and measurement concepts with Representative Harold Dutton and Senator Rodney Ellis, the legislative sponsors of the law that enacted Articles 5.35-3 and 21.49-12 of the Insurance Code requiring the Commissioner to designate areas as underserved for purposes of residential property insurance. The Department also met with Representative Dutton's and Senator Ellis' staff. (v) The Department discussed availability issues with insurance agents and the agents' association. (vi) Prior to finalizing the proposal, the Department received input from the City of Dallas, the Dallas Homeowners League (an umbrella organization for about sixty neighborhood and homeowners associations within the City of Dallas) and State Senator Royce West who represents part of the City of Dallas regarding availability in the city of Dallas and their desire for the city of Dallas to be eligible for the Market Assistance Program. The Department utilized

this input in determining how to designate the City of Dallas underserved areas. (vii) The Department discussed the issues of availability and measurement concepts with Dr. Robert Klein, then director of research at the National Association of Insurance Commissioners, and solicited his ideas for ways to define and identify underserved areas. Dr. Klein has experience in determining factors for the designation of underserved areas for residential property insurance and has done a lot of work in this area on behalf of various committees of the National Association of Insurance Commissioners. As a result of this extensive review and many discussions, the Department became aware that there was no single simple comprehensive measure of residential property insurance availability. As a result of this extensive review and many discussions, the Department developed the selected factors and scoring methodology in subsection (e) of this rule.

Comment: Three commenters stated that the Department erred in concluding that insurers used these factors in underwriting guidelines to deny coverage. One commenter stated that as the fourth largest writer of residential property insurance in Texas, it does not use the cited criteria to decline to issue policies. The commenter criticized the Department for failure to discuss or disclose the method or manner in which the underwriting restrictions are used. The same commenter asserted that these factors are used as guidelines but that underwriting is accomplished through the consideration of numerous factors and not solely upon any single restriction from which the criteria were drawn. Another commenter stated that insurers might consider the factors for determining rates, rather than for determining whether they would provide coverage. This same commenter stated that there may be other factors that companies use to determine that they will not write certain risks, and the commenter believes that these factors are legitimately "other relevant factors" that the Department can use in determining underserved areas.

Response: Based on a thorough review of underwriting guidelines used by property insurers in this state, it is the Department's position that the underwriting guidelines selected for purposes of this rule are legitimately "other relevant factors" and that these guidelines are used by many insurers to determine whether or not to provide residential property insurance coverage on a risk. The Department did not presume that all insurers decline to write risks based on a single underwriting guideline, though this is true in some instances. The Department understands that there are undoubtedly numerous underwriting guidelines that have conditions attached to the guideline, meaning some risks may be acceptable for insurance while others are not. It is the Department's position that certain factors used by the Department–low median household income, low median value of owner-occupied homes, older median-age of homes, and high theft losses per policy–for determining underserved areas reflect a large number of insurers' underwriting guidelines which are used by these insurers to specifically exclude the consideration of any risk with these characteristics. The Department believes that the reason that the fourth largest writer of residential property insurance in Texas does not use the cited criteria is because the commenter has a unique customer base, whose circumstances do not fit the circumstances typically found in underserved areas. Because of the commenter's customer base, the commenter is less likely than insurers who do not have such a customer base to use guidelines related to age of risk, value of risk, and income and employment of an individual. The comment that insurers might consider the factors for determining rates rather than for determining whether to provide coverage is speculation on the part of the commenter. The commenter offers no basis for such a statement, and since underwriting guidelines are considered confidential information of individual insurers there does not appear to be any support for this statement. The Department's review of the guidelines does not support the observation of the commenter that factors such as those used in the Department's designation of underserved areas relate to rates.

Comment: One commenter stated that while the commenter did not doubt the accuracy of the data used by the Department in developing the proposal, the Department should have identified the sources of the data.

Response: The Department relied upon 1990 Census data for determination of areas with low median household income, low value of owner occupied homes and older median age of homes. Analysis of the percentage of dwelling policies to homeowners policies and theft losses per policy was based on 1994 and 1995 data collected by the Department's residential property statistical agent in the Department's Residential Property Statistical Plan. The number of surplus lines policies was based on a Surplus Lines Special Data Call issued by the Department in December 1995 for policy information for 1994 and 1995. The Department also relied on materials included in the record of the September 5 hearing on the proposed rule as part of the testimony of Birny Birnbaum, who was then the Department's Chief Economist. These materials included: (1) A July 23, 1996, letter from Senator Royce West to the Commissioner, requesting that underserved areas in the City of Dallas be designated Class 2, to act as a test of the MAP; (2) the transcript of the Department's February 8, 1996, public hearing on availability of residential property insurance held in Arlington, Texas; (3) a February 1, 1996, letter from G. Ron Nichols, Chair of the MAP Executive Committee, suggesting a number of factors that the Commissioner could consider to determine underserved areas (a list of the members of the MAP Executive Committee also was included as part of the record); (4) OPIC's February 14, 1996, report entitled A Review of Homeowners Insurance Underwriting Guidelines Used in Texas; (5) an editorial appearing in National Underwriter on page 24 of the August 5, 1996, issue regarding the July 1995 conciliation agreement between State Farm, the United States Department of Housing and Urban Development (HUD), the National Fair Housing Alliance (NFHA) and the Toledo Fair Housing Alliance (TFHA); (6) an article appearing in the August 8, 1996, issue of the Journal of Commerce on Allstate's decision to eliminate certain underwriting guidelines relating to homeowners insurance; (7) an August 14, 1996, article in the Wall Street Journal on Allstate's decision to alter certain of its underwriting guidelines relating to homeowners insurance; (8) the July 1995 Conciliation Agreement between State Farm, HUD, NFHA and TFHA (Nos. 05-94-1351-8, 05-94-1352-8); (9) the transcript of the December 16, 1994, public hearing held by the Department on the proposed rule designating underserved areas for the purposes of establishing credits and incentives for voluntary sale of automobile insurance; and (10) information in spreadsheet evidencing, for certain Texas ZIP Codes, amounts of premium collected on

homeowners and dwelling policies and number of homeowners and dwelling policies. The Department relied upon insurer underwriting guidelines in selecting factors used in determining underserved areas, while protecting the confidentiality of guidelines used by specific insurers as required by the Insurance Code, Article 1.24D. The Department has utilized information from consumers, community leaders, and legislators; has obtained input from the MAP Executive Committee; and has held public hearings across the state (Houston and Big Spring in 1994 and Arlington in 1995).

Comment: Two commenters suggested that the Department needed to look at other data such as the number of single family dwellings on the tax rolls in county appraisal districts, and that it would be easy to compare that number to insured property.

Response: The Department disagrees. Information from county appraisal districts is not readily available from all districts or in an appropriate format for analysis. While information on insured properties is available, reliable up-to-date data to measure insurable properties statewide is not available from any source. Census data provide the number of residential property units, but these data provide a picture of 1990, not of current experience. The census data do not indicate whether the property was insurable at all, whether the consumers sought insurance, or whether the rental property was insured on a commercial basis. While the Department believes that the commenter's suggestion would be useful information, the inability to acquire this information on a statewide basis renders the recommended approach not feasible.

Comment: Two commenters, who criticized the specific factors in subsection (e) as possibly not being relevant, proposed an alternative rule which, according to the commenters, is more flexible and consistent with past actions in applying similar statutes (Article 21.49) and requested that the designated underserved areas be revised consistent with the factors urged in the proposed revision. The commenters' alternative proposes deleting reference to great weight being placed on residential property insurance not being reasonably available to a substantial number of owners of insurable property and substituting weight on the statutory standards and other relevant factors to determine whether residential property insurance is reasonably available to a substantial number of owners of insurable property. Under the commenter's alternative the relevant factors include: (i) Complaints received by the Department from consumers which indicate actual or potential difficulty for consumers in obtaining residential property insurance in a particular ZIP Code, city, or county; (ii) underwriting–if underwriting guidelines of a significant number of companies with significant market impact reflect restrictions that could limit availability of insurance, then consideration will be given to its impact in specific ZIP Code, city, or counties; examples of such underwriting restrictions could include guidelines relating to the minimum values of homes and age of homes; (iii) high concentration of surplus lines residential property policies; (iv) information from advisory groups; and (v) other relevant information on availability as necessary to add additional areas as underserved or to remove areas as designated underserved areas.

Response: The Department disagrees. The Department believes that the commenters' proposal is subject to a variety of interpretations, and as such is too vague to meet legal sufficiency requirements. In contrast, the Department's methodology is based upon specific assumptions, which can be tested. Any interested observer could review the methodology adopted by the Commissioner and the underlying data provided by the Department and replicate the results of the analysis. The commenters' proposed rule is sufficiently subjective that the Commissioner could interpret the criteria of the commenters' proposal as completely consistent with the criteria used in the Department's methodology, and thus, the Commissioner could obtain the exact same results under the commenters' proposal. The commenter proposed using five criteria: consumer complaints, underwriting guidelines, surplus lines policies, information from advisory groups and other relevant factors. The Department studied and considered consumer complaints presented at public hearings and to the Department's Consumer Protection division. The Department considered underwriting guidelines and developed several factors as a result – age of home, median housing value, and median household income. The Department considered surplus lines policies and developed a factor measuring surplus lines policies in a geographic area in comparison to statewide results. The Department obtained and relied upon the input from a formal advisory group – the MAP Executive Committee. The Department relied upon other relevant information, including theft losses in a geographic area, percentage of dwelling to total policies, testimony at public hearings. Thus, the Department's original methodology and designations–exactly as proposed–comply with the requirements of the commenters' proposed rule. However, the Department believes that radically different results could also be obtained under the commenters' proposed rule. Under the Department's adopted methodology, the outcome is much more predictable and the basis for the eventual designations can be tested objectively by all interested parties. This is not necessarily true of the commenter's proposal. With the commenters' proposed rule, any number of results could be obtained with no requirement for explanation or justification.

Comment: Three commenters objected to the factor relating to high theft losses per policy. One commenter stated that portions of the proposal seem to overlook the fact that the rationale in creating the MAP and PPP was to bring insurers together with owners of insurable properties who have been unable to reasonably obtain insurance in their area. According to the commenter, the high theft rate factor seems designed to define areas where there are a substantial number of "uninsurable" properties. The commenter pointed out that admitted insurers may legitimately consider high theft areas because those risks are uninsurable according to their underwriting guidelines. This same commenter stated that the use of statistics relating to persons with insurance to define underserved areas, as is the use of theft losses per policy, seems logically inconsistent. Two other commenters stated that some companies do have underwriting guidelines that relate to the number of thefts per policy, but criticized the Department for considering the dollar amount of thefts rather than the number of thefts. According to the commenter, the Department selected a factor related to severity when the companies underwriting guidelines relate to frequency.

Response: The Department disagrees that high theft losses per policy is an inappropriate or logically inconsistent factor for determining underserved areas. A neighborhood's high

theft rate does not necessarily mean that properties in that neighborhood are uninsurable. A key purpose of the PPP, which provides a cafeteria-type approach to allow consumers and insurers to select from a menu of policy forms and endorsements, is to create greater availability of basic coverage (such as fire loss coverage) in areas such as those with high theft losses. Accordingly, identifying such areas is crucial to the success of the PPP. Moreover, the fact that a risk has produced high theft losses may make the risk uninsurable and unacceptable for some companies, but it does not make it an unacceptable risk for all insurers. Some companies may find the risk insurable with the theft losses, or, as contemplated by the PPP, companies may exclude theft but provide coverage for other perils. The existence of policies with theft losses in a particular geographic area is evidence that insurers have written coverage in that area. The Department believes that the use of the theft loss factor based on the amount of loss rather than frequency of claims is the best and most valid means of identifying underserved areas for the purposes of MAP and PPP. Although most underwriting guidelines exclude risks which have several theft claims, which is a factor related to frequency of loss, this fact does not make the use of a characteristic of high theft losses invalid as a factor for determining availability problems in a specific area. It is the Department's assessment that insurers are reluctant to sell policies that include theft coverage in an area with high theft losses, leading to less availability to consumers in that area of all kinds of coverages. This assessment is based on the fact that theft loss, both in frequency and severity, are generally addressed in insurers underwriting guidelines, which is an indicator that insurers take into consideration theft losses when determining whether to issue policies. Through the use of this factor, the Department has not attempted to determine if an individual risk is underserved because of the frequency of theft losses, but rather to determine if an entire area is underserved because of higher theft losses that may be occurring in the area. The commenter has also confused uninsurable, in terms of an individual insurer's underwriting guidelines with uninsurable, as intended in Articles 5.35-3 and 21.49-12. While Articles 5.35-3 and 21.49-12 both speak of eligibility for the MAP and PPP in terms of insurable properties and both programs envision the application of individual insurer underwriting guidelines, the term insurable properties in the statute must mean a property that meets basic structural standards, not a property that meets an insurer's underwriting guidelines, as the commenter suggests. If the commenter were correct, then no consumer turned down by insurers would be eligible because the consumer did not meet the insurer's underwriting guidelines. Such a result would be contrary to the intent of Articles 5.35-2 and 21.49-12, which created the PPP and MAP to specifically encourage insurers to write policies for consumers who otherwise could not obtain the needed insurance.

Comment: One commenter objected to the factor relating to surplus lines policies. The commenter stated that portions of the proposal seem to overlook the fact that the rationale in creating the MAP and PPP was to bring insurers together with owners of insurable properties who have been unable to reasonably obtain insurance in their area. According to the commenter, the number of surplus lines factor seems designed to define areas where there are a substantial number of "uninsurable" properties. The commenter pointed out that admitted insurers may legitimately decline risks written by a surplus lines carrier, because those risks are uninsurable according to their underwriting guidelines.

Response: The Department disagrees. Because unlicensed surplus lines companies by law can only insure risks in areas that the licensed market is not serving, the existence of a high number of surplus lines policies is a direct measure of insurance availability, and so is an extremely useful factor in determining underserved areas. The Department disagrees that a risk necessarily is uninsurable by the licensed market simply because a risk presently is being insured by the unlicensed surplus lines market. A risk could be completely acceptable under the underwriting guidelines of certain insurers, but an insured may simply be unable to locate those insurers willing to accept new business. While one licensed carrier might refuse under its underwriting guidelines to insure a property covered under a surplus lines policy, another licensed carrier may not. The purpose of the MAP is to match consumers with insurers who are willing to write the coverage sought by the consumers. Also, a homeowner may be able to obtain basic coverage, excluding theft, under the PPP program, even though that homeowner would have to rely on the surplus lines market absent the PPP program. The commenter has also confused uninsurable, in terms of an individual insurer's underwriting guidelines with uninsurable, as intended in Articles 5.35-3 and 21.49-12. While Articles 5.35-3 and 21.49-12 both speak of eligibility for the MAP and PPP in terms of insurable properties and both programs envision the application of individual insurer underwriting guidelines, the term insurable properties in the statute must mean a property that meets basic structural standards, not a property that meets an insurer's underwriting guidelines, as the commenter suggests. If the commenter were correct, then no consumer turned down by insurers would be eligible because the consumer did not meet the insurer's underwriting guidelines. Such a result would be contrary to the intent of Articles 5.35-2 and 21.49-12, which created the PPP and MAP to specifically encourage insurers to write policies for consumers who otherwise could not obtain the needed insurance.

Comment: Four commenters objected to the consideration of the high percentage of dwelling policies to homeowner policies as a factor in determining underserved areas. Three of the commenters stated that the definition of residential property insurance for the purposes of Articles 5.35-3 and 21.49-12 includes dwelling policies. Thus, according to these commenters, this factor cannot be used to determine whether residential property insurance is reasonably available to a substantial number of owners of insurable property because if an individual has a dwelling policy, then as a matter of law, residential property insurance is not unavailable. All four commenters stated that a high percentage of dwelling policies within a geographic area could merely suggest that the area has a high percentage of rental properties and that homeowners coverage is not necessary or appropriate for the properties in that area. According to these commenters, an area with a high percentage of dwelling policies could easily have a healthy "served" market. Three commenters stated that because the percentage of dwelling policies factor is inappropriate and illogical to start with, they also objected to the assignment of

two points to ZIP Codes where more than 60% of the policies are dwelling policies when it takes only three points to be designated as a Class 1 area.

Response: The Department disagrees. It is the Department's position that the law grants the Commissioner the discretion to consider any factor relevant to determining whether an area is underserved. This includes the consideration of a factor, such as percentage of dwelling policies, that relates to lack of availability of all the types of coverage that a consumer may want or need. The consideration of this factor is based on the premise that a high percentage of dwelling to homeowners policies in an area is a possible indicator that insurers are restricting their writing of homeowners policies. A high percentage of dwelling policies may indicate that insurers are issuing dwelling policies even if the homeowners policy could be issued, when the coverage amount was less than the insurer was willing to issue or the perceived risks were such that the insurer wanted to reduce exposure by writing a less comprehensive coverage. Because the dwelling policy provides limited coverage, many consumers may consider the policy to provide less coverage than needed and those consumers have an availability problem. However, the Department agrees with the commenters that the usefulness of this factor is limited, and should be given less weight than the Department originally proposed. The Department recognizes that the use of the ratio of dwelling policies to total dwelling and homeowner policies does not pinpoint areas where residential property insurance is wholly unavailable, and agrees with the commenters that there are many reasons unrelated to availability problems– such as the presence of rental properties–why an area might have a high percentage of dwelling policies. The Department believes that a high ratio of dwelling policies to total dwelling and homeowners policies, when used in combination with the other factors in the Department's methodology, is indicative of areas where residents may have problems obtaining the scope of coverages that they want or need. The PPP is designed to specifically target this type of unavailability problem. Because consumers purchasing homeowner coverages generally have more choices than consumers purchasing dwelling coverages, the increased coverage choices available through the PPP likely will have a greater impact in areas with a high percentage of dwelling policies. Thus, the Department believes that it is not only appropriate, but essential, that the PPP target areas where there are a large number of dwelling policies. The Department also believes that because many of the areas assigned points for a high dwelling policy ratio number are rural, and since rural areas are less likely to have a high concentration of rental property than urban areas, it is unlikely that high concentrations of rental properties is a predominant reason for the high ratios in such areas. Though the Department believes that the rationale provided in the proposal for this factor is correct, the Department agrees with commenters that the factor carries too much weight in the scoring system. Therefore, the Department has changed the rule to reflect that a geographic area will be assigned a single point if the ratio in the area of dwelling policies to the total number of dwelling and homeowner policies is equal to or greater than 50 percent.

Comment: Two commenters objected to the use of the family income factor as not being relevant to insurance availability. One commenter stated that the proposal contains no explanation for how the Department selected the median household income amounts of $16,000 and $18,000.

Response: The Department disagrees with the contention that median family income is not a factor relevant to insurance availability. Insurers use underwriting guidelines that relate to applicants' financial status, employment and residential stability, and credit histories. Such guidelines likely will adversely affect more consumers in areas with lower income than consumers in other areas. Also, the Department has learned through previous analysis on automobile insurance availability, performed in the process of determining underserved areas for purposes of the Texas Automobile Insurance Association Plan in §5.206 of this title, that there tends to be fewer insurance agents in areas of low median income who are able to write business in standard companies than in areas with more affluent populations. This circumstance adversely impacts residential property insurance availability in the lower income areas because consumers in these areas have to exert greater effort to find an agent willing to write coverage, and even if they are able to find such an agent, the coverage may only be available from non-rate regulated companies at much higher rates than rates of standard companies for the same type of risks. According to 1990 U.S. Census Bureau data, the median family income in the state as a whole is approximately $28,000 and the median family income in Harris, Dallas and Tarrant counties is higher than in the rest of the state. The Department's selected factor is based on median income levels that are substantially less than the statewide average. The Department selected a very low median household income relative to the statewide average to identify potentially underserved areas. According to guidelines established by the U.S. Department of Health and Human Services, a family of four with a 1996 income of $15,600 or less is considered to be in poverty. The selected income levels for the factor of $16,000 and $18,000 are just slightly above the poverty level. Because Dallas, Tarrant and Harris counties have higher median incomes than other areas of the state, the Department's methodology assigned one point to areas in Harris, Dallas and Tarrant counties with median family incomes of $18,000 or less and assigned one point to other areas in the state with median family incomes of $16,000 or less.

Comment: Two commenters objected to the low median income factor on the basis that it assumes a fact that is not true in that not all insurers use low median income as an underwriting guideline; numerous insurers and some types of insurers, such as farm mutuals and county mutuals, do not restrict their insurance products based upon this. These two commenters also objected to this factor because it assumes that everyone in a particular ZIP code with a median income within the $16,000-$18,000 range are homeowners, and thus need homeowner's insurance. While that assumption is questionable, according to the commenters, if it were true, then those homeowners would likely have mortgages and good enough credit to get a mortgage. The commenters asserted that this assumption contradicts another assumption of the proposal– that families with low median incomes are more likely to be denied homeowner's insurance because they are more likely to have bad credit. The commenters stated that a person with a low median income could never purchase a home in the first place without a good credit rating. Two commenters indicated at the September 5 hearing that this factor might be a valid factor to consider.

Response: The Department disagrees that the use of the family income factor is based on any false assumptions. Although not every insurer will utilize identical underwriting guidelines, the Department has determined through careful study that many insurers have guidelines relating to financial status and employment and credit history of individuals, and that these guidelines are significant factors in the decision whether or not to write a policy. Many insurers rely upon the use of credit histories or credit scoring products, such as those distributed by Fair, Isaac, as part of the underwriting process. The Department believes that the use by insurers of credit scoring systems, credit histories, employment stability, residential stability, and other factors related to family or household income supports the inclusion of the median household income factor in the adopted methodology.

Comment: Two commenters questioned the use of the factor relating to low median value of owner-occupied homes because it assumes that all insurers have this type of underwriting guideline which is not true. The commenters stated that, in addition, some insurers, such as farm mutuals and county mutuals, actively market to low valued dwelling markets. These same two commenters indicated at the September 5 hearing that this factor might be a valid factor to consider.

Response: The Department believes that this factor is relevant to unavailability because many insurers use this factor as an underwriting guideline to restrict coverage. The Department disagrees with the commenters' contention that use of the low median home value factor assumes that all insurers use this factor in their underwriting guidelines. The Department is neither making nor implying such an assumption. While maintaining the confidentiality of the guidelines as required by the Insurance Code, Article 1.24D, the Department has carefully reviewed underwriting guidelines related to residential property insurance in the state in formulating the factors used pursuant to these rules to gauge insurance availability. Based on this review, which was detailed by Chief Economist Birny Birnbaum at the September 5 hearing, the Department has determined that many insurers use underwriting guidelines that restrict coverage based on minimum coverage requirements, including low median home value, and that these minimum coverage requirements likely will adversely affect more consumers in areas with lower median housing values than consumers in other areas. According to a recent Wall Street Journal report, Allstate, the state's third largest residential property insurer in the state, in 1995, wrote approximately 500,000 residential property policies in the state, which constitutes 12% of all such policies written in Texas in 1995, announced that it planned to eliminate its underwriting restrictions on issuing policies on homes valued at less than $40,000. Allstate stated that removal of this restriction would result in sales of more policies in areas with low-valued homes. In addition, State Farm, the state's largest residential property insurer, has entered into a conciliation agreement with the National Fair Housing Alliance and the Toledo Fair Housing Center and the Department of Housing and Urban Development in which State Farm voluntarily agrees to eliminate minimum coverage eligibility amounts. The Department agrees that while some insurers do specialize in writing lower-valued homes, such specialty insurers represent a very small percentage of the residential property insurance market, which means less availability for these types of risks. While farm mutual insurance companies do write lower valued homes, a farm mutual, by law, must maintain a majority of its total insurance in force on rural property. It is unlikely that a farm mutual company, which markets primarily in rural areas or small towns, would provide a market to risks located in large cities or, more specifically, in inner cities. The Department disagrees that county mutual insurance companies actively market residential property insurance. With the exception of one industrial fire county mutual which markets monthly-pay fire policies, the county mutual insurers do not market residential property insurance. In addition, farm mutuals provide limited coverage on unregulated policy forms at unregulated rates, and county mutual insurers provide only dwelling policies at unregulated rates. However, because neither type of these insurers by law can offer homeowners insurance, full homeowners coverage available through the standard market is not available through farm mutuals and county mutuals.

Comment: Two commenters questioned the use of the factor relating to older median age of homes because it assumes that all insurers have this type of underwriting guideline, which is not true. The commenters stated that some insurers, such as farm mutuals and county mutuals, actively market to low-value dwelling markets. These same two commenters indicated at the September 5 hearing that this factor may indicate some availability problems in some pocket areas.

Response: The Department believes that this factor is relevant to unavailability because many insurers use this factor as an underwriting guideline to restrict coverage. The use of this factor as one of several criteria to determine underserved areas does not assume that all insurers use this factor in their underwriting guidelines. It is the Department's position, however, that many insurers do use this factor as an underwriting restriction. This position is based on the Department's thorough review of underwriting guidelines related to residential property insurance in the state, which was undertaken as part of the process to formulate factors to determine underserved areas. As a result of this review, the Department has determined that a majority of insurers consider the age of a dwelling in deciding whether to write a policy covering the dwelling. Moreover, the 1994 review by the Office of Public Insurance Counsel of insurers' underwriting guidelines for homeowners insurance stated that 88% of such insurers have a guideline relating to age of homes. According to a 1996 Wall Street Journal article, Allstate, the state's third largest residential property insurer in the state, in 1995, wrote approximately 500,000 residential property policies in the state, which constitutes 12% of all such policies written in Texas in 1995, announced that it was eliminating its underwriting restriction that prohibited writing policies on homes older than 40 years. Allstate stated that removal of this restriction would result in the sale of more policies in urban areas. The Department agrees that while some insurers specialize in writing older-age homes, such specialty insurers represent a very small percentage of the residential property insurance market, which means less availability for these types of risks. While farm mutual insurance companies do write older homes, a farm mutual, by law, must maintain a majority of its total insurance in force on rural property. It is unlikely that a farm mutual company, which markets primarily in rural areas or small towns, would provide a market to risks located in large

cities or, more specifically, in inner cities. The Department disagrees that county mutual insurance companies actively market residential property insurance. With the exception of one industrial fire county mutual which markets monthly-pay fire policies, the county mutual insurers do not market residential property insurance. In addition, farm mutuals provide limited coverage on unregulated policy forms at unregulated rates, and county mutual insurers provide only dwelling policies at unregulated rates. However, because neither type of these insurers by law can provide homeowners insurance, full homeowners coverage available through the standard market is not available through farm mutuals and county mutuals. c. Point System

Six commenters objected specifically to the use of the point system in the methodology for determining underserved areas.

Comment: Two of these commenters urged that the point system be eliminated because it is totally arbitrary, and a fundamental law in rulemaking is that rules can't be arbitrary.

Response: The Department disagrees that the point system is arbitrary. The Department believes that the methodology, including the point system is fact-based and objective. While interested parties may disagree on the assumptions and factors used, each assumption and factor is carefully defined, described and justified. Further, the impact of each assumption can be analyzed because the Department explained the entire methodology in detail and because the Department provided to interested parties the data used by the Department in developing the designations. In addition, the Department notes that some insurers use a point system in underwriting, where the presence or absence of certain characteristics of the consumer, vehicle or property are assigned points and consumers above a certain point total are eligible, while consumers below the point total are ineligible. In another example, many insurers rely upon a credit scoring system, which awards points for various credit history characteristics of a consumer. Some insurers rely upon the credit scoring systems for underwriting and/or rating. The determination of whether a point scoring system is reasonable and not arbitrary depends upon the factors used and the relationship among the factors in the scoring system. Finally, the Department notes that the system is for initial designations only and will be adjusted as additional data either confirms the factors and weights or suggests appropriate modifications.

Comment: Two commenters stated that the proposal does not provide any support or explanation for its varied weighting of the factors employed. One commenter stated that there is no rationale or support as to why some factors are weighted one point while other factors are weighted two points.

Response: The Department disagrees. The rule explained the reason why each factor is used and how points are applied to the factors. Each factor identifies a characteristic of a ZIP Code which either identifies availability problems, identifies great potential for availability problems and/or relates the specific needs of insurers and consumers who will participate in the MAP and PPP in accordance with the intent and structure of the MAP and PPP. The methodology assigns one point to any ZIP code in which the specific factor is present. In some cases, when the specific factor, by itself, indicates severe availability problems or potentially severe availability problems, two points are awarded. There are two factors where two points are possible – surplus lines and theft losses. In the case of surplus lines, one point is awarded when the percentage of surplus lines policies is two to four times the state-wide average, while two points are awarded when the percentage of surplus lines policies is more than four times. In the case of theft losses, two points are awarded when average theft losses are greater than twice the statewide average for three consecutive years. In both instances, the Department provided a rationale for the awarding of the second point – the characteristic is so severe that the single characteristic should indicate availability problems. The awarding of a second point in the rule as originally proposed, relating to the dwelling factor, has been deleted in the adopted rule.

Comment: All six commenters stated that the Department arbitrarily disregarded the point system through the creation of major exceptions to the point system in order to designate some areas to a different class than the actual point total for the areas indicated. The commenters cited examples of certain areas that are assigned zero or one point which are designated as Class 2 underserved areas; certain areas with two points that are geographically contiguous to other areas with three or more points which are designated as Class 1 in order to create a geographically contiguous areas for the PPP; and certain areas in the City of Dallas with three or more points which are designated as Class 2 to test for the effectiveness of the MAP alone in addressing availability problems. One commenter opined that this arbitrary disregard of the point system indicates that the system is inherently flawed. Another commenter stated that the proposal provides no factual basis on why it was necessary to deviate from a strict scoring system in some areas but not others. Another commenter observed that the casting aside of the point system in certain select instances brings into question whether there should be confidence in the overall designation process. Another commenter stated that the method used for determining whether a territory is a Class 1 or Class 2 underserved territory appears to be a subjective determination that is inconsistently applied. According to this commenter, a clear example of this problem is the fact that no territory in Dallas is designated as a Class 1 territory, and such an outcome does not reasonably seem possible. The commenter stated that the standards for designating an underserved area as Class 1 or Class 2 must be some form of an objective benchmark, otherwise there can be no clear objective trigger for the FAIR Plan.

Response: The Department disagrees. The rule specifically explains and justifies each departure from the results of the factor analysis and point totals, such that any interested party could replicate the Department's results. The Department does not agree that the departures from the results of the point system were arbitrary, and, therefore does not agree that the methodology is fatally flawed. The Department also disagrees that departing from the point system results casts doubt on the point system itself. The point system represents many, but not all, of the factors considered by the Commissioner. For example, the MAP Executive Committee sent the Commissioner a letter on February 1, 1996 listing a variety of factors to consider, including the issue of geographic contiguousness. The Department believes that it is reasonable to review the results of the point system to ensure that geographically-contiguous areas are designated, given the importance to the effectiveness

of the program of making designated underserved areas easily understood to both insurers and consumers. The Department disagrees with the comments about the decision to designate only Class 2 areas in the City of Dallas. While the point system indicated that a few ZIP Codes in the City of Dallas might be designated as Class 1 areas, it is also true that both the MAP and PPP are new programs and establishing the opportunity to measure the effectiveness of both programs is essential for determining how resources are best applied to addressing the problems of insurance availability. The Department believes that it is reasonable that one area be designated only as Class 2 to determine the effectiveness of the MAP alone to address availability problems. This action is further supported by the interest and testimony of organizations from the City of Dallas, who will be participants in any programs to improve insurance availability. The Department disagrees with the comment regarding standards for the trigger for a FAIR Plan. The purpose of this section is not to establish triggers or standards for triggers for a FAIR Plan. Such triggers are part of the MAP Plan of Operation. However, it is important to point out that once the MAP and PPP are operating, additional data will be forthcoming about the operations of those programs which will better identify availability problems than any data currently available.

Comment: Three commenters criticized the Department's point system for failure to employ a weighting system to take differential geographic impact into account. One of these commenters stated that the proposal asserts that the various factors have differential geographic impact, and that this in fact appears to be a central assumption on which the proposal is based. The commenter stated that if this is the case, the commenter would expect the Department to use a methodology that employed derived weights to adjust for the influence of each of the various factors (rather than an arbitrarily applied system of weights that is the same for each geographic area) which would likely produce a more meaningful total score. However, according to the commenter, no scoring system can objectively determine what is inherently a subjective determination.

Response: The Department disagrees, particularly with the comments that no scoring system can objectively determine what is inherently a subjective determination. The fact that a particular determination requires judgment and decisions among competing alternatives does not mean that the determination is subjective and arbitrary. The Department's scoring system is objective in that it is fact-based, identifies all assumptions and relationships and allows any interested party to replicate the results. The Department does not understand the comment on the use of "derived weights to adjust for the influence of each of the various factors," and the commenter does not explain what is meant by "derived weights" nor what is meant by the "adjusting for the influence". The scoring system identifies factors which have a different geographic impact depending upon the characteristics of the geographic area. The methodology sets threshold values, above or below which the ZIP Code is determined to have availability problems, great potential for availability problems or a characteristic particularly relevant to the intent and operation of the programs, and awards points accordingly. By awarding points on this basis, it is the Department's position that it has given appropriate weight to a particular factor according to the characteristics of the particular geographic area.

Comment: Two commenters criticized the proposal for failing to provide a factual basis to determine what area is geographically isolated.

Response: The Department disagrees. Under the proposed rule a geographically isolated area is an area with two points that is not contiguous with other ZIP Codes of two or more points. The adopted section expands the definition of a geographically isolated area to include ZIP Codes with two or more points that are not contiguous with ZIP Codes of two or more points.

Comment: One commenter suggested the alternatives that either less weight be given to the factors or that the number of points for characterization of an underserved area be raised due to the lack of a demonstrable nexus between these factors.

Response: The Department disagrees. The Department determined the assignment of points on the basis that the factors were generally of equal value in any analysis of residential property insurance availability problems. Higher points were assigned to those factors determined to be indicative of greater severity of availability. In contrast, and in response to specific comments, the Department gave less weight to percentage dwelling to total policies factor in the adopted section than as originally proposed. Finally, the Department disagrees that a "nexus" has not been demonstrated between the factors and insurance availability. The rationale and basis for each factor is identified and explained. Each factor either identifies availability problems, identifies a great potential for availability problems or identifies specific characteristics of a geographic area which are directly related to the structure and intent of the MAP and PPP and to the needs of insurers and consumers participating in the programs.

4. Subsection (f)–Changes in Class 1 and Class 2 Designations

Comment: Four commenters recommended deleting the requirement in subsection (f) that after initial designation of an area as a Class 1 underserved area, the Class 1 designation may not be withdrawn for three years. Three commenters recommended that this provision be amended to provide that any changes in Class 1 designations may be adopted at any time by amending the rule pursuant to the Government Code, §§2001.004-2001.038 (Administrative Procedure Act). One commenter suggested that the proposal be changed to provide that Class 1 area designations may not be withdrawn for one year. The commenters noted that the statute does not impose such a three-year requirement and recommended that the proposal be changed to allow the Commissioner to take prompt and quick action in making changes in Class 1 designations.

Response: The Department agrees with deleting the requirement in subsection (f) that after initial designation of an area as a Class 1 underserved area the Class 1 designation may not be withdrawn for three years and has changed the rule accordingly.

5. Subsection (g)–Quarterly Report

Comment: Three commenters disagreed with the inclusion of company specific data in the quarterly report provided in subsection (g) of the proposal. One commenter stated that the provision of this quarterly report data will provide valuable infor-

mation to the commenter's competitors, with no corresponding benefit to the public. According to this commenter, competitors can determine the ZIP Codes where the commenter does business, and then can begin to aggressively target marketing those areas to take business away. According to the commenter, there appears to be virtually no relationship between making such information part of the public record and the goal of making residential property insurance reasonably available to a substantial number of owners of insurable property. The other commenter stated that the quarterly reporting requirement has nothing to do with designating underserved areas and is an attempt to require public disclosure of ZIP code specific premium and loss information reported under the statistical plans which is confidential trade secret information and disclosure of such information would be in violation of the Open Records Act. Both commenters stated that this provision exceeds the rulemaking authority provided in Articles 5.35-3 and 21.49-12.

Response: The Department disagrees. The commenter's objections are based on an incorrect reading of this subsection of the rule. The commenters are reading this subsection (g) to provide for the release of company-specific premium and loss data by ZIP code. No company-specific premium and loss data is authorized for release in this subsection, and no company-specific premium and loss data will be provided pursuant to this subsection. The information to be provided is the number of residential property insurance policies in force by type of policy by company by ZIP code or the number of residential property insurance policies written by type of policy by company by ZIP code. This type of information is identical to the kind of information that is released by the Department for underserved areas for purposes of the Texas Automobile Insurance Plan Association pursuant to 28 TAC §5.206. The Department disagrees that the release of the type of information authorized under this rule will allow competitors to understand or to identify a particular company's marketing strategy for several reasons. First, the data in the report will be historical data, representing experience and activity from several months to several years old. Second, much more current and timely information on market strategies is available to competitors in the marketplace. Insurers rely heavily upon feedback from agents to find out which companies are non-renewing and which are writing. Third, some companies routinely issue press releases to announce major changes in marketing policy. Fourth, the Department is aware that insurers are generally aware of other insurer's underwriting guidelines, which represent the implementation of insurer marketing strategy. Because the information to be released does not include company-specific premium and loss data, there is no violation of the Open Records Act and no disclosure of trade secret information. It is the Department's position that the release of the information is vital for two compelling reasons: (i) This information is necessary and in the public interest to enable insurers and the public to track the effectiveness of the PPP and the MAP. (ii) Public availability of this data allows insurers and other interested parties to verify the data and credits against TCPIA loss assessments. Insurers have an interest in monitoring possible increases in their assessment obligations because of other insurers writing of PPP policies pursuant to Article 5.35-3. The Department has statutory authority to adopt this subsection of the rule. The Commissioner has the authority to adopt the subsection for purposes of the MAP pursuant to Article 21.49-12, §8, which grants the Commissioner the authority to promulgate rules in addition to the MAP plan of operation that are necessary to accomplish the purposes of the MAP. The Commissioner has the authority to adopt the subsection for purposes of the PPP pursuant to Articles 5.35-3 and 1.03A. Article 5.35-3 authorizes the Commissioner by rule to determine and designate underserved areas for residential property insurance; Article 1.03A authorizes the Commissioner to adopt rules and regulations for the conduct and execution of duties and functions of the Department which are authorized by statute.

6. Public Policy Grounds

Four commenters objected to the adoption of the proposal on public policy grounds.

Comment: Two commenters stated that the statutory standards in Articles 5.35-3 and 21.49-12 are the same as the statutory standards for designating areas in the Texas Catastrophe Property Insurance Association (TCPIA) and the FAIR Plan and questioned why, if the legal basis used for designating underserved areas is sound in the proposal, isn't this same approach sound for the TCPIA and the FAIR Plan? The commenters expressed concern that the application of the methodology used in this rule to the TCPIA would lead to rapid expansion of the catastrophe areas which would be harmful to companies who are assessed for losses in the event of a catastrophe.

Response: The Department disagrees that the statutory standards in Articles 5.35-3 and 21.49-12 are the same as in Articles 21.49A and 21.49. Articles 5.35-3 and 21.49-12 require the Commissioner to consider whether residential property insurance is not reasonably available to a substantial number of owners of insurable property in the underserved area and any other relevant factors as determined by the Commissioner. Article 21.49A provides that if the Commissioner determines, after a public hearing, that in all or any part of the state residential property insurance is not reasonably available in the voluntary market to a substantial number of insurable risks and that at least 50% of the applicants to the residential property market assistance program who are qualified under the plan of operation have not been placed with an insurer in the previous 12-month period, the Commissioner may establish a FAIR Plan to deliver residential property insurance to citizens of this state in underserved areas, which shall be determined and designated by the Commissioner by rule. Under Article 21.49A, the Commissioner is required to consider a factor in designating underserved areas that is not required in Articles 5.35-3 and 21.49-12–that at least 50% of the applicants to the residential property market assistance program who are qualified under the plan of operation have not been placed with an insurer in the previous 12-month period. It is the Department's position that the Commissioner would have to consider this factor in determining which areas are underserved for purposes of the FAIR Plan. The Department, however, agrees that because some of the same factors which are indicative of underserved areas for purposes of the MAP may also be indicative of underserved areas for purposes of the FAIR Plan, it may be appropriate and necessary to use these factors as part of the methodology for designating underserved areas for the FAIR Plan. But such a determination under Article 21.49A would be the result of a separate determination process and would most likely include the

consideration of other factors not included in the methodology for determining underserved areas in this rule. Article 21.49 requires that areas may be designated as catastrophe areas eligible for coverage through the TCPIA if the Commissioner determines, after notice and hearing, that windstorm and hail insurance is not reasonably available to a substantial number of owners of insurable property within an area located within a city or county that is subject to unusually frequent and severe damage resulting from windstorms and/or hailstorms. Thus, designation of catastrophe areas eligible for the TCPIA relates to the exposure for catastrophic loss due to hurricanes striking the Texas coast. The criteria for determining availability of residential property insurance for dwelling and liability coverage is not the same as determining availability of windstorm and hail insurance in coastal areas. An insurer's willingness to write wind and hail insurance along the Texas coast relates to the construction of the risk, the location of the risks in relation to the exposure of a large body of open water, the availability of catastrophic reinsurance, the concentration of exposure subject to a major catastrophic loss in given areas of the coast for an individual insurer, and the concentration of an individual insurer's exposure along the Texas coast in relation to its exposure in other catastrophic areas of the United States. Clearly, the legislature recognized the difference between general residential property insurance availability problems throughout the state and availability problems along the Texas coast because Article 21.49-12 specifically prohibits the use of the MAP as a means to address the wind and hail availability problems for risks located in a designated catastrophe area. Further, in enacting Article 21.49, which created the TCPIA, the legislature initially identified areas with wind and hail problems – the counties in Tiers 1 and 2. The legislature made no such designations in Articles 5.35-3 or 21.49-12, but instead left such designations completely to the discretion of the Commissioner. The Department understands insurer concerns about the expansion of areas designated for TCPIA coverage, but the Department does not believe that the use of the factors to designate underserved areas for purposes of the MAP requires the use of these factors for the TCPIA. The two programs are separate and distinct programs with different purposes, different goals, and different means of operating; the MAP is purely voluntary participation by insurers while the TCPIA is mandatory participation. For these reasons, the Department does not believe that it makes sense to suggest that the same factors used to determine underserved areas for the MAP should, would, or must be used to designate catastrophe areas for the TCPIA. The Department believes that it is inappropriate to measure the reasonableness of the adopted methodology for designating underserved areas for purposes of Articles 5.35-3 and 21.49-12 against the possible results of applying such a methodology in another context.

Comment: Another commenter stated that adoption of the proposal could result in misuse of incentives for voluntary participation in the program, such as "cherry picking" among, what the commenter believes to be, the too-large Class 1 areas for the purposes of lessening premium tax and TCPIA assessments. The commenter stated that the unreasonably large areas and populations designated as Class 1 may perversely encourage the misuse of MAP in a way which will undermine the safety afforded by the TCPIA reserves. Thus, according to the commenter, the proposal is particularly destructive of a sound public policy relating to the larger insurance market.

Response: The Department disagrees. The Department does not believe that the proposed designations nor the adopted designations are destructive of a sound public policy relating to the larger insurance market for the following reasons: (i) Insurers are not eligible for premium tax credits or TCPIA assessment incentives under the MAP (Article 21.49-12). Because no credits against TCPIA assessments are associated with MAP activity, the size of MAP activity will not affect TCPIA assessments. (ii) The amount of premium written in areas designated as Class 1 is small, both in relation to total statewide premium and to the voluntary premium which is the basis for TCPIA assessments. If the commenter intended the concerns to apply to the PPP, the Department has reduced the Class 1 areas from 259 ZIP codes in the proposal to 165 ZIP codes in the adopted rule; the premium volume represented by the Class 1 areas is reduced from $117 million in the proposal to $89 million in the adopted rule. Thus the Department has not designated as broad a Class 1 area as proposed. Nevertheless, it is the Department's position that although there is always a potential for misuse of incentives provided to insurers by the Legislature, it is unreasonable to assume that the existence of incentives, regardless of the size of an area to which the incentive may apply, automatically indicates a misuse will occur. The legislature clearly intended that insurers writing PPP policies in designated underserved areas receive premium tax credits. The legislature could have placed a cap on the size of the underserved areas or on the amount of premium tax credit which would be allowed, but did not choose to do so. The sole purpose of the premium tax credits is to encourage insurers to write residential property insurance in an underserved area regardless of the size of the underserved area. If the implementation of the PPP results in the misuse of the statutory incentives, the Department is confident that the Legislature will take steps to stop the abuse. In addition, while the commenter may believe an insurer will "cherry pick" designated areas, there is no evidence to support this assertion. (iii) The Department disagrees that the scope of the areas and populations designated as Class 1 underserved areas in the rule may encourage the misuse of the MAP in a way which will undermine the stability of the TCPIA. The operating expenses and claims paid by the TCPIA are from annual premiums collected for policies written and from assessments to member insurers. The incentive provided by the legislature to insurers writing in Class 1 designated underserved areas produces a reduction in the net direct premiums used to determine an individual member insurer's percentage of participation in the TCPIA. The Department disagrees that the operation of the MAP, no matter how large or small the areas of eligibility, will adversely affect the financial stability, reserves or operation of the TCPIA. As stated previously, no credits against TCPIA assessments are associated with MAP activity, so the size of MAP activity will not affect TCPIA assessments. Moreover, the effect of the incentive on the TCPIA is to simply produce a redistribution of the participation by member insurers. Indeed, if all insurers participated in the writing of risks in Class 1 underserved areas to the same degree as their writing of other business, there would be no change to any insurer's participation in the TCPIA. Although one insurer could theoretically obtain a relative benefit from PPP activity by writing a large amount of

PPP policies while all other insurers do not, this same opportunity is already available to any insurer because insurers gain credits against the TCPIA assessment for voluntary writings in the TCPIA area. Thus, the existence of the PPP does not alter the basic structure of the TCPIA, nor does the PPP change the fact that the stability of the TCPIA is essentially dependent on the overall stability of the insurance marketplace. This incentive may help an individual insurer, but it in no way undermines the effectiveness of the TCPIA or places the TCPIA in a position of being unable to function as intended by the legislature.

Comment: One commenter stated that the proposal could significantly reduce the likelihood of successfully addressing genuine insurance availability problems in inner city neighborhoods which may need a market assistance plan. When so many are considered "underserved", the truly underserved will be unlikely to benefit from the efforts of industry or the Department. Instead, according to the commenter, this unfocused proposed solution will beget a cynicism that will encourage gaming of the market assistance plan by consumers, agents, and insurers alike. The commenter stated that it is the commenter's view that the primary thrust of the enabling legislation was intended to address perceived inner-city availability problems in urban areas. According to the commenter, a more targeted program at the outset will enhance the effectiveness of the program for those most urgently in need of assistance.

Response: The Department has modified the rule as proposed to designate fewer ZIP codes covering less geographic area. The areas designated as Class 1 underserved areas include the inner city areas of the major cities (Houston, Dallas, Fort Worth, San Antonio, and Austin). Insurers are provided incentives under the PPP program for writing in Class 1 areas. Accordingly, nothing in the non-inner city designations should inhibit insurers from issuing insurance policies on eligible insurable property in the inner city areas. Also, if the designated underserved areas do not have availability problems, there will not be any MAP applicants in those areas, and hence no need for insurers to focus efforts in those areas. It is the Department's position that the legislature in enacting Articles 5.35-3 and 21.49-12 intended to provide a mechanism to address availability problems wherever those problems exist in the State of Texas, and not just in inner city urban areas. Based on the Department's analysis as set forth in the rule, the Department has determined that areas other than urban areas, such as rural and coastal areas also face availability problems and should be allowed to benefit from the two programs. The MAP Executive Committee recognized the need to address availability problems in both urban and rural areas of Texas, specifically indicating in the plan of operation that the purpose of the MAP is to provide assistance to both urban and rural areas in Texas where availability problems exist.

Comment: Two commenters expressed concern that starting a program this big could be a precursor for a mandatory MAP or FAIR Plan. One commenter stated that concern based on two reasons: (i) the more territories that are designated for MAP now, the more opportunity there is for a FAIR Plan to be designated, and (ii) the subjectivity of the methodology, such as designating all of Tarrant County when not all areas met the ratios test.

Response: The Department disagrees with the contention that the larger the designated underserved area, the greater the likelihood of implementation of a mandatory MAP or FAIR Plan. The Department believes the size of the designation is not related to the likelihood of movement to a mandatory MAP or FAIR Plan. If an area is underserved and there is demand for MAP services, it is the response of insurers to those MAP applications that will determine whether a mandatory MAP or FAIR Plan is needed. Indeed, if areas that, in fact, are adequately served, are incorrectly designated as underserved for MAP, then the Department would expect no demand for MAP services, because a consumer is not eligible for MAP services without two rejections for insurance. However, even assuming, and the Department does not agree with the assumption, that size of designated area is related to the likelihood of moving to mandatory MAP or FAIR Plan, logic would indicate the opposite conclusion from the concerns of the commenter. A smaller designation would likely target the most severely underserved areas – the areas with the most structures insurers are not inclined to write. A larger designation would include all the most severely underserved areas plus areas underserved to a lesser degree. It is reasonable to expect that more insurers would be willing to write policies in the less-than-most-severely- underserved areas than in the most-severely-underserved areas, thereby resulting in a greater percentage of MAP applications being written by participating insurers. This would have the effect of improving the effectiveness of MAP, measured as the percentage of policies issued to total eligible MAP applications, and making it less likely that the mandatory MAP or FAIR Plan will be needed. The Department disagrees that the methodology employed to designate underserved area is subjective. The rule describes in clear and precise terms exactly what factors were used and how those factors were considered. By using the factors and methodology specified in the rule, any interested person can replicate the results of the analysis. Thus, the methodology and assumptions employed by the Commissioner are very clear. Moreover, the Department made available to any interested person at the time of publication of the proposed rule the spreadsheet analysis supporting the proposed designations. In combination with the detailed explanation in the proposed rule, any interested person could identify and evaluate any and all assumptions and relationships in the original analysis. The Department specifically provided this information to allow interested parties to replicate the staff analysis and to modify the staff analysis based upon different assumptions. The strength of the process and the methodology is demonstrated by the Commissioner's acceptance of the argument that too much weight was given to the dwelling policy percentage factor. The methodology allowed the Commissioner to give less weight to this factor, while retaining the other factors. While commenters may disagree with certain of the Department's assumptions, factors or methodology, the Department disagrees that any of the methodology is subjective in the sense of being arbitrary. The Department has explained and justified each assumption, each factor and each part of the methodology used to designate underserved areas.

7. Appointment of Working Group

Comment: Three commenters stated that the proposal was so flawed that it should be withdrawn and reworked. Four other

commenters proposed substantial revision of the proposal with two of these proposing an alternative rule. Six of these seven commenters requested that an advisory group be appointed to work with staff to develop a new proposal. Two commenters recommended that the advisory group be appointed as part of the rule to aid in monitoring underserved areas. Three of the commenters offered to participate in or work with such an advisory group.

Response: The Department disagrees that the rule is so flawed that it should be withdrawn and reworked. It is the Department's position that it has made appropriate changes to the proposal to address the major concerns of the commenters. The MAP plan of operation, which was adopted pursuant to Commissioner's Order Number 96-0987 (August 28, 1997), specifies the procedures and methods of operation of the MAP. This plan of operation provides for the appointment of a subcommittee on data collection with responsibilities for (i) assisting in determining criteria for designating underserved areas, (ii) ongoing review and monitoring of underserved areas, and (iii) identifying and presenting recommendations to the MAP Executive Committee for consideration. The MAP Executive Committee will then present recommendations to the Commissioner for possible action. It is the Department's position that this subcommittee and the MAP Executive Committee, which are composed of consumer, agent, and insurer representatives, are the appropriate bodies to monitor and review the designated underserved areas and to present recommendations for any changes in these designations. Pursuant to the Administrative Procedure Act (Government Code, §2001.021) any interested person may petition the Department for changes in the underserved area designations.

8. Phased Implementation

Comment: Three commenters suggested that the Department phase in implementation of the MAP and PPP. One commenter suggested that the Department first implement the programs only in Class 1 areas. The Department disagrees. The Department believes there is a substantial difference in the structure, operation and targeted availability problem of the MAP and PPP. As such, it would be inappropriate to limit even the initial designations to only areas which are eligible for PPP and MAP. This proposal is particularly flawed because of the very limited areas designated as Class 1. The commenter stated that insurers will have difficulty managing resources to cover 22% of the state all at once. Limiting the initial implementation to Class 1 areas only would make the programs more manageable from a company's standpoint and would allow the Department and insurers to obtain experience with the program before expanding it. . The Department agrees with this comment to the extent that some insurers may have difficulty applying adequate resources at one time for all designated underserved areas for both PPP and MAP. In response to this comment, the Department has added a phase-in provision to the designations. Phase 1 targets the city of Dallas, Tarrant County, the city of San Antonio, the city of Houston and the southernmost area of Texas. Phase 2 targets the city of El Paso, the city of Austin, the sea coast area, the county of Newton and the north-central area of Texas. Phase 3 includes the remaining designated underserved areas – portions of south Texas, northeast Texas and central Texas. This commenter also suggested that the Department designate some areas as Class 3, which would be studied to determine whether or not the areas are underserved, and whether the methodology proposed by these rules accurately detects underserved areas. The Department disagrees. The commenter did not explain how Class 3 designation would differ from Class 1 or Class 2 designation. However, the Department does not believe it is reasonable to designate an areas as underserved, allow consumers to go through the process of purchasing a PPP policy or filing a MAP application and then telling the consumer that they cannot participate in the program – but their interest will be noted. Another commenter recommended that the Department first implement a pilot project to begin the MAP process in one significant underserved area. The commenter stated that such a pilot program would help insurers, agents, consumers and the Department identify and correct possible problems in the MAP before the program is used statewide, and thus improve the likelihood that the entire program will succeed. The Department disagrees that a pilot program is necessary or desirable. Because of the phase-in of designated underserved areas, the Department, insurers, agents, consumers and other interested parties will be able to identify and correct possible problems in the MAP in a timely fashion. Moreover, the MAP Exectutive Committee is committed to careful monitoring of the MAP program and, with the Commissioner, will take timely actions as necessary to correct any problems with the program. Thus, mechanisms are in place to address the concerns which the commenter suggests should be addressed through a pilot program. The third commenter suggested that the Department first implement the programs only in inner-city areas, where the perception of unavailability of coverage is the highest. The commenter suggested that such a phased-in approach would likely enhance voluntary participation by insurers, particularly if the Department based later expansion on more objective criteria than contained in the present proposal. The Department disagrees. The Department finds nothing in the statutory authority to designate areas as underserved for PPP and MAP to indicate that the legislature intended only inner-city urban areas receive such designation. The Department believes that criteria used to determine whether an area is underserved or potentially underserved are appropriately applied to all areas in Texas – rural and urban. The Department agrees that a phase-in designation may encourage more insurers to more effectively participate in the PPP and MAP and has modified the proposed rule accordingly. The Department disagrees that a phased-in designation is related to later expansion and/or other criteria used in the future to designate underserved areas for the purposes of PPP and MAP.

Response: The Department agrees that a phased in implementation of the MAP and PPP is desirable, so that insurers can avoid the potential difficulty of applying resources to all designated areas at one time. Accordingly, the Department has added a phase-in provision to the designations. Phase 1 targets the City of Dallas, Tarrant County, the City of San Antonio, the City of Houston and the southernmost area of Texas. Phase 2 targets the City of El Paso, the City of Austin, the sea coast area, the county of Newton and the north-central area of Texas. Phase 3 includes the remaining designated underserved areas – portions of south Texas, northeast Texas and central Texas. The Department disagrees that all Class 1 designations should be implemented before any Class 2 designa-

tions. The Department believes there is a substantial difference between MAP and PPP in the structure, operation and targeted availability problem addressed by the two programs. As such, it would be inappropriate to limit even the initial designations to only areas which are eligible for PPP and MAP. The commenter's proposal also does not take into account the logistics in training the same agent force to participate in both the MAP and PPP. Based on these logistics, the Department believes it is more logical to divide the state into regions which implement both programs at one time. The Department disagrees that it should add the Class 3 designation proposed by one of the commenters because the Department believes that the best means of addressing commenters' concerns about the areas as proposed is to phase in the Class 1 and Class 2 areas. However, the Department understands that the commenter wants the Department to implement the MAP and PPP in certain areas to test the accuracy of the Department's methodology, but to not include these "test" areas in the quarterly report required by subsection (g) of the adopted rules. The Department does not believe that this extra class of designation is necessary because the designations of underserved areas in the adopted rule will adequately measure the accuracy of the Department's methodology. If consumers in an area designated under the adopted rule do not apply in significant numbers to the MAP or PPP, the adopted rule allows the Commissioner to analyze that data, and, if appropriate, drop the area from the designated ZIP Codes. The Department also disagrees that a pilot program for the MAP is necessary or desirable. Because of the phase-in of designated underserved areas, the Department, insurers, agents, consumers and other interested parties will be afforded time to identify and correct possible problems in the MAP. Moreover, the MAP Executive Committee is committed to careful monitoring of the MAP program and, with the Commissioner, will take timely actions as necessary to correct any problems with the program. Thus, mechanisms are in place to address the concerns which the commenter suggests should be addressed through a pilot program. The Department also disagrees that it should first implement the MAP and PPP only in the inner cities. The Department finds nothing in the statutory authority to designate areas as underserved for PPP and MAP to indicate that the legislature intended that only inner-city urban areas receive such designation. The Department believes that criteria used to determine whether an area is underserved or potentially underserved are appropriately applied to all areas in Texas – rural and urban. However, the Department agrees generally that a phase-in of the programs may encourage more insurers to more effectively participate in the PPP and MAP, and, as previously described, the Department has modified the rule accordingly. The Department disagrees that a phased-in designation is related to later expansion and/or other criteria used in the future to designate underserved areas for the purposes of PPP and MAP. As explained in response to other comments, the Department disagrees that the methodology employed under the rules is arbitrary or subjective.

The new section is adopted pursuant to the Insurance Code, Articles 5.35-3, 21.49-12 and 1.03A, and the Government Code §§2001.004-2001.038. Article 5.35-3, §1(a) provides that by rule the Commissioner may determine and designate areas as underserved areas for residential property insurance. It further provides that in determining which areas will be designated as underserved, the Commissioner shall consider whether residential property insurance is not reasonably available to a substantial number of owners of insurable property in the underserved area and any other relevant factors as determined by the Commissioner. Article 21.49-12, §1(a) requires the Commissioner to establish a voluntary market assistance program to assist Texas consumers in obtaining residential property insurance coverage in underserved areas, which shall be determined and designated by the Commissioner by rule using the standards specified in Article 5.35-3, §1 of the Insurance Code. Article 1.03A authorizes the Commissioner of Insurance to adopt rules and regulations, which must be for general and uniform application, for the conduct and execution of the duties and functions of the Texas Department of Insurance only as authorized by a statute. The Government Code §§2001.004-2001.038 (Administrative Procedure Act) authorize and require each state agency to adopt rules of practice stating the nature and requirements of available formal and informal procedures and prescribe the procedures for adoption of rules by a state agency. The following statutes are affected by this adoption: Articles 5.35-3 and 21.49-12. §5.3700. Designation of Underserved Areas for Residential Property Insurance For Purposes of the Insurance Code, Articles 5.35-3 and 21.49-12

§5.3700. Designation of Underserved Areas for Residential Property Insurance For Purposes of the Insurance Code, Articles 5.35-3 and 21.49-12.

(a) Purpose and scope. The purpose of this section is to:

(1) designate the areas determined by the Commissioner of Insurance to be underserved areas for purposes of residential property insurance pursuant to the Insurance Code, Article 5.35-3 (Property Protection Program for Underserved Areas);

(2) designate the areas determined by the Commissioner of Insurance to be underserved areas for purposes of residential property insurance pursuant to the Insurance Code, Article 21.49-12 (Market Assistance Program); and

(3) identify the factors and methodology used in determining such underserved areas.

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

(1) Class 1 underserved area–An area determined and designated in this section as an underserved area by the Commissioner of Insurance for purposes of both the Property Protection Program operated pursuant to the Insurance Code, Article 5.35-3, and the Residential Property Insurance Market Assistance Program operated pursuant to the Insurance Code, Article 21.49-12. Policy forms and types of coverage that insurers may write in these areas are specified in subsections (b)(1) and (d)(2) of §5.10004 (MAP Policy Forms and Types of Coverage) of this title.

(2) Class 2 underserved area– An area determined and designated in this section as an underserved area by the Commissioner of Insurance for purposes of the Residential Property Insurance Market Assistance Program operated pursuant to the Insurance Code, Article 21.49-12. Policy forms and types of coverage that insurers may write in these areas are specified in subsections (b)(2) and (d)(3) of §5.10004 (MAP Policy Forms and Types of Coverage) of this title.

(3) Commissioner–Commissioner of Insurance of the State of Texas.

(4) Department–Texas Department of Insurance.

(5) Market Assistance Program–The residential property insurance market assistance program operated pursuant to Article 21.49-12 of the Insurance Code and §§5.10001-5.100015 (Plan of Operation) of this title.

(6) Property Protection Program–The residential property insurance program for underserved areas operated pursuant to Article 5.35-3 of the Insurance Code.

(c) Class 1 underserved areas.

(1) The following areas are designated as Class 1 underserved areas, effective October 15, 1996:
Figure 1: 28 TAC §5.3700(c)(1)

(2) The following areas are designated as Class 1 underserved areas, effective January 15, 1997:
Figure 2: 28 TAC §5.3700(c)(2)

(3) The following areas are designated as Class 1 underserved areas, effective April 15, 1997:
Figure 3: 28 TAC §5.3700(c)(3)

(d) Class 2 underserved areas.

(1) The following areas are designated as Class 2 underserved areas, effective October 15, 1996:
Figure 4: 28 TAC §5.3700(d)(1)

(2) The following areas are designated as Class 2 underserved areas, effective January 15, 1997:
Figure 5: 28 TAC §5.3700(d)(2)

(3) The following areas are designated as Class 2 underserved areas, effective April 15, 1997:
Figure 6: 28 TAC §5.3700(d)(3)

(e) Factors considered in designating Class 1 and Class 2 underserved areas. In determining the areas designated as underserved, the Commissioner shall consider whether residential property insurance is not reasonably available to a substantial number of owners of insurable property in a specific geographic area and any other relevant factors as determined by the Commissioner. The determination of the areas to be designated as underserved is based on the factors and methodology outlined in this subsection.

(1) There is no single comprehensive measure of whether residential property insurance is or is not reasonably available or is or is not potentially reasonably available to a substantial number of owners of insurable property either on a statewide basis or in any particular area of the state. Therefore, the Commissioner has identified characteristics of particular geographic areas which are likely to be associated with greater difficulty by consumers in obtaining residential property insurance. These characteristics were considered in addition to direct measures of residential property insurance availability (including the number of surplus lines policies as specified in paragraph (3)(F) of this subsection)..

(2) The Commissioner considered underwriting restrictions and requirements of insurers writing residential property insurance in Texas that would limit availability of residential property insurance coverages to a greater extent in some geographic areas than in others. Underwriting guidelines are the rules used by insurers to determine whether or not to sell an insurance policy to a particular consumer and what, if any, restrictions will be placed on the policy issued. Many underwriting guidelines have a differential geographic impact. These guidelines include weather-related loss exposure, type of dwelling, age of dwelling, minimum dwelling value, financial stability of consumers, employment status of consumers, length of continuous employment, occupation, and length of continuous residency.

(3) Based upon the review of insurer underwriting guidelines and the Commissioner's authorization under Article 5.35-3 and the Commissioner's mandate under Article 21.49-12 to establish programs to increase the availability of residential property insurance in designated underserved areas as well as the structure and methods of operation of the two programs, specific factors for analysis by ZIP Code area or county were developed, and points were assigned to each of the factors. If the factor for a specific ZIP Code indicated actual or potential difficulty for consumers in obtaining residential property insurance, the ZIP Code was assigned one point. If the factor for a specific ZIP Code indicated especially significant actual or potential difficulty for consumers in obtaining residential property insurance, the ZIP Code was assigned two points. ZIP Codes not receiving one or two points received zero points for the specific factor. The specific factors and the points assigned are as follows:

(A) Low median household income. Underwriting guidelines related to financial, employment and residential stability and credit histories will likely affect consumers in areas with lower-income to a greater extent than consumers in other areas. Therefore, ZIP Codes with median household incomes of $16,000 or less are assigned one point, except that because of higher median incomes in Harris, Dallas, and Tarrant Counties, ZIP Codes in these counties with median household incomes of $18,000 or less are assigned one point.

(B) Low median value of owner-occupied homes. Underwriting guidelines relating to minimum coverage requirements will likely affect consumers in areas with lower median housing values to a greater extent than consumers in other areas. ZIP Codes with median value of owner-occupied dwellings of $30,000 or less are assigned one point, except that because of higher underwriting standards in Harris, Dallas, Tarrant, and Travis counties, ZIP Codes in these counties with median values of owner-occupied dwellings of $40,000 or less are assigned one point.

(C) Older median age of homes. Underwriting guidelines relating to age of dwelling will likely affect consumers in areas with older median housing age to a greater extent than consumers in other areas. ZIP Codes with a median year built of 1957 or earlier are assigned one point.

(D) High percentage of dwelling to homeowners policies. The consideration of this factor is based on the premise that a high percentage of dwelling to homeowners policies in an area is a possible indicator that insurers are restricting their writing of homeowners policies. A high percentage of dwelling policies may indicate that insurers are issuing dwelling policies even if the homeowners policy could be issued, when the coverage amount was less than the insurer was willing to issue or the perceived risks were such that the insurer wanted to reduce exposure by writing a less comprehensive coverage. Also, because consumers purchasing homeowners coverages generally have more choices than consumers purchasing dwelling coverages, the increased coverage choices available through the Property Protection Program will likely

have a greater impact in areas with higher percentages of dwelling policies to total policies. Because the statewide percentage of dwelling policies to total dwelling plus homeowners policies is about 20%, ZIP Codes with percentages of dwelling policies to total dwelling plus homeowners policies of more than 50% are assigned one point.

(E) High theft losses per policy. The consideration of this factor is based on the premise that because of insurers' perception of high theft losses in certain areas, insurers are reluctant to sell policies which include theft coverage. Consumers in high theft areas, therefore, have less availability of all kinds of coverages. The Property Protection Program allows policies to be sold without theft coverage, thereby creating the potential for greater availability in areas with high theft losses. Because the statewide average theft loss per residential property policy is approximately $70, ZIP Codes with a three-year average (1993-1995) of $125 or more theft losses per policy are assigned one point, while ZIP Codes with an average of $150 of theft losses in each of the three years are assigned two points.

(F) The number of surplus lines policies. By definition, consumers who have obtained residential property insurance coverage through a surplus lines, or non-admitted, carrier have been denied coverage in the admitted market. Based on a sample of 1994 and 1995 surplus lines policies representing about 75% of the total surplus lines residential property insurance writings in Texas, the statewide average of surplus lines policies to total dwelling and homeowners policies is about 1%. Because surplus lines data is available by county and not by ZIP Code, ZIP Codes in counties with surplus lines percentages of 2% to 4% are assigned one point, while ZIP Codes in counties with surplus lines percentage of over 4% are assigned two points.

(4) Based on the factors and points specified in paragraph (3) of this subsection, the number of points assigned were totaled by ZIP Code. Areas with three or more points were identified as the most underserved or potentially most underserved and generally designated as Class 1 underserved areas. Areas with two points were identified as underserved or potentially underserved and generally designated as Class 2 underserved areas. Generally, areas with zero or one point were not designated as underserved areas. The designated areas resulting from these general rules are modified for four reasons:

(A) First, areas with two points are generally designated as Class 2 underserved areas if the areas were geographically contiguous with other areas of two or more points to promote geographically contiguous underserved areas. Geographically isolated ZIP Codes with two or more points are not designated as Class 2 or Class 1 underserved areas to avoid identifying a random result as an underserved area. In addition, groupings of ZIP Codes with two or more points but with very few policies are not designated as Class 2 or Class 1 underserved areas to enable insurers participating in the MAP and PPP to dedicate their initial commitment of resources to underserved areas with the greatest potential impact. (B) Second, certain areas with zero or one point are designated as Class 2 underserved areas because of additional information available to the Department regarding availability problems in certain areas. This additional information included the testimony presented at public hearings held by the Commissioner for the purpose of soliciting comments from consumers, agents, insurers and other interested parties on residential property insurance availability problems. The February 8, 1996, hearing in Arlington, Texas identified severe restrictions in residential property insurance writings by insurers in Dallas and Tarrant counties. The Department's review of underwriting guidelines that was done as preparation for the Arlington hearing, which included the insurers' plans for writing residential property insurance in Tarrant County and the City of Dallas, confirmed the geographically-targeted restrictions in Tarrant County and the City of Dallas. Therefore, zero and one point areas in Tarrant County and the City of Dallas are designated as Class 2 underserved areas because of severe restrictions imposed by insurers on new and existing business in those areas.

(C) Third, certain areas with two points, which are geographically contiguous with areas of three or more points, are designated as Class 1 underserved areas in Harris and Bexar counties and Bexar counties to create a geographically contiguous area of eligibility for the Property Protection Program.

(D) Fourth, certain areas in the City of Dallas with three or more points are designated as Class 2 underserved areas to test for the effectiveness of the Market Assistance Program alone in addressing insurance availability problems, especially in comparison to the underserved areas in Harris County which consist solely of Class 1 designations.

(f) Changes in Class 1 and Class 2 designations. Any changes in Class 1 or Class 2 designations may be adopted at any time by amending this section pursuant to the Government Code, §§2001.004-2001.038 (Administrative Procedure Act).

(g) Quarterly report. The Department shall, upon request, provide a quarterly listing of the number of residential property insurance policies in force by type of policy by company by ZIP code or the number of residential property insurance policies written by type of policy by company by ZIP code. The availability of this information will enable insurers and the public to monitor the effectiveness of the Property Protection Program and the Market Assistance Program in improving the availability of residential property insurance.

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.

Issued in Austin, Texas, on September 24, 1996.

TRD-9614016
Caroline Scott
General Counsel and Chief Clerk
Texas Department of Insurance
Effective date October 15, 1996
Proposal publication date: August 6, 1996
For further information, please call: (512) 463–6327

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Chapter 7. Corporate and Financial Regulation

Subchapter A. Examination and Corporate Custodian and Tax

28 TAC §7.18

The Commissioner of Insurance adopts an amendment to §7.18, concerning the Accounting Practices and Procedures manuals published by the National Association of Insurance Commissioners (NAIC), with changes to the proposed text as

published in the June 11, 1996, issue of the *Texas Register* (21 TexReg 5238). A public hearing on the proposed amendment was requested by an association with 25 or more members and was held on September 11, 1996.

The adopted section is necessary to comply with Texas Insurance Code, Article 1.27, which requires the commissioner to approve any standard of the NAIC before the department can require an insurer to comply with such standard. The amendment to the section is also necessary to comply with 1 Texas Administrative Code §91.41(c), which requires a state agency to include the date of the document to be adopted by reference. The amendment updates the adoption by reference of the NAIC's Accounting Practices and Procedures Manual for Life, Accident and Health Insurance Companies for revisions made from October, 1994 through January, 1996 and the NAIC's Accounting Practices and Procedures Manual for Property and Casualty Companies for revisions made from October, 1994 through October, 1995. The NAIC's Accounting Practices and Procedures Manual for Health Maintenance Organizations (June, 1991), which is also adopted by reference by this section, has not been changed since its adoption by reference on July 13, 1995. The Commissioner did not adopt two of the changes to the NAIC's Accounting Practices and Procedures Manual for Life, Accident and Health Insurance Companies that were proposed in the amendment. Appendixes A and B of Chapter 24, Reinsurance, of the NAIC's Accounting Practices and Procedures Manual for Life, Accident and Health Insurance Companies are not included in the update of the adoption by reference of this manual. This change to the proposed amendment is effected by adding a new paragraph (3) to subsection (c) of this section.

These manuals are used by the department in the regulation of the financial condition of insurers that do business in Texas. The amendment is adopted to modify the Accounting Practices and Procedures manuals currently adopted by rule, and to provide notice and opportunity for hearing to insurers and other interested parties of certain changes in statutory accounting standards. Since the adoption by reference of the NAIC's Accounting Practices and Procedures Manual for Life, Accident and Health Insurance Companies effective July 13, 1995, the NAIC made substantive revisions or additions to the manual concerning the accounting treatment of "Dollar Repurchase Agreements," "Reverse Mortgages," "State Guarantee Association Promissory Notes," and "Reinsurance." The commissioner did not adopt Appendixes A and B of Chapter 24, Reinsurance, since that matter is dealt with in §7.28 of this Title (relating to Regulation of Accounting for Reinsurance Agreements by Life, Accident and Health, and Annuity Insurers). Since the adoption by reference of the NAIC's Accounting Practices and Procedures Manual for Property and Casualty Companies effective July 13, 1995, the NAIC made substantive revisions or additions to the manual concerning "Dollar Repurchase Agreements," "Reverse Mortgages," "Loss Adjustment Expenses," "Unearned Premium - single or fixed premium policies with coverage periods in excess of 13 months," "Loss Adjustment Expenses Incurred," and "Reinsurance."

A commenter stated that the adoption of the accounting manuals by reference violated the intent of Insurance Code, Article 1.27. The commenter stated that Article 1.27 prohibits the Commissioner from adopting any NAIC standard unless the application of the standard is expressly authorized by statute. The agency disagrees with the comment. Article 1.27 states "The department may not require an insurer to comply with any rule, regulation, directive or standard adopted by the National Association of Insurance Commissioners unless application of the rule, regulation directive or standard including policy reserves, is expressly authorized by statute and approved by the commissioner." The agency is complying with Article 1.27 by adopting the section under the statutes cited herein which authorize the commissioner to adopt the accounting standards contained in this section and following the procedures in Texas Government Code, §§2001.021-2001.0038 which include an order by the commissioner adopting the rule.

The Insurance Alliance of America commented against the amendment to the section.

The amendment is adopted under the Insurance Code, Articles 1.03A, 1.27, 1.32, 3.10, 5.75-1, 21.39, and 21.49-1. The Insurance Code, Article 1.03A, provides the commissioner with the authorization to adopt rules and regulations for the conduct and execution of the duties and functions by the department only as authorized by a statute. Article 1.27 provides that the department may not require an insurer to comply with any rule, regulation, directive or standard adopted by the National Association of Insurance Commissioners unless the application of the rule, regulation, directive or standard is expressly authorized by statute and approved by the commissioner. Such authority exists in the other statutes cited herein. Article 1.32 authorizes the commissioner to fix standards for evaluating the financial condition of an insurer. Articles 3.10 and 5.75-1 authorize the commissioner to adopt rules relating to accounting and financial statement requirements of reinsurance agreements between insurers. Article 21.28-A authorizes the commissioner to adopt rules concerning the rehabilitation of insurers. Article 21.39 authorizes the commissioner to adopt each current formula for establishing reserves recommended by the NAIC. Article 21.49-1 authorizes the commissioner to adopt rules to carry out the provisions of the Insurance Holding Company System Regulatory Act.

§7.18. National Association of Insurance Commissioners Accounting Practices and Procedures Manuals.

(a) (No change.)

(b) The commissioner adopts by reference the NAIC Accounting Practices and Procedures manuals as the accounting standard for the department when examining financial reports and for conducting statutory examinations and rehabilitations of insurers licensed in Texas, except where otherwise provided by law or where the commissioner has adopted rules which provide otherwise. Specifically, these manuals are the NAIC Accounting Practices and Procedures Manual for Life, Accident and Health Insurance Companies (January, 1996), the NAIC Accounting Practices and Procedures Manual for Property and Casualty Companies (October, 1995), and the NAIC Accounting Practices and Procedures Manual for Health Maintenance Organizations (June, 1991). Whenever any NAIC Accounting Practices and Procedures manual is referred to by statute or rule, it shall mean the particular NAIC Accounting Practices and Procedures manual (as specified in this subsection by name and publication date) for the type of insurance regulated by the statute or rule in question.

(c) The following exceptions are made to the NAIC Accounting Practices and Procedures Manual for Life, Accident and Health Insurance Companies:

(1)-(2) (No changes.)

(3) Chapter 24, Reinsurance, Appendixes A and B, are not adopted by reference. The subject matter therein is covered under §7.28 of this title (relating to Regulation of Accounting for Reinsurance Agreements by Life, Accident and Health, and Annuity Insurers).

(d)-(e) (No changes.)

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.

Issued in Austin, Texas, on September 26, 1996.

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Caroline Scott
General Counsel and Chief Clerk
Texas Department of Insurance
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Proposal publication date: June 11, 1996
For further information, please call: (512) 463–6327

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TITLE 30. ENVIRONMENTAL QUALITY

Part I. Texas Natural Resource Conservation Commission

Chapter 122. Federal Operating Permits

Subchapter F. General Operating Permits

Available General Operating Permits

30 TAC §§122.511-122.515

The commission adopts new §§122.511-122.515, concerning the requirements for specific general operating permits, with changes to the proposed text as published in the June 4, 1996, issue of the *Texas Register* (21 TexReg 4955). The changes, in part, reflect the use of new terminology in referring to the General Permits as General Operating Permits in the subchapter title, undesignated head title, titles of the adopted five sections, and within each of these five sections.

New §122.511, concerning Oil and Gas General Operating Permit-Brazoria, Chambers, Collin, Dallas, Denton, El Paso, Fort Bend, Galveston, Hardin, Harris, Jefferson, Liberty, Montgomery, Orange, Tarrant, and Waller Counties, provides sites subject to 30 TAC Chapter 122 which are located in these counties the authority to operate under this General Operating Permit, provided that the units meet the Qualification Criteria listed in subsection (a) of this section. General Provisions that the owner or operator must comply with are listed in subsection (b) of this section. The requirements for each site subject to 30 TAC Chapter 122 which apply on a unit-specific basis for purposes of these General Operating Permits are listed in subsection (c) of this new section.

Since the rule proposal, several qualification criteria have been revised or added to §122.511(a). These revisions or additions are based on comments received during the General Operating Permit comment period and corrections deemed necessary by the commission. The qualification criteria for tanks, storage vessels, or containers; boilers and steam generators; process vents; and stationary gas turbines are among the qualification criteria that were revised. A new qualification criteria stating that process heaters and furnaces shall only be fired with natural gas fuel was added.

In addition, several general provisions have been revised or added to §122.511(b). Revised general provisions include those for the risk management plan, Title VI protection of stratospheric ozone, and custom fuel monitoring schedules. New general provisions for the sulfur feed rate of sweetening units, the recordkeeping for stationary gas turbines claiming an exemption in Title 40, Code of Federal Regulations, Part 60 (40 CFR 60) in 40 CFR, §60.332, preconstruction authorizations, and fugitive emission control for §§115.352-115.359 are among the provisions which have been added.

The permit tables in §122.511(c) were also revised, added, or deleted. The permit table for process heaters and furnaces was deleted, since liquid fuel firing is now not allowed by the qualification criteria. This permit table deletion necessitated the renumbering of each subsequent figure number and index number in the permit tables in this subsection. Descriptive titles were added to each of the permit tables to aid in their use by the regulated community. Liquid fuel firing references were deleted in the boiler and steam generator permit table. Other changes to the permit tables include additional text to provide clarity, along with corrections of typographical errors and misrepresented applicable requirements.

New §122.512, concerning Oil and Gas General Operating Permit-Gregg, Nueces, and Victoria Counties, provides sites subject to 30 TAC Chapter 122 which are located in these counties the authority to operate under this General Operating Permit, provided that the units meet the Qualification Criteria listed in subsection (a) of this section. General Provisions that the owner or operator must comply with are listed in subsection (b) of this section. The requirements for each site subject to 30 TAC Chapter 122 which apply on a unit-specific basis for purposes of these General Operating Permits are listed in subsection (c) of this new section.

Several qualification criteria have been revised, added, or deleted in §122.512(a). The qualification criteria for tanks, storage vessels, or containers; boilers and steam generators; process vents; and stationary gas turbines are among the qualification criteria that were revised. A new qualification criteria stating that process heaters and furnaces shall only be fired with natural gas fuel was added. The qualification criteria relating to §§115.541-115.546 was deleted.

In addition, several general provisions have been revised or added to §122.512(b). Revised general provisions include those for the risk management plan, Title VI protection of stratospheric ozone, and custom fuel monitoring schedules. New general provisions for the sulfur feed rate of sweetening units, the recordkeeping for stationary gas turbines claiming an ex-

emption in 40 CFR, §60.332, and preconstruction authorizations are among the general provisions that were added.

The permit tables of §122.512(c) were also revised, added, or deleted. The permit table for process heaters and furnaces was deleted since liquid fuel firing is now not allowed by the qualification criteria. This permit table deletion necessitated the renumbering of each subsequent figure number and index number in the permit tables of this subsection. Descriptive titles were added to each of the permit tables to aid in their use by the regulated community. Liquid fuel firing references were deleted in the boiler and steam generator permit table. Other changes to the permit tables include additional text to provide clarity, along with corrections of typographical errors and misrepresented applicable requirements.

New §122.513, concerning Oil and Gas General Operating Permit-Aransas, Bexar, Calhoun, Matagorda, San Patricio, and Travis Counties, provides sites subject to 30 TAC Chapter 122 which are located in these counties the authority to operate under this General Operating Permit, provided that the units meet the Qualification Criteria listed in subsection (a) of this section. General Provisions that the owner or operator must comply with are listed in subsection (b) of this section. The requirements for each site subject to 30 TAC Chapter 122 which apply on a unit-specific basis for purposes of these General Operating Permits are listed in subsection (c) of this new section.

Several qualification criteria have been revised, added, or deleted in §122.513(a). The qualification criteria for tanks, storage vessels, or containers; boilers and steam generators; process vents; and stationary gas turbines are among the qualification criteria that were revised. A new qualification criteria stating that process heaters and furnaces shall only be fired with natural gas fuel was added. The qualification criteria relating to §§115.541-115.546 was deleted.

In addition, several general provisions have been revised or added to §122.513(b). Revised general provisions include those for the risk management plan, Title VI protection of stratospheric ozone, and custom fuel monitoring schedules. New general provisions for the sulfur feed rate of sweetening units, the recordkeeping for stationary gas turbines claiming an exemption in 40 CFR, §60.332, and preconstruction authorizations are among the general provisions that were added.

The permit tables of §122.513(c) were also revised, added, or deleted. The permit table for process heaters and furnaces was deleted, since liquid fuel firing is now not allowed by the qualification criteria. This permit table deletion necessitated the renumbering of each subsequent figure number and index number in the permit tables of this subsection. Descriptive titles were added to each of the permit tables to aid in their use by the regulated community. Liquid fuel firing references were deleted in the boiler and steam generator permit table. Other changes to the permit tables include additional text to provide clarity, along with corrections of typographical errors and misrepresented applicable requirements.

New §122.514, concerning Oil and Gas General Operating Permit-All Texas Counties Except for Aransas, Bexar, Brazoria, Calhoun, Chambers, Collin, Dallas, Denton, El Paso, Fort Bend, Galveston, Gregg, Hardin, Harris, Jefferson, Liberty, Matagorda, Montgomery, Nueces, Orange, San Patricio, Tarrant, Travis, Victoria, and Waller Counties, provides sites subject to 30 TAC Chapter 122 which are located in these counties the authority to operate under this General Operating Permit, provided that the units meet the Qualification Criteria listed in subsection (a) of this section. General Provisions that the owner or operator must comply with are listed in subsection (b) of this section. The requirements for each site subject to 30 TAC Chapter 122 which apply on a unit-specific basis for purposes of these General Operating Permits are listed in subsection (c) of this new section.

Several qualification criteria have been revised, added, or deleted in §122.514(a). The qualification criteria for tanks, storage vessels, or containers; boilers and steam generators; process vents; and stationary gas turbines are among the qualification criteria that were revised. A new qualification criteria stating that process heaters and furnaces shall only be fired with natural gas fuel was added.

In addition, several general provisions have been revised or added to §122.514(b). Revised general provisions include those for the risk management plan, Title VI protection of stratospheric ozone, and custom fuel monitoring schedules. New general provisions for the sulfur feed rate of sweetening units, the recordkeeping for stationary gas turbines claiming an exemption in 40 CFR, §60.332, and preconstruction authorizations are among the general provisions that were added.

The permit tables of §122.514(c) were revised, added, or deleted. The permit table for process heaters and furnaces was deleted, since liquid fuel firing is now not allowed by the qualification criteria. This permit table deletion necessitated the renumbering of each subsequent figure number and index number in the permit tables of this section. Descriptive titles were added to each of the permit tables to aid in their use by the regulated community. Liquid fuel firing references were deleted in the boiler and steam generator permit table. Other changes to the permit tables include additional text to provide clarity, along with corrections of typographical errors and misrepresented applicable requirements.

New §122.515, concerning Bulk Fuel Storage Terminal General Operating Permit, provides sites subject to 30 TAC Chapter 122 the authority to operate under this General Operating Permit, provided that the units meet the Qualification Criteria listed in subsection (a) of this section. General Provisions that the owner or operator must comply with are listed in subsection (b) of this section. The requirements for each site subject to 30 TAC Chapter 122 which apply on a unit-specific basis for purposes of these General Operating Permits are listed in subsection (c) of this new section.

A new qualification criteria for stationary vents (similar to the qualification criteria in §§122.511-122.514 was added in conjunction with the addition of the stationary vent permit tables in §122.515(c).

Several general provisions have been revised in §122.515(b). Revised general provisions include those for the risk management plan, Title VI protection of stratospheric ozone, and compliance with all applicable requirements.

The permit tables of §122.515(c) were revised and added. Descriptive titles were added to each of the permit tables to aid in their use by the regulated community. Three permit tables addressing stationary vents were added. Other changes to the permit tables include additional text to provide clarity, along with corrections of typographical errors and misrepresented applicable requirements.

Emission units with requirements not codified in the General Operating Permit, other than National Emissions Standard for Hazardous Air Pollutants (NESHAP) for Source Categories (Title 40, Code of Federal Regulations, Part 63 (40 CFR 63)), will require another type of federal operating permit (either a Site Operating Permit or a Temporary Operating Permit). The remaining emission units at the site can apply for and receive authorization to operate under a General Operating Permit.

Currently, the NESHAP for Bulk Gasoline Terminals and Pipeline Breakout Stations (40 CFR 63, Subpart R) is the only 40 CFR 63 subpart that applies to units that may be authorized to operate under these General Operating Permits. Specifically, the requirements of this subpart potentially affect only sources applying for authorization to operate under the General Operating Permit in §122.515. However, the proposed §122.515 did not codify the requirements of 40 CFR 63, Subpart R because, at the time of proposal, the United States Environmental Protection Agency (EPA) has not delegated 40 CFR 63, Subpart R to the commission for enforcement. Therefore, 40 CFR 63, Subpart R is currently a requirement that is federally enforceable only by the Administrator of the EPA. The omission of the 40 CFR 63, Subpart R requirement from §122.515 does not preclude an owner or operator of a unit from applying to be authorized to operate that unit under this General Operating Permit. Additionally, the omission of this subpart does not relieve the owner or operator from having to comply with the requirements of 40 CFR 63, Subpart R. The commission expects to receive delegation of 40 CFR 63, Subpart R in the future. A General Operating Permit will then be developed to codify the requirements of this regulation. Owners or operators who have received authorization to operate under the General Operating Permit for §122.515 should then apply for this new permit if they are affected by 40 CFR 63, Subpart R. The commission anticipates handling other 40 CFR 63 requirements in the same manner.

The following 32 issues have been reviewed by the commission for the purposes of developing official interpretations of applicable rules. The final determinations presented have been utilized to develop the Qualification Criteria, General Provisions, and Permit Tables in each of the General Operating Permits, and were based on the analysis of testimony and the continuing review of these determinations by the commission during the public comment period. In the case of determinations involving federal standards, the commission has utilized available guidance from the EPA.

1. Determination of applicability of Title 30, Texas Administrative Code, Chapter 115 (30 TAC Chapter 115) in §115.342 versus §115.352 for volatile organic compound (VOC) fugitive emission controls at natural gas/gasoline processing plants.

The commission determines that currently, sources have the option of complying with either the "old" rules (§§115.342-115.349) or the "new" rules (§§115.352-115.359) until November 15, 1996. After November 15, 1996, sources will be required to comply with both the "old" rules (unless they are repealed by November 15, 1996) and the "new" rules. However, the commission determines that after November 15, 1996, compliance with the "new" rules (§§115.352-115.359) is deemed compliance with the "old" rules (§§115.342-115.349) in accordance with §122.145(e).

2. Determination of applicability of nitrogen oxides (NO_x) monitoring requirements under 40 CFR 60, Subpart GG when exempted from NO_x emission standards of Subpart GG.

Note: this request was clarified to the applicable requirements (i.e., monitoring, recordkeeping, testing, and reporting) in 40 CFR, §60.334 and 40 CFR, §60.335 for NO_x emissions when claiming an exemption under 40 CFR, §60.332.

The commission determines that there are monitoring, recordkeeping, testing, and reporting requirements associated with NO_x emissions (or nitrogen content in the fuel) when claiming the exemptions stated 40 CFR, §60.332(e), (g), (h), (i), (j), or (l). The commission is making a stringency determination in accordance with §122.145(e) that if an owner and/or operator maintains records to prove the unit's exemption status, the unit is deemed in compliance with the applicable monitoring, recordkeeping, testing, and reporting requirements associated with NO_x emissions (or nitrogen content in the fuel).

When claiming the exemption unit's stated in 40 CFR, §60.332(f), the facility shall comply with the reporting requirement stated in 40 CFR, §60.334(c)(3). When claiming the exemption stated in 40 CFR, §60.332(k), the facility shall comply with the reporting requirement stated in 40 CFR, §60.334(c)(4). Affects the permit table in §122.511(c)(1).

3. Determination of applicability of §115.126(a)(2) and (b)(2) when complying with §115.126(a)(3) and (b)(3).

The commission determines that §115.126(a)(3) or (b)(3) contain recordkeeping requirements which may be followed instead of §115.126(a)(2) or (b)(2) for sources with emission rates and concentrations below 50% of applicable exemption limits. Affects the permit tables in §122.511(c)(13) and §122.512(c)(12).

4. Determination of whether a "depressurization of a compressor" would trigger applicability of §§115.121-115.129, relating to the undesignated head Vent Gas Control in 30 TAC Chapter 115.

The commission determines that if depressurization of a compressor is done for start-ups, shutdowns, or maintenance, and in accordance with §101.11, the depressurization would be exempt from §§115.121-115.125. Notification is submitted through the appropriate Texas Natural Resource Conservation Commission regional office and to local air pollution control agencies. Affects the permit tables in §§122.511(c)(13); 122.512(12); and 122.513(c)(12).

5. Determination of whether a flare may be considered a direct-flame incinerator.

The commission determines that a flare is not considered to be a direct-flame incinerator. Demonstration of compliance requirements for flares are identified in 30 TAC Chapter 111 in §111.111(a)(1) relating to Visible Emissions, 30 TAC Chapter

115, and 40 CFR 60, Subpart A in §60.18. Affects the permit tables in §§122.511(c)(4), (13), (16), and (17); 122.512(c)(4), (12), (14), and (15); and 122.515(c)(4), (5), (10), (11), (13), and (14).

6. Determination of any applicable monitoring, testing, recordkeeping, and reporting requirements when claiming any exemptions in §115.137(b)(1), (2), and (4).

Note: this request was clarified to include the same request for §115.137(b)(3).

The commission determines that sources exempted from §115.137(b)(1), (2), and (4) would have to comply with the monitoring and recordkeeping requirements of §115.136(b)(1) and (4). There are no testing or reporting requirements when claiming those exemptions. Sources exempted from §115.137(b)(3) would have to comply with the monitoring, testing, and recordkeeping requirements of §115.135(b)(5) and §115.136(b)(1), (3), and (4). There are no reporting requirements when claiming this exemption. Affects the permit tables in §122.512(c)(15) and §122.515(c)(14).

7. Determination of any applicable monitoring and recordkeeping requirements in §115.136 when claiming the exemptions in §115.137(a)(3) and (c)(4).

The commission determines that VOC water separators claiming the exemption in §115.137(a)(3) are subject to the recordkeeping requirements of §115.136(a)(1) and (4). For VOC water separators claiming the exemption in §115.137(c)(4), there are no recordkeeping requirements. Affects the permit tables in §§122.511(c)(17); 122.513(c)(15); and 122.515(c)(13) and (15).

8. Determination of applicability of §115.112(a)(2)(F) and §115.114(a) for internal floating roof tanks with secondary seals.

The commission determines that in accordance with the tables shown in §115.112, when an internal floating roof is required to comply with §115.112(a)(1), a secondary seal is not required for compliance. Therefore, since the secondary seal is not required, the facility is not required to comply with §115.112(a)(2)(F). The facility is required to comply with §115.114(a)(1) only with respect to the internal floating roof and the primary seal requirements. Affects the permit table in §122.515(c)(4).

9. Determination of applicability of §115.116(a) and (b)(1) when claiming the exemptions in §115.117(a) and (b)(1).

The commission determines that the monitoring and recordkeeping requirements of §115.116(a)(1) and (b)(1) both mandate that the exempted sources maintain records for the type of VOC stored and the average monthly true vapor pressure of the stored liquid. This includes sources which meet the exemption, but contain liquids with true vapor pressures greater than 1.0 pounds per square inch absolute. Affects the permit tables in §§122.511(c)(4); 122.512(c)(4); and 122.515(c)(4) and (5).

10. Determination of applicability of secondary seal requirements for external floating roof tanks storing waxy, high pour point crude oil.

The commission determines that if a storage tank meets the exemption in §115.117(a)(5) for external floating roof tanks storing waxy, high pour point crude oil and the compound in the storage tank is not changed to a non-exempt compound, the storage tank would not be required to have a secondary seal of any kind. Affects the permit table in §122.515(c)(4) and (5).

11. Determination of whether "gun barrels" should be classified as tanks or VOC water separators.

The commission determines that gun barrels should be considered as water separators and are subject to the water separation rules stated in §§115.131-115.139. In rare situations, a gun barrel may perform the storage of VOC containing liquids. If a gun barrel is used in this manner, then it should be considered a storage tank or container and would then be subject to the Storage of VOC rules stated in §§115.112-115.119. Affects the permit tables in §§122.511(c)(4) and (17); 122.512(c)(4) and (15); 122.513(c)(4) and (15); and 122.515(c)(13), (14), and (15).

12. Determination of applicability of §111.111(a)(1)(B) for vents with multiple sources.

The commission determines that a stationary vent with multiple sources of which at least *one* source was constructed after January 31, 1972, the vent is subject to §111.111(a)(1)(B). If *all* of the sources routed to the vent were constructed on or before January 31, 1972, then the vent is subject to §111.111(a)(1)(A). Please note that a vent could be subject to §111.111(a)(1)(C) based upon the flowrate. Affects the permit table in §122.511(c)(12).

13. Determination of applicability of §115.214(a)(3) when claiming the exemption in §115.217(a)(5).

The commission determines that §115.214(a)(3) is applicable whenever the exemption under §115.217(a)(5) is also applicable. Affects the permit table in §122.515(c)(4).

14. Determination of the definition of a VOC process vent for use in determining the applicability of §§115.121-115.129, relating to the undesignated head Vent Gas Control.

The commission determines that if a vent originates from or is associated with an operation that can be defined as a process, then it is a "process vent." Examples of process vents in the oil and gas industry would include any vent originating from or associated with oil/gas processing or treatment equipment. This could include, but is not limited to, vent streams from glycol dehydrators, wastewater treatment equipment, or any other equipment containing VOCs such as crude oil or natural gas with non-methane, non-ethane components. Affects the permit tables in §§122.511(c)(13); 122.512(c)(12); 122.513(c)(12); and 122.515(c)(18), (19), and (20).

15. Determination of whether a vent on a VOC water separator should be considered a VOC process vent for purposes of determining applicability of 30 TAC Chapter 115.

The commission determines that emissions from VOC water separators are subject to the Water Separation rules stated in §§115.131-115.139 and are not subject to the Vent Gas Rules stated in §§115.121-115.129. If a VOC water separator is exempted from the Water Separation rules, it is not subject to the Vent Gas Control rules. Affects the permit tables in §§122.511(c)(13); 122.512(c)(12); and 122.513(c)(12).

16. Determination of the requirements (including 30 TAC Chapter 111) for flares used only for emergencies and/or upsets.

The commission determines that there are no requirements in Chapter 111 that are applicable to flares used *only* during emergency or upset conditions. Affects the permit table in §122.511(c)(12) and §122.515(c)(8).

17. Determination of whether the alternative standards in 40 CFR, §60.483-1 and §60.483-2 are allowed for all valves, or only for valves in gas/vapor or light liquid service.

The commission determines that unless the EPA has determined that some other emissions limitation is equivalent to §60.482-8 pursuant to §60.482-1 and §60.484, valves in heavy liquid service are always required to comply with §60.482-8, and that in general, the provisions of §60.483-1 or §60.483-2 may not be substituted for the standards in §60.482-8, except where the standards are identical. (Both §60.482-8 and §60.483 use the same Method 21 procedure for monitoring and the same time limits for leak repairs. They only differ in that no systematic Method 21 monitoring is required for §60.482-8, unless a leak becomes apparent.) In summary, unless the EPA has granted an equivalency determination for some other form of control, whenever it is noticed that a valve in heavy liquid service is potentially leaking, the valve must be monitored and repaired (if necessary), as outlined in §60.482-8. A facility may not delay the monitoring/repair until the next scheduled monitoring period as would be permitted by §60.483 unless EPA has approved the §60.483 standards as equivalent to §60.482-8. Affects the permit table in §122.511(c)(6).

18. Determination of the requirements under 40 CFR 60, Subpart LLL for gas sweetening units with a design capacity of greater than or equal to 2.0 long tons per day (LTPD), but less than 2.0 LTPD *actual* sulfur feed rate.

The commission determines that any unit regardless of design capacity which commenced construction or modification after January 20, 1984, has to comply with 40 CFR 60, Subpart LLL. Units with a design capacity $\geq$ 2.0 LTPD must comply with applicable monitoring, testing, recordkeeping, and reporting requirements stated in 40 CFR 60, Subpart LLL. Subpart LLL does not differentiate according to operating capacity, and exemptions from control requirements are based upon design capacity. Tables 1 and 2 in §60.642 are to be utilized to determine the minimum sulfur dioxide (SO_2) emission reduction efficiency, and these tables deal only with units that have a sulfur feed rate $\geq$ 2.0 LTPD. Hence, it is not feasible to calculate the efficiency for units with actual operating capacity <2.0 LTPD from these tables. For facilities that have a design capacity $\geq$ 2.0 LTPD, but have an actual feed rate of <2.0 LTPD, there exists two alternative methods for demonstrating compliance with Subpart LLL. The first method requires a facility to limit its sulfur feed rate in a Title V federal operating permit and make this limit federally enforceable. Sulfur feed rates shall be *monitored* and *recorded monthly* to demonstrate that the unit is operating at <2.0 LTPD. The second method requires an owner or operator to physically change the design capacity of the gas sweetening unit to <2.0 LTPD (e.g., putting a flow restrictor into the inlet of the gas sweetening unit) and demonstrate that their new design capacity is <2.0 LTPD. In this case, the only requirement will be §60.647(c); there will be no other monitoring or recordkeeping requirements. Affects the permit table in §122.511(c)(5).

19. Determination of whether water injection and steam injection are considered different NO_x control methods under 40 CFR 60, Subpart GG, or if the terms are used interchangeably.

The commission determines that the use of the terms "water injection" and "steam injection" can be considered to be interchangeable in the regulations and have the same meaning. Affects the permit table in §122.511(c)(1).

20. Determination of the meaning of the exemption stated in 40 CFR 60, Subpart GG in §60.332(j).

The commission determines that when this regulation was promulgated in 1977, it did not cover non-utility stationary gas turbines greater than 100 million British thermal units per hour (MMBtu/hr). Section 60.332(j) was added to Subpart GG on January 27, 1982, as a result of an industry petition for a proposal to reconsider NO_x limits on large stationary gas turbines. This proposal resulted in an amendment (adding new §60.332(j)) which specifically exempted units from the NO_x emission limits stated in §60.332(a) for all units that were constructed, modified, or reconstructed during the period from October 3, 1977 to January 27, 1982 AND were required in the September 10, 1979, issue of the *Federal Register* (44 FR 52792) to comply with §60.332(a)(1). Affects the permit table in §122.511(c)(1).

21. Determination of whether an incinerator may be defined as a furnace, and under what circumstances. Title 30, Texas Administrative Code, Chapter 112 (30 TAC Chapter 112) impacts.

General Operating Permit rules have been revised to exclude furnaces burning liquid fuel and as a result, this question became irrelevant for the purpose of General Operating Permits rulemaking. However, the commission will resolve this issue at a later date through the commission's Rule Interpretation Team established by the commission to address these kinds of issues.

22. Determination of any other NO_x requirements (e.g., monitoring, testing, etc.) or sulfur dioxide requirements for turbines in which 40 CFR 60, Subpart GG applies, but are exempt from a NO_x standard in §60.332(a).

Note: This issue was clarified and combined with issue number 2. Affects the permit table in §122.511(c)(1).

23. Determination of the definition of a natural gas processing plant as it relates to 40 CFR 60, Subpart KKK.

The interpretation is withdrawn. The commission is reconsidering the use of the phrase "natural gas processing plant" and of the term "extraction" to clarify how 40 CFR 60, Subpart KKK applies to emission units associated with the natural gas production industry.

24. Determination of applicability of §112.7 when combusting a sulfur recovery unit's waste gas stream.

The commission determines that §112.7 would still apply when combusting a waste gas stream from the sulfur recovery unit. Affects the permit table in §122.511(c)(11).

25. Determination of whether gas sweetening units located in marshes or bays are considered a part of the territorial seas or not for purposes of determining 40 CFR 60, Subpart LLL applicability.

The commission determines that 40 CFR 60, §60.640 and §60.641 specify that Subpart LLL applies to all facilities not located in the territorial seas or outer continental shelf; therefore, units located landward of the territorial seas baseline *would* be subject to the regulation. In other words, facilities located inland of "the low-water line along the coast" would be subject to Subpart LLL. This would apply to units located in marshes or on wetlands. Generally, units located on the landward side of the "line joining the low-water marks of its natural entrance points" of bays would also be subject to regulation under Subpart LLL. Units located seaward of this line would be considered to be located in the territorial seas and would thus be exempt from this Subpart. Applicability of Subpart LLL to specific units located on or near bays can be ascertained by examining navigation charts to determine the exact location of the territorial seas baseline. Therefore, if the unit is located seaward of the baseline, it would be exempt from Subpart LLL, and if it is landward, it would *not* be exempt. Units located more than nine nautical miles from the coast would also be exempt. Affects the permit tables in §122.511(c)(5) and (10).

26. Determination of whether a glycol dehydrator firebox that burns reboiler exhaust can be considered both a process heater and a control device.

Note: this request was clarified to determine if a glycol dehydrator reboiler which fires with liquid fuel; and routes its still vent emissions (which contain VOCs such as benzene, toluene, ethyl benzene, xylene, etc.) back to its firebox is considered both a control device for purposes of meeting 30 TAC Chapter 115 Vent Gas Control requirements AND a process heater with SO_2 requirements.

The commission determines that the glycol dehydrator reboiler which uses its still vent emissions along with liquid fuel to fire its firebox can be considered both a process heater and a control device and is subject to §112.2 (Compliance, Reporting, and Recordkeeping), §112.9 (Allowable Emission Rates-Combustion of Liquid Fuel), and §§115.121-115.129 (Vent Gas Control). Affects the permit tables in §§122.511(c)(13), 122.512(c)(12), and 122.513(c)(12).

27. Determination of whether the construction date described in 40 CFR 60, Subpart GG in §60.330(b) is the manufactured date of the turbine or the installation of the turbine at the site.

The commission determines that per §60.330(b), October 3, 1977, refers to the date which construction, modification, or reconstruction of a stationary gas turbine commenced. Commenced means that an owner or operator has undertaken a continuous program of construction or modification or has entered into a contractual obligation to undertake and complete, within a reasonable time, a continuous program of construction or modification. The staff consulted with the EPA staff from the EPA regional office in Dallas (EPA Region 6). The EPA staff concurred with this interpretation, and further indicated that the commencement date also refers to the date when a construction contract or purchase order (a contractual obligation) is signed by the affected parties.

For the purpose of determining the applicability of 40 CFR 60, Subpart GG, the construction date is interpreted to mean the earlier of either: the fabrication, erection, or installation of an affected facility; or the date upon which a contractual obligation, such as a construction contract or a purchase order, is entered into by both affected parties. Per EPA's comments, dated July 18, 1996, on the General Operating Permits rule proposal, the date of manufacture is usually not used for defining the "construction" date for determining the applicability date of Subpart GG. The exception is when a manufacturer puts his own gas turbine into use. The manufacturer can then be defined as a Subpart GG owner or operator, as long as the turbine manufacture date is past the Subpart GG applicability date and all other Subpart GG applicability criteria have been met. Regarding installation, it is important to note that §60.14(e)(6) states that the relocation of an existing facility shall not, by itself, be considered a modification. Affects the permit table in §122.511(c)(1).

28. Determination of applicability of §115.116(a)(1) and (b)(1) for external floating roof tanks not required by 30 TAC Chapter 115 to install control devices.

Note: this request was clarified to determine if a tank equipped with an external floating roof by choice (i.e., not required by 30 TAC Chapter 115) which also meets the criteria in §115.116(a)(1) or (b)(1) (i.e., meets the secondary seal exemption), is required to keep the records stated in those two citations.

The commission determines that the recordkeeping requirements of §115.116(a)(1) and (b)(1) would not be applicable for a VOC, which is not required to be stored in a tank with a floating roof to meet the emission control requirements of §115.112, but is equipped with an external floating roof by choice. If a liquid VOC is placed in such a tank, which has a better emission control system than required by §115.112, relating to Control Requirements, the recordkeeping requirements are determined by the applicable control system required for the liquid, as stated in §115.112, and not by the control system installed on the tank. Affects the permit tables in §122.515(c)(4) and (5).

29. Determination of applicability of §112.9(b) when (c) applies.

The commission determines that since §112.9(b) is not listed as a paragraph under §112.9(a), it carries the same weight as all other subsections. Thus, it should be applied to all of the standards listed within §112.9, including §112.9(c). Affects the permit table in §122.511(c)(11).

30. Determination of applicability of §115.114(b)(2)-(4) for tanks with external floating roofs not required to have secondary seals.

The commission determines that secondary seal inspection rules are not applicable for the category of tanks in question because there is no requirement for having secondary seals. Affects the permit table in §122.515(c)(5).

31. Determination of the meaning of the phrase "as appropriate" in the testing citations in §111.111(a)(1)(F), (7)(B), and (8)(B).

The commission determines that the phrase "as appropriate" means that the owner or operator of an affected source can use any of the listed test methods to show compliance with

the requirements, depending on whichever test method is applicable for that particular source. Affects the permit table in §122.511(c)(12).

32. Determination of the applicability of the surface coating requirements in 30 TAC Chapter 115 to maintenance painting activities and the coating of miscellaneous metal parts and products.

The commission determines that surface coating operations performed on in-place and on-site equipments are classified as "maintenance coating" operations, and are not subject to the surface coating regulations in 30 TAC Chapter 115. The commission also determines that if the surface coating operations are performed at a central location, like an on-site building, then the coating operations cannot be classified as "maintenance coating" operations. Therefore, the miscellaneous parts coating, performed at an on-site maintenance building, is subject to the surface coating regulations in 30 TAC Chapter 115. Does not affect any table, since this is a site-wide provision.

Five additional issues were also brought to the attention of the commission in order to clarify the applicability of the regulatory requirements. The issues and their final determinations are as follows.

33. Citation 40 CFR, §60.115b(b) makes a reference to citation Title 40, Code of Federal Regulations, Part 61 (40 CFR 61) in §61.112b(a)(2) for control devices. Should the reference be §60.112b(a)(2)?

The commission determines that citation 40 CFR, §60.115b(b) makes reference to citation 40 CFR, §61.112b(a)(2) for control devices. The reference should be 40 CFR, §60.112b(a)(2).

34. Citation 40 CFR, §60.115b(a)(4) makes a reference to 40 CFR, §61.112b(a)(1) for control devices. Should the reference be 40 CFR, §60.112b(a)(1)?

The commission determines that citation 40 CFR, §60.115b(a)(4) makes reference to citation 40 CFR, §61.112b(a)(1) for control devices. The reference should be 40 CFR, §60.112b(a)(1).

35. Citation 40 CFR, §60.334(c)(3) makes a reference to the ice fog exemption in 40 CFR, §60.332(g). Should the reference be 40 CFR, §60.332(f)?

The commission determines that citation 40 CFR, §60.334(f)(1) makes reference to the ice fog exemption in 40 CFR, §60.332(g). The reference should be 40 CFR, §60.332(f).

36. Citation 40 CFR, §60.335(f)(1) makes a reference to the equation in 40 CFR, §60.335(b)(1). Should the reference be 40 CFR, §60.335(c)(1)?

The commission determines that citation 40 CFR, §60.335(f)(1) makes reference to the equation in 40 CFR, §60.335(b)(1). The reference should be 40 CFR, §60.335(c)(1).

37. Determination as to whether the "non-dedicated loading lines" that are referenced in §115.217(a)(10)(D) pertain *only* to marine terminals, or to *any* non-dedicated loading line.

The commission determines that the "non-dedicated loading lines" referenced in §115.217(a)(10)(D) pertain *only* to marine terminals, and not to just any non-dedicated loading lines.

The commission has prepared a Takings Impact Assessment for these rules pursuant to Texas Government Code, §2007.043. The purpose of this rulemaking is to provide affected persons with an alternate permitting mechanism to achieve compliance with 30 TAC Chapter 122. These rules will substantially advance this specific purpose because they will codify the General Operating Permits which may be used by the applicants who are required to submit an operating permit. The promulgation and enforcement of these rules will not burden private real property, and this rulemaking proposal is also an exempt action pursuant to Texas Government Code, §2007.003(b)(4), since the commission is fulfilling its requirement to implement a federal mandate (Title V of the 1990 Federal Clean Air Act Amendments).

A total of five interested parties submitted written testimony on the proposal. Texas Mid-Continent Oil and Gas Association (TMOGA) strongly supported the intent of the proposed revisions, but suggested changes and clarifications. The Association of Texas Intrastate Natural Gas Pipelines and the Gas Processors Association (ATINGP/GPA) supported the intent of the proposed revisions and also voiced support of TMOGA's comments. The United States Environmental Protection Agency (EPA) submitted comments on the proposal and items of concern that it suggested be addressed in the public record, but did not indicate support or opposition to the proposal. Natural Gas Pipeline of America (NGPA) requested an extension of the public comment period, but did not indicate support or opposition to the proposal. An individual suggested changes to the underlying requirements codified in the General Operating Permits, mainly in the interest of helping ozone nonattainment areas reach attainment status. In addition to the written comments, one interested party submitted oral testimony for an option to the requirement of using certified opacity readers at a site to determine compliance with opacity limits.

The comments and their responses are divided into seven sections to provide some structure for the analysis of testimony.

Comments in General. An individual requested the use of Method 22 under certain conditions as an acceptable alternative to using Method 9.

At present, there is no allowance in Chapter 111 for this proposed option as made by the commenter. Other than the continuous opacity monitor and Light Detection and Ranging methods as allowed to determine compliance for §111.111(a)(1)(A), (B), and (C), only Test Method 9 or an alternative that has been approved by both the executive director of the commission and the Administrator of the EPA are the current options available to sources affected by §111.111 in order to determine compliance. An approval of a §111.111(a)(1)(F) request by the executive director of the commission may entail either case-by-case determinations, which are not suitable for inclusion in the General Operating Permits, or source category specific determinations (e.g., natural gas fired engines and gas turbines) which may be included in the General Operating Permits at a later date through a separate rulemaking. Another approach would be to amend §111.111(a)(1)(F) to allow for this proposal, which would then require a separate rulemaking for General Operating Permits to implement this newly promulgated requirement. The presence of visible emissions does not necessarily mean that the process is in an upset condition, as the commenter

proposes. Although this is frequently true, it may not always be a correct presumption in all possible cases. Therefore, the commission cannot accept this proposal at this time during this rulemaking.

In additional background information submitted by the commenter, the commenter is correct in saying that the existing applicable requirements that are being codified in the General Operating Permits do not require a source-supplied certified observer to be on-site. In the past, it has been the commission's burden to determine noncompliance, and not the owner's or operator's of the source to determine compliance with the applicable requirements. However, compliance with opacity requirements contained in §111.111(a)(1) will require an initial and ongoing demonstration of compliance to be performed using one of the methods listed in §111.111(a)(1)(F) by the owner or operator of the source affected by the Texas Federal Operating Permits Program.

The Association of Texas Intrastate Natural Gas Pipelines and the Gas Processors Association (ATINGP/GPA) supported the commission's efforts in lessening operating permits' requirements for interim program sources, and supported the comments of the Texas Mid-Continent Oil and Gas Association (TMOGA).

The commission acknowledges the support of the TMOGA comments declared by these two trade associations.

It is the EPA's position that Minor New Source Review (MNSR) is an applicable requirement. While the exclusion of certain MNSR provisions may be allowed under interim approval of the program, the State will be required to revise the program as specified in the June 25, 1996, *Federal Register* notice. At that time, each of the general operating permits will need to be revised to include MNSR as an applicable requirement.

The commission is continuing to work with EPA on resolution of this issue and will address the MNSR requirements for approval of the full program.

Since past noncompliance may be discovered by the applicant during the application process, EPA requested that the State clarify, for the public record, that past noncompliance should be rectified.

All emission units shall be in compliance with their applicable requirements at the time of application as per the qualification criteria in subsection (a)(3) of each proposed General Operating Permit.

EPA requested that the commission add a provision to the general operating permit conditions that requires the permittee to reapply for the general operating permit every five years, as per §70.6(d).

The commission is continuing to work with EPA on resolution of this issue and will address the General Operating Permit five-year renewal requirements for approval of the full program.

EPA stated that pursuant to §70.6(a)(3) and §122.145(b)(2), periodic monitoring requirements need to be required where there are no monitoring or periodic testing requirements currently in existence.

The commission is continuing to work with EPA on resolution of this issue and will address the periodic monitoring requirements for approval of the full program. Until the commission adopts, through rulemaking, a version of Title 40, Code of Federal Regulations, Part 64 (the Compliance Assurance Monitoring rule), the applicant will use the monitoring, testing, recordkeeping, and reporting requirements contained in the applicable requirements for the individual unit and will use good engineering practice to maintain the site and equipment in good working order and operating properly during normal facility operations to meet the periodic monitoring requirements of 30 TAC Chapter 122.

TMOGA stated that it is a trade association representing all segments of the oil and gas industry in Texas. TMOGA has more than 2,000 members, including 50 of the state's largest energy companies. Its members account for more than 90% of all oil and gas production in Texas and for approximately 95% of the refining capacity in Texas. TMOGA added that it appreciates the opportunity to comment.

The commission acknowledges the position that TMOGA has in its representation of a significant number of sources affected by the Texas Title V Federal Operating Permits Program.

TMOGA strongly supported the promulgation of these permits and TNRCC's efforts in developing them in a timely manner with industry input.

The commission appreciates the opportunity to work with TMOGA and realizes the importance of the benefit that the General Operating Permits will play in the regulated community's ability to comply with the Texas Interim Federal Operating Permits Program.

TMOGA believes that this general permit incorporates all Title V applicable requirements (except as otherwise noted in these comments) and requested the following clarification from the TNRCC. Does TNRCC intend for noncompliance with an unintentional omission to be a Title V violation? If so, industry proposed that the proper remedy would be to revise the general permit(s) to incorporate unintentional omissions as expeditiously as possible. While noncompliance with an applicable requirement cannot be exempt from enforcement by the agency, noncompliance with unintentional omissions should not be considered a Title V violation and carry Title V penalties.

In order to obtain and maintain authorization for a site to operate, all applicable requirements must be codified in an operating permit. (If the General Operating Permit does not include all applicable requirements against a unit(s), that unit(s) shall be required to apply to be covered by another federal operating permit.)

Sections 122.231 and 122.233 also address situations in which the permit may be reopened and the procedures that reopening must follow if there were any new applicable requirements that become applicable, if there was a material mistake in the permit, or if there were inaccurate statements made in establishing the emissions standards or other terms and conditions of the permit. If there are any omissions of applicable requirements from the General Operating Permit, the commission will work expeditiously to codify these missing requirements.

TMOGA stated that neither the preamble nor the permits themselves address the applicability of these permits to sites

located in state waters under the jurisdiction of TNRCC. Absent any information to the contrary, industry assumes that these permits will be applicable to those sites and requested TNRCC to confirm this in the response to comments.

The commission agrees with the comment. The commission's position is that major sources of emissions that lie in the territorial waters of the State of Texas are subject to the requirements of 30 TAC Chapter 122. In addition, major sources in State waters are subject to the same qualification criteria as any other major source requesting authority to operate under a General Operating Permit.

TMOGA stated that these permits are proposed for promulgation in a new Subchapter F in 30 TAC Chapter 122, as permits by rule. Chapter 122, in §122.202(b), refers to a General Permit List which shall be filed in the Secretary of State's Office. This situation is somewhat akin to the treatment of the current standard exemption list. Chapter 122 does not appear to anticipate permits by rule. Absent a clear linkage, industry is concerned that these permits will have no clear legal meaning because they do not–on their face–state that they are the alternatives to site operating permits described in §122.202. Industry requested that the commission address, in the response to comments, its understanding of the legal meaning of these permits.

The commission has legal authority to issue General Operating Permits. Qualifications for a General Operating Permit must satisfy the requirements for site operating permits and are, therefore, a suitable and acceptable alternative and satisfy the requirement to operate with a Title V permit implemented through 30 TAC Chapter 122.

Natural Gas Pipeline of America (NGPA) requested an extension of the comment period due to the complexity of the proposed rule.

Industry has been integrally involved throughout the development of the General Operating Permits. Additional time for the comment period was already included in the setting of the July 19, 1996, close of comment period deadline, and any delays in the adoption of the rule proposal would not be beneficial for the agency or the regulated community. The request is respectfully denied as a result.

Comments on the Preamble's Interpretations. EPA confirmed that the following preliminary determinations made by the commission are acceptable: issue numbers 1, 2, 3, 6, 8, 9, 10, 11, 13, 14, 15, 16, 17, 19, 20, 22, 25, 26, 28, 29, 30, 31, and 32.

The commission appreciates the opportunity to clarify these issues with the assistance of EPA input.

EPA stated that the preliminary determination for issue number 4 by the commission is acceptable, as long as the depressurization of the compressor really is an infrequent maintenance activity.

The commission agrees with the commenter. If depressurization of a compressor is done for start-up, shutdown, or maintenance purposes in accordance with §101.7, the depressurization would be exempt from §§115.121-115.125. Notification is submitted through the appropriate TNRCC regional office and to local air pollution control agencies (as applicable).

EPA stated that for the preliminary determination for issue number 5, a typical flare, as described, would not be a direct-flame incinerator.

The final determination has been modified to address EPA's comments.

EPA stated that the preliminary determination for issue number 7 is acceptable, except that the exemptions listed in §115.137(a)(3) and (c)(4) have not yet been approved by the EPA. EPA intends to approve these regulations by the end of 1997.

The commission is aware that these citations have not been approved as part of the State Implementation Plan (SIP). The commission will retain the codification of the exemptions in the General Operating Permits with the understanding that the EPA may not approve the exemptions as part of the SIP.

EPA requested that the commission clarify that for issue number 12, sources which have an exhaust gas flow rate greater than 100,000 actual cubic feet per minute (acfm) are subject to §111.111(a)(1)(C).

The sources that are subject to §111.111(a)(1)(C) which have exhaust gas flowrates greater than 100,000 acfm have the applicable requirements codified for them in §§122.511(c)(10), 122.512(c)(9), 122.513(c)(9), 122.514(c)(8), and 122.515(c)(8). These permit tables list the §111.111(a)(1)(C) requirements.

EPA stated that the preliminary determination for issue number 18 is not in accordance with 40 CFR 60, Subpart LLL, specifically §60.640(b). EPA declared that the owner or operator of such a source would still be required to meet the sulfur dioxide reduction efficiencies listed in §60.642(a) and (b).

The commission agrees with the EPA's comments. The final determination has been modified to address EPA's concerns. Any unit, regardless of design capacity, which commenced construction or modification after January 20, 1984, has to comply with 40 CFR 60, Subpart LLL per the rule language in §60.640(a). Units with a design capacity $\geq$ 2.0 long tons per day LTPD shall comply with applicable monitoring, testing, recordkeeping, and reporting requirements stated in Subpart LLL. Subpart LLL does not differentiate according to operating capacity, and exemptions from control requirements are based upon design capacity.

Certification requirements are identified in §60.647(c). However, the rule discusses certification requirements for units with design capacity <2.0 LTPD, not for units that are operating with a capacity of <2.0 LTPD. Units with a design capacity of $\geq$ 2.0 LTPD, but operating with a capacity of <2.0 LTPD, must comply with applicable monitoring, testing, recordkeeping, and reporting requirements stated in Subpart LLL. However, the facility may establish a federally enforceable operating capacity by one of the following two options.

Option 1. The facility may limit its sulfur feed rate in a Title V federal operating permit and make this limit federally enforceable. There will be monitoring and recordkeeping requirements placed into the permit to ensure compliance with the federally enforceable sulfur feed rate.

Option 2. An owner or operator may physically change the design capacity of a gas sweetening to <2.0 LTPD (e.g., putting a flow restrictor into the inlet of the gas sweetening unit) and demonstrate that the new design capacity is <2.0 LTPD. In that case, the only requirement will be §60.647(c) and there will be no other monitoring or recordkeeping requirements.

For issue number 21, EPA questioned if the exemption should only be available for those incinerators which are not associated with any of the units regulated by Chapter 112. Even if not, EPA asked if the incinerator should be subject to §112.3 and §112.4 for net ground level effects.

The final determination addresses EPA's comment. Please refer to the final determination for issue number 21 for further clarification. In addition, net ground level effects are not applicable requirements for the Texas Federal Operating Permits Program as defined in §122.10, and would not need to be codified in the General Operating Permit.

For issue number 23, EPA stated that the preliminary determination is not in accordance with 40 CFR 60, Subpart KKK, specifically §60.630 and §60.631. EPA declared that the applicability of natural gas liquid extraction facilities located at an onshore natural gas processing plant subject to Subpart KKK is not dependent on the location, as long as the extraction facilities are located "onshore" as defined in §60.631.

The commission is in the process of developing a clear interpretation and has taken the comment into evaluation for this topic.

EPA questioned if the preliminary determination for issue number 24 contradicted issue number 21, and asked if these units are exempt from Chapter 112 in the determination for issue number 21.

Based upon the final determination for issue number 21 (addressing whether an incinerator may be defined as a furnace and under what circumstances), the determination for issue number 24 (pertaining to the determination of the applicability of §112.7 when combusting a sulfur recovery unit's waste gas stream) does not contradict the determination for issue number 21.

EPA stated that the preliminary determination for issue number 27 is acceptable. However, EPA stated that a clarification of the construction date is needed and provided guidance on this issue. EPA also provided guidance concerning 40 CFR 60, Subpart GG as it relates to gas turbine manufacturers.

The commission agrees with the comment. The final determination has been revised based on EPA's comments on the General Operating Permits rulemaking. Per §60.330(b) of Subpart GG, the date October 3, 1977, refers to the date which construction, modification, or reconstruction of a stationary gas turbine commenced.

Commenced means that an owner or operator has undertaken a continuous program of construction or modification or have entered into a contractual obligation to undertake and complete, within a reasonable time, a continuous program of construction or modification. The commission consulted with the staff from EPA Region 6. The EPA concurred with this interpretation, and further indicated that the commencement date also refers to the date when a construction contract or purchase order (a contractual obligation) is signed by the affected parties.

For the purpose of determining the applicability of Subpart GG, the construction date is interpreted to mean the earlier of: the fabrication, erection, or installation of an affected facility; or the date upon which a contractual obligation, such as a construction contract or a purchase order, is entered into by both affected parties.

Per EPA's comment on the General Operating Permits rule proposal, the date of manufacture is usually not used for defining the "construction" date for determining the applicability date of Subpart GG. The exception concerning gas turbine manufacturers that EPA mentioned is not relevant to this rulemaking, because gas turbine manufacturers are not allowed to use General Operating Permits.

TMOGA commented that interpretation number 4 is too narrowly focused. The blowdown of compressors was not the only activity of concern that industry representatives noted during work sessions to develop these general permits. TMOGA suggested language to revise the interpretation.

The final interpretation only addressed the issue of compressor depressurization. A broad request of this nature is difficult to answer with specific guidance, and generalities would only cause confusion in the regulated community; therefore, case-by-case determinations on issues concerning maintenance or upset condition activities must be made individually. If TMOGA would like an interpretation of applicability for other *specific* activities which occur during maintenance or upset conditions, it may make a request to the commission to address these kinds of issues.

TMOGA commented that interpretation number 5 does not appear to answer the question posed of whether rules that apply to incinerators apply to flares. Industry proposed that the rules should be interpreted such that a flare is not a direct flame incinerator and is not subject to the rules that apply to incinerators.

The final determination agrees with TMOGA's comment. Please refer to the final determination for issue number 5.

TMOGA commented that for interpretation number 18, while industry agrees with the interpretation proposed, a conversation with Jonathan York of EPA on June 3, 1996 (Attachment #1 of TMOGA's comments) indicates that, in addition to the requirements codified in §122.511(c)(5), the owner or operator must certify a lower capacity for the unit if the unit cannot be operated at design capacity. It is highly unlikely that the unit can be operated at design capacity, since the reason for bypassing the sulfur unit that the supply of sour natural gas (which determines the actual sulfur feed rate) is insufficient due to declining gas production or market cutbacks. Therefore, industry recommended that the general permit be revised to include a requirement for recertification in the general provision section in §§122.511-122.514 and industry suggested wording.

Industry recommended citing 40 CFR §60.647(c), since it outlines the requirements for certifying. Since 40 CFR §60.647(c) does not directly apply to this situation (it addresses situations where the original *intended* design capacity is less than 2.0 long tons per day), it is recommended that this citation not be

included in the table at §122.511(c)(5), but rather in the general provision section of the permit.

The commission understands the basis for the TMOGA comment, but disagrees with the requested change. Any unit, regardless of design capacity, which commenced construction or modification after January 20, 1984, has to comply with 40 CFR 60, Subpart LLL per the rule language in §60.640(a). Units with a design capacity ≥ 2.0 LTPD shall comply with applicable monitoring, testing, recordkeeping, and reporting requirements stated in Subpart LLL. Subpart LLL does not differentiate according to operating capacity, and exemptions from control requirements are based upon design capacity.

Certification requirements are identified in §60.647(c). However, the rule discusses certification requirements for units with design capacity <2.0 LTPD, not for units that are operating with a capacity of <2.0 LTPD. Units with a design capacity of ≥ 2.0 LTPD but operating with a capacity of <2.0 LTPD, must comply with applicable monitoring, testing, recordkeeping, and reporting requirements stated in Subpart LLL. However, the facility may establish a federally enforceable operating capacity by one of the following two options.

Option 1. The facility may limit its sulfur feed rate in a Title V federal operating permit and make this limit federally enforceable. There will be monitoring and recordkeeping requirements placed into the permit to ensure compliance with the federally enforceable sulfur feed rate.

Option 2. An owner or operator may physically change the design capacity of a gas sweetening to <2.0 LTPD (e.g., putting a flow restrictor into the inlet of the gas sweetening unit) and demonstrate that the new design capacity is <2.0 LTPD. In that case, the only requirement will be §60.647(c) and there will be no other monitoring or recordkeeping requirements.

TMOGA commented that for interpretation number 20, based on the preamble to the EPA final rule regarding New Source Performance Standards (NSPS) for turbines, industry believes that the interpretation presented should be modified to read, "Pipeline turbines located in a Metropolitan Statistical Area and all industrial turbines with heat inputs...." The qualifier "located in a Metropolitan Statistical Area" applies only to pipeline turbines, not to all industrial turbines. At 47 FR 3767, EPA says, "The proposed revision...would have rescinded the NO_x emission limit...for: industrial gas turbines having a heat input greater than 107.2 gigajoules per hour (100 million BTU/hr or approximately 7.5 MW); and pipeline gas turbines in metropolitan areas with a heat input greater than 107.2 gigajoules per hour."

Industry respectfully requested that the interpretation and the permit tables in §§122.511(c)(1), 122.512(c)(1), 122.513(c)(1), and 122.514(c)(1) be revised accordingly.

The commission understands the basis for the TMOGA comment; the final determination has been worded to clarify the preliminary determination, and the permit tables have been revised accordingly.

TMOGA commented that for interpretation number 23, 40 CFR 60, Subpart KKK, defines a natural gas processing plant (gas plant) as "any processing site engaged in the extraction of natural gas liquids from field gas, fractionation of mixed natural gas liquids to natural gas products, or both." Proposed rule interpretation number 23 broadens the Subpart KKK definition of a gas plant so that it could be read to include facilities that are not gas plants.

Proposed rule interpretation number 23 would include in the definition "those sites which remove natural gas liquids from feedstock gas or that separate mixed gas liquids into gas products." The interpretation attempts to clarify that production sites engaged in extraction of liquids without fractionation are not gas plants; however, the interpretation uses terms not in Subpart KKK (such as removal and separation), and uses some terms differently (such as excluding facilities that "extract without fractionation"). The TNRCC interpretation should conform to, not conflict with, Subpart KKK.

A review of the preamble to Subpart KKK shows that EPA chose to define natural gas processing as extraction and/or fractionation of natural gas liquids. Proposed Subpart KKK defined natural gas processing as "separation," but the agency changed this term to "extraction" in the final regulations in order "to exclude facilities that remove liquids from field gas by means other than a forced process (e.g., gravity or natural condensation)." As additional support, the TNRCC bulletin board contains prior rule interpretations, including one dated June 25, 1985, from Sam Crowther that states "please do not regard an oil and gas production separator or a tank battery as a gas processing plant subject to Subpart KKK."

The correct rule interpretation is that a natural gas processing plant as it relates to 40 CFR 60, Subpart KKK is any processing site engaged in the extraction of natural liquids from field gas, fractionation of mixed natural gas liquids to natural gas products, or both, and excludes facilities that remove liquids from field gas by means other than a forced process (e.g., excludes gravity or natural condensation).

The commission is in the process of developing a clear interpretation and has taken the comment into evaluation for this topic.

TMOGA commented that interpretation number 26 infers that unapproved alternative means of compliance might be permitted in the General Operating Permit. Such an action is specifically precluded under the Qualification Criteria in subsection (a)(2) of each of the five proposed permits. However, alternative control methods for vent gas control are allowed by §115.123 and do not require Executive Director approval if they meet the required efficiency criteria specified in §115.122. Therefore, TMOGA suggested that this interpretation should be revised.

The commission agrees with the comment. The final determination has incorporated this clarification and refers to the Vent Gas Control rules in §§115.121-115.129, which include the alternative control requirements of §115.123.

TMOGA commented that it disagrees with interpretation number 27, since it suggests that a turbine which predates NSPS and is relocated ("installed on-site") but not modified, could become subject to NSPS. This conflicts with 40 CFR §60.14(e)(6), which states that "the relocation or change in ownership of an existing facility" shall not, by itself be considered a modification and therefore subject to NSPS. In addition, EPA issued an opinion dated April 15, 1980, by Edward E. Reich (Attachment #2 of

TMOGA's comments) in response to the following question: "At what point in time will NSPS regulations apply to sources such as prefabricated internal combustion engines, where the source, after being manufactured, may lie on the shelf before being bought and used"?

EPA's response was: "...the initial owner/operator is considered to be the original manufacturer, since it is the manufacturer rather than the ultimate user who is responsible for construction of the engines. The regulation will apply to internal combustion engines for which construction commences on or after the effective date of the regulations."

The only exception to this interpretation of which TMOGA is aware is an EPA interpretation issued April 4, 1978 by Edward E. Reich (Attachment #3 of TMOGA's comments), which states that 40 CFR §60.2(i) allows for the situation in which an owner or operator has entered into a contractual obligation to undertake and complete, within a reasonable time, a continuous program of construction or modification. If the source was constructed after the applicable date of the regulations, but under a contract which commenced prior to that date, the source is not subject to the regulation provided that the primary purpose of the contract was not to circumvent the applicability of NSPS. While the commission's interpretation attempts to capture this exception, TMOGA recommended that it be clarified. Industry respectfully requested that the interpretation be reworded.

The commission disagrees with the comment. The final determination has been revised based on EPA's comments on the General Operating Permits rulemaking. Per §60.330(b) of Subpart GG, the date October 3, 1977, refers to the date which construction, modification, or reconstruction of a stationary gas turbine commenced.

Commenced means that an owner or operator has undertaken a continuous program of construction or modification or has entered into a contractual obligation to undertake and complete, within a reasonable time, a continuous program of construction or modification. The commission consulted with the staff from EPA Region 6. The EPA concurred with this interpretation, and further indicated that the commencement date also refers to the date when a construction contract or purchase order (a contractual obligation) is signed by the affected parties.

For the purpose of determining the applicability of Subpart GG, the construction date is interpreted to mean the earlier of: the fabrication, erection, or installation of an affected facility; or the date upon which a contractual obligation, such as a construction contract or a purchase order, is entered into by both affected parties.

Per EPA's comment on the General Operating Permits rule proposal, the date of manufacture is usually not used for defining the "construction" date for determining the applicability date of Subpart GG. The exception that EPA mentioned is not relevant to this rulemaking, because gas turbine manufacturers are not allowed to use General Operating Permits.

TMOGA also commented that for interpretation number 27, should additional question arise regarding the applicability of NSPS Dc, K, Ka and Kb, which are also codified in these permits, it is clear that the EPA interpretation for internal combustion engines would also apply to steam generators and storage vessels, such that generators or storage vessels that predate NSPS and are simply relocated are not subsequently subject to NSPS.

The commission understands the basis for the comment. A final determination has been made for the construction date described in 40 CFR 60, Subpart GG in §60.330(b) for issue number 27. Requests may be made to the agency for a rule interpretation of other various 40 CFR 60 Subparts.

TMOGA requested an additional interpretation: during the work sessions to develop the general permit, industry identified potential confusion in the interpretation of §115.217(a)(10)(D). Informal discussions with agency staff indicated that the intent in promulgating this section was that §115.217(a)(10)(D) only applies to non-dedicated loading lines at marine terminals and not at any other locations. Industry requested that in the commission's response to comments, the agency issue an interpretation that concurs or explains the proper interpretation of this citation.

The commission addressed this request and made the determination that the "non-dedicated loading lines" referenced in §115.217(a)(10)(D) pertain *only* to marine terminals, and not to just any non-dedicated loading line.

NGPA stated that the preliminary determinations and permit tables would require NGPA to review and determine applicability to the federal and state standards. NGPA stated that the proposed rule needs to ensure that any additional requirements are federally enforceable to maintain the goal of the general operating permit.

The commission understands the commenter's position and maintains that meeting the need of federally enforceability for existing and future requirements is a top priority in the development of these General Operating Permits by the commission.

Qualification Criteria Comments. EPA commented that the commission should clarify that the reference in the qualification criteria in subsection (a)(3) in each General Operating Permit to subsections (b) and (c) requires compliance with all applicable requirements, including preconstruction permits.

The only preconstruction authorizations that are applicable requirements for the Texas Interim Federal Operating Permits Program are those implementing Nonattainment (NA) and Prevention of Significant Deterioration (PSD) provisions. Units covered by these NA or PSD provisions are not eligible to be covered by the General Operating Permits. A unit covered by an NA or PSD permit will have to apply to be covered by a site operating permit for Title V compliance purposes, and will have to comply with its site operating permit as well as the NA or PSD permit provisions.

EPA commented that the commission should clarify the qualifier "of this section" in the qualification criteria in subsection (a)(3) in each general operating permit to make it clear that it means "of this permit."

For these rules, based on *Texas Register* guidelines, "of this section" in rulemaking language means "of this permit" in laymen's terms.

EPA requested that a more explicit statement of the qualification criteria for boilers and steam generators firing *only* natural gas

fuel be made in the qualification criteria concerning these types of emission units.

The permit tables correctly codified the requirements against boilers and steam generators affected by 40 CFR 60, Subparts Db and Dc. As a result of a separate comment by TMOGA, due to the infrequent firing of liquid fuel in these emission units, the commission is deleting the liquid fuel firing requirements from the appropriate permit tables and revising the qualification criteria to allow *only* natural gas fired boilers and steam generators.

EPA requested that in the qualification criteria for boilers and steam generators subject to 40 CFR 60, Subparts D, Da, Db, or Dc, the phrase "natural gas" should be restated as "100 percent pipeline quality natural gas" to eliminate mixtures containing other kinds of fuel from the qualification criteria.

The commission disagrees with the commenter. The definition of natural gas in 40 CFR 60, Subpart Db in §60.41b states, "(1) a naturally occurring mixture of hydrocarbon and nonhydrocarbon gases found in geologic formations beneath the earth's surface, of which the principal constituent is methane; or (2) liquid petroleum gas, as defined by the American Society for Testing and Materials in ASTM D1835-82, Standard Specification for Liquid Petroleum Gases.'" Subpart Dc also uses a similar definition. The definition that EPA proposes is actually more stringent than that used in the qualification criteria, and to retain consistency with the 40 CFR 60, Subparts D, Da, Db, or Dc rules, the qualification criteria's use of the term "natural gas" will remain the same.

EPA requested that in the qualification criteria for stationary gas turbines, the phrase "pipeline quality natural gas" should be restated as "100 percent pipeline quality natural gas" to eliminate fuel mixtures containing other kinds of fuel from the qualification criteria for turbines. EPA also stated that it should made clear that the general permit is not available if fuels and fuel mixtures other than 100% pipeline quality natural gas are fired in the turbine.

The commission disagrees with this request, since "natural gas" or "pipeline quality natural gas" is not defined in 40 CFR 60, Subpart GG, even though the term "natural gas" is used in the Subpart. In its common usage at pipeline compressor stations and other oil and gas field locations, the two terms "pipeline quality natural gas" and "100 percent pipeline quality natural gas" generally mean the same thing, especially with respect to the fuel sulfur content. Emergency fuels are excluded from being fired in the turbines; the turbines expected to be covered by these General Operating Permits only burn "pipeline quality natural gas," otherwise they would not be able to meet the testing requirements for sulfur content in the fuel.

EPA requested that the stationary gas turbine qualification criteria pertaining to gas turbine size criteria be revised to be in a range format to be consistent with the associated permit table (e.g., §122.511(c)(1)). This would make the range format more consistent with the nitrogen oxides emission standard applicability criteria of 40 CFR 60, Subpart GG.

The commission agrees with the commenter. The qualification criteria relating to stationary gas turbines greater than 100 MMBtu/hr has been deleted, so that the stationary gas turbine size criteria codified in the General Operating Permits are consistent with the regulatory language of 40 CFR 60, Subpart GG.

EPA requested that the term "reservoir" also be included in the list of allowed devices to be covered by the general operating permit in §122.515, since this emission unit is regulated by 40 CFR 60, Subparts K, Ka, and Kb.

The commission did not include this term because only tanks, containers, and storage vessels are meant to be covered by this General Operating Permit, since these three terms are the ones in most common usage in the field of air pollution control for these types of emission units at these types of facilities. 40 CFR 60, Subparts K, Ka, and Kb define "storage vessel" and use the term "reservoir" in this definition, although "reservoir" itself is not defined. Chapter 115 does not define "reservoir" either. However, if a bulk fuel storage terminal applying to be covered by a General Operating Permit were to have a "reservoir" as an emission unit, as long as all of its applicable requirements are codified in the General Operating Permit, the inclusion of the unit in the General Operating Permit is allowable, regardless of the term used to describe it.

An individual requested that in §122.511(a)(4), the tank size of 8,000 gallons (gal) as listed in the qualification criteria be changed to 5,000 gal because of the effects of hydrocarbon emissions on the ozone nonattainment area.

The qualification criteria in subsection (a) of each proposed section are based on a combination of the applicability thresholds of existing applicable requirements and the exclusion of certain emission units based on the difficulty of codifying all of their potentially applicable requirements without apparent benefit to the regulated community. Since the Texas Federal Operating Permits Program is designed to codify the applicable requirements that apply to the emission units (as defined in §122.10), the revisions suggested by the commenter cannot be made to those applicable requirements through this rulemaking.

An individual requested that in §122.511(a)(5), the 1,100 tons per year (tpy) threshold for equipment in benzene service as listed in the qualification criteria should be changed to 100 tpy because of the effects of hydrocarbon emissions on the ozone nonattainment area and also since benzene is a carcinogen.

See the response to the preceding comment on §122.511(a)(4).

An individual requested that in §122.511(a)(7), the vapor pressure threshold should be changed from 11.0 pounds per square inch absolute (psia) to 7.0 psia to maximize volatile organic compound (VOC) emission reductions in ozone nonattainment areas.

See the response to the preceding comment on §122.511(a)(4).

An individual requested that in §122.511(a)(9)(D), (E), and (F), the vapor pressure threshold should be changed to 7.0 psia to maximize VOC emission reductions to lower ozone levels in the Houston ozone nonattainment area.

See the response to the preceding comment on §122.511(a)(4).

An individual requested that in §122.511(a)(9)(D), (E), and (F), the tank storage capacity should be lowered to 10,000 gal to

maximize VOC emission reductions to lower ozone levels in the Houston ozone nonattainment area.

See the response to the preceding comment on §122.511(a)(4).

An individual requested that in §122.511(a)(10)(A), the threshold for the heat input rating for boilers and steam generators should be lowered to reduce nitrogen oxides emissions.

See the response to the preceding comment on §122.511(a)(4).

An individual requested that in §122.511(a)(18), all loading of VOCs containing benzene should not be eligible for general operating permits because of the effects of hydrocarbon emissions on the ozone nonattainment area and also since benzene is a carcinogen.

See the response to the preceding comment on §122.511(a)(4).

An individual objected to the allowance of surface coating operations at all facilities without meeting a standard exemption in §122.511(a)(19).

Surface coating operations, as described in §122.511(a)(19), must comply with the exemption criteria as stipulated in §115.427(a)(3)(A) and the recordkeeping requirements per §115.426(a)(4) because of their location in an ozone nonattainment area. As a point of information, Standard Exemption 75 requires that the owner or operator must also be in compliance with the requirements of Chapter 115 in Subchapter E, concerning surface coating processes if the facility is located in an ozone nonattainment area. It must also be noted that Standard Exemptions promulgated as part of 30 TAC Chapter 116 are outside of the scope of this rulemaking.

TMOGA stated that it fully supports the inclusion of the qualification criteria, although they appear to be lengthy, since they are necessary to keep the permits as streamlined as possible.

The qualification criteria were established to optimize the inclusion of a large number of emission units which could be covered by the General Operating Permit, while minimizing the complexity of the permit tables. This is why certain qualification criteria, such as the exclusion of solid fuel fired boilers and steam generators from coverage by the General Operating Permit, were stipulated as such. Also, see the response to the eighth comment under the heading addressing Qualification Criteria Comments.

TMOGA commented that in the preamble, the commission requested comments on §122.511(c)(6) for Process Heaters/Furnaces that fire liquid fuel. TMOGA said that it is rare for operators in their industry to use liquid fuel to fire these units. TMOGA suggested deleting the contents of §§122.511(c)(8), 122.512(c)(7), 122.513(c)(7), and 122.514(c)(6) and marking these paragraphs as "reserved" to avoid renumbering the index numbers on subsequent paragraph tables. As a result, TMOGA suggested wording for a qualification criteria to address its concern.

The commission understands the basis for the comment and has revised the appropriate permit tables and qualification criteria accordingly. It must be noted, though, that the deletion of the requested permit tables did necessitate the renumbering of the subsequent permit tables and their index numbers, since the *Texas Register* does not allow paragraphs to be "reserved."

TMOGA commented that in the preamble, the commission requested comments on §122.511(c)(16) for Boilers/Steam Generators that fire liquid fuel. TMOGA said that it is rare for operators in its industry to use liquid fuel to fire these units. TMOGA suggested deleting the provisions of Chapter 112 from §§122.511(c)(16), 122.512(c)(14), 122.513(c)(14), and 122.514(c)(12) and suggested wording for a qualification criteria to address its concern.

The commission understands the basis for the comment and has revised the appropriate permit tables and qualification criteria accordingly.

TMOGA requested that the commission modify the qualification criteria to stipulate that the use of custom fuel monitoring schedules to comply with NSPS GG, as allowed by 40 CFR §60.334(b)(2), not be considered an alternative monitoring method which would disqualify them from using the General Operating Permit. The proposed permits provide only for the custom fuel monitoring schedule proposed in §122.511(b)(13) or a more stringent version. Sources which have already received an EPA approved schedule or are in the approval process should not be disqualified from using the General Operating Permit, nor should they have to modify EPA approved custom schedules that might deviate slightly from the schedule proposed in this permit. TMOGA suggested that §§122.511(a)(2), 122.512(a)(2), 122.513(a)(2), and 122.514(a)(2) be revised and included its suggested language.

The commission does not agree that the recommended changes should be made. The custom fuel monitoring schedule that was proposed in June 4, 1996, issue of the *Texas Register* (21 TexReg 4955) was based on provisions from other custom fuel monitoring schedules that, in the past, have been submitted by industry and authorized by EPA. The revised schedule, as adopted (which includes changes based on EPA's comments), is still reasonable for a unit requesting to be authorized under a General Operating Permit. By the inclusion of this custom fuel monitoring schedule in the proposed rule, the commission fulfilled its obligation to provide the public and EPA with the opportunity to comment. An owner or operator who requests to utilize a custom fuel monitoring schedule that is less stringent than the one included in the adopted sections should include that unit in an application for another type of federal operating permit.

TMOGA mentioned that it also has concerns about whether the commission possesses the statutory authority to grant sources the permission to conduct custom fuel monitoring. This authority currently seems to reside only with EPA and cannot be delegated by the commission via these general permits. Industry recommended revising proposed §§122.511(b)(13), 122.512(b)(10), 122.513(b)(10), and 122.514(b)(10) and included the suggested language.

The commission disagrees with making the proposed revisions. The custom fuel monitoring schedule that was proposed in June 4, 1996, issue of the *Texas Register* rule was accepted by EPA, contingent upon the inclusion of three additional requirements. The commission modified the custom fuel monitoring schedule provisions based on EPA's comments pertaining to initial fuel sampling during startup, fuel supplier information, and fuel sampling requirements after a change in the fuel supply.

TMOGA stated, as proposed, §§122.511(a)(11)(D), 122.512(a)(11)(D), 122.513(a)(11)(D), and 122.514(a)(8)(D) may lead to confusion in the regulated community. TMOGA recommended language for the sake of clarity.

The commission disagrees with the commenter because as a matter of convention, each general provision in subsection (b) of each referenced section relating to stationary gas turbines stipulates compliance *only* with §60.333(b). Therefore, the requested qualification is unnecessary.

TMOGA stated that proposed §122.512(a)(4) and §122.513(a)(4) (prohibiting degassing and cleaning of VOC transport vessels with a capacity greater than 8,000 gallons) should be deleted as the underlying regulation, §§115.541-115.546, is not applicable to the counties covered by these general permits. The regulation is only applicable to the counties covered by proposed §122.511.

The commission agrees with the commenter and deleted the qualification criteria as suggested.

TMOGA stated that proposed §122.511(a)(15) should be revised to exclude a reference to §115.121(a)(4) and §115.122(a)(3), since these regulations pertain to bakeries and are not applicable to sources that would use this permit.

The qualification criteria in §122.511(a)(15) does not reference §115.121(a)(4) and §115.122(a)(3). However, §122.511(a)(16), which relates to process vents, does contain a reference to these two sections. The commission agrees that the requirements of §122.511(a)(16) need to be revised, since emissions from bakeries are not covered in this section; no changes are needed to §122.511(a)(15).

General Provision Comments. EPA stated that it is not clear why emission units subject to 40 CFR 60, Subpart GG shall only comply with §60.333(b). EPA then stated that if a stationary gas turbine is subject to the requirements of Subpart GG, then the owner or operator must comply with all of the requirements of Subpart GG. EPA requested that the public record reflect that the general operating permit address all applicable requirements in Subpart GG for sources subject to Subpart GG.

The qualification criteria in §122.511(a)(11)(D), *et al*, states that the owner or operator shall not use §60.333(a) as a means to comply with 40 CFR 60, Subpart GG. The general provision in §122.511(b)(12), *et al*, requires the owner or operator to only comply with §60.333(b). The provision in §60.333 states that the owner or operator must comply with either §60.333(a) *or* §60.333(b). Since the pertinent general provision requires the owner or operator to comply with §60.333(b) and the pertinent qualification criteria states that the owner or operator cannot comply with §60.333(a), the standard in §60.333(a) is not a relevant standard for General Operating Permits purposes. The General Operating Permit, therefore, addresses all of the pertinent applicable requirements contained in Subpart GG.

EPA requested that the general provision in subsection (b)(2) of each section dealing with major upsets be changed to require that notice of the emergency be sent within two working days. In the event that the State does not make this change during the interim status period, the State would be required to revise the program as specified in the June 25, 1996, *Federal Register* notice.

The commission is continuing to work with EPA on resolution of this issue and will address the major upset notification requirements for approval of the full program.

EPA stated that in the general provisions relating to Title VI, the commission has authority to issue permits that assure compliance with all applicable requirements, *including* Title VI stratospheric ozone conditions. EPA asked that the phrase "enforceable only by the Administrator of the EPA" be deleted from the general provisions of each general operating permit as a result.

The commission disagrees with the proposed change. Currently, the commission does not have, nor is requesting delegation of, Title VI Stratospheric Ozone Protection. Therefore, Title VI is a requirement that is enforceable *only* by the Administrator of the EPA. Since Title VI is an applicable requirement under the provisions of 30 TAC Chapter 122, a provision addressing it will be included in each General Operating Permit. This provision correctly references EPA's enforceability of the Title VI requirements.

EPA requested that in the general provisions relating to Title VI, the term "non-motor vehicle air conditioning equipment" be revised to say "non-motor vehicle air conditioning appliances" because the word "equipment" is usually used to designate the devices used to recover the refrigerant, not to designate the devices from which the refrigerant is to be recovered.

The commission agrees with the commenter and revised the language as suggested.

EPA requested that in the general provisions relating to Title VI, the phrase "using approved equipment" be added after the phrase "only by properly certified technicians," because the applicable regulations require the equipment to be approved for use using specific procedures.

The commission agrees with the commenter and revised the language as suggested.

EPA requested that the commission should clarify for the public record that by the responsible official or designee signing the annual compliance certification includes compliance with the Risk Management Plan requirements specified in the 1990 Federal Clean Air Act Amendments, 112(r).

The commission agrees with the commenter. When the responsible official or designee signs the annual compliance certification for the Risk Management Plan, it indicates compliance with the requirements of the Accidental Release Prevention Provisions in Title 40, Code of Federal Regulations, Part 68 (40 CFR 68).

EPA stated that in the general provisions relating to Risk Management Plan in 112(r), the commission has authority to issue permits that assure compliance with all applicable requirements, including the Risk Management Plan. EPA asked that the phrase "enforceable only by the Administrator of the EPA" be deleted from the general provisions of each general operating permit and the following notation be used "upon delegation to the State the provision is enforceable" by both parties.

The commission disagrees with the proposed change. Currently, the commission does not have, nor is requesting delegation of, the 112(r) provisions relating to the Risk Management Plan. Therefore, the Risk Management Plan is a requirement that is enforceable *only* by the Administrator of the EPA. Since the Risk Management Plan is an applicable requirement under the provisions of 30 TAC Chapter 122, a provision addressing it will be included in each General Operating Permit. This provision correctly references EPA's enforceability of the Risk Management Plan requirements.

EPA requested that the following 40 CFR 60, Subpart A provisions be added to the general provisions of each general operating permit for proper implementation and enforcement of the 40 CFR 60 rules where applicable: §60.2, Definitions, §60.3, Units and Abbreviations, §60.17, Incorporation by Reference, and §60.18, General Control Device Requirements.

The commission disagrees with the commenter. Sections 60.2, 60.3, and 60.17 referenced by EPA are only for informational purposes. The contents of these sections contain no enforceable requirements; therefore, it is not necessary to codify them in the General Operating Permit. It must be noted that the requirements of §60.18 (as it pertains to flares) have been codified in a permit table in each of the General Operating Permits.

In the general provisions relating to stationary gas turbines affected by 40 CFR 60, Subpart GG, arrangements for a custom fuel monitoring plan were allowed. EPA agreed, provided that the owner or operator of the affected stationary gas turbine meets three criteria that were listed in EPA's comments.

The commission modified the custom fuel monitoring schedule provisions based on EPA's comments pertaining to initial fuel sampling during startup, fuel supplier information, and fuel sampling requirements after a change in the fuel supply.

An individual requested that in §122.511(b)(7)(A), (C), and (E), the opacity limit be lowered from 30% to 20% for visible emissions from stationary vents, structures, and all other sources not specified.

The emission limits codified in the General Operating Permits are those from existing State and federal rules that meet the definition of applicable requirements as defined in §122.10. Since the General Operating Permits are not amending the underlying rules, there is no legal method for this rulemaking to revise and lower the opacity limits set forth in Chapter 111.

An individual objected to the allowance of surface coating operations in ozone nonattainment areas without meeting a standard exemption in §122.511(b)(15).

See the response to the preceding comment on §122.511(a)(19) under the heading addressing Qualification Criteria Comments.

TMOGA stated that the intent of proposed §§122.511(b)(3), 122.512(b)(3), 122.513(b)(3), 122.514(b)(3), and 122.515(b)(3) was to provide for emission units whose applicable requirements were intentionally not codified in this general permit. As written, proposed §122.511(b)(3) *et al* could also be interpreted to include inadvertent omissions. TMOGA recommended language to allow for inadvertent omissions.

The commission disagrees with the commenter. Please refer to the previous TMOGA comment concerning noncompliance with unintentional omissions under the heading addressing Comments in General.

TMOGA stated that the requirement for the submission of annual compliance certifications in §§122.511(b)(5), 122.512(b)(5), 122.513(b)(5), 122.514(b)(5), and 122.515(b)(5) is already stated in §122.143(4). TMOGA recommended deleting this redundant requirement from §§122.511-122.515, because inclusion could create confusion as to why other terms and conditions in §122.143 are not also repeated in each permit.

The commission agrees with the commenter that the submission of annual compliance certifications required by §122.143(4) is repeated twice in the General Operating Permits general provisions (§122.511(b)(2) and (5), for example). This reiteration was done to avoid confusion about this specific requirement and to clarify that an owner or operator with units at a site covered by a General Operating Permit needs to submit annual compliance certifications, the same as for owners or operators of units at sites covered by site operating permits.

TMOGA stated that on June 20, 1996 (after the publication of these proposed permits), EPA issued its final rule on the Risk Management Program. At 40 CFR §68.215, EPA addresses the permit content and air permitting authority or designated agency requirements. (See Attachment #4 of TMOGA's comments, 61 FR 31278). Upon review of these new regulations, TMOGA proposed that §§122.511(b)(8), 122.512(b)(7), 122.513(b)(7), 122.514(b)(7), and 122.515(b)(11) be revised to conform to the new requirements and suggested language.

Industry felt this change is necessary due to the requirement at 40 CFR §68.215(c) to revise or reopen permits that are issued prior to the deadline for registering and submitting a risk management plan and do not contain the permit conditions specified in 40 CFR §68.215(a).

The commission has developed a new provision to replace the one found in the sections mentioned in the comment. The new provision, although not the same as the provision requested by the commenter, does satisfy the requirements of 112(r).

In addition, a reference to the owner or operator, indicating in the permit application that Part 68 is an applicable requirement, was not included in the new provision. This reference is not a pertinent statement to add to the provision since Part 68 states, "the 40 CFR part 70 or part 71 permit for the stationary source shall contain a statement listing this part as an applicable requirement." It does not mention that the permit application has to indicate that Part 68 is an applicable requirement.

TMOGA stated that the proposed §§122.511(b)(9)(C), 122.512(b)(8)(C), 122.513(b)(8)(C), 122.514(b)(8)(C), and 122.515(b)(11) do not include the 50-pound exemption allowed by 40 CFR 82 and suggested language.

The commission disagrees with making the requested change. However, because of the approach taken throughout this rule proposal to codify on a high level of citation applicable requirements that are only enforceable by the EPA, subparagraph (C) has been deleted and the recordkeeping requirements contained in it have been moved to subparagraphs (A) and (B).

The recordkeeping requirements in subparagraphs (A) and (B) now state that the owner or operator shall keep records as required by the pertinent subpart. This revision will incorporate the 50-pound threshold provision found in 40 CFR 82, Subpart F in §82.166(j) and (k) that the commenter cites. Most importantly, it will still retain all of the recordkeeping requirements that are required for Title VI as well.

TMOGA stated that these proposed permits inadvertently omitted a general provision for asbestos NESHAP, 40 CFR 61, Subpart M for demolition and renovation activities and suggested wording.

The commission disagrees with the commenter. The demolition and renovation portions of 40 CFR 61, Subpart M are not applicable requirements for the sources which are eligible to be covered by these General Operating Permits.

Permit Table Comments in General. TMOGA strongly recommended that the commission add a descriptive title (e.g., Gas Turbines for §122.511(c)(1)) to each proposed table to aid in their use by the regulated community.

The commission agrees with the commenter and has implemented the request to add a descriptive title to each permit table.

Specific §122.511(c) Comments. In §122.511(c)(1), EPA indicated that the exemption citation for Index Number 511-04-004 should be §60.332(e).

The commission agrees with the commenter and revised the citation as suggested.

In §122.511(c)(1), EPA indicated that the exemption citation for military gas turbines was not provided for under the "Type of Service" column for gas turbines with the following unit attributes: 10 MMBtu/hr < Heat Input < 100 MMBtu/hr and Date > 10/03/82.

The commission agrees with the commenter that the exemption for military gas turbines was not provided; this is because the facilities that are eligible to apply for these General Operating Permits typically do not have military gas turbines. If they did, the gas turbine would have to be covered by another type of operating permit.

In §122.511(c)(1), EPA indicated that the exemption citation for military gas turbines was not provided for under the "Type of Service" column for gas turbines with the following unit attributes: 100 MMBtu/hr < Heat Input and Base Load < 30 megawatts (MW) and 10/03/77 < Date < 1/27/82.

See the preceding response to the EPA comment dealing with military gas turbines.

In §122.511(c)(1), EPA indicated that the exemption citation for military gas turbines was not provided for under the "Regulatory Requirements [Exemptions]" column for gas turbines with the following unit attributes: 100 MMBtu/hr < Heat Input and Base Load < 30 MW and 10/03/77 < Date < 1/27/82.

See the preceding response to the EPA comment dealing with military gas turbines.

In §122.511(c)(1), EPA indicated that for stationary gas turbines with the following unit attributes: 100 MMBtu/hr < Heat Input and Base Load < 30 MW and 10/03/77 < Date < 1/27/82, the nitrogen oxides emission standards do not represent the difference between "electric utility" stationary gas turbines and "industrial and pipeline" stationary gas turbines. EPA suggested dividing the table into two rows to implement the §60.332(a) standards for both "electric utility" and "industrial and pipeline" stationary gas turbines.

The commission agrees with the commenter that the standard for "electric utility" stationary gas turbines was not provided; this is because the facilities that are eligible to apply for these General Operating Permits typically do not have "electric utility" stationary gas turbines. If they did, the gas turbine probably would not be eligible for a General Operating Permit and would have to be covered by another type of operating permit, especially if the turbine were an acid rain affected source. This fact is because acid rain affected sources are not eligible for a General Operating Permit per §70.6(d)(1).

In §122.511(c)(5), EPA stated that the "Actual Sulfur Feed Rate (in LTPD)" is not an applicability determination factor and should be removed from the permit table.

The commission disagrees with the commenter that "Actual Sulfur Feed Rate" is not an applicability determination factor. This value is used to determine the appropriate applicable reduction efficiency from the tables in §60.642(a) and (b). The commission *does* recognize that the rule is inadequate to handle the scenario where the design capacity is ≥ 2.0 LTPD but with a current actual capacity of <2.0 LTPD.

In §122.511(c)(5), EPA indicated that for Unit Location of "Other" and these unit attributes, 1/20/84 < Date, design capacity > 2.0 LTPD, and an actual acid gas stream feed rate < 2.0 LTPD, there is no exemption from any or all of the 40 CFR 60, Subpart LLL requirements.

The commission agrees with the commenter that the unit attributes stated in the body of the comment would not lead to an exemption from 40 CFR 60, Subpart LLL; however, the commission recognizes that the rule is inadequate to handle the scenario where the design capacity is ≥ 2.0 LTPD but with a current actual capacity of <2.0 LTPD. See the previous comments by EPA and TMOGA concerning Subpart LLL.

TMOGA requested a revision to §122.511(c)(1), in accordance with its previous comment number 9. In addition, an exemption citation is needed for emergencies and firefighting as noted on TMOGA's attachment.

The commission agrees with the commenter that an exemption citation is needed for emergencies and firefighting. The commission has incorporated the comment as requested. The commission is uncertain as to the applicability of comment number 9 (dealing with the issue number 26 of whether a glycol dehydrator firebox that burns reboiler exhaust can be considered both a process heater and a control device) to this comment.

TMOGA requested a revision to §122.511(c)(2). The exemption citations on the table referring to 40 CFR §60.113(d)(1) and (d)(2) and 40 CFR §60.115a(d)(1) are exemptions from monitoring, not exemptions from controls. TMOGA believes the regulated community is more interested in seeing the exemptions from controls. The proper citation for the exemption from

controls is 40 CFR §60.112(a)(1) and 40 CFR §60.112a(a), respectively.

The commission agrees with the commenter that the exemptions used in the permit table were exemptions from monitoring. However, since no *explicit* exemption is given in the rule and the citation for standards would be §60.112(a)(1) and §60.112a(a)(1) or (2), the commission agreed that the section level preceding those citation standards (i.e., §60.112(a) and §60.112a(a)) would be an appropriate representation for the stated set of tank attributes.

TMOGA requested a second revision to §122.511(c)(2). Several tanks are listed as having a regulatory requirement specified at 40 CFR §60.110(c)(2) or 40 CFR §60.110a(a), but these tanks are exempt from controls as justified by 40 CFR §60.112(a)(1) and 40 CFR §60.112a(a), respectively, which should be inserted as an exemption citation.

See the response to the preceding TMOGA comment pertaining to the proper citation for exempting conditions for tanks.

TMOGA requested a third revision to §122.511(c)(2), because 40 CFR §60.113(a)-(c) and 40 CFR §60.115a(a)-(c) are incorrectly codified on this table.

The commission agrees with the commenter that the listed citations were codified incorrectly. The commission has incorporated the change as requested.

TMOGA requested a revision to §122.511(c)(3). References to 40 CFR §60.116b(f) should be deleted from the table. This regulation only applies if a waste mixture is stored that is of indeterminate or variable composition. Storage of these materials is prohibited by proposed §122.511(a)(9)(G).

The commission agrees with the commenter that references to §60.116b(f) should be deleted from the permit table codified in §122.511(c)(3). The commission has incorporated the change as requested.

TMOGA requested a second revision to §122.511(c)(3). During workgroup sessions, industry proposed to the commission that these tables be codified based on the preamble to 40 CFR 60, Subpart Kb, which apparently intended for the regulations to cover storage tanks with the same capacity ranges as NSPS K and Ka (e.g., 10,000 to 20,000 gallons, 20,000 to 40,000 gallons, etc.). As finally promulgated, the regulations were written in metric units that do not convert exactly to the same English unit ranges as laid out in NSPS K and Ka. Upon reconsidering the preamble and the precedents set by other state regulatory agencies that have adopted these regulations and have added an exact English unit to metric unit conversion, TMOGA recommended that this table be revised as shown on its attached marked-up table. The basis used for the conversion was the fact that the exemption for crude and condensate tanks is 1589.874 cubic meters. In NSPS K and Ka, the exemption size is 420,000 gallons. Therefore, the conversion factor TMOGA used was 264.172 gallons per cubic meter. In addition, the qualification criteria, §§122.511(a)(9)(E), 122.512(a)(9)(E), 122.513(a)(9)(E), and 122.514(a)(9)(D) should be revised from 19,800 gallons to 19,813 gallons.

The commission agrees with the commenter that there is an inconsistency in the units on storage capacity between NSPS K, Ka, and Kb; however, the commission maintains that the intent of the regulations was to maintain the same delineation in tank size ranges (i.e., 10,000 gallons, 20,000 gallons, and 40,000 gallons).

TMOGA requested a revision to §122.511(c)(4). References on lines 9 and 22 to §115.112(a)(1) as being regulatory requirements should be noted as exemptions because storage vessels with these unit attributes are exempt from control requirements.

The commission agrees that a storage tank with the stated attributes would be exempt from control requirements; however, the tank still has testing and recordkeeping requirements found in §115.115(a)(1)-(7) and §115.116(a)(4) and (5).

TMOGA requested a revision to §122.511(c)(8). As noted in its previous comment number 14, industry proposed to delete this table and mark it as "reserved."

The commission agrees with the commenter that the permit table in §122.511(c)(8) should be deleted. The commission has incorporated the change as requested. It must be noted that the commission is uncertain as to the applicability of TMOGA's comment number 14 (pertaining to custom fuel monitoring for gas turbines) to this comment.

TMOGA requested a revision to §122.511(c)(14). The heading of column 4 should be revised to indicate that the VOCs of concern are only those specified in §115.121(a)(1).

The commission is uncertain as to the intention of the comment. The commission's position is that §115.121(a)(1) does not delineate specific VOCs, but states that any VOCs should be controlled properly.

TMOGA requested a revision to §122.511(c)(16). TMOGA proposed to substantially reduce this table in conjunction with its earlier comment number 15.

The commission agrees with the commenter that the permit table in §122.511(c)(16) should be modified in conjunction with previous comment concerning liquid fuel firing affecting table §122.511(c)(8). The commission has incorporated the change as requested. It must be noted that the commission is uncertain as to the applicability of TMOGA's comment number 15 (pertaining to the compliance with the sulfur dioxide standard in 40 CFR 60, Subpart GG) to this comment.

TMOGA requested a revision to §122.511(c)(19). References to §115.412(a)(1)(E) should be deleted, as this does not pertain to a remote reservoir.

The commission agrees with the commenter that §115.412(a)(1)(E) should be deleted for remote reservoir cleaning machines. The commission has incorporated the change as requested.

Specific §122.515(c) Comments. In §122.515(c)(7), EPA stated that for non-assisted or steam-assisted flares, where the exit velocity range is 60 feet per second (ft/sec) < V < 400 ft/sec, and the heating value > 1,000 British thermal units per standard cubic feet (Btu/scf), V_{max} does not have to be determined, and, therefore, V_{max} is not a factor in determining compliance of the flare with the requirements in 40 CFR 60,

Subpart A. EPA requested that the appropriate permit tables be revised accordingly.

The commission agrees with the commenter that V_{max} should be incorporated as requested; however, the commission maintains that the permit tables accurately reflect this position. This position is evident by virtue of the fact that for the stated set of attributes, in the column entitled "V < V_{max}," the entry is "N/A." The "N/A" entry means that V_{max} is not required to be calculated in this instance.

In §122.515(c)(7), EPA stated that for non-assisted or steam-assisted flares, where the exit velocity range is 60 ft/sec < V < 400 ft/sec, and 200 or 300 Btu/scf < heating value < 1,000 Btu/scf, V_{max} does have to be determined, and, therefore, V_{max} is a factor in determining compliance of the flare with the requirements in 40 CFR 60, Subpart A. EPA requested that the appropriate permit tables be revised accordingly.

See the response to the previous EPA comment pertaining to non-assisted or steam-assisted flares concerning V_{max}.

In §122.515(c)(7), EPA stated that for air-assisted flares, where the 300 Btu/scf < heating value, V_{max} does have to be determined, and, therefore, V_{max} is a factor in determining compliance of the flare with the requirements in 40 CFR 60, Subpart A. EPA requested that the appropriate permit tables be revised accordingly.

See the response to the previous EPA comment pertaining to non-assisted or steam-assisted flares concerning V_{max}.

The new sections are adopted under the Texas Health and Safety Code, the Texas Clean Air Act (TCAA), §382.017, which provides the commission with the authority to adopt rules consistent with the policy and purposes of the TCAA.

§122.511. Oil and Gas General Operating Permit-Brazoria, Chambers, Collin, Dallas, Denton, El Paso, Fort Bend, Galveston, Hardin, Harris, Jefferson, Liberty, Montgomery, Orange, Tarrant, and Waller Counties.

(a) Qualification criteria. Emission units authorized to operate under this General Operating Permit shall meet each of the following criteria.

(1) Emission units which are authorized to operate under this General Operating Permit shall not have a federal prevention of significant deterioration permit or a federal nonattainment permit.

(2) Emission units which are authorized to operate under this General Operating Permit shall not use an alternative means of compliance which must be approved by the executive director of the commission or the Administrator of the United States Environmental Protection Agency (EPA).

(3) At the time of application submittal, emission units which are authorized to operate under this General Operating Permit shall be in compliance with all requirements as stated in subsections (b) and (c) of this section.

(4) Degassing and cleaning of volatile organic chemical transport vessels with a capacity greater than 8,000 gallons at sites located in counties subject to the regulatory requirements of Chapter 115 of this title (relating to Control of Air Pollution From Volatile Organic Compounds) is not authorized to operate under this General Operating Permit.

(5) Equipment in benzene service is not authorized to operate under this General Operating Permit unless the plant site is designed to produce or use less than 1,000 megagrams (1,100 tons) of benzene per year as determined according to the provisions of Title 40, Code of Federal Regulations, Part 61 (40 CFR 61) in 40 CFR, §61.245(d).

(6) Cooling towers which are authorized to operate under this General Operating Permit shall not have operated with chromium-based water treatment chemicals on or after September 8, 1994, in accordance with Title 40, Code of Federal Regulations, Part 63 (40 CFR 63), Subpart Q.

(7) Loading and unloading operations authorized to operate under this General Operating Permit shall not include the loading of volatile organic compounds (VOC) with a true vapor pressure greater than 11.0 pounds per square inch absolute (psia) into transport vessels unless the VOC is exempt from all of the control requirements of Chapter 115 of this title.

(8) Emission units in marine terminal loading and unloading operations are not authorized to operate under this General Operating Permit.

(9) For storage vessels, tanks, or containers which are authorized to operate under this General Operating Permit, the following subparagraphs shall apply.

(A) The storage vessels shall not store benzene having a specific gravity within the range of specific gravities specified in American Society for Testing and Materials (ASTM) D836-84 for Industrial Grade Benzene, ASTM D835-85 for Refined Benzene-485, ASTM D2359-85a for Refined Benzene-535, and ASTM D4734-87 for Refined Benzene-545.

(B) Internal or external floating roof vessels must be exempt from all regulatory requirements of Title 40, Code of Federal Regulations, Part 60 (40 CFR 60), Subparts K, Ka, and Kb.

(C) Internal or external floating roof tanks must be exempt from all of the regulatory requirements of Chapter 115 of this title.

(D) Degassing or cleaning of storage tanks greater than one million gallons of storage capacity is not authorized to operate under this General Operating Permit.

(E) Storage vessels shall not store waste mixtures of indeterminate or variable composition which are subject to the regulatory requirements of 40 CFR 60, Subpart Kb.

(F) Stored materials shall have a maximum true vapor pressure:

(i) less than or equal to 11.1 psia, at storage conditions, if stored in vessels or tanks subject to the regulatory requirements of 40 CFR 60, Subparts K and Ka;

(ii) less than 11.1 psia, at storage conditions, if stored in vessels or tanks subject to the regulatory requirements of 40 CFR 60, Subparts Kb; and

(iii) less than 11.0 psia, at storage conditions, if stored in vessels or tanks after custody transfer and subject to the regulatory requirements of Chapter 115 of this title.

(10) Boilers and steam generators which are authorized to operate under this General Operating Permit shall only be fired with natural gas, and:

(A) not have a rated capacity greater than 2,500 million British thermal units per hour (MMBtu/hr) and constructed, reconstructed, or modified on or before June 19, 1984;

(B) not exceed 100 MMBtu/hr rated capacity if constructed, reconstructed, or modified after June 19, 1984; or

(C) not have a rated capacity for "opposed-fired," "front-fired," or "tangential-fired" steam generating unit of more than 600,000 pounds per hour maximum continuous steam capacity in Brazoria, Chambers, Collin, Dallas, Denton, Fort Bend, Galveston, Harris, Liberty, Montgomery, Tarrant, or Waller Counties. (An "opposed-fired" steam generating unit is defined as a unit having burners installed on two opposite vertical firebox surfaces. A "front-fired" steam generating unit is defined as a unit having all burners installed in a geometric array on one vertical firebox surface. A "tangential-fired" steam generating unit is defined as a unit having burners installed on all corners of the unit at various elevations.)

(11) Stationary gas turbines which are authorized to operate under this General Operating Permit shall:

(A) only be fired with pipeline quality natural gas;

(B) not be fired with an emergency fuel;

(C) not be supplied its fuel from an intermediate bulk storage tank;

(D) not use 40 CFR, §60.333(a) as a means to comply with the requirements of 40 CFR 60, Subpart GG;

(E) not exceed the manufacturer's rated base load at International Standards Organization conditions of 30 megawatts if constructed, reconstructed, or modified on or after October 3, 1977; and

(F) not claim the exemption in 40 CFR, §60.332(i).

(12) Emission units subject to the regulatory requirements of 40 CFR 60, Subpart XX are not authorized to operate under this General Operating Permit.

(13) Degreasing operations which are authorized to operate under this General Operating Permit shall not utilize the following:

(A) a VOC for open-top vapor or conveyorized degreasing; or

(B) individual batch vapor, in-line vapor, in-line cold, or batch cold solvent cleaning machines subject to the regulatory requirements of 40 CFR 63, Subpart T.

(14) Emission units which are authorized to operate under this General Operating Permit and are subject to Chapter 111 of this title (relating to Control of Air Pollution From Visible Emissions and Particulate Matter) may not claim an exemption from the continuous emission monitoring requirements of §111.111(a)(3) of this title (relating to Requirements for Specified Sources).

(15) VOC water separators which are authorized to operate under this General Operating Permit shall not have been subject to the control requirements of §115.132(a)(1)-(3) of this title (relating to Control Requirements) at any time since July 17, 1991, which later were exempted from control requirements by satisfying the conditions of §115.132(a)(4)(A) and (B) of this title.

(16) Process vents which are authorized to operate under this General Operating Permit:

(A) shall not be subject to the emission specifications of §115.121(a)(2) and (3) of this title (relating to Emission Specifications) and the control requirements of §115.122(a)(2) of this title (relating to Control Requirements); or

(B) shall not have been subject to the emission specifications of §115.121(a)(1) of this title and the control requirements of §115.122(a)(1) of this title at any time since July 17, 1991, which later were exempted from control requirements by satisfying the conditions of §115.122(a)(4)(A) and (B) of this title.

(17) VOC loading/unloading which is authorized to operate under this General Operating Permit shall not have been subject to the control requirements of §115.212(a)(2) and

(4)-(6) of this title (relating to Control Requirements) at any time since November 15, 1996, which later were exempted from these control requirements by satisfying the conditions of §115.212(a)(12) of this title.

(18) Loading racks at a benzene production facility shall not be authorized to operate under this General Operating Permit unless these loading racks load only the following: gasoline, crude oil, natural gas liquids, or petroleum distillates.

(19) Surface coating operations, other than those performed on equipment that is located on-site and in-place, which are authorized to operate under this General Operating Permit shall not emit, when uncontrolled, a combined weight of VOC greater than or equal to three pounds per hour and 15 pounds in any consecutive 24-hour period.

(20) Process heaters and furnaces which are authorized to operate under this General Operating Permit shall only be fired with natural gas.

(b) General provisions.

(1) The owner or operator shall comply with the requirements relating to General Operating Permits which are contained in this chapter.

(2) The owner or operator shall comply with the conditions listed in §122.143 of this title (relating to Permit Conditions).

(3) Except for 40 CFR 63, emission units authorized to operate under this General Operating Permit shall have all applicable requirements codified in this subsection or subsection (c) of this section.

(4) The following requirements concerning preconstruction authorizations shall apply.

(A) The requirements of preconstruction authorizations (new source review permits) implemented through Chapter 116 of this title (relating to Control of Air Pollution By Permits for New Construction or Modification) are not incorporated in this General Operating Permit and will only be enforced through Chapter 116 of this title. For purposes of this subchapter, preconstruction authorizations include new source review permits, standard exemptions, standard permits, flexible permits, special permits, and special exemptions. These preconstruction authorizations shall be referenced in

the General Operating Permit application. Copies of preconstruction authorizations referenced in the General Operating Permit application may be obtained from the appropriate Texas Natural Resource Conservation Commission (TNRCC) regional office or TNRCC central office in Austin.

(B) The requirements of preconstruction authorizations referenced in the General Operating Permit application are not eligible for the Permit Shield provisions in §122.145 of this title (relating to Permit Content).

(5) For any unit subject to any subpart in 40 CFR 60, the owner or operator shall comply with the following unless otherwise stated in the applicable subpart:

(A) Section 60.1-Applicability;

(B) Section 60.7-Notification and Recordkeeping;

(C) Section 60.8-Performance Tests;

(D) Section 60.9-Availability of Information;

(E) Section 60.11-Compliance with Standards and Maintenance Requirements;

(F) Section 60.12-Circumvention;

(G) Section 60.13-Monitoring Requirements;

(H) Section 60.14-Modification;

(I) Section 60.15-Reconstruction; and

(J) Section 60.19-General Notification and Reporting Requirements.

(6) The owner or operator shall submit compliance certifications to the commission at least every 12 months and, upon request, to the EPA.

(7) The owner or operator of sites subject to the provisions of this chapter that are affected by the requirements of Chapter 115, Subchapter C of this title (relating to Volatile Organic Compound Transfer Operations) shall comply with the following.

(A) The requirements in the undesignated head Loading and Unloading of Volatile Organic Compounds in Chapter 115, Subchapter C of this title, are as follows:

(i) Section 115.212(a)(4), (5)(D), and (12) of this title;

(ii) Section 115.214(a)(3) of this title (relating to Inspection Requirements);

(iii) Section 115.215(a) of this title (relating to Approved Test Methods); and

(iv) Section 115.216(a)(4) and (5) of this title (relating to Monitoring and Recordkeeping Requirements).

(B) The requirements in the undesignated head Filling of Gasoline Storage Vessels (Stage I) for Motor Vehicle Fuel Dispensing Facilities in Chapter 115, Subchapter C of this title, are as follows:

(i) Section 115.221 of this title (relating to Emission Specifications);

(ii) Section 115.222 of this title (relating to Control Requirements);

(iii) Section 115.224 of this title (relating to Inspection Requirements);

(iv) Section 115.225(1)-(5) of this title (relating to Testing Requirements);

(v) Section 115.226 of this title (relating to Recordkeeping Requirements); and

(vi) Section 115.227 of this title (relating to Exemptions).

(C) The requirements in the undesignated head Control of Volatile Organic Compound Leaks From Transport Vessels in Chapter 115, Subchapter C of this title, are as follows:

(i) Section 115.234 of this title (relating to Inspection Requirements);

(ii) Section 115.235(1), (2), (3)(A), and (4) of this title (relating to Approved Test Methods);

(iii) Section 115.236 of this title (relating to Recordkeeping Requirements); and

(iv) Section 115.237 of this title (relating to Exemptions).

(D) The requirements in the undesignated head Control of Vehicle Refueling Emissions (Stage II) at Motor Vehicle Fuel Dispensing Facilities in Chapter 115, Subchapter C of this title, are as follows:

(i) Section 115.241 of this title (relating to Emission Specifications);

(ii) Section 115.242 of this title (relating to Control Requirements);

(iii) Section 115.244 of this title (relating to Inspection Requirements);

(iv) Section 115.245(1), (2), (3), (5), and (6) of this title (relating to Testing Requirements);

(v) Section 115.246 of this title (relating to Recordkeeping Requirements); and

(vi) Section 115.247 of this title (relating to Exemptions).

(E) The requirements in the undesignated head Control of Reid Vapor Pressure of Gasoline in Chapter 115, Subchapter C of this title for the El Paso ozone nonattainment area are as follows:

(i) Section 115.252 of this title (relating to Control Requirements);

(ii) Section 115.255 of this title (relating to Approved Test Methods);

(iii) Section 115.256 of this title (relating to Recordkeeping Requirements); and

(iv) Section 115.257 of this title (relating to Exemptions).

(8) Owners or operators shall comply with the following requirements of Chapter 111 of this title.

(A) Visible emissions from stationary vents constructed on or before January 31, 1972, shall not exceed 30% opacity

averaged over a six-minute period as required in §111.111(a)(1)(A) of this title. Compliance with the visible emission standard of §111.111(a)(1)(A) of this title shall be determined as required in §111.111(a)(1)(F)(ii) of this title by Test Method 9 (40 CFR 60, Appendix A), or as required in §111.111(a)(1)(F)(iii) of this title by Alternate Method 1 to Method 9, Light Detection and Ranging (40 CFR 60, Appendix A).

(B) Visible emissions from stationary vents constructed after January 31, 1972, shall not exceed 20% opacity averaged over a six-minute period as required in §111.111(a)(1)(B) of this title. Compliance with the visible emission standard of §111.111(a)(1)(B) of this title shall be determined as required in §111.111(a)(1)(F)(ii) of this title by Test Method 9 (40 CFR 60, Appendix A), or as required in §111.111(a)(1)(F)(iii) of this title by Alternate Method 1 to Method 9, Light Detection and Ranging (40 CFR 60, Appendix A).

(C) Visible emissions from structures shall not exceed 30% opacity for any six-minute period from any building, enclosed facility, or other structure as required in §111.111(a)(7)(A) of this title. Compliance with the visible emission standard of §111.111(a)(7)(A) of this title shall be determined as required in §111.111(a)(7)(B)(i) of this title by Test Method 9 (40 CFR 60, Appendix A).

(D) Visible emissions during the cleaning of a firebox or the building of a new fire, soot blowing, equipment changes, ash removal, and rapping of precipitators may exceed the limits set forth in §111.111 of this title for a period aggregating not more than six minutes in any 60 consecutive minutes, nor more than six hours in any ten-day period as required in §111.111(a)(1)(E) of this title. This exemption shall not apply to the emissions mass rate standard, as outlined in §111.151(a) of this title (relating to Allowable Emissions Limits).

(E) Visible emissions from all other sources not specified in §111.111(a)(1), (4), or (7) of this title shall not exceed 30% opacity for any six-minute period from any building, enclosed facility, or other structure as required in §111.111(a)(8)(A) of this title. Compliance with the visible emission standard of §111.111(a)(8)(A) of this title shall be determined by applying Test Method 9 (40 CFR 60, Appendix A) as required in §111.111(a)(8)(B)(i) of this title.

(F) Certification of opacity readers determining opacities under Method 9 (as outlined in 40 CFR 60, Appendix A) to comply with §111.111(a)(1)(G) of this title shall be accomplished by completing the TNRCC Visible Emissions Evaluators Course, or approved agency equivalent, no more than 180 days before the opacity reading.

(G) Emission limits on nonagricultural processes are as follows.

(i) Emissions of particulate matter from any source may not exceed the allowable rates specified in Table 1 as required in §111.151(a) of this title.
Figure 1: 30 TAC §122.511(b)(8)(G)(i)

(ii) Sources with an effective stack height (h_e), as determined from Table 2, must reduce the allowable emission level by multiplying it by $[h_e/H_o]^2$ as required in §111.151(b) of this title.
Figure 2: 30 TAC §122.511(b)(8)(G)(ii)

(iii) Effective stack height shall be calculated by the following equation as required in §111.151(c) of this title.
Figure 3: 30 TAC §122.511(b)(8)(G)(iii)

(H) Open burning, as stated in §111.201 of this title (relating to General Prohibition), shall not be authorized unless the following requirements are satisfied:

(i) Section 111.205 of this title (relating to Exception for Fire Training);

(ii) Section 111.209(3) of this title (relating to Exception for Disposal Fires);

(iii) Section 111.213 of this title (relating to Exception for Hydrocarbon Burning);

(iv) Section 111.219 of this title (relating to General Requirements for Allowable Outdoor Burning); and

(v) Section 111.221 of this title (relating to Responsibility for Consequences of Outdoor Burning).

(I) Owners or operators of sites subject to the provisions of this chapter in which the sites have Materials Handling, Construction, Roads, Streets, Alleys, and Parking Lots shall comply with the requirements of §§111.143, 111.145, 111.147, and 111.149 of this title (relating to Materials Handling; Construction and Demolition; Roads, Streets, and Alleys; and Parking Lots) if they are located in the following areas:

(i) the City of El Paso, including the Fort Bliss Military Reservation, except for training areas as referenced in §111.141 of this title (relating to Geographic Areas of Application and Date of Compliance); or

(ii) the area of Harris County located inside Beltway 8 (Sam Houston Tollway).

(J) Abrasive blasting of water storage tanks performed by portable operations shall not be authorized unless the following requirements are satisfied:

(i) Section 111.133(a)(1) and (2), (b), and (c) of this title (relating to Testing Requirements);

(ii) Section 111.135(a), (b), and (c)(1)-(4) of this title (relating to Control Requirements for Surfaces with Coatings Containing Lead);

(iii) Section 111.137(a), (b)(1)-(4), and (c) of this title (relating to Control Requirements for Surfaces with Coatings Containing Less than 1.0% Lead); and

(iv) Section 111.139(a) and (b) of this title (relating to Exemptions).

(9) For covered processes subject to Title 40, Code of Federal Regulations, Part 68 (40 CFR 68) and specified in 40 CFR, §68.10, the owner or operator shall comply with the requirements of the Accidental Release Prevention Provisions in 40 CFR 68. The owner or operator shall submit to the appropriate agency, either a compliance schedule for meeting the requirements of 40 CFR 68 by the date provided in 40 CFR, §68.10(a), or as part of the compliance certification submitted under §122.143(4) of this title, a certification statement that the source is in compliance with all requirements of 40 CFR 68, including the registration and submission of a risk

management plan. This general provision is enforceable only by the Administrator of the EPA.

(10) Owners and operators of a site subject to Title VI of the FCAA shall meet the following requirements for protection of stratospheric ozone which are enforceable only by the Administrator of the EPA.

(A) Operation, servicing, maintenance, and repair on refrigeration and non-motor vehicle air conditioning appliances using ozone-depleting refrigerants on-site shall be conducted in accordance with Title 40, Code of Federal Regulations, Part 82 (40 CFR 82), Subpart F. Owners or operators shall ensure that repairs or refrigerant removal are performed only by properly certified technicians using approved equipment. Records shall be maintained as required by Subpart F.

(B) Servicing, maintenance, and repair of fleet vehicle air conditioning using ozone-depleting refrigerants shall be conducted in accordance with 40 CFR 82, Subpart B. Owners or operators shall ensure that repairs or refrigerant removal are performed only by properly certified technicians using approved equipment. Records shall be maintained as required by Subpart B.

(11) For emission units located in the Houston/Galveston or Beaumont/Port Arthur ozone nonattainment areas and subject to the provisions of the undesignated head Commercial, Institutional, and Industrial Sources in Chapter 117, Subchapter B of this title (relating to Combustion at Existing Major Sources), the owner or operator shall have submitted a complete initial control plan as required by §117.209 of this title (relating to Initial Control Plan Procedures).

(12) For emission units located in the Houston/Galveston or Beaumont/Port Arthur ozone nonattainment areas and subject to the requirements of the undesignated head Commercial, Institutional, and Industrial Sources in Chapter 117, Subchapter B of this title, the owner or operator shall comply with the requirements of the undesignated head Commercial, Institutional, and Industrial Sources by the compliance date specified in §117.520 of this title (relating to Compliance Schedule for Commercial, Institutional, and Industrial Combustion Sources).

(13) Stationary gas turbines subject to 40 CFR 60, Subpart GG shall only comply with the requirements of 40 CFR, §60.333(b) for fuel sulfur content.

(14) Stationary gas turbines subject to 40 CFR 60, Subpart GG shall only fire natural gas and may be allowed to utilize a custom fuel monitoring schedule, as an alternative provided for under 40 CFR, §60.334(b)(2), as long as the provisions are at least as stringent as the following.

(A) Monitoring of fuel nitrogen is not required while pipeline quality natural gas is the only fuel fired in the gas turbine.

(B) The fuel supplier or suppliers shall be identified for the record during turbine startup, and at any time that the fuel supplier or suppliers change.

(C) Analysis for fuel sulfur content of the natural gas shall be conducted using one of the approved ASTM Test Methods for the measurement of sulfur in gaseous fuels, as referenced in 40 CFR, §60.335(d), or the Gas Processors Association (GPA) test method entitled "Test for Hydrogen Sulfide and Carbon Dioxide in Natural Gas Using Length of Stain Tubes." The test methods are listed as follows:

(i) ASTM D1072-80;

(ii) ASTM D3031-81;

(iii) ASTM D3246-81;

(iv) ASTM D4084-82; or

(v) GPA Standard 2377-86.

(D) The owner or operator of a gas turbine who is not currently utilizing an approved custom fuel monitoring schedule shall be required to initially sample the fuel supply daily for a period of two weeks to establish, after turbine startup, that the pipeline quality natural gas fuel supply is low in sulfur content.

(E) After the monitoring required in subparagraph (D) of this paragraph, sulfur monitoring shall be conducted twice monthly for six months. If this monitoring shows little variability in the fuel sulfur content, and indicates consistent compliance with 40 CFR, §60.333(b), then sulfur monitoring shall be conducted once per quarter for six quarters.

(F) If after the monitoring required in subparagraph (E) of this paragraph, or herein, the sulfur content of the fuel shows little variability and, calculated as sulfur dioxide, represents consistent compliance with the sulfur dioxide emission limits specified under 40 CFR, §60.333, sample analysis shall be conducted twice per annum. This monitoring shall be conducted during the first and third quarters of each calendar year.

(G) Should any sulfur analysis as required in subparagraphs (E) or (F) of this paragraph indicate noncompliance with 40 CFR, §60.333, the owner or operator shall notify the commission within two weeks of such excess emissions. The commission will then reexamine the custom schedule. Sulfur monitoring shall be conducted weekly during the interim period when this custom schedule is being reexamined.

(H) If there is a change in fuel supply (supplier), the owner or operator shall be required to sample the fuel daily for a period of two weeks to re-establish for the record that the fuel supply is low in sulfur content. If the fuel supply's low sulfur content is re-established, then the custom fuel monitoring schedule can be resumed.

(I) Stationary gas turbines that use the same supply of pipeline quality natural gas to fuel multiple gas turbines may monitor the fuel sulfur content at a single common location.

(J) Applicants shall attach the custom fuel monitoring schedule to their General Operating Permit application.

(K) Compliance with the provisions of this paragraph fulfills the requirement that custom schedules be approved by the Administrator, as required by 40 CFR, §60.334(b)(2), before being used as an alternative means of compliance.

(15) Stationary gas turbines using water or steam injection need not comply with the nitrogen oxide control requirements of 40 CFR, §60.332(a) during conditions when ice fog is deemed a traffic hazard by the owner or operator of the stationary gas turbine.

(16) Surface coating operations, other than those performed on equipment that is located on-site and in-place, which are authorized to operate under this General Operating Permit and are subject to the conditions for exemptions referenced in §115.427(a)(3)(A) of this title (relating to Exemptions) shall main-

tain sufficient records to document applicability as required by §115.426(a)(4) of this title (relating to Monitoring and Recordkeeping Requirements).

(17) The owner or operator shall keep records as required in 40 CFR, §61.246(i) if claiming the exemption in 40 CFR, §61.110(c)(2), pertaining to National Emission Standard for Equipment Leaks (Fugitive Emission Sources) of Benzene.

(18) The owner or operator of a sweetening unit with a design capacity greater than or equal to 2.0 long tons per day (LTPD) that operates at less than 2.0 LTPD, may choose to limit the sulfur feed rate, i.e., the hydrogen sulfide (H_2S) in the acid gas (expressed as sulfur) from the sweetening unit to less than 2.0 LTPD. For those owners or operators who choose to do so, the sulfur feed rate limit established in this General Operating Permit shall be federally enforceable. Compliance with this general provision is deemed compliance with 40 CFR 60, Subpart LLL pursuant to the Permit Shield provisions in §122.145 of this title. If a sweetening unit operates at greater than or equal to 2.0 LTPD, then the owner or operator shall comply with the permit tables. The owner or operator shall monitor the sulfur feed rate using the following procedure and record the sulfur feed rate every calender month to demonstrate compliance with 40 CFR 60, Subpart LLL:
Figure 4: 30 TAC §122.511(b)(18)

(19) Owners or operators who claim any of the exemptions stated 40 CFR, §60.332(e), (g), (h), (j), or (l) shall maintain records to prove their exemption status in lieu of performing the monitoring, recordkeeping, reporting, and testing requirements specified in 40 CFR 60, Subpart GG. Compliance with this paragraph is deemed compliance with the nitrogen oxide emission limit's monitoring, recordkeeping, reporting, and testing requirements of 40 CFR 60, Subpart GG in accordance with the Permit Shield provisions in §122.145 of this title.

(20) After November 15, 1996, compliance with the undesignated head Fugitive Emission Control in Petroleum Refining and Petrochemical Processes in Chapter 115, Subchapter D of this title (relating to Petroleum Refining and Petrochemical Processes) is deemed compliance with undesignated head Fugitive Emission Control in Natural Gas/Gasoline Processing Operations in Chapter 115, Subchapter D of this title in accordance with the Permit Shield provisions in §122.145 of this title.

(21) Upon the granting of this General Operating Permit, detailed applicability determinations and the underlying basis for those determinations in the General Operating Permit application submitted to comply with the requirements of this chapter shall become conditions under which the owner or operator shall operate.

(c) Permit tables.

(1) The following permit table lists the requirements for Stationary Gas Turbines affected by 40 CFR 60, Subpart GG.
Figure 5: 30 TAC §122.511(c)(1)

(2) The following permit table lists the requirements for Storage Vessels affected by 40 CFR 60, Subparts K and Ka.
Figure 6: 30 TAC §122.511(c)(2)

(3) The following permit table lists the requirements for Storage Vessels affected by 40 CFR 60, Subpart Kb.
Figure 7: 30 TAC §122.511(c)(3)

(4) The following permit table lists the requirements for Storage Vessels affected by Chapter 115 of this title.
Figure 8: 30 TAC §122.511(c)(4)

(5) The following permit table lists the requirements for Gas Sweetening Units Not Utilizing Sulfur Recovery affected by 40 CFR 60, Subpart LLL.
Figure 9: 30 TAC §122.511(c)(5)

(6) The following permit table lists the requirements for Natural Gas Processing Plant Fugitive Emissions affected by 40 CFR 60, Subpart KKK.
Figure 10: 30 TAC §122.511(c)(6)

(7) The following permit table lists the requirements for Natural Gas Processing Operations Fugitive Emissions affected by Chapter 115 of this title.
Figure 11: 30 TAC §122.511(c)(7)

(8) The following permit table lists the requirements for Flares affected by 40 CFR 60, Subpart A.
Figure 12: 30 TAC §122.511(c)(8)

(9) The following permit table lists the requirements for Flares affected by Chapter 111 of this title.
Figure 13: 30 TAC §122.511(c)(9)

(10) The following permit table lists the requirements for Gas Sweetening Units Utilizing Sulfur Recovery affected by 40 CFR 60, Subpart LLL.
Figure 14: 30 TAC §122.511(c)(10)

(11) The following permit table lists the requirements for Gas Sweetening Units Utilizing Sulfur Recovery affected by Chapter 112 of this title (relating to Sulfur Compounds).
Figure 15: 30 TAC §122.511(c)(11)

(12) The following permit table lists the requirements for Stationary Vents affected by Chapter 111 of this title.
Figure 16: 30 TAC §122.511(c)(12)

(13) The following permit table lists the requirements for Stationary Vents affected by Chapter 115 of this title.
Figure 17: 30 TAC §122.511(c)(13)

(14) The following permit table lists the requirements for Combustion Units affected by Chapter 117 of this title (relating to Control of Air Pollution From Nitrogen Compounds).
Figure 18: 30 TAC §122.511(c)(14)

(15) The following permit table lists the requirements for Boilers/Steam Generators affected by 40 CFR 60, Subparts Db and Dc.
Figure 19: 30 TAC §122.511(c)(15)

(16) The following permit table lists the requirements for Non-Marine VOC Loading/Unloading Operations affected by Chapter 115 of this title.
Figure 20: 30 TAC §122.511(c)(16)

(17) The following permit table lists the requirements for VOC Water Separators affected by Chapter 115 of this title.
Figure 21: 30 TAC §122.511(c)(17)

(18) The following permit table lists the requirements for Cold Cleaning Degreasing Operations affected by Chapter 115 of this title.
Figure 22: 30 TAC §122.511(c)(18)

§122.512. Oil and Gas General Operating Permit-Gregg, Nueces, and Victoria Counties.

(a) Qualification criteria. Emission units authorized to operate under this General Operating Permit shall meet each of the following criteria.

(1) Emission units which are authorized to operate under this General Operating Permit shall not have a federal prevention of significant deterioration permit or a federal nonattainment permit.

(2) Emission units which are authorized to operate under this General Operating Permit shall not use an alternative means of compliance which must be approved by the executive director of the commission or the Administrator of the United States Environmental Protection Agency (EPA).

(3) At the time of application submittal, emission units which are authorized to operate under this General Operating Permit shall be in compliance with all requirements as stated in subsections (b) and (c) of this section.

(4) Equipment in benzene service is not authorized to operate under this General Operating Permit unless the plant site is designed to produce or use less than 1,000 megagrams (1,100 tons) of benzene per year as determined according to the provisions of Title 40, Code of Federal Regulations, Part 61 (40 CFR 61) in 40 CFR, §61.245(d).

(5) Cooling towers which are authorized to operate under this General Operating Permit shall not have operated with chromium-based water treatment chemicals on or after September 8, 1994, in accordance with Title 40, Code of Federal Regulations, Part 63 (40 CFR 63), Subpart Q.

(6) Loading and unloading operations authorized to operate under this General Operating Permit shall not include the loading of volatile organic compounds (VOC) with a true vapor pressure greater than 11.0 pounds per square inch absolute (psia) into transport vessels unless the VOC is exempt from all of the control requirements of Chapter 115 of this title (relating to Control of Air Pollution From Volatile Organic Compounds).

(7) Emission units in marine terminal loading and unloading operations are not authorized to operate under this General Operating Permit.

(8) For storage vessels, tanks, or containers which are authorized to operate under this General Operating Permit, the following subparagraphs shall apply.

(A) The storage vessels shall not store benzene having a specific gravity within the range of specific gravities specified in American Society for Testing and Materials (ASTM) D836-84 for Industrial Grade Benzene, ASTM D835-85 for Refined Benzene-485, ASTM D2359-85a for Refined Benzene-535, and ASTM D4734-87 for Refined Benzene-545.

(B) Internal or external floating roof vessels must be exempt from all regulatory requirements of Title 40, Code of Federal Regulations, Part 60 (40 CFR 60), Subparts K, Ka, and Kb.

(C) Internal or external floating roof tanks must be exempt from all of the regulatory requirements of Chapter 115 of this title.

(D) Degassing or cleaning of storage tanks greater than one million gallons of storage capacity is not authorized to operate under this general permit.

(E) Storage vessels shall not store waste mixtures of indeterminate or variable composition which are subject to the regulatory requirements of 40 CFR 60, Subpart Kb.

(F) Stored materials shall have a maximum true vapor pressure:

(i) less than or equal to 11.1 psia, at storage conditions, if stored in vessels or tanks subject to the regulatory requirements of 40 CFR 60, Subparts K and Ka;

(ii) less than 11.1 psia, at storage conditions, if stored in vessels or tanks subject to the regulatory requirements of 40 CFR 60, Subparts Kb; and

(iii) less than 11.0 psia, at storage conditions, if stored in vessels or tanks after custody transfer and subject to the regulatory requirements of Chapter 115 of this title.

(9) Boilers and steam generators which are authorized to operate under this General Operating Permit shall only be fired with natural gas, and:

(A) not have a rated capacity greater than 2,500 million British thermal units per hour (MMBtu/hr) and constructed, reconstructed, or modified on or before June 19, 1984; or

(B) not exceed 100 MMBtu/hr rated capacity if constructed, reconstructed, or modified after June 19, 1984.

(10) Stationary gas turbines which are authorized to operate under this General Operating Permit shall:

(A) only be fired with pipeline quality natural gas;

(B) not be fired with an emergency fuel;

(C) not be supplied its fuel from an intermediate bulk storage tank;

(D) not use 40 CFR, §60.333(a) as a means to comply with the requirements of 40 CFR 60, Subpart GG;

(E) not exceed the manufacturer's rated base load at International Standards Organization conditions of 30 megawatts if constructed, reconstructed, or modified on or after October 3, 1977; and

(F) not claim the exemption in 40 CFR, §60.332(i).

(11) Emission units subject to the regulatory requirements of 40 CFR 60, Subpart XX are not authorized to operate under this General Operating Permit.

(12) Degreasing operations subject to this General Operating Permit and located on any property shall not emit, when uncontrolled, a combined weight of VOC greater than or equal to 550 pounds in any consecutive 24-hour period; or, utilize the following:

(A) a VOC for open-top vapor or conveyorized degreasing; or

(B) individual batch vapor, in-line vapor, in-line cold, or batch cold solvent cleaning machines subject to the regulatory requirements of 40 CFR 63, Subpart T.

(13) Emission units which are authorized to operate under this General Operating Permit and are subject to Chapter 111 of this title (relating to Control of Air Pollution From Visible Emissions and Particulate Matter) may not claim an exemption from the continuous emission monitoring requirements of §111.111(a)(3) of this title (relating to Requirements for Specified Sources).

(14) Loading racks at a benzene production facility shall not be authorized to operate under this General Operating Permit unless these loading racks load only the following: gasoline, crude oil, natural gas liquids, or petroleum distillates.

(15) Surface coating operations, other than those performed on equipment that is located on-site and in-place, which are authorized to operate under this General Operating Permit shall not emit, when uncontrolled, a combined weight of VOC greater than or equal to 550 pounds (249.5 kilograms) in any consecutive 24-hour period.

(16) Process heaters and furnaces which are authorized to operate under this General Operating Permit shall only be fired with natural gas.

(b) General provisions.

(1) The owner or operator shall comply with the requirements relating to General Operating Permits which are contained in this chapter.

(2) The owner or operator shall comply with the conditions listed in §122.143 of this title (relating to Permit Conditions).

(3) Except for 40 CFR 63, emission units authorized to operate under this General Operating Permit shall have all applicable requirements codified in this subsection or subsection (c) of this section.

(4) The following requirements concerning preconstruction authorizations shall apply.

(A) The requirements of preconstruction authorizations (new source review permits) implemented through Chapter 116 of this title (relating to Control of Air Pollution By Permits for New Construction or Modification) are not incorporated in this General Operating Permit and will only be enforced through Chapter 116 of this title. For purposes of this subchapter, preconstruction authorizations include new source review permits, standard exemptions, standard permits, flexible permits, special permits, and special exemptions. These preconstruction authorizations shall be referenced in the General Operating Permit application. Copies of preconstruction authorizations referenced in the General Operating Permit application may be obtained from the appropriate Texas Natural Resource Conservation Commission (TNRCC) regional office or TNRCC central office in Austin.

(B) The requirements of preconstruction authorizations referenced in the General Operating Permit application are not eligible for the Permit Shield provisions in §122.145 of this title (relating to Permit Content).

(5) For any unit subject to any subpart in 40 CFR 60, the owner or operator shall comply with the following unless otherwise stated in the applicable subpart:

(A) Section 60.1-Applicability;

(B) Section 60.7-Notification and Recordkeeping;

(C) Section 60.8-Performance Tests;

(D) Section 60.9-Availability of Information;

(E) Section 60.11-Compliance with Standards and Maintenance Requirements;

(F) Section 60.12-Circumvention;

(G) Section 60.13-Monitoring Requirements;

(H) Section 60.14-Modification;

(I) Section 60.15-Reconstruction; and

(J) Section 60.19-General Notification and Reporting Requirements.

(6) The owner or operator shall submit compliance certifications to the commission at least every 12 months and, upon request, to the EPA.

(7) Owners or operators shall comply with the following requirements of Chapter 111 of this title.

(A) Visible emissions from stationary vents constructed on or before January 31, 1972, shall not exceed 30% opacity averaged over a six-minute period as required in §111.111(a)(1)(A) of this title. Compliance with the visible emission standard of §111.111(a)(1)(A) of this title shall be determined as required in §111.111(a)(1)(F)(ii) of this title by Test Method 9 (40 CFR 60, Appendix A), or as required in §111.111(a)(1)(F)(iii) of this title by Alternate Method 1 to Method 9, Light Detection and Ranging (40 CFR 60, Appendix A).

(B) Visible emissions from stationary vents constructed after January 31, 1972, shall not exceed 20% opacity averaged over a six-minute period as required in §111.111(a)(1)(B) of this title. Compliance with the visible emission standard of §111.111(a)(1)(B) of this title shall be determined as required in §111.111(a)(1)(F)(ii) of this title by Test Method 9 (40 CFR 60, Appendix A), or as required in §111.111(a)(1)(F)(iii) of this title by Alternate Method 1 to Method 9, Light Detection and Ranging (40 CFR 60, Appendix A).

(C) Visible emissions from structures shall not exceed 30% opacity for any six-minute period from any building, enclosed facility, or other structure as required in §111.111(a)(7)(A) of this title. Compliance with the visible emission standard of §111.111(a)(7)(A) of this title shall be determined as required in §111.111(a)(7)(B)(i) of this title by Test Method 9 (40 CFR 60, Appendix A).

(D) Visible emissions during the cleaning of a firebox or the building of a new fire, soot blowing, equipment changes, ash removal, and rapping of precipitators may exceed the limits set forth in §111.111 of this title for a period aggregating not more than six minutes in any 60 consecutive minutes, nor more than six hours in any ten-day period as required in §111.111(a)(1)(E) of this title. This exemption shall not apply to the emissions mass rate standard, as outlined in §111.151(a) of this title (relating to Allowable Emissions Limits).

(E) Visible emissions from all other sources not specified in §111.111(a)(1), (4), or (7) of this title shall not exceed 30% opacity for any six-minute period from any building, enclosed facility, or other structure as required in §111.111(a)(8)(A) of this title. Compliance with the visible emission standard of §111.111(a)(8)(A)

of this title shall be determined by applying Test Method 9 (40 CFR 60, Appendix A) as required in §111.111(a)(8)(B)(i) of this title.

(F) Certification of opacity readers determining opacities under Method 9 (as outlined in 40 CFR 60, Appendix A) to comply with §111.111(a)(1)(G) of this title shall be accomplished by completing the TNRCC Visible Emissions Evaluators Course, or approved agency equivalent, no more than 180 days before the opacity reading.

(G) Emission limits on nonagricultural processes are as follows.

(i) Emissions of particulate matter from any source may not exceed the allowable rates specified in Table 1 as required in §111.151(a) of this title.
Figure 1 : 30 TAC §122.512(b)(7)(G)(i)

(ii) Sources with an effective stack height (h_e) less than the standard effective stack height (H_e), as determined from Table 2, must reduce the allowable emission level by multiplying it by $[h_e/H_e]^2$ as required in §111.151(b) of this title.
Figure 2 : 30 TAC §122.512(b)(7)(G)(ii)

(iii) Effective stack height shall be calculated by the following equation as required in §111.151(c) of this title.
Figure 3 : 30 TAC §122.512(b)(7)(G)(iii)

(H) Open burning, as stated in §111.201 of this title (relating to General Prohibition), shall not be authorized unless the following requirements are satisfied:

(i) Section 111.205 of this title (relating to Exception for Fire Training);

(ii) Section 111.209(3) of this title (relating to Exception for Disposal Fires);

(iii) Section 111.213 of this title (relating to Exception for Hydrocarbon Burning);

(iv) Section 111.219 of this title (relating to General Requirements for Allowable Outdoor Burning); and

(v) Section 111.221 of this title (relating to Responsibility for Consequences of Outdoor Burning).

(I) Owners or operators of sites subject to the provisions of this chapter in which the sites have Materials Handling, Construction, Roads, Streets, Alleys, and Parking Lots shall comply with the requirements of §§111.143, 111.145, 111.147, and 111.149 of this title (relating to Materials Handling; Construction and Demolition; Roads, Streets, and Alleys; and Parking Lots) if they are located in the area of Nueces County outlined in the Group II State Implementation Plan for Inhalable Particulate Matter.

(J) Abrasive blasting of water storage tanks performed by portable operations shall not be authorized unless the following requirements are satisfied:

(i) Section 111.133(a)(1) and (2), (b), and (c) of this title (relating to Testing Requirements);

(ii) Section 111.135(a), (b), and (c)(1)-(4) of this title (relating to Control Requirements for Surfaces with Coatings Containing Lead);

(iii) Section 111.137(a), (b)(1)-(4), and (c) of this title (relating to Control Requirements for Surfaces with Coatings Containing Less than 1.0% Lead); and

(iv) Section 111.139(a) and (b) of this title (relating to Exemptions).

(8) For covered processes subject to Title 40, Code of Federal Regulations, Part 68 (40 CFR 68) and specified in 40 CFR, §68.10, the owner or operator shall comply with the requirements of the Accidental Release Prevention Provisions in 40 CFR 68. The owner or operator shall submit to the appropriate agency, either a compliance schedule for meeting the requirements of 40 CFR 68 by the date provided in 40 CFR, §68.10(a), or as part of the compliance certification submitted under §122.143(4) of this title, a certification statement that the source is in compliance with all requirements of 40 CFR 68, including the registration and submission of a risk management plan. This general provision is enforceable only by the Administrator of the EPA.

(9) Owners and operators of a site subject to Title VI of the FCAA shall meet the following requirements for protection of stratospheric ozone which are enforceable only by the Administrator of the EPA.

(A) Operation, servicing, maintenance, and repair on refrigeration and non-motor vehicle air conditioning appliances using ozone-depleting refrigerants on-site shall be conducted in accordance with Title 40, Code of Federal Regulations, Part 82 (40 CFR 82), Subpart F. Owners or operators shall ensure that repairs or refrigerant removal are performed only by properly certified technicians using approved equipment. Records shall be maintained as required by Subpart F.

(B) Servicing, maintenance, and repair of fleet vehicle air conditioning using ozone-depleting refrigerants shall be conducted in accordance with 40 CFR 82, Subpart B. Owners or operators shall ensure that repairs or refrigerant removal are performed only by properly certified technicians using approved equipment. Records shall be maintained as required by Subpart B.

(10) Stationary gas turbines subject to 40 CFR 60, Subpart GG shall only comply with the requirements of 40 CFR, §60.333(b) for fuel sulfur content.

(11) Stationary gas turbines subject to 40 CFR 60, Subpart GG shall only fire natural gas and may be allowed to utilize a custom fuel monitoring schedule, as an alternative provided for under 40 CFR, §60.334(b)(2), as long as the provisions are at least as stringent as the following.

(A) Monitoring of fuel nitrogen is not required while pipeline quality natural gas is the only fuel fired in the gas turbine.

(B) The fuel supplier or suppliers shall be identified for the record during turbine startup, and at any time that the fuel supplier or suppliers change.

(C) Analysis for fuel sulfur content of the natural gas shall be conducted using one of the approved ASTM Test Methods for the measurement of sulfur in gaseous fuels, as referenced in 40 CFR, §60.335(d), or the Gas Processors Association (GPA) test method entitled "Test for Hydrogen Sulfide and Carbon Dioxide in Natural Gas Using Length of Stain Tubes." The test methods are listed as follows:

(i) ASTM D1072-80;

(ii) ASTM D3031-81;

(iii) ASTM D3246-81;

(iv) ASTM D4084-82; or

(v) GPA Standard 2377-86.

(D) The owner or operator of a gas turbine who is not currently utilizing an approved custom fuel monitoring schedule shall be required to initially sample the fuel supply daily for a period of two weeks to establish, after turbine startup, that the pipeline quality natural gas fuel supply is low in sulfur content.

(E) After the monitoring required in subparagraph (D) of this paragraph, sulfur monitoring shall be conducted twice monthly for six months. If this monitoring shows little variability in the fuel sulfur content, and indicates consistent compliance with 40 CFR, §60.333(b), then sulfur monitoring shall be conducted once per quarter for six quarters.

(F) If after the monitoring required in subparagraph (E) of this paragraph, or herein, the sulfur content of the fuel shows little variability and, calculated as sulfur dioxide, represents consistent compliance with the sulfur dioxide emission limits specified under 40 CFR, §60.333, sample analysis shall be conducted twice per annum. This monitoring shall be conducted during the first and third quarters of each calendar year.

(G) Should any sulfur analysis as required in subparagraphs (E) or (F) of this paragraph indicate noncompliance with 40 CFR, §60.333, the owner or operator shall notify the commission within two weeks of such excess emissions. The commission will then reexamine the custom schedule. Sulfur monitoring shall be conducted weekly during the interim period when this custom schedule is being reexamined.

(H) If there is a change in fuel supply (supplier), the owner or operator shall be required to sample the fuel daily for a period of two weeks to re-establish for the record that the fuel supply is low in sulfur content. If the fuel supply's low sulfur content is re-established, then the custom fuel monitoring schedule can be resumed.

(I) Stationary gas turbines that use the same supply of pipeline quality natural gas to fuel multiple gas turbines may monitor the fuel sulfur content at a single common location.

(J) Applicants shall attach the custom fuel monitoring schedule to their General Operating Permit application.

(K) Compliance with the provisions of this paragraph fulfills the requirement that custom schedules be approved by the Administrator, as required by 40 CFR, §60.334(b)(2), before being used as an alternative means of compliance.

(12) Stationary gas turbines using water or steam injection need not comply with the nitrogen oxide control requirements of 40 CFR, §60.332(a) during conditions when ice fog is deemed a traffic hazard by the owner or operator of the stationary gas turbine.

(13) The owner or operator of sites subject to the provisions of this chapter that are affected by the requirements of the undesignated head Loading and Unloading of Volatile Organic Compounds in Chapter 115, Subchapter C of this title (relating to Volatile Organic Compound Transfer Operations), shall comply with the following requirements:

(A) Section 115.212(b)(2) and (3)(C) of this title (relating to Control Requirements);

(B) Section 115.215(b) of this title (relating to Approved Test Methods); and

(C) Section 115.216(b)(5) of this title (relating to Monitoring and Recordkeeping Requirements).

(14) Surface coating operations, other than those performed on equipment that is located on-site and in-place, which are authorized to operate under this General Operating Permit and are subject to the conditions for exemptions referenced in §115.427(b)(1) of this title (relating to Exemptions), shall maintain sufficient records to document applicability as required by §115.426(b)(3) of this title (relating to Monitoring and Recordkeeping Requirements).

(15) The owner or operator shall keep records as required in 40 CFR, §61.246(i) if claiming the exemption in 40 CFR, §61.110(c)(2), pertaining to National Emission Standard for Equipment Leaks (Fugitive Emission Sources) of Benzene.

(16) The owner or operator of a sweetening unit with a design capacity greater than or equal to 2.0 long tons per day (LTPD) that operates at less than 2.0 LTPD, may choose to limit the sulfur feed rate, i.e., the hydrogen sulfide (H_2S) in the acid gas (expressed as sulfur) from the sweetening unit, to less than 2.0 LTPD. For those owners or operators who choose to do so, the requirements of §122.511(b)(18) of this title (relating to Oil and Gas General Operating Permit - Brazoria, Chambers, Collin, Dallas, Denton, El Paso, Fort Bend, Galveston, Hardin, Harris, Jefferson, Liberty, Montgomery, Orange, Tarrant, and Waller Counties) shall apply.

(17) Owners or operators who claim any of the exemptions stated 40 CFR, §60.332(e), (g), (h), (j), or (l) shall maintain records to prove their exemption status in lieu of performing the monitoring, recordkeeping, reporting, and testing requirements specified in 40 CFR 60, Subpart GG. Compliance with this paragraph is deemed compliance with the nitrogen oxide emission limit's monitoring, recordkeeping, reporting, and testing requirements of 40 CFR 60, Subpart GG in accordance with the Permit Shield provisions in §122.145 of this title.

(18) Upon the granting of this General Operating Permit, detailed applicability determinations and the underlying basis for those determinations in the General Operating Permit application submitted to comply with the requirements of this chapter shall become conditions under which the owner or operator shall operate.

(c) Permit tables.

(1) The permit table which lists the requirements for Stationary Gas Turbines affected by 40 CFR 60, Subpart GG is contained in §122.511(c)(1) of this title.

(2) The permit table which lists the requirements for Storage Vessels affected by 40 CFR 60, Subparts K and Ka is contained in §122.511(c)(2) of this title.

(3) The permit table which lists the requirements for Storage Vessels affected by 40 CFR 60, Subpart Kb is contained in §122.511(c)(3) of this title.

(4) The following permit table lists the requirements for Storage Vessels affected by Chapter 115 of this title.
Figure 4: 30 TAC §122.512(c)(4)

(5) The permit table which lists the requirements for Gas Sweetening Units Not Utilizing Sulfur Recovery affected by 40 CFR 60, Subpart LLL is contained in §122.511(c)(5) of this title.

(6) The permit table which lists the requirements for Natural Gas Processing Plant Fugitive Emissions affected by 40 CFR 60, Subpart KKK is contained in §122.511(c)(6) of this title.

(7) The permit table which lists the requirements for Flares affected by 40 CFR 60, Subpart A is contained in §122.511(c)(8) of this title.

(8) The permit table which lists the requirements for Flares affected by Chapter 111 of this title is contained in §122.511(c)(9) of this title.

(9) The permit table which lists the requirements for Gas Sweetening Units Utilizing Sulfur Recovery affected by 40 CFR 60, Subpart LLL is contained in §122.511(c)(10) of this title.

(10) The permit table which lists the requirements for Gas Sweetening Units Utilizing Sulfur Recovery affected by Chapter 112 of this title (relating to Sulfur Compounds) is contained in §122.511(c)(11) of this title.

(11) The permit table which lists the requirements for Stationary Vents affected by Chapter 111 of this title is contained in §122.511(c)(12) of this title.

(12) The following permit table lists the requirements for Stationary Vents affected by Chapter 115 of this title.
Figure 5: 30 TAC §122.512(c)(12)

(13) The permit table which lists the requirements for Boilers/Steam Generators affected by 40 CFR 60, Subparts Db and Dc is contained in §122.511(c)(15) of this title.

(14) The following permit table lists the requirements for Non-Marine VOC Loading/Unloading Operations affected by Chapter 115 of this title.
Figure 6: 30 TAC §122.512(c)(14)

(15) The following permit table lists the requirements for VOC Water Separators affected by Chapter 115 of this title.
Figure 7: 30 TAC §122.512(c)(15)

§122.513. Oil and Gas General Operating Permit-Aransas, Bexar, Calhoun, Matagorda, San Patricio, and Travis Counties.

(a) Qualification criteria. Emission units authorized to operate under this General Operating Permit shall meet each of the following criteria.

(1) Emission units which are authorized to operate under this General Operating Permit shall not have a federal prevention of significant deterioration permit or a federal nonattainment permit.

(2) Emission units which are authorized to operate under this General Operating Permit shall not use an alternative means of compliance which must be approved by the executive director of the commission or the Administrator of the United States Environmental Protection Agency (EPA).

(3) At the time of application submittal, emission units which are authorized to operate under this General Operating Permit shall be in compliance with all requirements as stated in subsections (b) and (c) of this section.

(4) Equipment in benzene service is not authorized to operate under this General Operating Permit unless the plant site is designed to produce or use less than 1,000 megagrams (1,100 tons) of benzene per year as determined according to the provisions of Title 40, Code of Federal Regulations, Part 61 (40 CFR 61) in 40 CFR §61.245(d).

(5) Cooling towers which are authorized to operate under this General Operating Permit shall not have operated with chromium-based water treatment chemicals on or after September 8, 1994, in accordance with Title 40, Code of Federal Regulations, Part 63 (40 CFR 63), Subpart Q.

(6) Loading and unloading operations authorized to operate under this General Operating Permit shall not include the loading of volatile organic compounds (VOC) with a true vapor pressure greater than 11.0 pounds per square inch absolute (psia) into transport vessels unless the VOC is exempt from all of the control requirements of Chapter 115 of this title.

(7) Emission units in marine terminal loading and unloading operations are not authorized to operate under this General Operating Permit.

(8) For storage vessels, tanks, or containers which are authorized to operate under this General Operating Permit, the following subparagraphs shall apply.

(A) The storage vessels shall not store benzene having a specific gravity within the range of specific gravities specified in American Society for Testing and Materials (ASTM) D836-84 for Industrial Grade Benzene, ASTM D835-85 for Refined Benzene-485, ASTM D2359-85a for Refined Benzene-535, and ASTM D4734-87 for Refined Benzene-545.

(B) Internal or external floating roof vessels must be exempt from all regulatory requirements of Title 40, Code of Federal Regulations, Part 60 (40 CFR 60), Subparts K, Ka, and Kb.

(C) Internal or external floating roof tanks must be exempt from all of the regulatory requirements of Chapter 115 of this title.

(D) Degassing or cleaning of storage tanks greater than one million gallons of storage capacity is not authorized to operate under this general permit.

(E) Storage vessels shall not store waste mixtures of indeterminate or variable composition which are subject to the regulatory requirements of 40 CFR 60, Subpart Kb.

(F) Stored materials shall have a maximum true vapor pressure:

(i) less than or equal to 11.1 psia, at storage conditions, if stored in vessels or tanks subject to the regulatory requirements of 40 CFR 60, Subparts K and Ka;

(ii) less than 11.1 psia, at storage conditions, if stored in vessels or tanks subject to the regulatory requirements of 40 CFR 60, Subparts Kb; and

(iii) less than 11.0 psia, at storage conditions, if stored in vessels or tanks after custody transfer and subject to the regulatory requirements of Chapter 115 of this title.

(9) Boilers and steam generators which are authorized to operate under this General Operating Permit shall only be fired with natural gas, and:

(A) not have a rated capacity greater than 2,500 million British thermal units per hour (MMBtu/hr) and constructed, reconstructed, or modified on or before June 19, 1984;

(B) not exceed 100 MMBtu/hr rated capacity if constructed, reconstructed, or modified after June 19, 1984; or

(C) not have a rated capacity for "opposed-fired," "front-fired," or "tangential-fired" steam generating unit of more than 600,000 pounds per hour maximum continuous steam capacity in Matagorda County. (An "opposed-fired" steam generating unit is defined as a unit having burners installed on two opposite vertical firebox surfaces. A "front-fired" steam generating unit is defined as a unit having all burners installed in a geometric array on one vertical firebox surface. A "tangential-fired" steam generating unit is defined as a unit having burners installed on all corners of the unit at various elevations.)

(10) Stationary gas turbines which are authorized to operate under this General Operating Permit shall:

(A) only be fired with pipeline quality natural gas;

(B) not be fired with an emergency fuel;

(C) not be supplied its fuel from an intermediate bulk storage tank;

(D) not use 40 CFR, §60.333(a) as a means to comply with the requirements of 40 CFR 60, Subpart GG;

(E) not exceed the manufacturer's rated base load at International Standards Organization conditions of 30 megawatts if constructed, reconstructed, or modified on or after October 3, 1977; and

(F) not claim the exemption in 40 CFR, §60.332(i).

(11) Emission units subject to the regulatory requirements of 40 CFR 60, Subpart XX are not authorized to operate under this General Operating Permit.

(12) Emission units which are authorized to operate under this General Operating Permit and are subject to Chapter 111 of this title (relating to Control of Air Pollution From Visible Emissions and Particulate Matter) may not claim an exemption from the continuous emission monitoring requirements of §111.111(a)(3) of this title (relating to Requirements for Specified Sources).

(13) Loading racks at a benzene production facility shall not be authorized to operate under this General Operating Permit unless these loading racks load only the following: gasoline, crude oil, natural gas liquids, or petroleum distillates.

(14) Process vents which are authorized to operate under this General Operating Permit shall not be subject to the emission specifications of §115.121(c)(2)-(4) of this title (relating to Emission Specifications) and the control requirements of §115.122(c)(2)-(4) of this title (relating to Control Requirements).

(15) Process heaters and furnaces which are authorized to operate under this General Operating Permit shall only be fired with natural gas.

(b) General provisions.

(1) The owner or operator shall comply with the requirements relating to General Operating Permits which are contained in this chapter.

(2) The owner or operator shall comply with the conditions listed in §122.143 of this title (relating to Permit Conditions).

(3) Except for 40 CFR 63, emission units authorized to operate under this General Operating Permit shall have all applicable requirements codified in this subsection or subsection (c) of this section.

(4) The following requirements concerning preconstruction authorizations shall apply.

(A) The requirements of preconstruction authorizations (new source review permits) implemented through Chapter 116 of this title (relating to Control of Air Pollution By Permits for New Construction or Modification) are not incorporated in this General Operating Permit and will only be enforced through Chapter 116 of this title. For purposes of this subchapter, preconstruction authorizations include new source review permits, standard exemptions, standard permits, flexible permits, special permits, and special exemptions. These preconstruction authorizations shall be referenced in the General Operating Permit application. Copies of preconstruction authorizations referenced in the General Operating Permit application may be obtained from the appropriate Texas Natural Resource Conservation Commission (TNRCC) regional office or TNRCC central office in Austin.

(B) The requirements of preconstruction authorizations referenced in the General Operating Permit application are not eligible for the Permit Shield provisions in §122.145 of this title (relating to Permit Content).

(5) For any unit subject to any subpart in 40 CFR 60, the owner or operator shall comply with the following unless otherwise stated in the applicable subpart:

(A) Section 60.1-Applicability;

(B) Section 60.7-Notification and Recordkeeping;

(C) Section 60.8-Performance Tests;

(D) Section 60.9-Availability of Information;

(E) Section 60.11-Compliance with Standards and Maintenance Requirements;

(F) Section 60.12-Circumvention;

(G) Section 60.13-Monitoring Requirements;

(H) Section 60.14-Modification;

(I) Section 60.15-Reconstruction; and

(J) Section 60.19-General Notification and Reporting Requirements.

(6) The owner or operator shall submit compliance certifications to the commission at least every 12 months and, upon request, to the EPA.

(7) Owners or operators shall comply with the following requirements of Chapter 111 of this title.

(A) Visible emissions from stationary vents constructed on or before January 31, 1972, shall not exceed 30% opacity

averaged over a six-minute period as required in §111.111(a)(1)(A) of this title. Compliance with the visible emission standard of §111.111(a)(1)(A) of this title shall be determined as required in §111.111(a)(1)(F)(ii) of this title by Test Method 9 (40 CFR 60, Appendix A), or as required in §111.111(a)(1)(F)(iii) of this title by Alternate Method 1 to Method 9, Light Detection and Ranging (40 CFR 60, Appendix A).

(B) Visible emissions from stationary vents constructed after January 31, 1972, shall not exceed 20% opacity averaged over a six-minute period as required in §111.111(a)(1)(B) of this title. Compliance with the visible emission standard of §111.111(a)(1)(B) of this title shall be determined as required in §111.111(a)(1)(F)(ii) of this title by Test Method 9 (40 CFR 60, Appendix A), or as required in §111.111(a)(1)(F)(iii) of this title by Alternate Method 1 to Method 9, Light Detection and Ranging (40 CFR 60, Appendix A).

(C) Visible emissions from structures shall not exceed 30% opacity for any six-minute period from any building, enclosed facility, or other structure as required in §111.111(a)(7)(A) of this title. Compliance with the visible emission standard of §111.111(a)(7)(A) of this title shall be determined as required in §111.111(a)(7)(B)(i) of this title by Test Method 9 (40 CFR 60, Appendix A).

(D) Visible emissions during the cleaning of a firebox or the building of a new fire, soot blowing, equipment changes, ash removal, and rapping of precipitators may exceed the limits set forth in §111.111 of this title for a period aggregating not more than six minutes in any 60 consecutive minutes, nor more than six hours in any ten-day period as required in §111.111(a)(1)(E) of this title. This exemption shall not apply to the emissions mass rate standard, as outlined in §111.151(a) of this title (relating to Allowable Emissions Limits).

(E) Visible emissions from all other sources not specified in §111.111(a)(1), (4), or (7) of this title shall not exceed 30% opacity for any six-minute period from any building, enclosed facility, or other structure as required in §111.111(a)(8)(A) of this title. Compliance with the visible emission standard of §111.111(a)(8)(A) of this title shall be determined by applying Test Method 9 (40 CFR 60, Appendix A) as required in §111.111(a)(8)(B)(i) of this title.

(F) Certification of opacity readers determining opacities under Method 9 (as outlined in 40 CFR 60, Appendix A) to comply with §111.111(a)(1)(G) of this title shall be accomplished by completing the TNRCC Visible Emissions Evaluators Course, or approved agency equivalent, no more than 180 days before the opacity reading.

(G) Emission limits on nonagricultural processes are as follows.

(i) Emissions of particulate matter from any source may not exceed the allowable rates specified in Table 1 as required in §111.151(a) of this title.
Figure 1: 30 TAC §122.513(b)(7)(G)(i)

(ii) Sources with an effective stack height (h_e) less than the standard effective stack height (He), as determined from Table 2, must reduce the allowable emission level by multiplying it by $[h_e/H_e]^2$ as required in §111.151(b) of this title.
Figure 2: 30 TAC §122.513(b)(7)(G)(ii)

(iii) Effective stack height shall be calculated by the following equation as required in §111.151(c) of this title.
Figure 3: 30 TAC §122.513(b)(7)(G)(iii)

(H) Open burning, as stated in §111.201 of this title (relating to General Prohibition), shall not be authorized unless the following requirements are satisfied:

(i) Section 111.205 of this title (relating to Exception for Fire Training);

(ii) Section 111.209(3) of this title (relating to Exception for Disposal Fires);

(iii) Section 111.213 of this title (relating to Exception for Hydrocarbon Burning);

(iv) Section 111.219 of this title (relating to General Requirements for Allowable Outdoor Burning); and

(v) Section 111.221 of this title (relating to Responsibility for Consequences of Outdoor Burning).

(I) Abrasive blasting of water storage tanks performed by portable operations shall not be authorized unless the following requirements are satisfied:

(i) Section 111.133(a)(1) and (2), (b), and (c) of this title (relating to Testing Requirements);

(ii) Section 111.135(a), (b), and (c)(1)-(4) of this title (relating to Control Requirements for Surfaces with Coatings Containing Lead);

(iii) Section 111.137(a), (b)(1)-(4), and (c) of this title (relating to Control Requirements for Surfaces with Coatings Containing Less than 1.0% Lead); and

(iv) Section 111.139(a) and (b) of this title (relating to Exemptions).

(8) For covered processes subject to Title 40, Code of Federal Regulations, Part 68 (40 CFR 68) and specified in 40 CFR, §68.10, the owner or operator shall comply with the requirements of the Accidental Release Prevention Provisions in 40 CFR 68. The owner or operator shall submit to the appropriate agency, either a compliance schedule for meeting the requirements of 40 CFR 68 by the date provided in 40 CFR, §68.10(a), or as part of the compliance certification submitted under §122.143(4) of this title, a certification statement that the source is in compliance with all requirements of 40 CFR 68, including the registration and submission of a risk management plan. This general provision is enforceable only by the Administrator of the EPA.

(9) Owners and operators of a site subject to Title VI of the FCAA shall meet the following requirements for protection of stratospheric ozone which are enforceable only by the Administrator of the EPA.

(A) Operation, servicing, maintenance, and repair on refrigeration and non-motor vehicle air conditioning appliances using ozone-depleting refrigerants on-site shall be conducted in accordance with Title 40, Code of Federal Regulations, Part 82 (40 CFR 82), Subpart F. Owners or operators shall ensure that repairs or refrigerant removal are performed only by properly certified technicians using approved equipment. Records shall be maintained as required by Subpart F.

(B) Servicing, maintenance, and repair of fleet vehicle air conditioning using ozone-depleting refrigerants shall be conducted in accordance with 40 CFR 82, Subpart B. Owners or operators shall ensure that repairs or refrigerant removal are performed only by properly certified technicians using approved equipment. Records shall be maintained as required by Subpart B.

(10) Stationary gas turbines subject to 40 CFR 60, Subpart GG shall only comply with the requirements of 40 CFR, §60.333(b) for fuel sulfur content.

(11) Stationary gas turbines subject to 40 CFR 60, Subpart GG shall only fire natural gas and may be allowed to utilize a custom fuel monitoring schedule, as an alternative provided for under 40 CFR, §60.334(b)(2), as long as the provisions are at least as stringent as the following.

(A) Monitoring of fuel nitrogen is not required while pipeline quality natural gas is the only fuel fired in the gas turbine.

(B) The fuel supplier or suppliers shall be identified for the record during turbine startup, and at any time that the fuel supplier or suppliers change.

(C) Analysis for fuel sulfur content of the natural gas shall be conducted using one of the approved ASTM Test Methods for the measurement of sulfur in gaseous fuels, as referenced in 40 CFR, §60.335(d), or the Gas Processors Association (GPA) test method entitled "Test for Hydrogen Sulfide and Carbon Dioxide in Natural Gas Using Length of Stain Tubes." The test methods are listed as follows:

(i) ASTM D1072-80;

(ii) ASTM D3031-81;

(iii) ASTM D3246-81;

(iv) ASTM D4084-82; or

(v) GPA Standard 2377-86.

(D) The owner or operator of a gas turbine who is not currently utilizing an approved custom fuel monitoring schedule shall be required to initially sample the fuel supply daily for a period of two weeks to establish, after turbine startup, that the pipeline quality natural gas fuel supply is low in sulfur content.

(E) After the monitoring required in subparagraph (D) of this paragraph, sulfur monitoring shall be conducted twice monthly for six months. If this monitoring shows little variability in the fuel sulfur content, and indicates consistent compliance with 40 CFR, §60.333(b), then sulfur monitoring shall be conducted once per quarter for six quarters.

(F) If after the monitoring required in subparagraph (E) of this paragraph, or herein, the sulfur content of the fuel shows little variability and, calculated as sulfur dioxide, represents consistent compliance with the sulfur dioxide emission limits specified under 40 CFR, §60.333, sample analysis shall be conducted twice per annum. This monitoring shall be conducted during the first and third quarters of each calendar year.

(G) Should any sulfur analysis as required in subparagraphs (E) or (F) of this paragraph indicate noncompliance with 40 CFR, §60.333, the owner or operator shall notify the commission within two weeks of such excess emissions. The commission will then reexamine the custom schedule. Sulfur monitoring shall be conducted weekly during the interim period when this custom schedule is being reexamined.

(H) If there is a change in fuel supply (supplier), the owner or operator shall be required to sample the fuel daily for a period of two weeks to re-establish for the record that the fuel supply is low in sulfur content. If the fuel supply's low sulfur content is re-established, then the custom fuel monitoring schedule can be resumed.

(I) Stationary gas turbines that use the same supply of pipeline quality natural gas to fuel multiple gas turbines may monitor the fuel sulfur content at a single common location.

(J) Applicants shall attach the custom fuel monitoring schedule to their General Operating Permit application.

(K) Compliance with the provisions of this paragraph fulfills the requirement that custom schedules be approved by the Administrator, as required by 40 CFR, §60.334(b)(2), before being used as an alternative means of compliance.

(12) Stationary gas turbines using water or steam injection need not comply with the nitrogen oxide control requirements of 40 CFR, §60.332(a) during conditions when ice fog is deemed a traffic hazard by the owner or operator of the stationary gas turbine.

(13) The owner or operator of sites subject to the provisions of this chapter that are affected by the requirements of the undesignated head Loading and Unloading of Volatile Organic Compounds in Chapter 115, Subchapter C of this title (relating to Volatile Organic Compound Transfer Operations), shall comply with §115.212(c)(2) and (3)(C) of this title (relating to Control Requirements).

(14) The owner or operator shall keep records as required in 40 CFR, §61.246(i) if claiming the exemption in 40 CFR, §61.110(c)(2), pertaining to National Emission Standard for Equipment Leaks (Fugitive Emission Sources) of Benzene.

(15) The owner or operator of a sweetening unit with a design capacity greater than or equal to 2.0 long tons per day (LTPD) that operates at less than 2.0 LTPD, may choose to limit the sulfur feed rate, i.e., the hydrogen sulfide (H_2S) in the acid gas (expressed as sulfur) from the sweetening unit, to less than 2.0 LTPD. For those owners or operators who choose to do so, the requirements of §122.511(b)(18) of this title (relating to Oil and Gas General Operating Permit - Brazoria, Chambers, Collin, Dallas, Denton, El Paso, Fort Bend, Galveston, Hardin, Harris, Jefferson, Liberty, Montgomery, Orange, Tarrant, and Waller Counties) shall apply.

(16) Owners or operators who claim any of the exemptions stated 40 CFR, §60.332(e), (g), (h), (j), or (l) shall maintain records to prove their exemption status in lieu of performing the monitoring, recordkeeping, reporting, and testing requirements specified in 40 CFR 60, Subpart GG. Compliance with this paragraph is deemed compliance with the nitrogen oxide emission limit's monitoring, recordkeeping, reporting, and testing requirements of 40 CFR 60, Subpart GG in accordance with the Permit Shield provisions in §122.145 of this title.

(17) Upon the granting of this General Operating Permit, detailed applicability determinations and the underlying basis for those determinations in the General Operating Permit application

submitted to comply with the requirements of this chapter shall become conditions under which the owner or operator shall operate.

(c) Permit tables.

(1) The permit table which lists the requirements for Stationary Gas Turbines affected by 40 CFR 60, Subpart GG is contained in §122.511(c)(1) of this title.

(2) The permit table which lists the requirements for Storage Vessels affected by 40 CFR 60, Subparts K and Ka is contained in §122.511(c)(2) of this title.

(3) The permit table which lists the requirements for Storage Vessels affected by 40 CFR 60, Subpart Kb is contained in §122.511(c)(3) of this title.

(4) The following permit table lists the requirements for Storage Vessels affected by Chapter 115 of this title.
Figure 4: 30 TAC §122.513(c)(4)

(5) The permit table which lists the requirements for Gas Sweetening Units Not Utilizing Sulfur Recovery affected by 40 CFR 60, Subpart LLL is contained in §122.511(c)(5) of this title.

(6) The permit table which lists the requirements for Natural Gas Processing Plant Fugitive Emissions affected by 40 CFR 60, Subpart KKK is contained in §122.511(c)(6) of this title.

(7) The permit table which lists the requirements for Flares affected by 40 CFR 60, Subpart A is contained in §122.511(c)(8) of this title.

(8) The permit table which lists the requirements for Flares affected by Chapter 111 of this title is contained in §122.511(c)(9) of this title.

(9) The permit table which lists the requirements for Gas Sweetening Units Utilizing Sulfur Recovery affected by 40 CFR 60, Subpart LLL is contained in §122.511(c)(10) of this title.

(10) The permit table which lists the requirements for Gas Sweetening Units Utilizing Sulfur Recovery affected by Chapter 112 of this title (relating to Sulfur Compounds) is contained in §122.511(c)(11) of this title.

(11) The permit table which lists the requirements for Stationary Vents affected by Chapter 111 of this title is contained in §122.511(c)(12) of this title.

(12) The following permit table lists the requirements for Stationary Vents affected by Chapter 115 of this title.
Figure 5 : 30 TAC §122.513(c)(12)

(13) The permit table which lists the requirements for Boilers/Steam Generators affected by 40 CFR 60, Subparts Db and Dc is contained in §122.511(c)(15) of this title.

(14) The following permit table lists the requirements for Non-Marine VOC Loading/Unloading Operations affected by Chapter 115 of this title.
Figure 6: 30 TAC §122.513(c)(14)

(15) The following permit table lists the requirements for VOC Water Separators affected by Chapter 115 of this title.
Figure 7: 30 TAC §122.513(c)(15)

§122.514. Oil and Gas General Operating Permit-All Texas Counties Except for Aransas, Bexar, Brazoria, Calhoun, Chambers, Collin, Dallas, Denton, El Paso, Fort Bend, Galveston, Gregg, Hardin, Harris, Jefferson, Liberty, Matagorda, Montgomery, San Patricio, Tarrant, Travis, Victoria, and Waller Counties.

(a) Qualification criteria. Emission units authorized to operate under this General Operating Permit shall meet each of the following criteria.

(1) Emission units which are authorized to operate under this General Operating Permit shall not have a federal prevention of significant deterioration permit or a federal nonattainment permit.

(2) Emission units which are authorized to operate under this General Operating Permit shall not use an alternative means of compliance which must be approved by the executive director of the commission or the Administrator of the United States Environmental Protection Agency (EPA).

(3) At the time of application submittal, emission units which are authorized to operate under this General Operating Permit shall be in compliance with all requirements as stated in subsections (b) and (c) of this section.

(4) Equipment in benzene service is not authorized to operate under this General Operating Permit unless the plant site is designed to produce or use less than 1,000 megagrams (1,100 tons) of benzene per year as determined according to the provisions of Title 40, Code of Federal Regulations, Part 61 (40 CFR 61) in 40 CFR, §61.245(d).

(5) Cooling towers which are authorized to operate under this General Operating Permit shall not have operated with chromium-based water treatment chemicals on or after September 8, 1994, in accordance with Title 40, Code of Federal Regulations, Part 63 (40 CFR 63), Subpart Q.

(6) For storage vessels, tanks, or containers which are authorized to operate under this General Operating Permit, the following subparagraphs shall apply.

(A) The storage vessels shall not store benzene having a specific gravity within the range of specific gravities specified in American Society for Testing and Materials (ASTM) D836-84 for Industrial Grade Benzene, ASTM D835-85 for Refined Benzene-485, ASTM D2359-85a for Refined Benzene-535, and ASTM D4734-87 for Refined Benzene-545.

(B) Internal or external floating roof vessels must be exempt from all regulatory requirements of Title 40, Code of Federal Regulations, Part 60 (40 CFR 60), Subparts K, Ka, and Kb.

(C) Storage vessels shall not store waste mixtures of indeterminate or variable composition which are subject to the regulatory requirements of 40 CFR 60, Subpart Kb.

(D) Stored materials shall have a maximum true vapor pressure:

(i) less than or equal to 11.1 psia, at storage conditions, if stored in vessels or tanks subject to the regulatory requirements of 40 CFR 60, Subparts K and Ka; and

(ii) less than 11.1 psia, at storage conditions, if stored in vessels or tanks subject to the regulatory requirements of 40 CFR 60, Subparts Kb.

(7) Boilers and steam generators which are authorized to operate under this General Operating Permit shall only be fired with natural gas, and:

(A) not have a rated capacity greater than 2,500 million British thermal units per hour (MMBtu/hr) and constructed, reconstructed, or modified on or before June 19, 1984;

(B) not exceed 100 MMBtu/hr rated capacity if constructed, reconstructed, or modified after June 19, 1984; or

(C) not have a rated capacity for "opposed-fired," "front-fired," or "tangential-fired" steam generating unit of more than 600,000 pounds per hour maximum continuous steam capacity in Austin, Colorado, Cooke, Ellis, Erath, Fannin, Grayson, Hood, Hunt, Johnson, Kaufman, Navarro, Palo Pinto, Parker, Rockwall, Somervell, Wharton, and Wise Counties. (An "opposed-fired" steam generating unit is defined as a unit having burners installed on two opposite vertical firebox surfaces. A "front-fired" steam generating unit is defined as a unit having all burners installed in a geometric array on one vertical firebox surface. A "tangential-fired" steam generating unit is defined as a unit having burners installed on all corners of the unit at various elevations.)

(8) Stationary gas turbines which are authorized to operate under this General Operating Permit shall:

(A) only be fired with pipeline quality natural gas;

(B) not be fired with an emergency fuel;

(C) not be supplied its fuel from an intermediate bulk storage tank;

(D) not use 40 CFR, §60.333(a) as a means to comply with the requirements of 40 CFR 60, Subpart GG;

(E) not exceed the manufacturer's rated base load at International Standards Organization conditions of 30 megawatts if constructed, reconstructed, or modified on or after October 3, 1977; and

(F) not claim the exemption in 40 CFR, §60.332(i).

(9) Emission units subject to the regulatory requirements of 40 CFR 60, Subpart XX are not authorized to operate under this General Operating Permit.

(10) Emission units which are authorized to operate under this General Operating Permit and are subject to Chapter 111 of this title (relating to Control of Air Pollution From Visible Emissions and Particulate Matter) may not claim an exemption from the continuous emission monitoring requirements of §111.111(a)(3) of this title (relating to Requirements for Specified Sources).

(11) Loading racks at a benzene production facility shall not be authorized to operate under this General Operating Permit unless these loading racks load only the following: gasoline, crude oil, natural gas liquids, or petroleum distillates.

(12) Process heaters and furnaces which are authorized to operate under this General Operating Permit shall only be fired with natural gas.

(b) General provisions.

(1) The owner or operator shall comply with the requirements relating to General Operating Permits which are contained in this chapter.

(2) The owner or operator shall comply with the conditions listed in §122.143 of this title (relating to Permit Conditions).

(3) Except for 40 CFR 63, emission units authorized to operate under this General Operating Permit shall have all applicable requirements codified in this subsection or subsection (c) of this section.

(4) The following requirements concerning preconstruction authorizations shall apply.

(A) The requirements of preconstruction authorizations (new source review permits) implemented through Chapter 116 of this title (relating to Control of Air Pollution By Permits for New Construction or Modification) are not incorporated in this General Operating Permit and will only be enforced through Chapter 116 of this title. For purposes of this subchapter, preconstruction authorizations include new source review permits, standard exemptions, standard permits, flexible permits, special permits, and special exemptions. These preconstruction authorizations shall be referenced in the General Operating Permit application. Copies of preconstruction authorizations referenced in the General Operating Permit application may be obtained from the appropriate Texas Natural Resource Conservation Commission (TNRCC) regional office or TNRCC central office in Austin.

(B) The requirements of preconstruction authorizations referenced in the General Operating Permit application are not eligible for the Permit Shield provisions in §122.145 of this title (relating to Permit Content).

(5) For any unit subject to any subpart in 40 CFR 60, the owner or operator shall comply with the following unless otherwise stated in the applicable subpart:

(A) Section 60.1-Applicability;

(B) Section 60.7-Notification and Recordkeeping;

(C) Section 60.8-Performance Tests;

(D) Section 60.9-Availability of Information;

(E) Section 60.11-Compliance with Standards and Maintenance Requirements;

(F) Section 60.12-Circumvention;

(G) Section 60.13-Monitoring Requirements;

(H) Section 60.14-Modification;

(I) Section 60.15-Reconstruction; and

(J) Section 60.19-General Notification and Reporting Requirements.

(6) The owner or operator shall submit compliance certifications to the commission at least every 12 months and, upon request, to the EPA.

(7) Owners or operators shall comply with the following requirements of Chapter 111 of this title.

(A) Visible emissions from stationary vents constructed on or before January 31, 1972, shall not exceed 30% opacity averaged over a six-minute period as required in §111.111(a)(1)(A) of this title. Compliance with the visible emission standard of §111.111(a)(1)(A) of this title shall be determined as required in §111.111(a)(1)(F)(ii) of this title by Test Method 9 (40 CFR 60,

Appendix A), or as required in §111.111(a)(1)(F)(iii) of this title by Alternate Method 1 to Method 9, Light Detection and Ranging (40 CFR 60, Appendix A).

(B) Visible emissions from stationary vents constructed after January 31, 1972, shall not exceed 20% opacity averaged over a six-minute period as required in §111.111(a)(1)(B) of this title. Compliance with the visible emission standard of §111.111(a)(1)(B) of this title shall be determined as required in §111.111(a)(1)(F)(ii) of this title by Test Method 9 (40 CFR 60, Appendix A), or as required in §111.111(a)(1)(F)(iii) of this title by Alternate Method 1 to Method 9, Light Detection and Ranging (40 CFR 60, Appendix A).

(C) Visible emissions from structures shall not exceed 30% opacity for any six-minute period from any building, enclosed facility, or other structure as required in §111.111(a)(7)(A) of this title. Compliance with the visible emission standard of §111.111(a)(7)(A) of this title shall be determined as required in §111.111(a)(7)(B)(i) of this title by Test Method 9 (40 CFR 60, Appendix A).

(D) Visible emissions during the cleaning of a firebox or the building of a new fire, soot blowing, equipment changes, ash removal, and rapping of precipitators may exceed the limits set forth in §111.111 of this title for a period aggregating not more than six minutes in any 60 consecutive minutes, nor more than six hours in any ten-day period as required in §111.111(a)(1)(E) of this title. This exemption shall not apply to the emissions mass rate standard, as outlined in §111.151(a) of this title (relating to Allowable Emissions Limits).

(E) Visible emissions from all other sources not specified in §111.111(a)(1), (4), or (7) of this title shall not exceed 30% opacity for any six-minute period from any building, enclosed facility, or other structure as required in §111.111(a)(8)(A) of this title. Compliance with the visible emission standard of §111.111(a)(8)(A) of this title shall be determined by applying Test Method 9 (40 CFR 60, Appendix A) as required in §111.111(a)(8)(B)(i) of this title.

(F) Certification of opacity readers determining opacities under Method 9 (as outlined in 40 CFR 60, Appendix A) to comply with §111.111(a)(1)(G) of this title shall be accomplished by completing the TNRCC Visible Emissions Evaluators Course, or approved agency equivalent, no more than 180 days before the opacity reading.

(G) Emission limits on nonagricultural processes are as follows.

(i) Emissions of particulate matter from any source may not exceed the allowable rates specified in Table 1 as required in §111.151(a) of this title.
Figure 1 : 30 TAC §122.514(b)(7)(G)(i)

(ii) Sources with an effective stack height (h_e) less than the standard effective stack height (H_e), as determined from Table 2, must reduce the allowable emission level by multiplying it by $[h_e/H_e]^2$ as required in §111.151(b) of this title.
Figure 2 : 30 TAC §122.514(b)(7)(G)(ii)

(iii) Effective stack height shall be calculated by the following equation as required in §111.151(c) of this title:
Figure 3 : 30 TAC §122.514(b)(7)(G)(iii)

(H) Open burning, as stated in §111.201 of this title (relating to General Prohibition), shall not be authorized unless the following requirements are satisfied:

(i) Section 111.205 of this title (relating to Exception for Fire Training);

(ii) Section 111.209(3) of this title (relating to Exception for Disposal Fires);

(iii) Section 111.213 of this title (relating to Exception for Hydrocarbon Burning);

(iv) Section 111.219 of this title (relating to General Requirements for Allowable Outdoor Burning); and

(v) Section 111.221 of this title (relating to Responsibility for Consequences of Outdoor Burning).

(I) Abrasive blasting of water storage tanks performed by portable operations shall not be authorized unless the following requirements are satisfied:

(i) Section 111.133(a)(1) and (2), (b), and (c) of this title (relating to Testing Requirements);

(ii) Section 111.135(a), (b), and (c)(1)-(4) of this title (relating to Control Requirements for Surfaces with Coatings Containing Lead);

(iii) Section 111.137(a), (b)(1)-(4), and (c) of this title (relating to Control Requirements for Surfaces with Coatings Containing Less than 1.0% Lead); and

(iv) Section 111.139(a) and (b) of this title (relating to Exemptions).

(8) For covered processes subject to Title 40, Code of Federal Regulations, Part 68 (40 CFR 68) and specified in 40 CFR, §68.10, the owner or operator shall comply with the requirements of the Accidental Release Prevention Provisions in 40 CFR 68. The owner or operator shall submit to the appropriate agency, either a compliance schedule for meeting the requirements of 40 CFR 68 by the date provided in 40 CFR, §68.10(a), or as part of the compliance certification submitted under §122.143(4) of this title, a certification statement that the source is in compliance with all requirements of 40 CFR 68, including the registration and submission of a risk management plan. This general provision is enforceable only by the Administrator of the EPA.

(9) Owners and operators of a site subject to Title VI of the FCAA shall meet the following requirements for protection of stratospheric ozone which are enforceable only by the Administrator of the EPA.

(A) Operation, servicing, maintenance, and repair on refrigeration and non-motor vehicle air conditioning appliances using ozone-depleting refrigerants on-site shall be conducted in accordance with Title 40, Code of Federal Regulations, Part 82 (40 CFR 82), Subpart F. Owners or operators shall ensure that repairs or refrigerant removal are performed only by properly certified technicians using approved equipment. Records shall be maintained as required by Subpart F.

(B) Servicing, maintenance, and repair of fleet vehicle air conditioning using ozone-depleting refrigerants shall be conducted in accordance with 40 CFR 82, Subpart B. Owners or operators shall ensure that repairs or refrigerant removal are performed only

by properly certified technicians using approved equipment. Records shall be maintained as required by Subpart B.

(10) Stationary gas turbines subject to 40 CFR 60, Subpart GG shall only comply with the requirements of 40 CFR, §60.333(b) for fuel sulfur content.

(11) Stationary gas turbines subject to 40 CFR 60, Subpart GG shall only fire natural gas and may be allowed to utilize a custom fuel monitoring schedule, as an alternative provided for under 40 CFR, §60.334(b)(2), as long as the provisions are at least as stringent as the following.

(A) Monitoring of fuel nitrogen is not required while pipeline quality natural gas is the only fuel fired in the gas turbine.

(B) The fuel supplier or suppliers shall be identified for the record during turbine startup, and at any time that the fuel supplier or suppliers change.

(C) Analysis for fuel sulfur content of the natural gas shall be conducted using one of the approved ASTM Test Methods for the measurement of sulfur in gaseous fuels, as referenced in 40 CFR, §60.335(d), or the Gas Processors Association (GPA) test method entitled "Test for Hydrogen Sulfide and Carbon Dioxide in Natural Gas Using Length of Stain Tubes." The test methods are listed as follows:

(i) ASTM D1072-80;

(ii) ASTM D3031-81;

(iii) ASTM D3246-81;

(iv) ASTM D4084-82; or

(v) GPA Standard 2377-86.

(D) The owner or operator of a gas turbine who is not currently utilizing an approved custom fuel monitoring schedule shall be required to initially sample the fuel supply daily for a period of two weeks to establish, after turbine startup, that the pipeline quality natural gas fuel supply is low in sulfur content.

(E) After the monitoring required in subparagraph (D) of this paragraph, sulfur monitoring shall be conducted twice monthly for six months. If this monitoring shows little variability in the fuel sulfur content, and indicates consistent compliance with 40 CFR, §60.333(b), then sulfur monitoring shall be conducted once per quarter for six quarters.

(F) If after the monitoring required in subparagraph (E) of this paragraph, or herein, the sulfur content of the fuel shows little variability and, calculated as sulfur dioxide, represents consistent compliance with the sulfur dioxide emission limits specified under 40 CFR, §60.333, sample analysis shall be conducted twice per annum. This monitoring shall be conducted during the first and third quarters of each calendar year.

(G) Should any sulfur analysis as required in subparagraphs (E) or (F) of this paragraph indicate noncompliance with 40 CFR, §60.333, the owner or operator shall notify the commission within two weeks of such excess emissions. The commission will then reexamine the custom schedule. Sulfur monitoring shall be conducted weekly during the interim period when this custom schedule is being reexamined.

(H) If there is a change in fuel supply (supplier), the owner or operator shall be required to sample the fuel daily for a period of two weeks to re-establish for the record that the fuel supply is low in sulfur content. If the fuel supply's low sulfur content is re-established, then the custom fuel monitoring schedule can be resumed.

(I) Stationary gas turbines that use the same supply of pipeline quality natural gas to fuel multiple gas turbines may monitor the fuel sulfur content at a single common location.

(J) Applicants shall attach the custom fuel monitoring schedule to their General Operating Permit application.

(K) Compliance with the provisions of this paragraph fulfills the requirement that custom schedules be approved by the Administrator, as required by 40 CFR, §60.334(b)(2), before being used as an alternative means of compliance.

(12) Stationary gas turbines using water or steam injection need not comply with the nitrogen oxide control requirements of 40 CFR, §60.332(a) during conditions when ice fog is deemed a traffic hazard by the owner or operator of the stationary gas turbine.

(13) The owner or operator shall keep records as required in 40 CFR, §61.246(i) if claiming the exemption in 40 CFR, §61.110(c)(2), pertaining to National Emission Standard for Equipment Leaks (Fugitive Emission Sources) of Benzene.

(14) The owner or operator of a sweetening unit with a design capacity greater than or equal to 2.0 long tons per day (LTPD) that operates at less than 2.0 LTPD, may choose to limit the sulfur feed rate, i.e., the hydrogen sulfide (H_2S) in the acid gas (expressed as sulfur) from the sweetening unit, to less than 2.0 LTPD. For those owners or operators who choose to do so, the requirements of §122.511(b)(18) of this title (relating to Oil and Gas General Operating Permit - Brazoria, Chambers, Collin, Dallas, Denton, El Paso, Fort Bend, Galveston, Hardin, Harris, Jefferson, Liberty, Montgomery, Orange, Tarrant, and Waller Counties) shall apply.

(15) Owners or operators who claim any of the exemptions stated 40 CFR, §60.332(e), (g), (h), (j), or (l) shall maintain records to prove their exemption status in lieu of performing the monitoring, recordkeeping, reporting, and testing requirements specified in 40 CFR 60, Subpart GG. Compliance with this paragraph is deemed compliance with the nitrogen oxide emission limit's monitoring, recordkeeping, reporting, and testing requirements of 40 CFR 60, Subpart GG in accordance with the Permit Shield provisions in §122.145 of this title.

(16) Upon the granting of this General Operating Permit, detailed applicability determinations and the underlying basis for those determinations in the General Operating Permit application submitted to comply with the requirements of this chapter shall become conditions under which the owner or operator shall operate.

(c) Permit tables.

(1) The permit table which lists the requirements for Stationary Gas Turbines affected by 40 CFR 60, Subpart GG is contained in §122.511(c)(1) of this title.

(2) The permit table which lists the requirements for Storage Vessels affected by 40 CFR 60, Subparts K and Ka is contained in §122.511(c)(2) of this title.

(3) The permit table which lists the requirements for Storage Vessels affected by 40 CFR 60, Subpart Kb is contained in §122.511(c)(3) of this title.

(4) The permit table which lists the requirements for Gas Sweetening Units Not Utilizing Sulfur Recovery affected by 40 CFR 60, Subpart LLL is contained in §122.511(c)(5) of this title.

(5) The permit table which lists the requirements for Natural Gas Processing Plant Fugitive Emissions affected by 40 CFR 60, Subpart KKK is contained in §122.511(c)(6) of this title.

(6) The permit table which lists the requirements for Flares affected by 40 CFR 60, Subpart A is contained in §122.511(c)(8) of this title.

(7) The permit table which lists the requirements for Flares affected by Chapter 111 of this title is contained in §122.511(c)(9) of this title.

(8) The permit table which lists the requirements for Gas Sweetening Units Utilizing Sulfur Recovery affected by 40 CFR 60, Subpart LLL is contained in §122.511(c)(10) of this title.

(9) The permit table which lists the requirements for Gas Sweetening Units Utilizing Sulfur Recovery affected by Chapter 112 of this title (relating to Sulfur Compounds) is contained in §122.511(c)(11) of this title.

(10) The permit table which lists the requirements for Stationary Vents affected by Chapter 111 of this title is contained in §122.511(c)(12) of this title.

(11) The permit table which lists the requirements for Boilers/Steam Generators affected by 40 CFR 60, Subparts Db and Dc is contained in §122.511(c)(15) of this title.

§122.515. Bulk Fuel Storage Terminal General Operating Permit.

(a) Qualification criteria. Emission units authorized to operate under this General Operating Permit shall meet each of the following criteria.

(1) Emission units which are authorized to operate under this General Operating Permit shall not have a federal prevention of significant deterioration permit or a federal nonattainment permit.

(2) Emission units which are authorized to operate under this General Operating Permit shall not use an alternative means of compliance which must be approved by the executive director of the commission or the Administrator of the United States Environmental Protection Agency (EPA).

(3) At the time of application submittal, emission units which are authorized to operate under this General Operating Permit shall be in compliance with all requirements as stated in subsections (b) and (c) of this section.

(4) Loading racks at a benzene production facility or bulk terminal shall not be authorized to operate under this General Operating Permit unless these loading racks load only the following: gasoline, crude oil, natural gas liquids, or petroleum distillates.

(5) Emission units in marine terminal loading and unloading operations are not authorized to operate under this General Operating Permit.

(6) For storage vessels, tanks, or containers which are authorized to operate under this General Operating Permit:

(A) the storage vessels shall not store benzene having a specific gravity within the range of specific gravities specified in American Society for Testing and Materials (ASTM) D836-84 for Industrial Grade Benzene, ASTM D835-85 for Refined Benzene-485, ASTM D2359-85a for Refined Benzene-535, and ASTM D4734-87 for Refined Benzene-545; or

(B) petroleum liquid, condensate, crude oil, or volatile organic liquid shall not be stored prior to custody transfer.

(7) Degreasing operations which are authorized under this General Operating Permit and located on any property in Gregg, Nueces, or Victoria Counties shall not emit, when uncontrolled, a combined weight of volatile organic compounds (VOC) greater than or equal to 550 pounds in any consecutive 24-hour period.

(8) Degreasing operations which are authorized to operate under this General Operating Permit shall not utilize the following:

(A) a VOC for open-top vapor or conveyorized degreasing in counties where the regulatory requirements of Chapter 115 of this title (relating to Control of Air Pollution From Volatile Organic Compounds) are applicable; or

(B) individual batch vapor, in-line vapor, in-line cold, or batch cold solvent cleaning machines subject to the regulatory requirements of Title 40, Code of Federal Regulations, Part 63, Subpart T.

(9) VOC water separators which are authorized to operate under this General Operating Permit and are located in the Houston/Galveston, Beaumont/Port Arthur, Dallas/Fort Worth, or El Paso ozone nonattainment areas, shall not have been subject to the control requirements of §115.132(a)(1)-(3) of this title (relating to Control Requirements) at any time since July 17, 1991, which later were exempted from these control requirements by satisfying the conditions of §115.132(a)(4)(A) and (B) of this title.

(10) VOC loading/unloading which is authorized to operate under this General Operating Permit and occurs in the Houston/Galveston, Beaumont/Port Arthur, Dallas/Fort Worth, or El Paso ozone nonattainment areas, shall not have been subject to the control requirements of §115.212(a)(2) and (4)-(6) of this title (relating to Control Requirements) at any time since November 15, 1996, which later were exempted from these control requirements by satisfying the conditions of §115.212(a)(12) of this title.

(11) Emission units which are authorized to operate under this General Operating Permit and are subject to Chapter 111 of this title (relating to Control of Air Pollution From Visible Emissions and Particulate Matter) may not claim an exemption from the continuous emission monitoring requirements of §111.111(a)(3) of this title (relating to Requirements for Specified Sources).

(12) Surface coating operations, other than those performed on equipment that is located on-site and in-place, which are authorized to operate under this General Operating Permit shall not emit, when uncontrolled, the following:

(A) a combined weight of VOC greater than or equal to three pounds per hour and 15 pounds in any consecutive 24-hour period at sites located in the Houston/Galveston, Beaumont/Port Arthur, Dallas/Fort Worth, or El Paso ozone nonattainment areas; or

(B) a combined weight of VOC greater than or equal to 550 pounds (249.5 kilograms) in any consecutive 24-hour period at sites located in Gregg, Nueces, or Victoria Counties.

(13) Equipment in benzene service is not authorized to operate under this General Operating Permit unless the plant site is designed to produce or use less than 1,000 megagrams (1,100 tons) of benzene per year as determined according to the provisions of Title 40, Code of Federal Regulations, Part 61 (40 CFR 61) in 40 CFR, §61.245(d).

(14) Process vents which are authorized to operate under this General Operating Permit and are located in the Houston/ Galveston, Beaumont/Port Arthur, Dallas/Fort Worth, or El Paso ozone nonattainment areas shall not have been subject to the emission specifications of §115.121(a)(1) of this title (relating to Emission Specifications) and the control requirements of §115.122(a)(1) of this title (relating to Control Requirements) at any time since July 17, 1991, which later were exempted from control requirements by satisfying the conditions of §115.122(a)(4)(A) and (B) of this title.

(b) General provisions.

(1) The owner or operator shall comply with the requirements relating to General Operating Permits which are contained in this chapter.

(2) The owner or operator shall comply with the conditions listed in §122.143 of this title (relating to Permit Conditions).

(3) Except for Title 40, Code of Federal Regulations, Part 63, emission units authorized to operate under this General Operating Permit shall have all applicable requirements codified in this subsection or subsection (c) of this section.

(4) The following requirements concerning preconstruction authorizations shall apply.

(A) The requirements of preconstruction authorizations (new source review permits) implemented through Chapter 116 of this title (relating to Control of Air Pollution By Permits for New Construction or Modification) are not incorporated in this General Operating Permit and will only be enforced through Chapter 116 of this title. For purposes of this subchapter, preconstruction authorizations include new source review permits, standard exemptions, standard permits, flexible permits, special permits, and special exemptions. These preconstruction authorizations shall be referenced in the General Operating Permit application. Copies of preconstruction authorizations referenced in the General Operating Permit application may be obtained from the appropriate Texas Natural Resource Conservation Commission (TNRCC) regional office or TNRCC central office in Austin.

(B) The requirements of preconstruction authorizations referenced in the General Operating Permit application are not eligible for the Permit Shield provisions in §122.145 of this title (relating to Permit Content).

(5) For any unit subject to any subpart in Title 40, Code of Federal Regulations, Part 60 (40 CFR 60), the owner or operator shall comply with the following unless otherwise stated in the applicable subpart:

(A) Section 60.1-Applicability;

(B) Section 60.7-Notification and Recordkeeping;

(C) Section 60.8-Performance Tests;

(D) Section 60.9-Availability of Information;

(E) Section 60.11-Compliance with Standards and Maintenance Requirements;

(F) Section 60.12-Circumvention;

(G) Section 60.13-Monitoring Requirements;

(H) Section 60.14-Modification;

(I) Section 60.15-Reconstruction; and

(J) Section 60.19-General Notification and Reporting Requirements.

(6) The owner or operator shall submit compliance certifications to the commission at least every 12 months and, upon request, to the EPA.

(7) Owners or operators shall comply with the following requirements of Chapter 111 of this title.

(A) Visible emissions from stationary vents constructed on or before January 31, 1972, shall not exceed 30% opacity averaged over a six-minute period as required in §111.111(a)(1)(A) of this title. Compliance with the visible emission standard of §111.111(a)(1)(A) of this title shall be determined as required in §111.111(a)(1)(F)(ii) of this title by Test Method 9 (40 CFR 60, Appendix A), or as required in §111.111(a)(1)(F)(iii) of this title by Alternate Method 1 to Method 9, Light Detection and Ranging (40 CFR 60, Appendix A).

(B) Visible emissions from stationary vents constructed after January 31, 1972, shall not exceed 20% opacity averaged over a six-minute period as required in §111.111(a)(1)(B) of this title. Compliance with the visible emission standard of §111.111(a)(1)(B) of this title shall be determined as required in §111.111(a)(1)(F)(ii) of this title by Test Method 9 (40 CFR 60, Appendix A), or as required in §111.111(a)(1)(F)(iii) of this title by Alternate Method 1 to Method 9, Light Detection and Ranging (40 CFR 60, Appendix A).

(C) Visible emissions from structures shall not exceed 30% opacity for any six-minute period from any building, enclosed facility, or other structure as required in §111.111(a)(7)(A) of this title. Compliance with the visible emission standard of §111.111(a)(7)(A) of this title shall be determined as required in §111.111(a)(7)(B)(i) of this title by Test Method 9 (40 CFR 60, Appendix A).

(D) Visible emissions from all other sources not specified in §111.111(a)(1), (4), or (7) of this title shall not exceed 30% opacity for any six-minute period from any building, enclosed facility, or other structure as required in §111.111(a)(8)(A) of this title. Compliance with the visible emission standard of §111.111(a)(8)(A) of this title shall be determined by applying Test Method 9 (40 CFR 60, Appendix A) as required in §111.111(a)(8)(B)(i) of this title.

(E) Certification of opacity readers determining opacities under Method 9 (as outlined in 40 CFR 60, Appendix A) to comply with §111.111(a)(1)(G) of this title shall be accomplished by completing the TNRCC Visible Emissions Evaluators Course, or approved agency equivalent, no more than 180 days before the opacity reading.

(F) Emission limits on nonagricultural processes are as follows.

(i) Emissions of particulate matter from any source may not exceed the allowable rates specified in Table 1 as required in §111.151(a) of this title (relating to Allowable Emissions Limits). Figure 1: 30 TAC §122.515(b)(7)(F)(i)

(ii) Sources with an effective stack height (h_e) less than the standard effective stack height (H_e), as determined from Table 2, must reduce the allowable emission level by multiplying it by $[h_e/H_e]^2$ as required in §111.151(b) of this title.
Figure 2 : 30 TAC §122.515(b)(7)(F)(ii)

(iii) Effective stack height shall be calculated by the following equation as required in §111.151(c) of this title: §122.515(b)(7)(F)(iii)
Figure 3 : 30 TAC

(G) Open burning, as stated in §111.201 of this title (relating to General Prohibition), shall not be authorized unless the following requirements are satisfied:

(i) Section 111.205 of this title (relating to Exception for Fire Training);

(ii) Section 111.209(3) of this title (relating to Exception for Disposal Fires);

(iii) Section 111.213 of this title (relating to Exception for Hydrocarbon Burning);

(iv) Section 111.219 of this title (relating to General Requirements for Allowable Outdoor Burning); and

(v) Section 111.221 of this title (relating to Responsibility for Consequences of Outdoor Burning).

(H) Owners or operators of sites subject to the provisions of this chapter in which the sites have Materials Handling, Construction, Roads, Streets, Alleys, and Parking Lots shall comply with the requirements of §§111.143, 111.145, 111.147, and 111.149 of this title (relating to Materials Handling; Construction and Demolition; Roads, Streets, and Alleys; and Parking Lots) if they are located in the following areas:

(i) the City of El Paso, including the Fort Bliss Military Reservation, except for training areas as referenced in §111.141 of this title (relating to Geographic Areas of Application and Date of Compliance);

(ii) the area of Harris County located inside Beltway 8 (Sam Houston Tollway); or

(iii) the area of Nueces County outlined in the Group II State Implementation Plan for Inhalable Particulate Matter.

(I) Abrasive blasting of water storage tanks performed by portable operations shall not be authorized unless the following requirements are satisfied:

(i) Section 111.133(a)(1) and (2), (b), and (c) of this title (relating to Testing Requirements);

(ii) Section 111.135(a), (b), and (c)(1)-(4) of this title (relating to Control Requirements for Surfaces with Coatings Containing Lead);

(iii) Section 111.137(a), (b)(1)-(4), and (c) of this title (relating to Control Requirements for Surfaces with Coatings Containing Less than 1.0% Lead); and

(iv) Section 111.139(a) and (b) of this title (relating to Exemptions).

(8) The owner or operator of sites subject to the provisions of this chapter that are affected by the requirements of Chapter 115, Subchapter C of this title (relating to Volatile Organic Compound Transfer Operations) shall comply with the following.

(A) The requirements in the undesignated head Loading and Unloading of Volatile Organic Compounds in Chapter 115, Subchapter C of this title for the Houston/Galveston, Beaumont/Port Arthur, Dallas/Fort Worth, and El Paso ozone nonattainment areas are as follows:

(i) Section 115.212(a)(4), (5)(D), (8)(C), (9)(A), (9)(C), and (12) of this title;

(ii) Section 115.214(a)(3) of this title (relating to Inspection Requirements);

(iii) Section 115.215(a) of this title (relating to Approved Test Methods); and

(iv) Section 115.216(a)(3)(A)-(C) and (4)(A)-(C) of this title (relating to Monitoring and Recordkeeping Requirements).

(B) The requirements of the undesignated head Loading and Unloading of Volatile Organic Compounds in Chapter 115, Subchapter C of this title for Gregg, Nueces, and Victoria Counties are as follows:

(i) Section 115.212(b)(2) and (3)(C) of this title;

(ii) Section 115.215(b) of this title; and

(iii) Section 115.216(b)(3)(A) of this title.

(C) The requirements of the undesignated head Loading and Unloading of Volatile Organic Compounds in Chapter 115, Subchapter C of this title for Aransas, Bexar, Calhoun, Matagorda, San Patricio, and Travis Counties are §115.212(c)(2) and (3)(C) of this title.

(D) The requirements in the undesignated head Filling of Gasoline Storage Vessels (Stage I) For Motor Vehicle Fuel Dispensing Facilities in Chapter 115, Subchapter C of this title for the Houston/Galveston, Beaumont/Port Arthur, Dallas/Fort Worth, and El Paso ozone nonattainment areas are as follows:

(i) Section 115.221 of this title (relating to Emission Specifications);

(ii) Section 115.222 of this title (relating to Control Requirements);

(iii) Section 115.224 of this title (relating to Inspection Requirements);

(iv) Section 115.225(1)-(5) of this title (relating to Testing Requirements);

(v) Section 115.226 of this title (relating to Recordkeeping Requirements); and

(vi) Section 115.227 of this title (relating to Exemptions).

(E) The requirements in the undesignated head Control of Volatile Organic Compound Leaks From Transport Vessels in Chapter 115, Subchapter C of this title for the Houston/Galveston, Beaumont/Port Arthur, Dallas/Fort Worth, and El Paso ozone nonattainment areas are as follows:

(i) Section 115.234 of this title (relating to Inspection Requirements);

(ii) Section 115.235(1), (2), (3)(A), and (4) of this title (relating to Approved Test Methods);

(iii) Section 115.236 of this title (relating to Recordkeeping Requirements); and

(iv) Section 115.237 of this title (relating to Exemptions).

(F) The requirements in the undesignated head Control of Vehicle Refueling Emissions (Stage II) at Motor Vehicle Fuel Dispensing Facilities in Chapter 115, Subchapter C of this title for the Houston/Galveston, Beaumont/Port Arthur, Dallas/Fort Worth, and El Paso ozone nonattainment areas are as follows:

(i) Section 115.241 of this title (relating to Emission Specifications);

(ii) Section 115.242 of this title (relating to Control Requirements);

(iii) Section 115.244 of this title (relating to Inspection Requirements);

(iv) Section 115.245(1), (2), (3), (5), and (6) of this title (relating to Testing Requirements);

(v) Section 115.246 of this title (relating to Recordkeeping Requirements); and

(vi) Section 115.247 of this title (relating to Exemptions).

(G) The requirements in the undesignated head Control of Reid Vapor Pressure of Gasoline in Chapter 115, Subchapter C of this title for the El Paso ozone nonattainment area are as follows:

(i) Section 115.252 of this title (relating to Control Requirements);

(ii) Section 115.255 of this title (relating to Approved Test Methods);

(iii) Section 115.256 of this title (relating to Recordkeeping Requirements); and

(iv) Section 115.257 of this title (relating to Exemptions).

(9) For the degassing or cleaning of stationary and transport vessels located in the Houston/Galveston, Beaumont/Port Arthur, Dallas/Fort Worth, or El Paso ozone nonattainment areas, the owner or operator shall comply with the requirements of Chapter 115, Subchapter F of this title (relating to Miscellaneous Industrial Sources), as follows:

(A) for the degassing or cleaning of stationary volatile organic compound storage vessels with a nominal capacity of one million gallons or more, comply with the following requirements:

(i) Section 115.541(a)(1) of this title (relating to Emission Specifications);

(ii) Section 115.542(a) of this title (relating to Control Requirements);

(iii) Section 115.544 of this title (relating to Inspection Requirements);

(iv) Section 115.545(1)-(9) of this title (relating to Approved Test Methods);

(v) Section 115.546 of this title (relating to Monitoring and Recordkeeping Requirements); and

(vi) Section 115.547 of this title (relating to Exemptions);

(B) for the degassing or cleaning of all transport vessels with a nominal capacity of 8,000 gallons or more, comply with the following requirements:

(i) Section 115.541(a)(2) of this title;

(ii) Section 115.542(a) of this title;

(iii) Section 115.544 of this title;

(iv) Section 115.545(1)-(9) of this title;

(v) Section 115.546 of this title; and

(vi) Section 115.547 of this title.

(10) For emission units located in the Houston/Galveston or Beaumont/Port Arthur ozone nonattainment areas and subject to the provisions of the undesignated head Commercial, Institutional, and Industrial Sources in Chapter 117, Subchapter B of this title (relating to Combustion at Existing Major Sources), the owner or operator shall have submitted a complete initial control plan as required by §117.209 of this title (relating to Initial Control Plan Procedures).

(11) For emission units located in the Houston/Galveston or Beaumont/Port Arthur ozone nonattainment areas and subject to the requirements of the undesignated head Commercial, Institutional, and Industrial Sources in Chapter 117, Subchapter B of this title, the owner or operator shall comply with the requirements of the undesignated head Commercial, Institutional, and Industrial Sources by the compliance date specified in §117.520 of this title (relating to Compliance Schedule for Commercial, Institutional, and Industrial Combustion Sources).

(12) For covered processes subject to Title 40, Code of Federal Regulations, Part 68 (40 CFR 68) and specified in 40 CFR, §68.10, the owner or operator shall comply with the requirements of the Accidental Release Prevention Provisions in 40 CFR 68. The owner or operator shall submit to the appropriate agency, either a compliance schedule for meeting the requirements of 40 CFR 68 by the date provided in 40 CFR, §68.10(a), or as part of the compliance certification submitted under §122.143(4) of this title, a certification statement that the source is in compliance with all requirements of 40 CFR 68, including the registration and submission of a risk management plan. This general provision is enforceable only by the Administrator of the EPA.

(13) Owners and operators of a site subject to Title VI of the FCAA shall meet the following requirements for protection of stratospheric ozone which are enforceable only by the Administrator of the EPA.

(A) Operation, servicing, maintenance, and repair on refrigeration and non-motor vehicle air conditioning appliances using ozone-depleting refrigerants on-site shall be conducted in accordance with Title 40, Code of Federal Regulations, Part 82 (40 CFR 82), Subpart F. Owners or operators shall ensure that repairs or refrigerant removal are performed only by properly certified technicians using approved equipment. Records shall be maintained as required by Subpart F.

(B) Servicing, maintenance, and repair of fleet vehicle air conditioning using ozone-depleting refrigerants shall be conducted in accordance with 40 CFR 82, Subpart B. Owners or operators shall ensure that repairs or refrigerant removal are performed only by properly certified technicians using approved equipment. Records shall be maintained as required by Subpart B.

(14) Surface coating operations, other than those performed on equipment that is located on-site and in-place, which are authorized to operate under this General Operating Permit shall comply with the following requirements:

(A) at sites located in the Houston/Galveston, Beaumont/Port Arthur, Dallas/Fort Worth, or El Paso ozone nonattainment areas, surface coating operations that are subject to the conditions for exemptions referenced in §115.427(a)(3)(A) of this title (relating to Exemptions) shall maintain sufficient records to document applicability as required by §115.426(a)(4) of this title (relating to Monitoring and Recordkeeping Requirements); or

(B) at sites located in Gregg, Nueces, or Victoria Counties, surface coating operations that are subject to the conditions for exemptions referenced in §115.427(b)(1) of this title shall maintain sufficient records to document applicability as required by §115.426(b)(3) of this title.

(15) The owner or operator shall keep records as required in 40 CFR, §61.246(i) if claiming the exemption in 40 CFR, §61.110(c)(2), pertaining to National Emission Standard for Equipment Leaks (Fugitive Emission Sources) of Benzene.

(16) Upon the granting of this General Operating Permit, detailed applicability determinations and the underlying basis for those determinations in the General Operating Permit application submitted to comply with the requirements of this chapter shall become conditions under which the owner or operator shall operate.

(c) Permit tables.

(1) The following permit table lists the requirements for Storage Vessels affected by 40 CFR 60, Subpart K.
Figure 4: 30 TAC §122.515(c)(1)

(2) The following permit table lists the requirements for Storage Vessels affected by 40 CFR 60, Subpart Ka.
Figure 5: 30 TAC §122.515(c)(2)

(3) The following permit table lists the requirements for Storage Vessels affected by 40 CFR 60, Subpart Kb.
Figure 6: 30 TAC §122.515(c)(3)

(4) The following permit table lists the requirements for Storage Vessels located in Brazoria, Chambers, Collin, Dallas, Denton, El Paso, Fort Bend, Galveston, Hardin, Harris, Jefferson, Liberty, Montgomery, Orange, Tarrant, or Waller Counties which are affected by Chapter 115 of this title.
Figure 7: 30 TAC §122.515(c)(4)

(5) The following permit table lists the requirements for Storage Vessels located in Gregg, Nueces, or Victoria Counties which are affected by Chapter 115 of this title.
Figure 8: 30 TAC §122.515(c)(5)

(6) The following permit table lists the requirements for Storage Vessels located in Aransas, Bexar, Calhoun, Matagorda, San Patricio, or Travis Counties which are affected by Chapter 115 of this title.
Figure 9: 30 TAC §122.515(c)(6)

(7) The following permit table lists the requirements for Flares affected by 40 CFR 60, Subpart A.
Figure 10: 30 TAC §122.515(c)(7)

(8) The following permit table lists the requirements for Flares affected by Chapter 111 of this title.
Figure 11: 30 TAC §122.515(c)(8)

(9) The following permit table lists the requirements for Combustion Units affected by Chapter 117 of this title (relating to Control of Air Pollution From Nitrogen Compounds).
Figure 12: 30 TAC §122.515(c)(9)

(10) The following permit table lists the requirements for Non-Marine VOC Loading/Unloading Operations located in Brazoria, Chambers, Collin, Dallas, Denton, El Paso, Fort Bend, Galveston, Hardin, Harris, Jefferson, Liberty, Montgomery, Orange, Tarrant, or Waller Counties which are affected by Chapter 115 of this title.
Figure 13: 30 TAC §122.515(c)(10)

(11) The following permit table lists the requirements for Non-Marine VOC Loading/Unloading Operations located in Gregg, Nueces, or Victoria Counties which are affected by Chapter 115 of this title.
Figure 14: 30 TAC §122.515(c)(11)

(12) The following permit table lists the requirements for Non-Marine VOC Loading/Unloading Operations located in Aransas, Bexar, Calhoun, Matagorda, San Patricio, or Travis Counties which are affected by Chapter 115 of this title.
Figure 15: 30 TAC §122.515(c)(12)

(13) The following permit table lists the requirements for VOC Water Separators located in Brazoria, Chambers, Collin, Dallas, Denton, El Paso, Fort Bend, Galveston, Hardin, Harris, Jefferson, Liberty, Montgomery, Orange, Tarrant, or Waller Counties which are affected by Chapter 115 of this title.
Figure 16: 30 TAC §122.515(c)(13)

(14) The following permit table lists the requirements for VOC Water Separators located in Gregg, Nueces, or Victoria Counties which are affected by Chapter 115 of this title.
Figure 17: 30 TAC §122.515(c)(14)

(15) The following permit table lists the requirements for VOC Water Separators located in Aransas, Bexar, Calhoun, Matagorda, San Patricio, or Travis Counties which are affected by Chapter 115 of this title.
Figure 18: 30 TAC §122.515(c)(15)

(16) The following permit table lists the requirements for Cold Cleaning Degreasing Operations located in Brazoria, Chambers, Collin, Dallas, Denton, El Paso, Fort Bend, Galveston, Hardin, Harris, Jefferson, Liberty, Montgomery, Orange, Tarrant, or Waller Counties which are affected by Chapter 115 of this title.

Figure 19: 30 TAC §122.515(c)(16)

(17) The following permit table lists the requirements for Bulk Gasoline Terminals affected by 40 CFR 60, Subpart XX.
Figure 20: 30 TAC §122.515(c)(17)

(18) The following permit table lists the requirements for Stationary Vents located in Brazoria, Chambers, Collin, Dallas, Denton, El Paso, Fort Bend, Galveston, Hardin, Harris, Jefferson, Liberty, Montgomery, Orange, Tarrant, or Waller Counties which are affected by Chapter 115 of this title.
Figure 21: 30 TAC §122.515(c)(18)

(19) The following permit table lists the requirements for Stationary Vents located in Nueces and Victoria Counties which are affected by Chapter 115 of this title.
Figure 22: 30 TAC §122.515(c)(19)

(20) The following permit table lists the requirements for Stationary Vents located in Aransas, Bexar, Calhoun, Matagorda, San Patricio, or Travis Counties which are affected by Chapter 115 of this title.
Figure 23: 30 TAC §122.515(c)(20)

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

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Kevin McCalla
Director, Legal Counsel
Texas Natural Resource Conservation Commission
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For further information, please call: (512) 239–1966

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Chapter 292. River Authorities

The Texas Natural Resource Conservation Commission (commission) adopts the amendments to §§292.1, 292.2, 292.11, and 292.13 and repeal of §292.3, concerning river authorities and the commission's supervision over their actions.

Amendments to §292.2, and §292.13 are adopted with changes to the proposed text as published in the April 5, 1996, issue of the *Texas Register* (21 TexReg 2919). Amendments to §292.1, §292.11, and the repeal of §292.3 are adopted without changes and will not be republished.

These changes are in response to the passage of Senate Bill 626, Acts of the 74th Legislature, 1995, which repealed and reorganized several administrative provisions in Texas Water Code, Chapters 50-66, as well as other legislative changes. The amendments update references and citations to current statutes.

No comments were received on the proposed rules. The adopted rules update definitions and rules to conform to recent changes to the definitions contained in §3.2 of this title.

The Commission has prepared a Takings Impact Assessment for these rules pursuant to Texas Government Code Annotated, §2007.043. The following is a summary of that Assessment. The main purpose of the rule is to implement Senate Bill 626, enacted by the 74th legislature, 1995. The rules will substantially advance this specific purpose by changing the citations from the repealed Chapter 50, Water Code to the new Chapter 49, Water Code and amending the rules where necessary to reflect changes in the statutes as more fully described herein. Promulgation and enforcement of these rules will not affect private real property.

Subchapter A. General Provisions

30 TAC §292.1, §292.2

The amendments are adopted under Texas Water Code, §§5.103, 5.105, and 5.235, which provide the Commission with the authority to adopt any sections necessary to carry out its powers and duties under the Texas Water Code and other laws of the State of Texas, to establish and approve all general policy of the commission, and to collect statutory fees from persons submitting various applications to the commission.

The amendments are adopted under the Texas Water Code, §§5.013, 5.103, 5.105, and 12.081, which provide the Texas Natural Resource Conservation Commission with the authority to adopt any rules necessary to carry out its powers and duties under the Texas Water Code and other laws of the State of Texas, to establish and approve all general policies of the commission, and to issue rules necessary to supervise districts and authorities.

§292.2. Meaning of Certain Words.

Unless the context requires otherwise, the following terms and phrases shall mean the following:

(1) Authority shall be used interchangeably with the term District to connote any entity created by Article III, Section 52 or Article XVI, Section 59, of the Texas Constitution and which are subject to these rules.

(2) Board means the governing body of the district.

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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Kevin McCalla
Director, Legal Division
Texas Natural Resource Conservation Commission
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Proposal publication date: April 5, 1996
For further information, please call: (512) 239-4640

♦ ♦ ♦

30 TAC §292.3

The repeal is adopted under the Texas Water Code, §§5.103, 5.105, and 5.235, which provide the Texas Natural Resource Conservation Commission with the authority to adopt any sections necessary to carry out its powers and duties under the Texas Water Code and other laws of the state of Texas, to establish and approve all general policy of the commission, and to collect statutory fees from persons submitting various applications to the commission.

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

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Kevin McCalla
Director, Legal Division
Texas Natural Resource Conservation Commission
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For further information, please call: (512) 239-4640

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Subchapter B. Administrative Policies

30 TAC §292.11, §292.13

The amendments are adopted under the Texas Water Code, &§5.103, 5.105 and 12.081, which provide the commission with the authority to adopt any rules necessary to carry out its powers and duties under the Texas Water Code and other laws of the State of Texas, to establish and approve all general policy of the commission, and to issue rules necessary to supervise districts and authorities.

§292.13. Minimum Provisions.
The following provisions shall be incorporated into the administrative policies adopted by the authorities subject to these rules.

(1) Code of Ethics. The administrative policies shall mandate compliance with the following standards:

(A) the Local Government Code, Chapter 171, relating to conflicts of interests with a business entity in which the official has a substantial interest.

(B) Texas Government Code, Chapter 573, relating to nepotism.

(C) for River Authorities, Texas Government Code, Chapter 572, relating to standards of conduct, personal financial disclosure, and conflict of interest.

(D) Article III, Section 52, of the Texas Constitution, relating to the prohibition on granting public money or things of value to any individual, association or corporation.

(2) Travel Expenditures. The administrative policies shall provide for reimbursing district officials for necessary and reasonable travel expenditures incurred while conducting business or performing official duties or assignments. The board may adopt additional policies which further define the criteria for necessary and reasonable travel expenditures and which provide procedures for the reimbursement of expenses.

(3) Investments. The administrative polices shall provide for compliance with the following statutes:

(A) Subchapter A, Chapter 2256, Government Code (the Public Funds Investment Act);

(B) Chapter 2257, Government Code (the Public Funds Collateral Act); and

(C) any other appropriate statutes which are applicable to the investment of the authority's funds.

(4) Professional Services Policy. The administrative polices shall provide for compliance with the following standards:

(A) Texas Government Code, Chapter 2254, Subchapter A (the Professional Services Procurement Act) which prohibits the selection of professional services based on competitive bids.

(B) A list shall be maintained of at least three qualified persons or firms for each area of professional service used by the authority. The pre-qualified persons or firms shall be sent a request for proposal for any contract award for a new project which is expected to exceed $25,000.

(5) Industrial Development Bonds and Pollution Control Bonds. The administrative policies shall reference any industrial development corporation associated with the authority and shall provide for compliance with the memorandum issued by the State Auditor on October 7, 1988 relating to the disclosure of industrial development and pollution control bonds.

(6) Management Policies. The administrative policies shall provide for the following:

(A) an independent management audit to be conducted every five years and submitted to the executive director. As an alternative, an internal audit office may be established which reports to the board of directors.

(B) compliance with the provisions and intent of §106, Contracting With Historically Underutilized Businesses of Texas, Article V, General Provisions of Texas House Bill 1, 72nd Legislature, First Called Session (1991) relative to contracting with underutilized businesses and providing equal employment opportunities.

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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Kevin McCalla
Director, Legal Division
Texas Natural Resource Conservation Commission
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For further information, please call: (512) 239-4640

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Chapter 293. Water Districts

The Texas Natural Resource Conservation Commission (commission) adopts the repeal of 30 TAC §§293.11-293.18, 293.22-293.24, 293.41, 293.60-293.61, 293.149-293.152, 293.177, 293.301-293.311, 293.331, 293.341 and 293.343; amendments to §§293.1, 293.3-293.4, 293.6, 293.21, 293.32-293.34, 293.42-293.44, 293.46-293.48, 293.50, 293.55-293.57, 293.59, 293.62-293.63, 293.68-293.70, 293.83, 293.88, 293.91-293.97, 293.101, 293.111, 293.121, 293.123-293.124, 293.131-293.132, 293.134, 293.141-293.143, 293.145-293.146, 293.148, 293.171-293.173, 293.180, 293.201-293.202, 293.361-293.365; and new §§293.11-293.15, §§293.22-293.25, 293.35, 293.41, 293.60, 293.61, 293.80, 293.102-293.103, and 293.149-293.150, relating to water districts subject to commission supervision.

Amendments to §§293.3, 293.4, 293.21, 293.33, 293.34, 293.42, 293.46, 293.48, 293.62, 293.68-293.70, 293.83, 293.88, 293.91, 293.92, 293.93, 293.94, 293.96, 293.111, 293.131, 293.132, 293.141-143, 293.145-293.146, 293.172-293.173, 293.180, 293.202, 293.361-293.362, and new §§293.11-293.15, 293.25, 293.22, 293.23, 293.35, 293.61, 293.80, and 293.102 are adopted with changes to the proposed text as published in the April 5, 1996, issue of the *Texas Register* (21 TexReg 2920).

The repeals of §§293.11-293.18, 293.22-293.24, 293.41,293.60-293.61, 293.149-293.152,293.177, 293.301-293.311, 293.331, and 293.341; amendments to §§293.1, 293.6, 293.32, 293.44, 293.47, 293.50, 293.55-293.57, 293.59, 293.63, 293.95, 293.97, 293.101, 293.121, 293.123-293.124, 293.134, 293.148, 293.171, 293.201, 293.363-292.365; and new §§293.24, 293.41, 293.60, 293.103, and 293.149-293.150 are adopted without changes and will not be republished.

The repeal of §293.343 is adopted without changes as published in the April 23, 1996, issue of the *Texas Register* (21 TexReg 3506) and will not be republished.

The purpose of the adopted rules is to incorporate new references and new requirements relating to the administration of water districts and the commission's supervision over their actions as provided by Senate Bill (SB) 626, Acts of the 74th Legislature, 1995, which repealed and reorganized several administrative provisions in the Texas Water Code, Chapters 50-66 and added Chapters 49 and 59. These amendments also incorporate new procedural requirements for designating groundwater management areas pursuant to House Bill (HB) 2294, Acts of the 74th Legislature, 1995, and HB 2209, Acts of the 73rd Legislature, 1993, which codifies the creation and duties of the Harris-Galveston Coastal Subsidence District into a new Title 5 of the Texas Water Code. Additionally, these revisions reflect updated citations to other statutory requirements and cross-references to other chapters of this title, as well as clarifying certain sections.

Written testimony on these rules was provided by six commenters. Written testimony that requested clarification or questioned certain sections was provided by the Greater Houston Builders Association and other interested individuals. Written testimony that requested waivers or exemptions of certain provisions was provided by the Cypress Hill Municipal Utility District, the Lamar County Water Supply District, and the Texas Rural Water Association. The following paragraphs summarize the comments received.

The Greater Houston Builders Association and an individual suggested that the certificate received from the county clerk's office as required by §293.14(b), relating to District Actions Following Creation, be required to show only the date and not the time of the district confirmation election and the time that the information form is filed. The commission concurs with this suggestion and has deleted the requirement that the certificate show the time of the election and informational filing.

The Greater Houston Builders Association and an individual requested that §293.35(c), relating to Reinstatement of a Board Member, be modified to insert "to the attorney for the district" in the second sentence so that a copy of the report prepared by the executive director is also mailed to the district's attorney. The commission agrees that a copy of the report should be sent to the district's attorney if that information is available. The commission also believes that the report should be sent to the district's official address to assure proper notification. Therefore, the second sentence has been modified to read as follows: "A copy of the report will be mailed to the removed board member, the directors of the district, the district's official address and any other interested parties, including the district's attorney, if known."

The Lamar County Water Supply District and the Texas Rural Water Association requested that §293.41(a), relating to Approval of Projects and Issuance of Bonds, be changed to exempt from TNRCC bond approval districts that can achieve and consistently maintain an investment grade bond rating, levy no taxes, and involve no developer interest. The exemptions in the proposed rules are taken directly from Texas Water Code, §49.181, which governs the commission's approval of district bonds. The statute does not provide for any other exemptions from the commission's bond approval authority. Therefore, no changes have been made.

The Greater Houston Builders Association objected to a possible interpretation of "availability of plans", as referenced in §239.46(5), relating to Construction Prior to Commission Approval. The rule simply refers to the statutory requirements, and the proposed amendment was only to reference the effective date of the rule. Therefore, no changes have been made in response to the comment.

The Greater Houston Builders Association expressed concern about the 100% reimbursable status under §293.47(d)(8), relating to Thirty Percent of District Construction Costs to be Paid by Developer, of drainage impact fees required by Harris County Flood Control District. No changes were suggested. The intent of the rule is to make clear that costs associated with construction of drainage facilities serving or programmed to serve less than 2,000 acres do not qualify for an exemption to the 30% rule even though their construction may be required by another entity, including the Harris County Flood Control District.

The Greater Houston Builders Association and an individual questioned why §293.48, relating to Street and Water, Wastewater and Drainage Utility Construction by Developer, requires a letter of credit for the construction of utilities before a district advertises bonds for sale when §293.59(k)(6), relating to Economic Feasibility of Project, requires that such utilities be 95% complete. They asked that this requirement be clarified. Although utilities are required to be completed in most instances, districts with a low combined no-growth tax rate or that have an acceptable rating on their bonds are exempt from §293.59(k)(6). In such cases, financial guarantees are required for any developer's share of incomplete utilities. For clarity, "Except as otherwise provided," has been added to the first sentence in §293.48.

The Greater Houston Builders Association and an individual asked that §293.63(a)(4), relating to Contract Documents for Water District Projects, be revised to provide that a district may require a bid bond or a certified/cashier's check at the district's sole discretion, and not the contractor's choice. The proposed language in the rule follows the statutory language in Texas Water Code, §49.271. Districts should consult with their own

legal counsel if they have questions about the interpretation of this statutory provision.

The Cypress Hill Municipal Utility District and one individual requested that §293.88, relating to Petition for Authorization to Proceed in Federal Bankruptcy, be amended by including a new subsection waiving the requirement for the developer to pay 30% of the construction cost (as provided in §293.47, relating to Thirty Percent of District Construction Costs to be Paid by Developer) in districts which have secured permission of the creditors and the bankruptcy court for 100% financing under the terms of the Plan of Arrangement approved by a federal bankruptcy court. The commission has not made any changes in response to this comment. The intent of the rule is to help reduce the bonded indebtedness of a district, assure that the developer has more ownership and thus financial interest in the construction projects. While waiving the rule might encourage development in certain formerly bankrupt districts, it could have negative consequences on other developments. Specifically, this could give an unfair competitive advantage to such developers over other developers in the area. Also, this type of regulation tends to reward poor development or development in areas of low demand and hurts the developers who may have been more prudent or those that continued to support their districts during times of economic stagnation or decline. In addition, §293.47(j) already allows a district to request a waiver of any requirement in §293.47 based on the particular facts at issue.

The Greater Houston Builders Association asked that §293.111, relating to Utility Service Lines and Connection, be modified to change the references from "utility" to "water and wastewater" to eliminate confusion over the term "utility". The commission agrees with this suggestion and has made the change.

On August 28, 1996 the commission adopted the rules as proposed with the instructions to modify the ruse of the words file and submit to make them consistent with other agency rules. These changes are reflected herein.

The Commission has prepared a Takings Impact Assessment for these rules pursuant to Tex. Government Code, Ann. §2007.043. The following is a summary of that Assessment. The main purpose of the rules is to implement Senate Bill 626, enacted by the 74th legislature, 1995. The rules will substantially advance this specific purpose by changing the cites from the repealed Chapter 50, Water Code to the new Chapter 49, Water Code and amending the rules where necessary to reflect changes in the statutes as more fully described herein. Promulgation and enforcement of these rules will not affect private real property.

General Provisions

30 TAC §293.1, 293.3, 293.4, 293.6

The amendments are adopted under §§5.103, 5.105, and 5.235, the Texas Water Code, which provide the Texas Natural Resource Conservation Commission (commission) with the authority to adopt any sections necessary to carry out its powers and duties under the Texas Water Code and other laws of the State of Texas, to establish and approve all general policy of the commission, and to collect statutory fees from persons submitting various applications to the commission.

§293.3. Continuing Right of Supervision of Districts and Authorities Created Under Article III, Section 52 and Article XVI, Section 59 of the Texas Constitution.

(a) The powers and duties of all districts and authorities created under the Texas Constitution, Article III, §52, and Article XVI, §59, are subject to the continuing right of supervision of the State of Texas, by and through the commission or its successor, and this supervision may include but is not limited to the authority to:

(1) inquire into the competence, fitness, and reputation of the officers and directors of any district or authority;

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

(4) institute investigations and hearings;

(5) issue rules necessary to supervise the districts and authorities, except that such rules shall not apply to water quality ordinances adopted by any river authority which meet or exceed minimum requirements established by the commission; and

(6) the right of supervision granted herein shall not apply to matters relating to electric utility operations.

(b) the executive director shall prepare and submit to the governor, lieutenant governor, and speaker of the house a report of any findings made under this section.

§293.4. Public Records.

(a) Audits on file with a district and all other records and information as set forth in the Texas Water Code, §49.194, shall be maintained in the district office and shall be available to the public during normal business hours as provided in Texas Government Code, Chapter 552.

(b) All records and information required by law to be filed with the agency shall be available for public inspection during the office hours of the agency.

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

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Kevin McCalla
Director, Legal Division
Texas Natural Resource Conservation Commission
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For further information, please call: (512) 239-4640

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Creation of Water Districts

30 TAC §§293.11-293.18

The repeals are adopted under the Texas Water Code, §§5.103, 5.105, and 5.235, which provide the Texas Natural Resource Conservation Commission with the authority to adopt any sections necessary to carry out its powers and duties under the Texas Water Code and other laws of the state of Texas, to establish and approve all general policy of the commission, and to collect statutory fees from persons submitting various applications to the commission.

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

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Director, Legal Division
Texas Natural Resource Conservation Commission
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30 TAC §§293.11-293.15

The new sections are adopted under the Texas Water Code, §§5.103, 5.105, and 5.235, which provide the Texas Natural Resource Conservation Commission (commission) with the authority to adopt any sections necessary to carry out its powers and duties under the Texas Water Code and other laws of the State of Texas, to establish and approve all general policy of the commission, and to collect statutory fees from persons submitting various applications to the commission.

§293.11. Information Required to Accompany Applications for Creation of Districts.

(a) Creation applications for all types of districts shall contain the following:

(1) $700 non refundable application fee;

(2) if a proposed district's purpose is to supply fresh water for domestic or commercial use or to provide wastewater services, roadways, or drainage, a certified copy of the action of the governing body of any municipality in whose extraterritorial jurisdiction the proposed district is located, consenting to the creation of the proposed district, pursuant to Local Government Code, §42.042. If the governing body of any such municipality fails or refuses to grant consent, the petitioners must show that the provisions of Local Government Code, §42.042 have been followed.

(3) if city consent was obtained pursuant to paragraph (2) of this subsection, provide the following:

(A) evidence that the application conforms substantially to the city consent; provided, however, that nothing herein shall prevent the commission from creating a district with less land than included in the city consent;

(B) evidence that the city consent does not place any conditions or restrictions on a district other than those permitted by Texas Water Code, §54.016(e);

(4) a statement by the appropriate secretary or clerk that a copy of the petition for creation of the proposed district was received by any city in whose corporate limits any part of the proposed district is located;

(5) evidence of submitting creation petition and report to appropriate agency regional office;

(6) if substantial development is proposed, a market study and a developer's financial statement;

(7) if the petitioner is a corporation, trust, partnership, or joint venture, a certificate of corporate authorization to sign the petition, a certificate of the trustee's authorization to sign the petition, a copy of the partnership agreement or a copy of the joint venture agreement as appropriate to evidence that the person signing the petition is authorized to sign the petition on behalf of the corporation, trust, partnership, or joint venture;

(8) a vicinity map;

(9) unless waived by the executive director, for districts where substantial development is proposed, a certification by the petitioning landowners that those lienholders who signed the petition or a separate document consenting to the petition, or who were notified by certified mail, are the only persons holding liens on the land described in the petition;

(10) other related information as required by the executive director.

(b) Creation applications for Chapter 36, Texas Water Code, Groundwater Conservation Districts shall contain the items listed in subsection (a) of this section and the following items:

(1) a petition containing the matters required by Texas Water Code, §36.013, signed by the majority of the landowners in the proposed district, or if there are more than 50 landowners, at least 50 of those landowners. The petition shall include the following:

(A) the name of the proposed district;

(B) the area and boundaries of the proposed district, including a map generally outlining the boundaries of the proposed district;

(C) the purpose or purposes of the proposed district;

(D) a statement of the general nature of any projects proposed to be undertaken by the district, the necessity and feasibility of the work, and the estimated cost of those projects according to the petitioners if the projects are to be funded by the issuance of bonds or notes; and

(E) any additional terms or conditions that limit the powers of the proposed district from those authorized in Chapter 36, Texas Water Code.

(2) evidence that the boundaries are coterminous with or inside the boundaries of a delineated groundwater management area, critical area, or underground water reservoir or subdivision thereof. A groundwater conservation district may include all or part of one or more counties, cities, districts, or other political subdivision and may consist of separate bodies of land within a groundwater management area, critical area, or underground water reservoir or subdivision thereof separated by land not included in the proposed district. Evidence shall show:

(A) a rule adopted by the commission designating a groundwater management area as provided in the Texas Water Code, §35.004, and §§293.21-293.25 of this title (relating to Designation of Groundwater Management Areas), designating a critical area as provided under the Texas Water Code, §§35.007-35.012, or an order designating delineation of an underground water reservoir or subdivision thereof; or

(B) if part of the proposed district is not included within either a delineated groundwater management area, critical area,

or underground water reservoir or a subdivision thereof, the petition may also contain a request (meeting the requirements of the Texas Water Code, §35.005 and §§293.21-293.25 of this title) to create or alter the boundaries of a management area. If such a request is made, it may be acted upon separately by the commission from the petition for the creation of the proposed district;

(3) a map showing the proposed district's boundaries, metes and bounds, area, physical culture, and computation sheet for survey closure;

(4) a vicinity map (22-24 inches by 36 inches or in a digital data electronic format) showing as appropriate the location of municipalities, highways, roads, and other improvements, together with the areal extent of groundwater aquifers, reservoirs, or subdivisions thereof, and showing the location of known recharge (i.e., outcrops of aquifer units, karst features, etc.) or discharge (i.e., known seeps, springs, etc.) features, and any other information pertinent to the creation of the proposed district;

(5) a geologic/hydrologic report including as appropriate:

(A) the purpose or purposes of the proposed district and its management planning objectives/goals;

(B) a description of the existing area, conditions, topography, economic endeavors which rely heavily upon groundwater, and any proposed improvements;

(C) a description of the groundwater resources, including the characteristics (i.e., recharge/discharge features, depth of usable groundwater, etc.) of individual aquifers within the proposed district;

(D) complete justification for the creation of the proposed district supported by evidence that the district is feasible, practicable, necessary, and will benefit all of the land to be included in the district;

(E) if the proposed district is located in a designated critical area, a description of how the proposed projects will address issues identified within the critical area;

(F) the existing and projected land use in the proposed district;

(G) the existing and projected groundwater quality, quantity, availability, and usage within the proposed district, including any foreseeable quality, quantity, availability, and usage issues as identified by the petitioners;

(H) the existing and projected population;

(I) an evaluation of the effect the proposed district and its programs will have within the district on the following:

(i) land elevation;

(ii) subsidence;

(iii) groundwater levels;

(iv) groundwater conservation and availability;

(v) groundwater quality;

(vi) monitoring of ambient groundwater conditions;

(vii) groundwater educational initiatives;

(J) financial information including the following:

(i) the projected maintenance tax rate, under Texas Water Code, §36.020, which should not exceed 50 cents on each $100 of assessed valuation;

(ii) the proposed budget of revenues and expenses for the district;

(iii) an evaluation of the effect the district and its programs will have on the total tax assessments on all land within the district, including a discussion of current and projected tax rates;

(iv) tentative itemized cost estimates of the proposed projects and itemized cost summary for anticipated bond issue requirements;

(K) if water supply utility services are proposed:

(i) an evaluation of the availability of comparable service from other entities, including, but not limited to, water districts, water supply corporations, municipalities, and regional authorities;

(ii) complete justification, supported by evidence, for the necessity and feasibility of the proposed district to provide water supply services;

(iii) the current and projected water rates in the proposed district;

(iv) tentative itemized cost estimates of the proposed capital improvements and itemized cost summary for anticipated bond issue requirements; and

(v) any other related technical information as required by the executive director;

(6) a certificate by the county tax assessor(s) indicating the owners and tax valuation of land within the proposed district as reflected on the county tax rolls as of the date of the petition. If the tax rolls do not show the petitioners to be the majority of the landowners within the proposed district, then the petitioners shall submit to the executive director a certified copy of the deed(s) tracing title from the person(s) listed on the county tax rolls as owners of the land to the petitioners and any additional information required by the executive director necessary to show accurately the ownership of the land to be included in the proposed district;

(7) affidavits by those persons desiring appointment by the commission as temporary directors, showing compliance with applicable statutory requirements of qualifications and eligibility for temporary directors, and in accordance with Texas Water Code, §§36.051(b) , 36.058, and 36.059(b) for appointment of directors; and

(8) any other data as the executive director may require.

(c) Creation applications for Chapter 51, Texas Water Code, Water Control and Improvement Districts within 2 or more counties shall contain items listed in subsection (a) of this section and the following:

(1) a petition as required by Texas Water Code, §51.013, requesting creation signed by majority of persons holding title to land representing a total value of more than 50 percent of value of all land in proposed district as indicated by county tax rolls, or if there are more than 50 persons holding title to land in the proposed district, the petition can be signed by 50 of them. The petition shall include the following:

(A) name of district;

(B) area and boundaries of district;

(C) constitutional authority;

(D) purpose(s) of district;

(E) statement of the general nature of work and necessity and feasibility of project with reasonable detail;

(F) statement of estimated cost of project.

(2) evidence that the petition was filed with the office of the county clerk of the county(ies) in which the district or portions of the district are located;

(3) a map showing the district boundaries, metes and bounds, area, physical culture, and computation sheet for survey closure;

(4) a preliminary plan (22-24 inches by 36 inches or digital data in electronic format) showing the location of existing facilities including highways, roads, and other improvements, together with the location of proposed utility mains and sizing, general drainage patterns, principal drainage ditches and structures, utility plant sites, recreational areas, commercial and school sites, areas within the 100-year flood plain and 100-year floodway, and any other information pertinent to the project including an inventory of any existing water, wastewater or drainage facilities;

(5) a preliminary engineering report including the following as applicable:

(A) a description of existing area, conditions, topography and proposed improvements;

(B) land use plan;

(C) 100-year flood computations or source of information;

(D) existing and projected populations;

(E) tentative itemized cost estimates of the proposed capital improvements and itemized cost summary for anticipated bond issue requirement;

(F) projected tax rate and water and wastewater rates;

(G) an investigation and evaluation of the availability of comparable service from other systems, including but not limited to water districts, municipalities, and regional authorities;

(H) an evaluation of the effect the district and its systems and subsequent development within the district will have on the following:

(i) land elevation;

(ii) subsidence;

(iii) groundwater level within the region;

(iv) recharge capability of a groundwater source;

(v) natural run-off rates and drainage;

(vi) water quality;

(I) a table summarizing overlapping taxing entities and the most recent tax rates by those entities; and

(J) complete justification for creation of the district supported by evidence that the project is feasible, practicable, necessary, will benefit all of the land and residents to be included in the district and will further the public welfare.

(6) a certificate by the county tax assessor indicating the owners and tax valuation of land within the proposed district as reflected on the county tax rolls as of the date of the petition or any amended petition. If the tax rolls do not show the petitioner(s) to be the owners of the majority of value of the land within the proposed district, then the petitioner(s) shall submit to the executive director a certified copy of the deed(s) tracing title from the person(s) listed on the county tax rolls as owners of the land to the petitioner(s) and any additional information required by the executive director necessary to show accurately the ownership of the land to be included in the district;

(7) affidavits by those persons desiring appointment by the commission as temporary or initial directors, showing compliance with applicable statutory requirements of qualifications and eligibility for temporary or initial directors, in accordance with Texas Water Code, §§51.072 and 49.052; and

(8) other information as required by the executive director.

(d) Creation applications for Chapter 54, Texas Water Code, Municipal Utility Districts, shall contain items listed in subsection (a) of this section and the following;

(1) a petition containing the matters required by Texas Water Code, §§54.014 and 54.015 signed by persons holding title to land representing a total value of more than 50 percent of value of all land in proposed district as indicated by county tax rolls, if there are more than 50 persons holding title to land in the proposed district, the petition can be signed by 50 of them. The petition shall include the following:

(A) name of district;

(B) area and boundaries of district described by metes and bounds or lot and block number, if there is a recorded map or plat and survey of the area;

(C) necessity for the work;

(D) statement of the general nature of work proposed;

(E) statement of estimated cost of project.

(2) evidence that the petition was filed with the office of the county clerk of the county(ies) in which the district or portions of the district are located;

(3) a map showing the district boundaries in metes and bounds, area, physical culture, and computation sheet for survey closure;

(4) a preliminary plan (22-24 inches by 36 inches or digital data in electronic format) showing the location of existing facilities including highways, roads, and other improvements, together with the location of proposed utility mains and sizing, general drainage patterns, principal drainage ditches and structures, utility plant sites, recreational areas, commercial and school sites, areas within the 100-year flood plain and 100-year floodway, and any other information pertinent to the project including an inventory of any existing water, wastewater or drainage facilities;

(5) a preliminary engineering report including as appropriate:

(A) a description of existing area, conditions, topography and proposed improvements;

(B) land use plan;

(C) 100-year flood computations or source of information;

(D) existing and projected populations;

(E) tentative itemized cost estimates of the proposed capital improvements and itemized cost summary for anticipated bond issue requirement;

(F) projected tax rate and water and wastewater rates;

(G) an investigation and evaluation of the availability of comparable service from other systems, including but not limited to water districts, municipalities, and regional authorities;

(H) an evaluation of the effect the district and its systems and subsequent development within the district will have on the following:

(i) land elevation;

(ii) subsidence;

(iii) groundwater level within the region;

(iv) recharge capability of a groundwater source;

(v) natural run-off rates and drainage;

(vi) water quality;

(I) a table summarizing overlapping taxing entities and the most recent tax rates by those entities; and

(J) complete justification for creation of the district supported by evidence that the project is feasible, practicable, necessary, and will benefit all of the land to be included in the district;

(6) a certificate by the county tax assessor indicating the owners and tax valuation of land within the proposed district as reflected on the county tax rolls as of the date of the petition. If the tax rolls do not show the petitioner(s) to be the owners of the majority of value of the land within the proposed district, then the petitioner(s) shall submit to the executive director a certified copy of the deed(s) tracing title from the person(s) listed on the county tax rolls as owners of the land to the petitioner(s) and any additional information required by the executive director necessary to show accurately the ownership of the land to be included in the district;

(7) a certified copy of the action of the governing body of any municipality in whose corporate limits or extraterritorial jurisdiction the proposed district is located, consenting to the creation of the proposed district pursuant to Texas Water Code, §54.016. For districts to be located in the extraterritorial jurisdiction of any municipality, if the governing body of any such municipality fails or refuses to grant consent, the petitioners must show that provisions of Texas Water Code, §54.016 have been followed;

(8) if city consent was obtained pursuant to paragraph (7) of this subsection, then provide the following:

(A) evidence that the application conforms substantially to the city consent; provided, however, that nothing herein shall prevent the commission from creating a district with less land than included in the city consent;

(B) evidence that the city consent does not place any conditions or restrictions on a district other than those permitted by Texas Water Code, §54.016(e);

(C) evidence that the city consent provides for the notice to buyers of land required by Texas Water Code, §49.452(d) - (n) and (p), and §54.016(h)(4)(A), and complies with Texas Water Code, §54.016(h)(4)(B) by including in the required filings with the appropriate county clerk or clerks the information required by Texas Water Code, §54.016(h)(4)(A) and the provisions of Texas Water Code, §§49.455(c)-(j);

(9) the petitioners for districts proposed to be created within the corporate boundaries of a municipality should show that the city will rebate to the district an equitable portion of city taxes to be derived from the residents of the area proposed to be included in the district if such taxes are used by the city to finance elsewhere in the city services of the type the district proposes to provide. If like services are not to be provided, then an agreement regarding a rebate of city taxes is not necessary. Nothing in this subsection is intended to restrict the contracting authorization provided in the Local Government Code, §402.014;

(10) affidavits by those persons desiring appointment by the commission as temporary directors, showing compliance with applicable statutory requirements of qualifications and eligibility for temporary directors, in accordance with Texas Water Code, §§54.102 and 49.052; and

(11) other data and information as the executive director may require.

(e) Creation applications for Chapter 55, Texas Water Code, Water Improvement Districts within 2 or more counties shall contain items listed in subsection (a) of this section and the following:

(1) a petition containing the matters required by Texas Water Code, §55.040 signed by persons holding title to more than 50 percent of all land in proposed district as indicated by county tax rolls, or by 50 qualified property taxpaying electors. The petition shall include the following:

(A) name of district;

(B) area and boundaries of district;

(2) a map showing the district boundaries in metes and bounds, area, physical culture, and computation sheet for survey closure;

(3) a preliminary plan (22-24 inches by 36 inches or digital data in electronic format) showing the location of existing facilities including highways, roads, and other improvements, together with the location of proposed utility mains and sizing, general drainage patterns, principal drainage ditches and structures, utility plant sites, recreational areas, commercial and school sites, areas within the 100-year flood plain and 100-year floodway, and any other information pertinent to the project including an inventory of any existing water, wastewater or drainage facilities;

(4) a preliminary engineering report including as appropriate:

(A) a description of existing area, conditions, topography and proposed improvements;

(B) land use plan;

(C) 100-year flood computations or source of information;

(D) existing and projected populations;

(E) tentative itemized cost estimates of the proposed capital improvements and itemized cost summary for anticipated bond issue requirement;

(F) projected tax rate and water and wastewater rates;

(G) an investigation and evaluation of the availability of comparable service from other systems, including but not limited to water districts, municipalities, and regional authorities;

(H) an evaluation of the effect the district and its systems and subsequent development within the district will have on the following:

(i) land elevation;

(ii) subsidence;

(iii) groundwater level within the region;

(iv) recharge capability of a groundwater source;

(v) natural run-off rates and drainage;

(vi) water quality;

(I) a table summarizing overlapping taxing entities and the most recent tax rates by those entities; and

(J) complete justification for creation of the district supported by evidence that the project is practicable, would be a public utility, and would serve a beneficial purpose;

(5) a certificate by the county tax assessor indicating the owners and tax valuation of land within the proposed district as reflected on the county tax rolls as of the date of the petition. If the tax rolls do not show the petitioner(s) to be the owners of the majority of the land within the proposed district, then the petitioner(s) shall submit to the executive director a certified copy of the deed(s) tracing title from the person(s) listed on the county tax rolls as owners of the land to the petitioner(s) and any additional information required by the executive director necessary to show accurately the ownership of the land to be included in the district; and

(6) other data and information as the executive director may require.

(f) Creation applications for Chapter 58, Texas Water Code, Irrigation Districts within 2 or more counties, shall contain items listed in subsection (a) of this section and the following:

(1) a petition containing the matters required by the Texas Water Code, §58.013 and §58.014 signed by persons holding title to land representing a total value of more than 50% of value of all land in proposed district as indicated by county tax rolls, or if there are more than 50 persons holding title to land in the proposed district, the petition can be signed by 50 of them. The petition shall include the following:

(A) name of district;

(B) area and boundaries;

(C) provision of the Texas Constitution under which district will be organized;

(D) purpose(s) of district;

(E) statement of the general nature of the work to be done and the necessity, feasibility, and utility of the project, with reasonable detail; and

(F) statement of the estimated costs of the project.

(2) evidence that the petition was filed with the office of the county clerk of the county(ies) in which the district or portions of the district are located;

(3) a map showing the district boundaries in metes and bounds, area, physical culture, and computation sheet for survey closure;

(4) a preliminary plan (22-24 inches by 36 inches or digital data in electronic format) showing as applicable the location of existing facilities including highways, roads, and other improvements, together with the location of proposed irrigation facilities, general drainage patterns, principal drainage ditches and structures, sites, areas within the 100-year flood plain and 100-year floodway, and any other information pertinent to the project;

(5) a preliminary engineering report including the following as applicable:

(A) a description of existing area, conditions, topography and proposed improvements;

(B) land use plan, including a table showing irrigable and non-irrigable acreage;

(C) copies of any agreements, meeting minutes, contracts, or permits executed or in draft form with other entities including but not limited to federal, state or local entities or governments or persons;

(D) tentative itemized cost estimates of the proposed capital improvements and itemized cost summary for anticipated bond issue requirement;

(E) proposed budget including projected tax rate and/or fee schedule and rates;

(F) an investigation and evaluation of the availability of comparable service from other systems, including but not limited to water districts, municipalities, and regional authorities;

(G) an evaluation of the effect the district and its systems will have on the following:

(i) land elevation;

(ii) subsidence;

(iii) groundwater level within the region;

(iv) recharge capability of a groundwater source;

(v) natural run-off rates and drainage;

(vi) water quality;

(H) a table summarizing overlapping taxing entities and the most recent tax rates by those entities; and

(I) complete justification for creation of the district supported by evidence that the project is feasible, practicable, necessary, and will benefit all of the land and residents to be included in the district and will further the public welfare;

(6) a certificate by the county tax assessor indicating the owners and tax valuation of land within the proposed district as reflected on the county tax rolls as of the date of the petition or any amended petition. If the tax rolls do not show the petitioner(s) to be the owners of the majority of value of the land within the proposed district, then the petitioner(s) shall submit to the executive director a certified copy of the deed(s) tracing title from the person(s) listed on the county tax rolls as owners of the land to the petitioner(s) and any additional information required by the executive director necessary to show accurately the ownership of the land to be included in the district;

(7) affidavits by those persons desiring appointment by the commission as temporary or initial directors, showing compliance with applicable statutory requirements of qualifications and eligibility for temporary or initial directors, in accordance with Texas Water Code, §58.072; and

(8) other data as the executive director may require.

(g) Creation applications for Chapter 59, Texas Water Code, Regional Districts, shall contain items listed in subsection (a) of this section and the following:

(1) a petition, as required by Texas Water Code, §59.003, signed by the owner or owners of 2,000 contiguous acres or more; or by the county commissioners court of one, or more than one, county; or by any city whose boundaries or ETJ the proposed district lies within; or by 20% of the municipal districts to be included in the district. The petition shall contain:

(A) a description of the boundaries by metes and bounds or lot and block number, if there is a recorded map or plat and survey of the area;

(B) a statement of the general work, and necessity of the work;

(C) estimated costs of the work;

(D) name of the petitioner(s);

(E) name of the proposed district;

(F) if submitted by at least 20% of the municipal districts to be included in the regional district, such petition shall also include:

(i) a description of the territory to be included in the proposed district; and

(ii) endorsing resolutions from all municipal districts to be included.

(2) evidence that a copy of the petition was filed with city clerk in each city where proposed district's boundaries cover in whole or part;

(3) if land in the corporate limits or ETJ of a city is proposed, documentation of city consent or documentation of having followed the process outlined in Texas Water Code, §59.006;

(4) a preliminary engineering report including as appropriate:

(A) a description of existing area, conditions, topography and proposed improvements;

(B) land use plan;

(C) 100-year flood computations or source of information;

(D) existing and projected populations;

(E) tentative itemized cost estimates of the proposed capital improvements and itemized cost summary for anticipated bond issue requirement;

(F) projected tax rate and water and wastewater rates;

(G) an investigation and evaluation of the availability of comparable service from other systems, including but not limited to water districts, municipalities, and regional authorities;

(5) affidavits by those persons desiring appointment by the commission as temporary or initial directors, showing compliance with applicable statutory requirements of qualifications and eligibility for temporary or initial directors, as required by Texas Water Code, §§59.021 and 49.052; and

(6) other information as the executive director may require.

(h) Creation applications for Chapter 65, Texas Water Code, Special Utility Districts, shall contain items listed in subsection (a) of this section and the following:

(1) a certified copy of the resolution requesting creation, as required by Texas Water Code, §§65.014 and 65.015, signed by the president and secretary of the board of directors of the water supply corporation, and stating that the water supply corporation, acting through its board of directors, has found that it is necessary and desirable for the water supply corporation to be converted into a district. The resolution shall include the following:

(A) a description of the boundaries of the proposed district by metes and bounds or by lot and block number, if there is a recorded map or plat and survey of the area, or by any other commonly recognized means in a certificate attached to the resolution executed by a registered professional engineer;

(B) a statement regarding the general nature of the services presently performed and proposed to be provided, and the necessity for the services;

(C) name of the district;

(D) the names of not less than 5 and not more than 11 qualified persons to serve as the initial board.

(E) if the proposed district also seeks approval of an impact fee, the resolution should also include a request for approval of an impact fee and state the amount of the requested fee.

(2) the legal description accompanying the resolution requesting conversion of a water supply corporation, as defined in the Texas Water Code, §65.001(10), to a special utility district shall conform to the legal description of the service area of the water supply corporation as such service area appears in the certificate of public convenience and necessity issued by the commission or by the Public Utility Commission of Texas to the water supply corporation. Any area of the water supply corporation that overlaps another entity's certificate of convenience and necessity must be excluded unless the

other entity consents in writing to the inclusion of its dually certified area in the district;

(3) a plat showing boundaries of proposed district as described in the petition;

(4) a preliminary plan (22-24 inches by 36 inches or digital data in electronic format) showing the location of existing facilities including highways, roads, and other improvements, together with the location of proposed utility mains and sizing, general drainage patterns, principal drainage ditches and structures, utility plant sites, recreational areas, commercial and school sites, areas within the 100-year flood plain and 100-year floodway, and any other information pertinent to the project including an inventory of any existing water or wastewater facilities;

(5) a preliminary engineering report including the following information unless previously provided to the commission:

(A) a description of existing area, conditions, topography and any proposed improvements;

(B) existing and projected populations;

(C) for proposed system expansion:

(i) tentative itemized cost estimates of any proposed capital improvements and itemized cost summary for any anticipated bond issue requirement;

(ii) an investigation and evaluation of the availability of comparable service from other systems, including but not limited to water districts, municipalities, and regional authorities;

(D) water and wastewater rates;

(E) projected water and wastewater rates;

(F) an evaluation of the effect the district and its system and subsequent development within the district will have on the following:

(i) land elevation;

(ii) subsidence;

(iii) groundwater level within the region;

(iv) recharge capability of a groundwater source;

(v) natural run-off rates and drainage;

(vi) water quality; and

(G) complete justification for creation of the district supported by evidence that the project is feasible, practicable, necessary, and will benefit all of the land to be included in the district;

(6) a certified copy of a certificate of convenience and necessity issued by the commission or its predecessor agency to the water supply corporation applying for conversion to a special utility district;

(7) a certified copy of the most recent financial report prepared by the water supply corporation;

(8) if requesting approval of an existing capital recovery fee or impact fee, supporting calculations and required documentation regarding such fee;

(9) certified copy of resolution and an order canvassing election results, adopted by the water supply corporation, which shows an affirmative vote of its membership to:

(A) authorize conversion to a special utility district operating pursuant to Texas Water Code, Chapter 65;

(B) approve the dissolution of the water supply corporation at such time as creation of the special utility district is approved by the commission;

(C) approve the conveyance of all the assets and debts of the water supply corporation to the special utility district upon dissolution; and

(10) affidavits by those persons named in the resolution for appointment by the commission as initial directors, showing compliance with applicable statutory requirements of qualifications and eligibility for temporary or initial directors, in accordance with Texas Water Code, §65.102 and §49.052 where applicable;

(11) affidavits indicating that the transfer of the assets and the certificate of convenience and necessity has been properly noticed to the executive director and customers in accordance with §291.110 of this title (relating to Report of Sale, Merger or Consolidation) and §291.111 of this title (relating to Transfer of Certificates of Convenience and Necessity); and

(12) other information as the executive director requires.

(i) Creation applications for Chapter 66, Texas Water Code, Stormwater Control Districts, shall contain items listed in subsection (a) or this section and the following:

(1) a petition as required by Texas Water Code, §§66.014, 66.015 and 66.016 requesting creation of a stormwater control district signed by at least 50 persons who reside within the boundaries of the proposed district or signed by a majority of the members of the county commissioners court in each county or counties in which the district is proposed. The petition shall include the following:

(A) a boundary description by metes and bounds or lot and block number if there is a recorded map or plat and survey;

(B) a statement of the general nature of the work proposed and an estimated cost of the work proposed; and

(C) the proposed name of the district;

(2) a map showing the district boundaries in metes and bounds, area, physical culture, and computation sheet for survey closure;

(3) a preliminary engineering report including:

(A) a description of the existing area, conditions, topography and proposed improvements;

(B) preliminary itemized cost estimate for the proposed improvements and associated plans for financing such improvements;

(C) a listing of other entities capable of providing same or similar services and reasons why those are unable to provide such services;

(D) copies of any agreements, meeting minutes, contracts, or permits executed or in draft form with other entities

including but not limited to federal, state or local entities or governments or persons;

(E) an evaluation of the effect the district and its projects will have on the following:

(i) land elevations;

(ii) subsidence/groundwater level and recharge;

(iii) natural run-off rates and drainage;

(iv) water quality;

(F) a table summarizing overlapping taxing entities and the most recent tax rates by those entities;

(G) complete justification for creation of the district supported by evidence that the project is feasible, practical, necessary and will benefit all the land to be included in the district;

(4) affidavits by those persons desiring appointment by the commission as temporary or initial directors, showing compliance with applicable statutory requirements of qualifications and eligibility for temporary or initial directors, in accordance with Texas Water Code, §§66.102 and 49.052 where applicable; and

(5) other data as the executive director may require.

(j) Creation applications for Chapter 375, Local Government Code, Municipal Management Districts shall contain the items listed in subsection (a) of this section and the following:

(1) a petition requesting creation signed by owners of a majority of the assessed value of real property in proposed district, or 50 persons who own property in the proposed district, if more than 50 people own real property in the proposed district. The petition shall include the following:

(A) a boundary description by metes and bounds, or lot and block number if there is a recorded map or plat and survey;

(B) purpose(s) for which district is being created;

(C) general nature of the work, projects or services proposed to be provided, the necessity for those services, and an estimate of the costs associated with such;

(D) include name of proposed district, which must be generally descriptive of the location of the district, followed by "Management District";

(E) list proposed initial directors and experience and term of each; and,

(F) include a resolution of municipality in support of creation, if inside a city;

(2) a preliminary plan or report providing sufficient details on the purpose and projects of district as allowed in Chapter 375, Local Government Code including budget, statement of expenses revenues and sources of such revenues;

(3) a certificate by the county tax assessor indicating the owners and tax valuation of land within the proposed district as reflected on the county tax rolls as of the date of the petition or any amended petition. If the tax rolls do not show the petitioner(s) to be the owners of the majority of value of the land within the proposed district, then the petitioner(s) shall submit to the executive director a certified copy of the deed(s) tracing title from the person(s) listed on the county tax rolls as owners of the land to the petitioner(s) and any additional information required by the executive director necessary to show accurately the ownership of the land to be included in the district.

(4) affidavits by those persons desiring appointment by the commission as initial directors, showing compliance with applicable statutory requirements of qualifications and eligibility for initial directors, in accordance with §375.063 of the Texas Local Government Code.

§293.12. Creation Hearing Notice Actions and Requirements.

(a) The chief clerk shall set the petition for hearing by the commission and issue notice thereof.

(b) The hearing notice actions and requirements for Texas Water Code, Chapter 36, Groundwater Conservation Districts, are as follows:

(1) notice must be published not later than the 30th day before the date of the hearing in at least one newspaper with general circulation in the county or counties in which the proposed district is to be located;

(2) posted on the bulletin board used for posting legal notices in each county in which all or part of the proposed district is to be located; and

(3) if a petition for the creation of a groundwater conservation district contains a request to create or alter the boundaries of a groundwater management area in all or part of the proposed district, the notice must also be given in accordance with the requirements of Texas Water Code, §35.006 and §§293.21-293.25 of this title (relating to Designation of Groundwater Management Areas);

(c) The hearing notice actions and requirements for Texas Water Code Chapter 51, multi-county Water Control & Improvement Districts, and for Chapter 58, multi-county Irrigation Districts are as follows:

(1) The chief clerk shall prepare one original and three copies of the notice for each county and send to the county clerk of each county in which the proposed district may be located. The county clerk shall retain one copy and deliver the original and two copies to the county sheriff;

(2) The sheriff of each county shall post one copy at the courthouse door of that county 15 days before the hearing and publish one in a newspaper of general circulation in that county once a week for two consecutive weeks. The first publication shall be at least 20 days before the hearing.

(d) The hearing notice actions and requirements for Texas Water Code, Chapter 54, Municipal Utility Districts and Chapter 59, Regional Districts are as follows:

(1) The chief clerk shall send a copy of the notice of hearing to all cities which have extraterritorial jurisdiction in the county or counties in which the proposed district is located and which have formally requested notice of creation of all districts in their county or counties. The chief clerk shall prepare a certificate indicating that notice was properly mailed to all these cities.

(2) The chief clerk shall send a copy of the notice of hearing to the petitioners, or their agents, who shall:

(A) cause the notice to be published in a newspaper with general circulation in the county or counties in which the proposed district is located once a week for two consecutive weeks with the first publication being at least 30 days prior to the date of the commission hearing;

(B) send the notice of the hearing by certified mail, return receipt requested, to all fee simple landowners, as reflected on the county tax rolls, whose property is located within the proposed district, except those who have signed the petition for creation at least 30 days prior to the date of the commission hearing. Ownership of the property shall be certified by the tax assessor and collector from the tax rolls as of the date of submitting the petition to the executive director.

(e) The hearing actions and notice requirements for Texas Water Code, Chapter 55, Water Improvement Districts to be located in more than one county are as follows:

(1) the chief clerk shall send a copy of the notice of hearing to the commissioners court of each county where land in the proposed district is located.

(2) The county clerk of each county shall post notice of the time and place of the hearing at the courthouse door.

(f) The hearing actions and notice requirements for Texas Water Code, Chapter 65, Special Utility Districts notice of the creation and transfer of the certificate of convenience and necessity, and for approval of an impact fee, if applicable, shall be accomplished as follows:

(1) The chief clerk shall send a copy of the notice of hearing to all cities which have extraterritorial jurisdiction in the county or counties in which the proposed district is located and which have formally requested notice of creation of all districts in their county or counties. The chief clerk shall prepare a certificate indicating that notice was properly mailed to all these cities.

(2) The chief clerk shall send a copy of the notice to the Public Utility Commission.

(3) The chief clerk shall send a copy of the notice of hearing to the petitioners, or their agents, who shall:

(A) cause the notice to be published in a newspaper with general circulation in the county or counties in which the proposed district is located once a week for two consecutive weeks with the first publication being at least 14 days prior to the date of the commission hearing.

(B) unless waived by executive director, mailed to customers of the water supply corporation and other affected parties at least 120 days prior to the date of the hearing including the following:

(i) name and business address of the district;

(ii) a description of the service area involved;

(iii) the anticipated effect of the conversion on the operation or the rates and services provided to customers; and

(iv) a statement that persons may attend the hearing and participate in the process.

(C) Impact fee notice to be mailed to owners of property within the proposed district, except customers of the water supply corporation, at least 30 days prior to the date of the commission hearing, if the application for conversion concurrently requests approval of an impact fee.

(g) The hearing action and notice requirements for Texas Water Code, Chapter 66, Stormwater Control Districts, are that the chief clerk shall send a copy of the notice of hearing to the petitioners, or their agents, who shall cause the same to be published in a newspaper with general circulation in the county or counties in which the proposed district is located once a week for two consecutive weeks with the first publication being at least 30 days prior to the date of the commission hearing.

(h) The hearing action and notice requirements for Local Government Code, Chapter 375, Municipal Management Districts are as follows:

(1) The chief clerk shall send a copy of the notice of hearing to all counties in which the proposed district is located and all municipalities which have extraterritorial jurisdiction in the county or counties in which the proposed district is located and which have formally requested notice of creation of all districts in their county or counties. The chief clerk shall prepare a certificate indicating that notice was properly mailed to any such counties and/or municipalities.

(2) The chief clerk shall send a copy of the notice of hearing to the petitioners, or their agents, who shall:

(A) cause the notice to be published in a newspaper with general circulation in the municipality in which the proposed district is located once a week for two consecutive weeks with the first publication being at least 31 days prior to the date of the commission hearing;

(B) send the notice of the hearing by certified mail, return receipt requested, to all property owners within the district at least 30 days before the hearing.

§293.13. Commission Actions Following Creation Hearing.

(a) If the commission finds that the petition does not conform to the requirements of the applicable statutes the commission shall deny the petition. With respect to regional plan implementation agencies, the commission will consider the regional plan submitted with the petition in connection with its findings.

(b) If the commission grants the petition for creation:

(1) the commission shall issue an order including a finding that the project meets applicable statutory requirements;

(2) if the commission finds that any of the lands to be included in the district will not be benefited by the creation of the district, the commission shall exclude the lands not to be benefited and shall redefine the boundaries of the proposed district to include only those lands that will receive benefits from the district;

(3) the commission shall appoint directors as provided in applicable statutes, who shall serve until permanent directors are elected and qualified;

(c) A copy of the order of the commission granting or denying the petition shall be mailed by the chief clerk to each city having extraterritorial jurisdiction and/or to each county.

§293.14. District Reporting Actions Following Creation.

(a) A certified copy of the order canvassing results of the confirmation election shall be recorded in the office of the county

clerk of each county in which a portion of the district lies and shall be submitted to the executive director.

(b) The governing board of the district shall submit to the executive director the information required by §293.92 of this title (relating to Additional Reports and Information Required of Certain Districts) and a certificate from the county clerk of each county in which all or part of the district is located showing compliance with Texas Water Code, §49.455. The certificate shall show on its face the date of the confirmation election, and the date that the information required by Texas Water Code, §49.455, was filed with the county clerk(s).

§293.15. Addition of Wastewater and/or Drainage Powers and Conversion of Districts into Municipal Utility Districts.

(a) Any water improvement district, water control and improvement district, fresh water supply district, levee improvement district, irrigation district or any other conservation and reclamation district or any special utility district created under the Texas Constitution, Article XVI, §59, may be converted into a municipal utility district operating under the Texas Water Code, Chapter 54 or obtain additional wastewater and/or drainage powers.

(b) The application shall be accompanied by the following:

(1) a certified copy of the resolution adopted by the board of directors requesting the commission to hold a hearing on the question of conversion of the district or the addition of wastewater and/or drainage powers for the district;

(2) a $700 application fee plus the cost of required notice, if any;

(3) unless waived by the executive director, a preliminary plan (22-24 inches by 36 inches or digital data in electronic format) showing the location of existing facilities including highways, roads, and other improvements together with the location of proposed utility mains and sizing, general drainage patterns, principal drainage ditches and structures, utility plant sites, recreational areas, commercial and school sites, areas within the 100-year flood plain, and any other information pertinent to the project;

(4) unless waived by the executive director, a preliminary engineering report including:

(A) a description of existing area, conditions, topography and proposed improvements;

(B) land use plan;

(C) 100-year flood computations or source of information;

(D) existing and projected populations;

(E) tentative itemized cost estimates of the proposed capital improvements, if any and itemized cost summary for anticipated bond issue requirements;

(F) projected tax rate and water and wastewater rates; and

(G) total tax assessments on all land within the district.

(5) other data and information as the executive director may require.

(c) Prior to the hearing, the following requirements shall be met with evidence of such compliance filed with the chief clerk at or prior to the hearing:

(1) Notice of the hearing in a form issued by the chief clerk shall be given by publishing notice in a newspaper with general circulation in the county or counties in which the district is located. The notice shall be published once a week for two consecutive weeks with the first publication to be made not less than 30 days before the time set for the hearing. The notice shall:

(A) state the time and place of the hearing;

(B) set out the resolution adopted by the district in full; and

(C) notify all interested persons to appear and offer testimony for or against the proposed contained in the resolution.

(2) at least 30 days before the date of the hearing, notice of the hearing shall be sent by certified mail, return receipt requested, to all fee simple landowners, as reflected on the county tax rolls, whose property is located within the proposed district unless good cause is shown why such notice by mail should not be given.

(3) ownership of the property shall be certified by the tax assessor and collector from tax rolls or as reflected by the records of the appraisal district, whichever is more current, as of the date of the submitting the resolution to the commission.

(4) the district shall file its resolution requesting conversion or additional powers with the city secretary or clerk of each city, in whose corporate limits or extraterritorial jurisdiction any part of the district is located, concurrently with submitting its application for conversion to the commission.

(d) A special utility district formed pursuant to the Texas Water Code, Chapter 65, which applies for conversion to a district having taxing authority that provides water, wastewater or other public utility services, must comply with the requirements of Local Government Code, §42.042.

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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Kevin McCalla
Director, Legal Division
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Designation of Groundwater Management Areas

30 TAC §§293.21–293.25

The amendment and new sections are adopted under the Texas Water Code, §§5.103, 5.105, and 5.235, which provide the Texas Natural Resource Conservation Commission (commission) with the authority to adopt any sections necessary to carry out its powers and duties under the Texas Water Code and other laws of the State of Texas, to establish and approve all

general policy of the commission, and to collect statutory fees from persons submitting various applications to the commission.

§293.21. Designation of Groundwater Management Area Through Rulemaking.

(a) These sections only apply to the designation of groundwater management areas as authorized by Water Code, §35.004, but shall not apply to proceedings for the designation of groundwater management areas in progress on the effective date of these sections.

(b) Designation of a groundwater management area is a separate proceeding from that for creation of a groundwater conservation district.

(c) In accordance with Water Code, §35.004, on its own motion or on receiving a petition, the commission may initiate a rulemaking to designate a groundwater management area. Through the rulemaking process, the commission will determine the boundaries of such a management area with the objective of providing the most suitable area for the management of the groundwater resources of the part of the state where a groundwater conservation district is or may be located. To the extent feasible, the management area will coincide with the boundaries of a groundwater reservoir or a subdivision thereof. The commission may also consider other factors in determining the boundaries of the management area, such as the boundaries of other political subdivisions and the appropriateness of the size and configuration of the management area to a groundwater conservation district's performance of its duties under Water Code, §§36.101-36.121.

(d) Upon the request of the commission or any person interested in a petition to designate a groundwater management area, the executive director will prepare available evidence relating to the configuration of a groundwater management area. The evidence prepared by the executive director shall include information concerning the existence, configuration, and characteristics of a groundwater reservoir or subdivision thereof. The evidence prepared by the executive director shall be made part of the rulemaking record.

(e) The commission shall designate groundwater management areas using the procedures applicable to rulemaking under the Administrative Procedure Act (Subchapter B, Chapter 2001, Government Code) except where such procedures conflict with those set forth in the Texas Water Code, Chapter 35.

(f) A petition for designation of an underground water management area must be submitted to the executive director and be accompanied by a $100 application fee and petition recording fee of $1.00 per page.

§293.22. Petition for Adoption of Rules Designating a Groundwater Management Area.

(a) A petition may be submitted to the executive director for the sole purpose of requesting that the commission designate a management area for all or part of one or more counties.

(b) A petition submitted pursuant to this section must be signed by:

(1) a majority of the landowners in the proposed management area; or

(2) if there are more than 50 landowners in the proposed management area, the petition must be signed by at least 50 of those landowners.

(c) A petition submitted pursuant to this section must contain the following statement: "Petitioners request that the Texas Natural Resource Conservation Commission designate a groundwater management area to include all or part of _____ County (Counties). The management area shall be designated with the objective of providing the most suitable area for the management of groundwater resources of the part of the state in which a district is to be located. Petitioners understand that this petition requests only the designation of a management area, but that all or part of the land in the management area designated may later be added to an existing groundwater conservation district or become a new groundwater conservation district as provided by Chapter 36 of the Texas Water Code."

(d) A petition shall include a map that shows the location of the proposed management area and may include any other information desired by the petitioners concerning the proposed management area.

(e) The petitioners shall submit the petition to the executive director.

(f) The petitioners shall supply any additional information requested by the commission or the executive director.

§293.23. Commission Consideration of Petition for Adoption of Rules Designating a Groundwater Management Area.

Within 60 days of the receipt of a Petition To Designate a Groundwater Management Area the commission shall initiate a rulemaking proceeding or deny the petition. If the commission denies the petition, it shall issue an order which sets forth the reasons for denying the petition.

§293.24. Notice of Commission Consideration of Final Adoption of Rules Designating a Groundwater Management Area.

(a) In addition to the notice prescribed by the Administrative Procedure Act (Subchapter B, Chapter 2001, Government Code), the petitioners shall have notice published in at least one newspaper with general circulation in the county or counties in which the proposed management area is to be located. Notice must be published not later than the 30th day before the date set for the commission to consider the final adoption of the rules designating the management area.

(b) The notice must include:

(1) a statement of the general purpose and effect of designating the proposed management area;

(2) a map generally outlining the boundaries of the proposed management area or notice of the location at which a copy of the map may be examined or obtained; and

(3) the time and place at which the commission will consider the final adoption of rules designating the management area.

(c) If the commission initiates the rulemaking proceeding on its own motion, the chief clerk shall give the same notice as required to be given by the petitioner under this section.

§293.25. Alteration of Groundwater Management Area.

In accordance with Water Code, §35.004, on its own motion or on receiving a petition, the commission, after notice and hearing, may initiate a rulemaking proceeding to alter the boundaries of a designated management area as required by changed or future conditions and as justified by factual data. A petition for alteration of management area boundaries must allege in detail the facts and circumstances making alteration necessary and be accompanied by a $100 application fee and petition recording fee of $1.00 per page.

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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Kevin McCalla
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Designation of Underground Water Areas

30 TAC §§293.22-293.24

The repeals are adopted under the Texas Water Code, §§5.103, 5.105, and 5.235, which provide the Texas Natural Resource Conservation Commission with the authority to adopt any sections necessary to carry out its powers and duties under the Texas Water Code and other laws of the state of Texas, to establish and approve all general policy of the commission, and to collect statutory fees from persons submitting various applications to the commission.

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Appointment of Directors

30 TAC §§293.32-293.35

The amendments and new section are adopted under the Texas Water Code, (Vernon 1992), §§5.103, 5.105, and 5.235, which provide the Texas Natural Resource Conservation Commission (commission) with the authority to adopt any rules necessary to carry out the powers and duties under the provisions of the Texas Water Code and other laws of this state, to establish and approve all general policy of the commission, and to collect statutory fees from persons submitting various applications to the commission.

§293.33. Commission Appointment of Directors.
Requests for Appointment shall be accompanied by the following:

(1) petition signed by a landowner within the district requesting appointment of temporary directors or directors to fill one or more vacancies on the board;

(2) evidence of each former director's failure or refusal to qualify or serve for each vacancy on the board to be filled;

(3) requests for consideration of appointment as director in the form shown in §293.34 of this title (relating to Form of Affidavit for Appointment as Director) for those persons desiring consideration as director for vacant positions;

(4) certified mail receipt verifying that notice of the application for appointment of directors was sent to the district's official address and each director as shown on the district's latest registration form.

(5) an application fee of $100; and

(6) any other information as the executive director may require.

§293.34. Form of Affidavit for Appointment as Director.

The following form of affidavit must be completed, executed, and filed with the chief clerk at least ten working days prior to the commission hearing on the appointment of such directors.
Figure: 30 TAC §293.34

§293.35. Reinstatement of a Board Member.

(a) If a board by unanimous vote of its remaining members has removed a board member pursuant to Water Code, §49.052(g), that board member may submit a written appeal to the executive director within 30 days after receiving written notice of the board action. The commission may reinstate a removed director if the commission finds that the removal was unwarranted under the circumstances, including the reasons for absences, the time and place of the meetings missed, the business conducted at the meetings missed, and any other facts or circumstances the commission may deem relevant.

(b) A removed board member desiring to appeal the decision of the district's board of directors shall submit an application to the executive director. The application shall consist of the following:

(1) a written request by the removed board member requesting commission review;

(2) an application fee of $100;

(3) copies of the district's board meeting minutes for the 12 months prior to the date of the board member's removal;

(4) a statement as to why the removed board member believes that his/her removal was unwarranted, along with supporting documentation to support the statement, including the reasons for absences, the time and place of the meetings missed, the business conducted at the meetings missed, and any other relevant facts or circumstances; and

(5) such other information which the commission considers material to a determination of whether the removed board member should be reinstated as a director of the district or the district's actions in removing the board member were warranted and reasonable.

(c) The executive director will examine the application and the facts and circumstances contained therein and will prepare a written report which will be submitted to the commission. A copy of the report will be mailed to the removed board member, the directors of the district, the district's official address and any other interested parties, including the district's attorney, if known.

(d) After consideration, the commission will determine whether the removed board member will or will not be reinstated. The commission will enter the appropriate order, either reinstating

the applicant to the district's board of directors or confirming the board's decision to remove the board member.

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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Issuance of Bonds

30 TAC §293.41

The repeal is adopted under the Texas Water Code, §§5.103, 5.105, and 5.235, which provide the Texas Natural Resource Conservation Commission with the authority to adopt any sections necessary to carry out its powers and duties under the Texas Water Code and other laws of the state of Texas, to establish and approve all general policy of the commission, and to collect statutory fees from persons submitting various applications to the commission.

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30 TAC §§293.41, 293.42-293.44, 293.46-293.48, 293.50, 293.55-293.57, 293.59, 293.60, 293.61

The amendments and new sections are adopted under the Texas Water Code, (Vernon 1992), §§5.103, 5.105, and 5.235, which provide the Texas Natural Resource Conservation Commission (commission) with the authority to adopt any rules necessary to carry out the powers and duties under the provisions of the Texas Water Code and other laws of this state, to establish and approve all general policy of the commission, and to collect statutory fees from persons submitting various applications to the commission.

§293.42. Submitting of Documents.

Applicants shall submit all of the required data at one time in one package. Applications may be returned for completion if they do not satisfy the requirements and conform to the bond application report format.

§293.46. Construction Prior to Commission Approval.

The developer may proceed with financing or construction of water, wastewater and drainage facilities contemplated for purchase by the district prior to commission approval of the bond issue designed to finance the project under the following conditions:

(1) (No change.)

(2) All construction plans, specifications, and contract documents as set forth in §293.62 of this title (relating to Construction Related Documents To Be Submitted to the Commission), change orders and supporting engineering data for construction or installation of the facilities shall be submitted to the appropriate commission field office in a timely manner, together with evidence that the materials have been filed with and approved by the district and have been noted in the district's minutes (if the district has not been created, the documents shall be filed with the district within 30 days after creation).

(3)-(4) (No change.)

(5) Contract advertising and award and construction and installation of facilities shall be accomplished in the manner required by the general law for districts and in conformity with commission rules. For construction contracts awarded after the effective date of this subsection (September 5, 1986), if substantial compliance with statutory requirements is not achieved, reimbursement to a developer may be limited to the final construction contract amount, or a lesser amount, if more reflective of the actual value of such facilities as may be determined by the commission, without developer interest.

(6)-(8) (No change.)

§293.48. Street and Water, Wastewater and Drainage Utility (street and utility) Construction by Developer.

Except as otherwise provided, unless street and utility construction is completed within the area to be developed by the proposed bond issue, the developer must provide assurance to the satisfaction of the executive director, prior to advertisement for sale of the district's bonds, that such street and utility construction will be completed as hereinafter provided.

(1) The developer must enter into an agreement with the district, secured by a letter of credit, specifying that if street and utility construction is not completed within a reasonable and specified period of time after the district sells its bonds, the district may award a contract for completion of the streets and utilities with financing to be accomplished by utilizing the letter of credit; provided, however, the district shall not proceed in such a manner until the executive director, after having given at least ten days written notice to both the district and the developer, has reviewed the matter, either on the petition of the district or on his own motion and has approved the district's awarding of the contract and utilization of the letter of credit; and provided further, the executive director may extend the time for the developer to complete the streets and utilities if the developer renews the letter of credit and adequately compensates the district for lost revenues and taxes resulting from failure to complete the streets and utilities within the specified time. In the event that the letter of credit has not been renewed or replaced 45 days prior to its expiration date, or in the event that the developer commences any proceeding, voluntary or involuntary, or any proceeding, voluntary or involuntary, is commenced against the developer involving the bankruptcy, insolvency, reorganization, liquidation, or dissolution of the developer, or any receiver is appointed for the developer, or the

developer makes a general assignment for the benefit of creditors, the district shall have the immediate right to draw down the lesser of the current cost, as estimated by the district's engineer, to construct the streets and utilities, or the entire remaining balance of the letter of credit. The current estimated costs to construct the streets and utilities shall include construction contract amounts, engineering, surveying and testing fees, and a 10% contingency. The district shall deposit such funds in a separate account and shall not commit or expend such funds until the executive director has held the hearing and authorized use of the funds as provided in this subsection. Within 30 days after final completion of the streets and utilities, the district shall provide an accounting of the use of funds drawn pursuant to the provisions hereof and shall refund any remaining funds, including accrued interest, if any, to the developer or his designee. A district shall not allow any letter of credit to expire, except upon completion of the paving in substantial compliance with the agreement or written approval of the executive director. A copy of the street and utility construction agreement meeting the criteria specified in §293.57 of this title (relating to Form of Street and Utility Construction Agreement), the letter of credit and any amendments or renewals thereof shall be submitted to the executive director within ten days after their execution or receipt by the district. The letter of credit must be from a financial institution meeting the qualifications as specified in §293.56 of this title (relating to Requirements for Letters of Credit).

(2) The developer shall include in the street and utility construction contract a provision that places the responsibility on the contractor for repair and clean-up of broken manholes, buried valve boxes, broken wastewater pipe, and all other damage to district facilities caused by construction of streets and utilities.

(3)-(4) (No change.)

§293.61. Bond Related Documents To Be Submitted to the Commission.

Every district required to obtain commission approval of its projects relating to the issuance and sale of bonds as indicated in §293.41 of this title (relating to Approval of Projects and Issuance of Bonds), is required to submit the following bond related reports and/or documents:

(1) If the commission directs funds from the bond issue to be escrowed, a certified copy of the executed escrow agreement with an authorized financial institution of the district's choice shall be submitted within five days of that transaction.

(2) The district shall submit to the executive director a copy of the final official statement within 30 days after the final official statement is issued. The executed contract for the sale of the bonds and debt service schedule shall be submitted to the executive director within 30 days after execution of the contract.

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

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Conditional Approval

30 TAC §293.60

The repeal is adopted under the Texas Water Code, §§5.103, 5.105, and 5.235, which provide the Texas Natural Resource Conservation Commission with the authority to adopt any sections necessary to carry out its powers and duties under the Texas Water Code and other laws of the state of Texas, to establish and approve all general policy of the commission, and to collect statutory fees from persons submitting various applications to the commission.

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District Actions if the Commission Approves the Engineering Project and Issuance of Bonds

30 TAC §293.61

The repeal is adopted under the Texas Water Code, §§5.103, 5.105, and 5.235, which provide the Texas Natural Resource Conservation Commission with the authority to adopt any sections necessary to carry out its powers and duties under the Texas Water Code and other laws of the state of Texas, to establish and approve all general policy of the commission, and to collect statutory fees from persons submitting various applications to the commission.

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District Actions Related to Construction Projects and Purchase of Facilities

30 TAC §§293.62, 293.63, 293.68-293.70

The amendments are adopted under the Texas Water Code, (Vernon 1992), §§5.103, 5.105, and 5.235, which provide the Texas Natural Resource Conservation Commission with the authority to adopt any rules necessary to carry out the powers and duties under the provisions of the Texas Water Code and other laws of this state, to establish and approve all general policy of the commission, and to collect statutory fees from persons submitting various applications to the commission.

§293.62. Construction Related Documents To Be Submitted to the Commission.

Every district required to obtain commission approval of its projects relating to the issuance and sale of bonds as indicated in §293.41 of this title (relating to Approval of Projects and Issuance of Bonds), is required to submit the following construction related reports and/or documents:

(1) (No change.)

(2) As the construction progresses, provide to the appropriate agency field office:

(A) engineer's monthly construction progress reports and monthly pay estimates for contract partial payments within 10 days after payment;

(B) copies of proposed change orders;

(C) copies of infiltration/exfiltration tests for wastewater lines and test results of water lines prior to final construction inspection;

(D)-(F) (No change.)

(3) (No change.)

§293.68. Document Identification.

All bond related documents submitted to the executive director should be properly labeled in the upper right hand corner of the cover page with the name of the district, amount of bonds approved which included funding for the project and the date of approval. If the project is to be funded by a future bond issue, state "future bond issue" under the name of the district.

§293.69. Purchase of Facilities.

(a) A district shall not purchase facilities financed or constructed by a developer, investor owned utility or water supply corporation in contemplation of sale to the district or assume facility contracts from the developer or reimburse the developer, investor owned utility or water supply corporation for funds advanced to finance construction of facilities until the executive director has inspected the project, reviewed contract administration, and given written authorization to finalize the purchase or reimbursement. The executive director shall inspect the facilities and, subject to the requirements contained in this subsection, issue his written approval or disapproval of such proposed purchase within 30 days after receipt of written request from a district or a district's authorized representative. The written approval shall be valid for 120 days.

(b) If the purchase of facilities or reimbursement of funds to the developer, investor owned utility or water supply corporation is not completed within 120 days after the date of the executive director's written approval, the district shall again obtain the written approval as provided herein.

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

§293.70. Audit of Payments to Developer.

(a) Prior to the payment of funds to a developer from bond proceeds, bond anticipation note proceeds, funds to be derived from future bond proceeds, or maintenance tax revenue the governing board of directors of the district shall engage an auditor to perform certain agreed upon procedures applicable to all items and amounts for which a reimbursement request has been received. The auditor must be a certified public accountant or public accountant holding a permit from the Texas State Board of Public Accountancy.

(b) As a minimum, the following procedures shall be included to the extent applicable.

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

(5) A determination shall be made that the items and amounts to be reimbursed are appropriate and in accordance with commitments or policies of the district and interoffice memorandums, orders and rules of the commission as a result of the procedures followed and subject to such limitations as may apply.

(c) (No change.)

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Other Actions Requiring Commission Consideration for Approval

30 TAC §§293.80, 293.83, 293.88

The amendments and new sections are adopted under the Texas Water Code, (Vernon 1992), §§5.103, 5.105, and 5.235, which provide the Texas Natural Resource Conservation Commission with the authority to adopt any rules necessary to carry out the powers and duties under the provisions of the Texas Water Code and other laws of this state, to establish and approve all general policy of the commission, and to collect statutory fees from persons submitting various applications to the commission.

§293.80. Revenue Notes.

(a) A district, as defined by Water Code, §49.001 may not execute a revenue note as described by Water Code, §49.153 for a term longer than three years unless approved by the commission.

(b) This rule does not apply to special water authorities, as defined by Water Code, §49.001.

(c) Applications for commission approval of revenue notes except as provided in subsection (d) of this section shall include the following:

(1) a resolution by the governing board requesting approval of the revenue note;

(2) documents indicating district ownership of the facility;

(3) a detailed explanation of the intended use and project to be financed, and complete justification for the proposed revenue note;

(4) a copy of the district's current Rate Order or Amended Rate Order;

(5) a proposed amortization schedule for the revenue note;

(6) a draft of the proposed revenue note;

(7) copies of the district's current operating budget and estimates of revenues and expenses for the years associated with the revenue note;

(8) copies of all existing notes, liens or judgements against revenues associated with the facility;

(9) an application fee in the amount of $100; and

(10) other information as the executive director may require.

(d) Revenue notes proceeds of which are used to reimburse a developer as defined in the Water Code, §49.052(d) are subject to §§293.41-293.61 of this title (relating to the Issuance of Bonds).

§293.83. District Use of Surplus Funds For Any Purpose And Use of Maintenance Tax Revenue for Certain Purposes.

(a) Except as provided in subsection (c) (3), (4), and (5) of this section, a district contemplating use of surplus bond funds, interest earned on invested bond proceeds, grants, contributions by others for costs sharing of facilities constructed with bond funds and litigation settlements related to projects financed by bond proceeds must receive approval from the executive director prior to obligation of these funds for any purpose.

(b) A district contemplating the use of operation and maintenance tax revenue for reimbursement to a developer (as defined in Water Code, §49.052 (d)), of property, or its assigns, for planning, construction, or acquiring facilities must receive approval from the executive director.

(c) Application requirements are:

(1) For engineering projects, the following documents shall be submitted:

(A) a resolution by the governing board requesting approval of the project;

(B) construction plans and specifications approved by all agencies having jurisdictional responsibilities;

(C) a detailed explanation of the project;

(D) a detailed cost summary;

(E) if developer reimbursement from an operation and maintenance tax, operating budgets showing revenues and expenditures over the years from which the operation and maintenance tax revenue is derived;

(F) the number of utility connections to be added (if applicable) and area served;

(G) engineer's certification as to the availability and sufficiency of water supply and wastewater treatment capacities to serve such additional connections;

(H) a written statement from district's bookkeeper stating the amount and source of funding including how available funds were generated;

(I) the 100-year flood data for area to be served if not previously provided;

(J) evidence of compliance with the requirements of §§293.41-293.60 of this title.

(K) an application fee in the amount of $100; and

(L) other information as the executive director may require.

(2) For expenditures other than engineering projects, the following documents shall be submitted:

(A) a resolution by the governing board requesting approval of the expenditure;

(B) a complete justification and explanation of purpose for which the funds are proposed for expenditure;

(C) if developer reimbursement from an operation and maintenance tax, operating budgets showing revenues and expenditures over the years from which the operation and maintenance tax revenue is derived;

(D) other information as the executive director may require; and

(E) an application fee in the amount of $100.

(3) Subject to the requirements prescribed in paragraph (4) of this subsection, a district which has a no-growth tax rate of $2.00 per $100 assessed valuation or less calculated by dividing its average annual debt service on existing tax supported debt by current taxable assessed valuation/100, may use surplus funds for improvements necessary to serve development within the district as follows without further approval:

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

(C) pump stations and force mains located within the boundaries of the district which directly connect the districts wastewater system to a regional plant.

(D) alternate water supply interconnects between two or more districts.

(4) Districts contemplating the use of surplus funds as provided in paragraph (3) of this subsection must:

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

(C) report expenditures of all surplus funds in their annual audit report in the notes to the financial statements disclosing any amounts transferred among the funds including the use of surplus funds and the authority for such transfers.

(d) A district may transfer surplus interest earnings on invested bond proceeds to its debt service account without executive director approval if permitted by its bond covenants and if such funds are not committed for other purposes.

§293.88. Petition for Authorization to Proceed in Federal Bankruptcy.

(a) A district desiring to proceed under the Federal Bankruptcy Code, Chapter 9 (11 United States Code, §§901-946) or any other federal bankruptcy law shall submit an application requesting authorization pursuant to Water Code, §49.456. The application shall consist of the following:

(1) a certified copy of the resolution adopted by the board of directors or other governing body requesting such authorization;

(2) an application fee of $100 plus the cost of required notice;

(3) a district status report with all information current and certified within 30 days prior to the date of submittal;

(4) a comparison of the projections or assumptions of growth, taxes, revenues and expenses submitted to the commission in connection with the approval of the bonds issued most recently by the district, or, if commission approval was not required, the projections or assumptions used by the district in connection with the bonds most recently issued by the district, to the actual growth, taxes, revenues and expenses;

(5) a description of the reasons that, in the opinion of the governing body of the district, the projections and assumptions used in connection with the most recent issue of bonds were not realized and any other factors which have caused the district financial difficulties;

(6) a complete analysis of the tax rate, user fees or other charges or sources of revenues that the district may lawfully impose that would be necessary in order for the district to meet its debts and obligations as they become due and the impact of such taxes and fees upon taxpayers and users within the district;

(7) a complete analysis of the reasons that the district cannot, through the full exercise of its rights and powers under the laws of this state, reasonably expect to meet its debts and other obligations as they mature;

(8) a statement of whether the district has complied with the commission order, approving the issuance of bonds, and this chapter;

(9) a list of the names and addresses of all creditors of the district or a statement explaining the reasons for the inability to obtain such a list and the efforts taken to identify such creditors;

(10) the plan of adjustment of the district's debt which it proposes to file in the bankruptcy proceeding if the commission authorizes the district to proceed; and

(11) such other information which the commission considers material to a determination of whether authorization to proceed in bankruptcy should be granted.

(b) The chief clerk shall mail written notice to all creditors shown in the district's application, all developers and their lienholders and the top ten taxpayers shown in the district status report, the city in whose corporate limits or extraterritorial jurisdiction the district is located, if any, and the county in which the district is located. The chief clerk shall publish notice of the application at least once a week for two consecutive weeks in a newspaper of general circulation in the county in which the district is located. The chief clerk shall also publish notice of the application once in the Texas Bond Reporter of Austin, The Daily Bond Buyer, The Weekly Bond Buyer, or The Wall Street Journal. Such notices shall be mailed or published within 30 days of the date an administratively complete application is received by the executive director. No hearing on the application shall be held less than 30 days after such notices are given, mailed or published.

(c) If, after hearing and consideration of all evidence, the commission determines that the district cannot, through the full exercise of its rights and powers under the law of this state, reasonably expect to meet its debts and other obligations as they mature, the commission may authorize the district to proceed in bankruptcy.

(d) If, after hearing, the commission determines that the district can, through the full exercise of its rights and powers under the laws of this state, reasonably expect to meet its debt and other obligations as they mature, the commission shall deny the district's application and shall order the district to adopt specific measures to generate sufficient revenues to meet its obligations. The commission shall also require the district to submit periodic reports on the implementation of the measures required by the commission and its current financial condition.

(e) The commission may assess additional fees adequate to cover its cost in administering this section.

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

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Reports

30 TAC §§293.91-293.97

The amendments are adopted under the Texas Water Code, §5.103 and §5.105, which provide the Texas Natural Resource Conservation Commission with the authority to adopt any rules necessary to carry out its powers and duties under the Water Code and other laws of the State of Texas, and to establish and approve all general policy of the commission.

§293.91. Reporting by Districts.

(a) All districts are required to submit certain documents and reports to the executive director by the Texas Water Code, Chapter 49, as follows:

(1) a certified copy of the order or legislative act creating the district within 60 days after the date the district is created;

(2) certified copy of the order of the district's governing board changing the boundaries of the district within 60 days after the date of any boundary change together with a linen tracing or other map of equal quality showing the new boundaries;

(3) a written notification to the executive director of the name, mailing address and date of expiration of term of office of

any elected or appointed director within 30 days after the date of the election or appointment;

(4) a certified copy of the audit report within 15 days after the date of completion of any audit of the affairs of the district, other than the annual audit required by Water Code, §49.191;

(5) an annual audit report, financial report, or financial dormancy affidavit, as required by §293.94 (c), (e), and (f) of this title (relating to Annual financial Reporting Requirements); and

(6) an annual filing affidavit, as required by subsection (g) of §293.94 of this title (relating to Annual financial Reporting Requirements), and Water Code, §49.194(d), certifying that all filings of copies of the annual audit report, an annual financial dormancy affidavit, or annual financial report, as applicable, have been completed.

(b) (No change.)

§293.92. Additional Reports and Information Required of Certain Districts.

A district which is providing or proposing to provide, as the district's principal function, water, wastewater, drainage, and flood control or protection facilities or services, or any of these facilities or services that have been financed or are proposed to be financed with bonds of the district payable in whole or in part from taxes of the district, or by imposition of a standby fee to household or commercial users, other than agricultural or irrigation users, and which district includes less than all the territory in at least one county and which, if located within the corporate area of a city, includes less than 75 percent of the incorporated area of the city or which is located outside the corporate area of a city in whole or in substantial part shall submit such additional reports and information as may be required by the executive director from time to time.

(1) The information shall include:

(A)-(C) (No change.)

(D) The total amount of bonds which have been approved by the voters and which may be issued by the district (excluding refunding bonds and any bonds or portion of bonds payable solely from revenues received or expected to be received pursuant to a contract with a governmental entity);

(E) the aggregate initial principal amount of all bonds of the district payable in whole or in part from taxes (excluding refunding bonds and any bonds or portion of bonds payable solely from revenues received or expected to be received pursuant to a contract with a governmental entity) which have been previously issued and remain outstanding;

(F) whether a standby fee is imposed by the district, and, if so, the amount of the standby fee;

(G)-(H) (No change.)

(I) the particular form of Notice to Purchasers required by Water Code, §49.452 to be furnished by a seller to a purchaser of real property in that district completed by the district with all information required to be furnished by the district; and

(J) (No change.)

(K) If a district has not yet levied taxes, a statement to such effect together with the district's projected rate of debt service tax estimated at the time of creation of the district shall be substituted for subparagraphs (C) and (D) of this paragraph.

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

(v) If a district fails to submit the information required by this section in the time required, the executive director may request the attorney general, or the district or county attorney of the county in which the district is located, to seek a writ of mandamus to force the governing board of the district to prepare and submit the necessary information.

(vi) (No change.)

§293.93. Special Reporting Requirements for Districts Subject to Consent Agreements Made Pursuant to the Texas Water Code, §54.016(h).

Districts created subject to the consent agreements authorized by the Texas Water Code, §54.016(h), shall submit the duly affirmed and acknowledged statement, and the map or plat, required by Water Code, §54.016(h)(4)(B), together with the reports and information required by Water Code,§§49.455(c)-49.455(j), as incorporated by reference into Water Code, §54.016(h)(4)(B).

§293.94. Annual Financial Reporting Requirements.

(a) Statutory provisions for fiscal accountability. All districts as defined in Water Code, §49.001(a) are required to comply with the provisions of Water Code, §49.191-49.198 requiring every district to either have performed an annual audit or to submit an annual financial dormancy affidavit or an annual financial report.

(b) Accounting and auditing manuals. All districts shall comply with the accounting and auditing manuals adopted by the executive director. The manuals shall consist of two publications, "Water District Accounting Manual" and "Annual Audit Report Requirements". The manuals may be revised as necessary by the executive director.

(c) Duty to audit. The governing board of each district created under the general law or by special act of the legislature shall have the district's fiscal accounts and records audited annually at the expense of the district. The person who performs the audit shall be a certified public accountant or public accountant holding a permit from the Texas State Board of Public Accountancy. Districts with limited or no financial activity may qualify to prepare an unaudited financial report, pursuant to subsection (e) of this section, or a financial dormancy affidavit, pursuant to subsection (f) of this section.

(d) Form of audit. The audit shall be performed according to generally accepted auditing standards adopted by the American Institute of Certified Public Accountants. Financial statements shall be prepared in accordance with generally accepted accounting principles as adopted by the American Institute of Certified Public Accountants.

(e) Audit report exemption.

(1) A district that is not collecting taxes may elect to submit annual financial reports to the executive director in lieu of the district's compliance with Water Code, §49.191 provided:

(A) the district had no bonds or other long-term (more than one year) liabilities outstanding during the fiscal period;

(B) the district did not have gross receipts from operations, loans, or contributions in excess of $100,000 during the fiscal period; and

(C) the district's cash and temporary investments were not in excess of $100,000 at any time during the fiscal period.

(2) The annual financial report must be accompanied by an affidavit, attesting to the accuracy and authenticity of the financial report, signed by a duly authorized representative of the district, which conforms with the format prescribed by the executive director. Financial report and filing affidavit forms may be obtained from the executive director.

(3) Districts governed by this section are subject to periodic audits by the executive director.

(f) Financially dormant districts.

(1) (No change.)

(2) The required financial dormancy and filing affidavit shall be prepared in a format prescribed by the executive director and shall be submitted by a duly authorized representative of the district. Financial dormancy affidavit forms may be obtained from the executive director.

(3) Districts governed by this section are subject to periodic audits by the executive director.

(g) Annual filing affidavit. Each district shall submit annually with the executive director a filing affidavit which affirms that copies of the district's audit report, financial report, or financial dormancy affidavit have been filed within the district's business office. Each district that files a financial report or a financial dormancy affidavit will find that the annual filing affidavit has been incorporated within those documents, so a separate filing affidavit form is not necessary. However, each district that submits an audit report must execute and submit, together with the audit, an annual filing affidavit when the audit is submitted with the executive director. Annual filing affidavits must conform to the format prescribed by the executive director. Filing affidavit forms may be obtained from the executive director.

(h) Submitting of audits, financial reports, and affidavits.

(1) Submittal dates.

(A) Audits. Audit reports and the annual filing affidavits that must accompany those reports shall be submitted as prescribed by paragraph (2) of this subsection within 135 days after the close of the district's fiscal year. The district's governing board shall approve the audit before a copy of the report is submitted to the executive director; however, the governing board's refusal to approve the audit shall not extend the submittal deadline for the audit report. If the governing board refuses to approve the audit, the board shall submit to the executive director by the prescribed submittal date the report and a statement providing the reasons for the board's refusal to approve the report.

(B) Financial reports. Financial reports and the annual filing affidavits in a format prescribed by the executive director, must be submitted to the executive director as prescribed by paragraph (2) of this subsection within 45 days after the close of the district's fiscal year.

(C) (No change.)

(2) Submittal locations. Copies of the audit, financial report, or financial dormancy affidavit described in subsections (c), (e) and (f) of this section shall be submittal annually to the executive director, and within the district's office.

(i) Review by executive director.

(1) The executive director may review the audit report of each district, and if the executive director has any objections or determines any violations of generally accepted auditing standards or accounting principles, statutes or commission rules, or if the executive director has any recommendations, he shall notify the governing board of the district.

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

(j) Penalties for Noncompliance.

(1) (No change.)

(2) A district that fails to comply with the filing provisions of Texas Water Code, Chapter 49, may be subject to a civil penalty of up to $100 per day for each day the district wilfully continues to violate these provisions after receipt of written notice of violation from the executive director by certified mail, return receipt requested. The state may sue to recover the penalty.

§293.96. Miscellaneous Reports To Be Submitted to the Executive Director.

(a) (No change.)

(b) Certified copy of water and wastewater rate order adopted by the board and any amendments thereto, shall be submitted within 30 days of adoption.

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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District Name Changes and Posting Signs

30 TAC §§293.101-293.103

The amendment and new sections are adopted under the Texas Water Code, §5.103 and §5.105, which provide the Texas Natural Resource Conservation Commission with the authority to adopt any sections necessary to carry out its powers and duties under the Texas Water Code and other laws of the State of Texas, and to establish and approve all general policy of the commission.

§293.102. District Name Change.

(a) A district may apply to the commission for approval of a name change.

(1) The district must have reasonable grounds for requesting the change.

(2) The new name must be generally descriptive of the location of the district followed by the type of district as provided by the title of the chapter of the Texas Water Code concerning the district. If a district is located wholly within one county that contains more than one district of that type, the district may be differentiated, if necessary by adding to the new name the proper consecutive number. The new name may not be the same as the name of any other district.

(b) Applications requesting approval of a name change shall include the following:

(1) A resolution by the governing board requesting commission approval of the name change which indicates the proposed new name;

(2) The reason for the requested change;

(3) A $100 application fee;

(4) Any other information that the executive director may require.

(c) District action following commission approval of the name change.

(1) Within 30 days of the date of commission approval, the district shall publish notice of the name change in a newspaper or newspapers of general circulation in the county or counties in which the district is located.

(2) Within 30 days of the date of commission approval, the district shall give notice of the name change by mail to utility customers, permittees, if any, and the county clerk of all counties in which a portion of the district lies; and, to the extent practicable, to the holders of bonds, obligations, and other indebtedness of the district.

(3) A suggested form of notice is given in §293.103 of this title (relating to Form of Notice for Name Change).

(4) If applicable, the district shall post new name signs pursuant to §293.101 of this title (relating to Posting Signs in the District).

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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Water and Wastewater System Rules and Regulations

30 TAC §293.111

The amendment is adopted under the Texas Water Code, §5.103 and §5.105, which provides the Texas Natural Resource Conservation Commission with the authority to adopt any regulations necessary to carry out its powers and duties under the Texas Water Code and other laws of the State of Texas, and to establish and approve all general policy of the commission.

§293.111. Water and Wastewater Service Lines and Connection.

(a) All water districts which provide or propose to provide water and wastewater service shall:

(1) adopt regulations governing the construction of commercial and/or household service lines and connections to the district's water and wastewater system;

(2) complete and have operable water and wastewater lines and a treatment plant before any connections are authorized;

(3) (No change.)

(4) require that the district's inspector certify in writing that the connection was installed in accordance with accepted construction practices and in compliance with the district's regulations governing this type of work;

(5) (No change.)

(6) upon submission of each bond application, document to the executive director that a water and wastewater service connection inspection program is in force for all new connections and that certification by the district's inspector of compliance with district rules is on file in the district's records;

(b) Suggested regulations for wastewater systems may be obtained from the executive director upon request. Strict enforcement of such regulations will eliminate infiltration/inflow problems in service lines, sewage treatment plant overload and, as a result, reduce operation and maintenance costs.

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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Fire Department Projects

30 TAC §§293.121, 293.123, 293.124

The amendments are adopted under the Texas Water Code, §§5.103, 5.105, and 5.235, which provide the Texas Natural Resource Conservation Commission with the authority to adopt any sections necessary to carry out its powers and duties under the Texas Water Code and other laws of the State of Texas, to establish and approve all general policy of the commission, and to collect statutory fees from persons submitting various applications to the commission.

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Dissolution of Districts

30 TAC §§293.131, 293.132, 293.134

The amendments are adopted under Texas Water Code §§5.103, 5.105, and 5.235, which provide the Texas Natural Resource Conservation Commission with the authority to adopt any sections necessary to carry out its powers and duties under the Water Code and other laws of the State of Texas, to establish and approve all general policy of the commission, and to collect statutory fees from persons submitting various applications to the commission.

§293.131. Authorization for Dissolution of Water District by the Commission.

(a) Chapters 36 and 49, subchapters I and K, being the Texas Water Code, §§36.301-36.307 and 49.321-49.327 authorize the commission to dissolve any district as defined in Water Code, §49.001(1) which is inactive for a period of three consecutive years for a groundwater conservation district or five consecutive years for other water districts and has no outstanding bonded indebtedness. A groundwater conservation district that is composed of territory entirely within one county may be dissolved even if it has outstanding indebtedness that matures after the year in which the district is dissolved.

(b) (No change.)

(c) The application must include a petition on the part of the party requesting dissolution including a statement of the reasons that a dissolution is desirable or necessary, and contain a statement that the district has been financially dormant for the preceding three-year period for a groundwater conservation district or the preceding five-year period for other water districts and has performed no functions for the five previous preceding years and has no outstanding bonded indebtedness. A groundwater conservation district that is composed of territory entirely within one county may be dissolved even if it has outstanding indebtedness that matures after the year in which the district is dissolved.

(d) If the petition is submitted by a landowner, a director of the district, or other interested party, the application must contain certified copies of dormancy affidavits submitted pursuant to Water Code, §49.197, for three years for a groundwater conservation district or five years for other water districts preceding the year in which the application is submitted.

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

(g) The executive director may initiate procedures to dissolve a district without financial dormancy affidavits on file if:

(1) The district has failed to comply with the reporting requirements of this chapter for the previous five year period;

(2) attempts to contact directors, interested parties or anyone with knowledge of district's financial activity have failed; and,

(3) the state comptroller of public accounts has submitted a certificate certifying that the district has never registered any bonds with the comptroller.

§293.132. Notice of Hearing.

A notice of the hearing upon the proposed dissolution of a district will be given by the chief clerk and will describe the reasons for the proceeding, as required by Water Code, §36.302 for groundwater conservation districts and §49.322 for other water districts. The notice will be published once each week for two consecutive weeks before the day of hearing in a newspaper having general circulation in the county or counties in which the district is located. The first publication will be 30 days before the day of the hearing. Notice of the hearing will be given by the chief clerk by first class mail addressed to the directors of the district according to the last record on file with the executive director.

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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Application for Approval of Standby Fees

30 TAC §§293.141, 293.142, 293.143, 293.145, 293.146, 293.148-293.150

The sections are adopted under the Texas Water Code, §§5.103, 5.105, and 5.235, which provides the Texas Natural Resource Conservation Commission with the authority to adopt any sections necessary to carry out its powers and duties under the Texas Water Code and other laws of the State of Texas, to establish and approve all general policies of the commission, and to collect statutory fees from persons submitting various applications to the commission.

§293.141. Standby Fees.

(a) Districts, as defined by Water Code, §49.001, which provide or propose to provide retail potable water, wastewater, or drainage services may, with commission approval, adopt and levy standby fees.

(b) Standby fee, as authorized by Water Code, §49.231, means a charge, other than a tax, imposed on undeveloped property for the availability of water, wastewater, or drainage facilities and services. Standby fee does not mean an impact fee, tap fee, or a connection fee.

(c) Undeveloped property means a tract, lot or reserve in the district to which no vertical improvements and water or wastewater connections or drainage services have been made to serve the property

utilizing substantially the full amount of the capacity allocated to the property as shown in the district's land development plan submitted with creation applications, bond applications, (including supporting documents) or by written commitment and for which:

(1) any portion of water, wastewater, or drainage facilities and services are available;

(2) water supply or wastewater treatment plant capacity or drainage capacity sufficient to serve any portion of the property is available; or

(3) major water supply lines or wastewater collection lines or major drainage outfall facilities with capacity sufficient to serve any portion of the property are available.

(d) A district may not impose a debt service standby fee unless the facilities and services available to the property were financed by the district; however, a district may impose a standby fee for operating and maintaining facilities that it has not financed.

(e) Standby fees levied under this section may be used for the purpose of paying the following costs:

(1) operation and maintenance costs associated with maintaining the facilities; and/or

(2) debt service payments for water wastewater, or drainage facilities.

(f) Commission approval and adoption of standby fees is valid for a period of not more than three successive years. A district may charge a standby fee of an amount not to exceed the maximum amount approved by the commission. A district may submit an application to increase or renew its standby fee at any time.

(g) It is not required that standby fees be uniform throughout the district, only that the fees fairly allocate the cost of district water, wastewater, and drainage facilities and service among property owners of the district. The standby fee may be a single fee expressed as a unit cost per single family equivalent connection or the fee per single family equivalent unit may be divided into separate components (tiers) such as water distribution facilities, water supply facilities, wastewater collection facilities, wastewater treatment facilities, internal drainage facilities, or outfall drainage facilities.

(h) Standby fees as approved by the commission may be collected for monthly, quarterly or annual billing periods, but may not be imposed retroactively or in arrears beyond January 1 of the calendar year in which such standby fees are adopted unless authorized by the commission. A district may not require payment of standby fees in advance of a current billing period.

(i) To the extent that standby fees are imposed and collected in contravention of applicable rules or order(s) of the commission, the commission may require that such improperly collected fees be refunded, together with interest thereon.

§293.142. Application Requirements for Imposition of Standby Fees To Be Used to Supplement the Debt Service Account.

(a) Only those districts which meet the following criteria may seek approval from the commission to use standby fee revenues to supplement the debt service account:

(1) the district's combined tax rate as defined under §293.59(f) of this title (relating to Economic Feasibility of Projects) and calculated as described in subsection (c) (1) of this section, excepting standby fees and developer contribution, over the period over which standby fees are to be levied exceeds those limits defined under §293.59(k)(3) of this title, for the county in which the district is situated. Any increases in assessed valuation used in calculating the combined projected tax rate shall be based on historical growth rates experienced in the district; and

(2) (No change.)

(b) (No change.)

(c) Standby fee amounts shall be determined so that:

(1) the resultant combined projected tax rate as defined under §293.59(f) of this title is not less than those limits defined under §293.59 (k)(3) of this title when calculated based on:

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

(2) the total taxes and standby fee assessment for debt service for water, wastewater, and drainage facilities against undeveloped property does not exceed the amount of district taxes levied for water, wastewater, and drainage facilities against a comparable lot or tract with completed improvements. In the absence of a comparable lot or tract with completed improvements, the projected value of the lot or tract with completed improvements as contained in the district's bond application(s) shall be used; and

(3) (No change.)

(d) Applications shall include the following items.

(1) (No change.)

(2) a certified copy of a board resolution which shall contain a request for commission approval of the fee and shall state the designated fund to which standby fee revenues will be applied, the amount of the fee, the three years for which the fee is proposed for levy, and the projected debt service and operations and maintenance tax rates the district expects to achieve through the levy of the standby fee;

(3) a map of the district (not larger than 24 inches by 36 inches) which shall clearly designate the properties against which the proposed standby fee will be levied. If such information cannot be located in agency files, the executive director may require that water, wastewater, and drainage facilities serving those properties and financed by the district be identified. An accounting of district-financed water supply, wastewater treatment facilities, and drainage facilities and capacity available in those facilities may also be required;

(4) a copy of the most recent tax appraisal roll by the Central Appraisal District accompanied by a table prepared by the district which delineates the district's assessed valuation. The table should list each component of the district's assessed valuation attributable to raw acreage and acreage with and without vertical improvements. The component attributable to acreage with vertical improvements should be further divided into single family residential sections according to similar home value, multi-family sections, commercial sections, industrial sections, and any other type of vertical development existing within the district;

(5) a table which compares the cumulative buildout for the current fiscal year to the cumulative buildout for the same fiscal year projected at the time of the bond issue. Indicate according to section,

the number of lots, homes, commercial and industrial development, etc., and raw acreage within the district;

(6) A list by source of the following tax rates:

(A) the combined tax rate projected at the time of the most recent bond issue;

(B) the actual combined tax rate set for the current fiscal year; and

(C) the combined tax rate projected over the period during which the standby fee will be levied. Any increases in assessed valuation for this calculation should be based on the district's historical growth rate.

(7) a debt service schedule for all bonds outstanding.

(8) a cash flow table based on the reduced combined projected tax rate the district expects to achieve through the standby fee levy. Distinguish between debt service revenues obtained from taxes and other sources of debt service revenues. List as a separate column the additional revenues required to produce the reduced debt service tax rate. Any increases in assessed valuation shown on this table should be based on the historical buildout rate experienced in the district. If the district's assessed valuation has been declining, show the assessed valuation as fixed at the current value. The district shall use the latest certified assessed value or estimated assessed valuation provided by the central appraisal district.

(9) a comparison of the actual versus the approved cost summary from the district's most recent bond issue with separate costs shown for water, wastewater and drainage projects.

(10) any other information as the executive director may require to assure that the fees are consistent with the criteria contained herein.

(11) in the event that a district provides the executive director with a written consent of all landowners of undeveloped property in the district identified on the district's tax rolls and of all mortgagees of undeveloped property who have submitted a written request to be informed of any hearing pursuant to §293.145 of this title (relating to Public Hearing and Notice Requirements), to the proposed levy of standby fees, the district shall be exempted from the requirements of paragraphs (4), and (5) of this subsection except that the district shall provide a copy of the most recent tax appraisal roll by the central appraisal district.

§293.143. Application Requirements for Standby Fees to be Used to Supplement the Operation and Maintenance Fund.

(a) In calculating standby fees to be used to supplement the operation and maintenance fund, the following definitions apply.

(1) (No change.)

(2) Active connection, as used in this section, means a lot or tract with vertical improvements and a meter in service for which water and/or wastewater usage is billed.

(3) Inactive connection, as used in this section, means a lot or tract with existing vertical improvements, and where water and/or wastewater connections were made but such service is not being provided nor billed.

(4) Undeveloped property (expressed in terms of connections), as used in this section, means a tract, lot or reserve in the district to which no water or wastewater connections or drainage services exist and for which:

(A) water, wastewater, or drainage facilities and services are available;

(B) water supply, wastewater treatment plant capacity, or drainage capacity sufficient to serve any portion of the property is available; or

(C) major water supply lines, wastewater collection lines, or drainage facilities with capacity sufficient to serve any portion of the property are available.

(b) Only those districts which meet the following criteria may seek approval from the commission to use standby fee revenue to supplement the operation and maintenance fund:

(1) all capitalized funds or reserves for operating purposes which were derived from all prior bond issues (except an amount not to exceed a three-month reserve) have been depleted or are projected to be depleted within the three years in which the standby fees are to be levied; and

(2) the operation and maintenance fund is operating at a deficit or is projected to operate at a deficit within the three years in which the standby fees are to be levied with:

(A) rates for the first 10,000 gallons of water and wastewater usage for residential users (or equal or greater amounts for other users) which exceed $30.00; or

(B) rates for the first 10,000 gallons of usage for residential users (or equal or greater amounts for other users) which exceed $22.00 if the district is a provider of only water or wastewater service.

(c) In determining the revenue to be generated from water and wastewater rates if such rates do not equal or exceed the rates stated in subsection (b)(2) of this section, an amount will be added to the minimum charge such that the total bill for 10,000 gallons of usage will equal the rates stated in subsection (b)(2) of this section.

(d) Standby fee amounts shall be determined so that all of the following are true:

(1) The total revenue projected to be generated from the fee is not more than that necessary to balance the projected operation and maintenance budget assuming:

(A) a 90 % collection rate of the proposed fee;

(B) maintenance tax revenue based on a 90 % collection rate is applied toward the budget;

(C) all of the water, wastewater, or drainage revenue projected for the coming year is applied toward the budget, with rates or revenues established or assumed at an amount equal to or higher than those in the preceding subsection (b)(2) of this section; and

(D) an operating reserve not to exceed three months included in the first year's budget if that reserve is not already existing.

(2) The fee amount shall not exceed the rate charged to active connections for 10,000 gallons actual water and wastewater usage;

(3) The fee amount equitably distributes the fixed costs of operating and maintaining the district's water, wastewater, or drainage facilities among active connections, inactive connections, and undeveloped property owners. In the absence of an allocation of a district's budget to fixed and variable expenses in an application, the staff shall make its own determination based on a predetermined fixed and variable allocation, a copy of which shall be made available from the executive director. A district may submit, with supporting and substantiating documentation, an allocation specific to that district.

(e) In determining whether a district which meets the foregoing requirements be allowed to impose standby fees for operation and maintenance revenue and the amount of the standby fee levy against the various categories of development authorized to be imposed, the following factors may be considered:

(1) (No change.)

(2) the amounts charged or proposed to be charged for water and/or wastewater services usage;

(3) (No change.)

(4) the capacity of the various components of the system;

(5) (No change.)

(6) the amounts charged by districts with comparable land uses;

(7) (No change.)

(f) Applications shall include the following:

(1) an application fee of $100;

(2) a certified copy of a board resolution which shall contain a request for commission approval of the fee and shall state the designated fund to which standby fee revenues will be applied, the amount of the fee and the intervals or periods of billing for such standby fees (either monthly, quarterly or annually);

(3) a proposal for the standby fee amount including substantiating calculations to show how the standby fee was derived;

(4) a map of the district (not larger than 24 inches by 36 inches) which shall clearly designate the properties against which the proposed standby fee will be levied. If such information is not available within agency files, the executive director may require that water, wastewater, or drainage facilities serving those properties be identified. An accounting of water supply, wastewater treatment facilities, or drainage facilities and capacity available in those facilities may also be required.

(5) a table indicating the ultimate number of connections according to section for which the district has water, wastewater, or drainage facilities. Indicate active connections, inactive connections, and the number of connections attributable to undeveloped property;

(6) a copy of the district's operating budget for the past two years and the proposed budget for the coming year. Indicate those fixed costs required to operate and maintain the water, wastewater, or drainage facilities, including a proportionate share of consultant and organizational fees attributable to operating and maintaining the water, wastewater, or drainage facilities and those expenses not related to operating and maintaining the district's water, wastewater, or drainage facilities, such as operating a recreational facility;

(7) an indication of revenues available for operation and maintenance costs and the sources of those revenues. Include water consumption records, wastewater flow records, or drainage maintenance records (if used in determining charge for service) for the previous two years and projected for the coming year as reflected in the proposed budget;

(8) a certified copy of the district's most current order establishing the water and/or wastewater rates or drainage charges, as applicable;

(9) any other information as the executive director may require to assure that the fees are consistent with the criteria contained herein.

(10) in the event that a district provides the executive director with written consent of all landowners of undeveloped property in the district identified on the district's tax rolls and of all mortgagees of undeveloped property who have submitted a written request to be informed of any hearing pursuant to §293.145 of this title (relating to Public Hearing and Notice Requirements), to the proposed levy of standby fees, the district shall be exempted from the requirements of paragraphs (3), (5) and (6) of this subsection except that the district shall provide a copy of the district's operating budget for the past two years and the coming year.

§293.145. Public Hearing and Notice Requirements.

(a) The chief clerk shall schedule a hearing date on its uncontested agenda and advise the district of the scheduled time and date of the hearing. If the item is contested, the commission may remand the item for an evidentiary hearing.

(b) The district shall publish notice of the hearing in a form provided by the chief clerk of the commission. Notice of the hearing shall be published in a newspaper of general circulation in the county or counties in which the district is located once a week for two consecutive weeks. The first publication must occur not later than the 30th day before the date of the hearing.

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

§293.146. District Actions Following Approval of a Standby Fee.

(a) (No change.)

(b) The governing board of the district shall, within seven days from the date of the district's order adopting the standby fees, submit to the executive director and file with the county clerk of each county in which a portion of the district lies an update of the information required by Water Code, §49.452.

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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Kevin McCalla
Director, Legal Division
Texas Natural Resource Conservation Commission
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30 TAC §§293.149-293.152

The repeals are adopted under the Texas Water Code, §§5.103, 5.105, and 5.235, which provide the Texas Natural Resource Conservation Commission with the authority to adopt any sections necessary to carry out its powers and duties under the Texas Water Code and other laws of the state of Texas, to establish and approve all general policy of the commission, and to collect statutory fees from persons submitting various applications to the commission.

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

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Petition for Approval of Impact Fees

30 TAC §§293.171-293.173

The amendments are adopted under the Texas Water Code, (Vernon 1992), §§5.103, 5.105, and 5.235, which provide the Texas Natural Resource Conservation Commission with the authority to adopt any rules necessary to carry out the powers and duties under the provisions of the Texas Water Code and other laws of this state, to establish and approve all general policy of the commission, and to collect statutory fees from persons submitting various applications to the commission.

§293.172. Information Required to Accompany Applications for Approval of Impact Fees.

Pursuant to the Local Government Code, §395.080, a district proposing to assess impact fees shall submit to the executive director an application for review. Upon submission of an application for review, the executive director has the responsibility for reviewing and the commission has the responsibility for approving or denying impact fee requests by all districts created pursuant to Article III, Section 52, or Article XVI, Section 59, of the Texas Constitution. Each application submitted shall contain the following:

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

(5) A table establishing the additional demand required by the new connections, including the level of consumption represented by a connection for each category of capital improvements. Justification must be provided if the consumption levels differ from the minimum design criteria established by the commission.

(6)-(8) (No change.)

§293.173. Impact Fee Notice Actions and Requirements.

(a) The chief clerk shall set the petition for hearing, and issue notice thereof.

(b) The notice of the hearing must be published by the district once in a newspaper with general circulation in each county in which the district intends to levy an impact fee. The notice shall be of sufficient size to be easily legible and appear at least 30 days before the scheduled date of the hearing. An affidavit verifying publication of the notice must be filed with the chief clerk prior to the date of the hearing.

(c) (No change.)

(d) The district shall send, not later than the 30th day before the date of the hearing, notice of the hearing to each owner of property within the service area, as of the date of submitting the application to the executive director, unless good cause is shown why such notice should not be given. Property ownership shall be as reflected by the county tax rolls or the records of the appraisal district for the county, whichever is more current. The district shall file an affidavit certifying compliance with the requirements of this subsection to the chief clerk at least one week prior to the commission hearing. Ownership of the property shall be certified by the county tax assessor/collector from the county tax rolls or by the appraisal district for the county, as applicable, as of the date of submitting of the application to the commission.

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

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30 TAC §293.177

The repeal is adopted under the Texas Water Code, §§5.103, 5.105, and 5.235, which provide the Texas Natural Resource Conservation Commission with the authority to adopt any sections necessary to carry out its powers and duties under the Texas Water Code and other laws of the state of Texas, to establish and approve all general policy of the commission, and to collect statutory fees from persons submitting various applications to the commission.

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Appeal of Decision Regarding Facilities Constructed for a Municipal Utility District

30 TAC §293.180

The amendment is adopted under the Texas Water Code, (Vernon 1992), §§5.103, 5.105, and 5.235, which provide the Texas Natural Resource Conservation Commission with the authority to adopt any rules necessary to carry out the powers and duties under the provisions of the Texas Water Code and other laws of this state, to establish and approve all general policy of the commission, and to collect statutory fees from persons submitting various applications to the commission.

§293.180. Appeal of a Decision of the Board of Municipal Utility District Regarding Facilities Constructed for the District.

(a) (No change.)

(b) Notice Actions and Requirements.

(1) The chief clerk of the commission shall set the petition for hearing, and issue notice thereof.

(2) The district shall issue notice by sending, not later than the 30th day before the date of the hearing, notice of the hearing to each owner of property within the district, as of the date of submitting the application with the executive director, unless good cause is shown why such notice should not be given. Property ownership shall be as reflected by the county tax rolls or the records of the appraisal district for the county, whichever is more current. The district shall file an affidavit certifying compliance with the requirements of this subsection at least one week prior to the commission hearing. Ownership of the property shall be certified by the county tax assessor/collector from the county tax rolls or by the appraisal district for the county, as applicable, as of the date of submitting the application to the executive director.

(c) (No change.)

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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Acquisition of Road Utility District Powers by Municipal Utility Districts

30 TAC §293.201, §293.202

The amendments are adopted under the Texas Water Code, §§5.103, 5.105, and 5.235, which provide the Texas Natural Resource Conservation Commission with the authority to adopt any sections necessary to carry out its powers and duties under the Texas Water Code and other laws of the state of Texas, to establish and approve all general policy of the commission, and to collect statutory fees from persons submitting various applications to the commission.

§293.202. Application Requirements for Commission Approval.

A conservation and reclamation district, operating pursuant to the Texas Water Code, Chapter 54, and which has the power to levy taxes, shall submit to the executive director of the Texas Natural Resource Conservation Commission an application which shall include the following documents, prior to petitioning the Texas Department of Transportation or road utility district powers:

(1) (No change.)

(2) a certified copy of the resolution of the governing board of the district authorizing the request for approval of the Texas Natural Resource Conservation Commission to petition the Texas Department of Transportation for road utility district powers;

(3)-(4) (No change.)

(5) a certified copy of the latest audit of the district performed pursuant to Water Code, §§49.191-49.194;

(6) for districts which have not submitted an annual audit, a financial statement of the district, including a detailed itemization of all assets and liabilities showing all balances in effect not later than 30 days before the date the district submits its request for approval with the executive director;

(7) a certified copy of preliminary plans for all the facilities to be constructed, acquired, or improved by the district, which the district is required to submit to the governmental entity to which it proposes to convey district facilities by Texas Transportation Code, §441.013;

(8)-(9) (No change.)

(10) any other information which may be required by the executive director; and

(11) (No change.)

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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Procedures and Design Criteria for Approval of Water System Projects

30 TAC §293.301–293.311

The repeals are adopted under the Texas Water Code, §§5.103, 5.105, and 5.235, which provide the Texas Natural Resource Conservation Commission with the authority to adopt any sections necessary to carry out its powers and duties under the Texas Water Code and other laws of the state of Texas, to establish and approve all general policy of the commission, and to collect statutory fees from persons submitting various applications to the commission.

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Procedures and Design Criteria for Approval of Wastewater System Projects

30 TAC §293.331

The repeal is adopted under the Texas Water Code, §§5.103, 5.105, and 5.235, which provide the Texas Natural Resource Conservation Commission with the authority to adopt any sections necessary to carry out its powers and duties under the Texas Water Code and other laws of the state of Texas, to establish and approve all general policy of the commission, and to collect statutory fees from persons submitting various applications to the commission.

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Abbreviated Review of Water and Wastewater Line Projects

30 TAC §293.341

The repeal is adopted under the Texas Water Code, §§5.103, 5.105, and 5.235, which provide the Texas Natural Resource Conservation Commission with the authority to adopt any sections necessary to carry out its powers and duties under the Texas Water Code and other laws of the state of Texas, to establish and approve all general policy of the commission, and to collect statutory fees from persons submitting various applications to the commission.

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

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Filing of Plans and Specifications with Commission Offices

30 TAC §293.343

The repeal is adopted under the Texas Water Code, §§5.103, 5.105, and 5.235, which provide the Texas Natural Resource Conservation Commission with the authority to adopt any sections necessary to carry out its powers and duties under the Texas Water Code and other laws of the state of Texas, to establish and approve all general policy of the commission, and to collect statutory fees from persons submitting various applications to the commission.

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

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Special Actions Relating to the Harris-Galveston Coastal Subsidence District

30 TAC §§293.361-293.365

The amendments are adopted under the Texas Water Code, §§5.103, 5.105, and 5.235, which provide the Texas Natural Resource Conservation Commission with the authority to adopt any sections necessary to carry out its powers and duties under the Texas Water Code and other laws of the state of Texas, to establish and approve all general policy of the commission, and to collect statutory fees from persons submitting various applications to the commission.

§293.361. Definitions.

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

§293.362. Request to Monitor Delivered Water.

(a) Upon the submittal of a written request pursuant to Water Code, §151.129, to the executive director by a person ordered by the board to completely or partially discontinue the use of groundwater, the executive director shall monitor the water delivered to the person from the alternative water supply as defined in Water Code, §151.129(f) to determine the percentage of that water supply

that is surface water and the percentage that is groundwater. The request for monitoring must be submitted, together with the following information, to the executive director no later than six months prior to the end of the permit year immediately following the board's order. The submittal of an administratively complete request will entitle the person to monitoring not during that permit year, but during the first succeeding permit year, subject to the provisions of subsection (b) of this section. For purposes of Water Code, §151.129, a person shall be deemed to have been ordered to completely or partially discontinue the use of groundwater the board issues a permit that results in the person's use of surface water as an alternative water supply. For purposes of Water Code, §151.129, the request for monitoring shall be deemed made as of the first day of the permit year following the timely receipt by the executive director of an administratively complete request subject, however, to the provisions of subsection (b) of this section. The following information shall be provided to the executive director with the request for monitoring:

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

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

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

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TITLE 31. NATURAL RESOURCES AND CONSERVATION

Part I. General Land Office

Chapter 16. Coastal Protection

31 TAC §16.4

The General Land Office (GLO), with the approval of the School Land Board (SLB) granted at its January 16, 1996 and October 1, 1996 meetings, adopts amendments to §16.4, concerning thresholds for referral for specific activities in coastal natural resource areas (CNRAs). The amendments are being adopted with changes to the proposed text as published in the June 14, 1996, issue of the *Texas Register* (21 TexReg 5429).

The section identifies thresholds for certain GLO and SLB actions that may adversely affect wetlands and other critical areas along the Texas coast. Actions that exceed the threshold may be referred to the Coastal Coordination Council (council) for consistency review. The section is being amended to provide uniformity between GLO\SLB and Texas Natural Resources Conservation Commission (TNRCC) thresholds, to change the threshold for seismic permits from one based on area to one based on size and depth of charge, and to consolidate into one threshold the thresholds for miscellaneous easements.

Pursuant to §33.204(a) of the Coastal Coordination Act (Texas Natural Resources Code, Chapter 33, Subchapter F, §§33.201-33.208), the council promulgated rules adopting Coastal Management Program (CMP) goals and policies, Part XVI of this title (relating to Coastal Coordination Council). Chapter 16 (relating to Coastal Protection) was adopted by the GLO and the SLB as required by the rules of the council as set out in Part XVI of this title (relating to Coastal Coordination Council), which Part XVI had been revised to reflect House Bill 3226, enacted during the 74th Legislature, 1995, which amended the Coastal Coordination Act.

One of the council's stated CMP goals is that, when an agency proposes a listed action that may adversely affect a CNRA, the action comply with the CMP goals and policies. The CMP describes a process by which the agency can, in the first instance, determine whether its own action is consistent with the CMP. Pursuant to §505.10(a)(2) of this title (relating to Purpose and Policy), the council made a policy decision to solicit and ensure adequate review at the agency level. Only those actions that present unique or significant consistency issues are expected to be reviewed by the council. As a result, the council anticipates reviewing fewer agency actions than if it were not requiring agencies to monitor their own actions for consistency with CMP goals and policies. To implement that policy, an agency may develop thresholds relating to agency actions that otherwise could be referred to the council for review. Agency actions falling below a threshold may only be referred for consistency review under certain limited circumstances described in §505.32(b)(1)(B) of this title (relating to Requirements for Referral of a Proposed Agency Action).

At its June 29, 1995, meeting, the council directed that a task force be established to resolve disparities between the various thresholds for review that had been proposed by various state agencies with overlapping authority or jurisdiction.

Chapter 16 was adopted and published in the October 20, 1995, issue of the *Texas Register* (20 TexReg 8643). When §16.4 was first adopted, the GLO and the TNRCC were working together to coordinate thresholds where the agencies have overlapping authority. That effort was not completed by the time §16.4 was adopted. At the time, no modification of GLO/SLB thresholds was anticipated, and the thresholds were adopted for real estate activities without change to those thresholds as proposed. That coordination effort has now been completed, and the amendment to paragraph 16.4(b)(2) is adopted to provide uniformity between GLO\SLB and TNRCC thresholds, by setting the thresholds for real estate activities at one acre for all critical areas except oyster reefs.

When §16.4 was first adopted, threshold limits for seismic activities governed by a geophysical permit were based on certain assumptions related to the size of typical seismic activities in submerged areas and in upland and shallow submerged areas.

Paragraph 16.4(c)(2) is amended to change the threshold for seismic (geophysical) permits from a series of figures based on acreage to a threshold based on the size and depth of explosives used pursuant to the permit. The rule as amended defines as in excess of the threshold for review any geophysical permit authorizing (i) for upland areas, a shot in excess of 40

pounds of dynamite equivalent, and (ii) for submerged areas, either a shot in excess of 20 pounds of dynamite equivalent or a shot hole drilled shallower than 120 feet below the mud line. A threshold based on charge size and hole depth is more functional because the size of the charge detonated and the depth of the drilled hole in which the charge is placed are more commonly used measures of the level of natural resource impact from geophysical activity. Further, the GLO's oil and gas rules in subparagraphs (e)(1)(E) and (e)(2)(E) of §9.4 of this title (relating to Geophysical and Geochemical Exploration Permits) already require (i) that the special permission of the commissioner be obtained for any permit allowing a shot in excess of 40 pounds of dynamite equivalent, for upland areas, and 20 pounds of dynamite equivalent, in submerged areas, and (ii) that a shot hole be at least 120 feet below the mud line.

Section 16.4 as originally adopted identified thresholds for certain GLO and SLB actions that may adversely affect CNRAs, including geophysical and geochemical permits, miscellaneous easements, surface leases, coastal easements, and coastal leases.

New §16.4(d) is adopted to consolidate into one threshold the thresholds for miscellaneous easements, previously described in subsection (b) (for real estate activities) and paragraph (c)(3) (for energy-related activities). Approximately 90% of all miscellaneous easements issued by the GLO are for energy-related activities. Of the remaining miscellaneous easements that are issued for real estate activities, few affect CNRAs. In order to coordinate the GLO's issuance of miscellaneous easements into an efficient procedure that reflects the reality of demand for miscellaneous easements, and still protects CNRAs against adverse affects, the GLO adopts a single threshold based on the threshold in subparagraphs (c)(3)(A) and (B): disturbance of five acres or more of a critical area or removal of more than 10,000 cubic yards of material from a critical area, except with respect to submerged aquatic vegetation and tidal mud or sand flats in the lower coast, in which case the threshold for referral is disturbance of ten or more acres.

The GLO, with the approval of the SLB, extended the original comment period for an additional 30 days. Notice of that extension was published in the July 23, 1996, issue of the *Texas Register* (21 TexReg 6914). The GLO also held a meeting on August 19, 1996, with members of the oil and gas industry, represented by the president of a trade group of exploration contractors and representatives of six constituent members of that trade group. The president of the trade group indicated that the trade group represents the companies "that do virtually all of the petroleum- finding geophysical exploration in the United States and about 90% of this work worldwide."

Written comments were received from four commenters associated with the trade group, which comments can be divided into the two received before the August 19, 1996, meeting, and the two received after the meeting. Comments were also received from a state agency member of the council.

One pre-meeting commenter (that copied the trade group on its comment) urged the GLO not to adopt the charge size limitation proposed in amended §16.4(c)(2) because the establishment of such a threshold would discourage exploration and production of oil and gas in Texas coastal waters, with an attendant reduction in revenue to the state. The charge size threshold is based on the charge size requirement in existing §9.4 of this title (relating to Geophysical and Geochemical Exploration Permits). No change to the proposed amendment was made on the basis of this comment.

The other pre-meeting commenter (that copied the trade group on its comment) urged the GLO not to adopt the charge size or depth thresholds proposed in amended §16.4(c)(2) because the proposed amendments would "change the way the 'threshold' impact is measured for the issuance of seismic permits by the GLO", and would cause substantial delays during the time the permits are reviewed by the council. The commenter urged the development of a sliding scale of charge sizes and depths to be applicable in different amounts for different CNRAs and different locations. The charge size and depth thresholds are based on the charge size and depth requirements in existing §9.4 of this title (relating to Geophysical and Geochemical Exploration Permits). Permits issued by the GLO or SLB that exceed the threshold will be subject to referral to the council for consistency review, but will not necessarily be referred to or accepted by the council for review. No change to the proposed amendment was made on the basis of this comment.

Commenters at the meeting expressed concern that all permits issued in excess of the thresholds would automatically be referred to the council for consistency review. Commenters at the meeting also proposed that the GLO and SLB adopt a sliding scale of charge sizes and depths to be applicable in different amounts for different locations, depending on the CNRA to be affected. Permits issued by the GLO or SLB that exceed the threshold will be subject to referral to the council for consistency review, but will not necessarily be referred to or accepted by the council for review. The GLO is amenable to the development of a sliding scale of charge sizes and depths. However, at this time, no body of information has been accumulated, and no scientific analysis has been undertaken, that could form the rational basis for such a sliding scale. No change to the proposed amendment will be made on the basis of these comments at this time. However, the GLO may propose amendments at a future date if subsequent data justify them.

One post-meeting commenter, the trade group, generally supported the amended threshold as published, but wants the GLO to work with industry to develop a sliding scale of applicable charge sizes and depths. The GLO and the SLB plan to work with industry as relevant information is accumulated and analyzed for the purpose of developing a scientifically and environmentally sound sliding scale of applicable charge sizes and depths. No change to the proposed amendment will be made on the basis of these comments at this time. However, the GLO may propose amendments at a future date if subsequent data justify them.

The other post-meeting commenter did not object to the proposed seismic threshold, but wants the GLO to work with industry to develop a sliding scale of applicable charge sizes and depths. The commenter proposed language for amended §16.4(c)(2) that would refer to an unspecified reduced threshold "based on site-specific test programs that demonstrate to GLO, SLB and other resource agencies that the lesser threshold will create environmental impacts no greater than those created by

a 20 lb. shot at a depth of 120'". The GLO and the SLB plan to work with industry as relevant information is accumulated and analyzed for the purpose of developing a scientifically and environmentally sound sliding scale of applicable charge sizes and depths. However, the GLO and the SLB believe that a reference at this time to a threshold standard to be determined in the future based on information not currently available could have a negative impact on the agencies' ability to have §16.4 certified by the council as in compliance with the CMP. No change to the proposed amendment will be made on the basis of these comments at this time. However, the GLO may propose amendments at a future date if subsequent data justify them.

One commenter, a state agency member of the council, generally supported the adoption of thresholds for geophysical permits based on shot pounds and depth of shot instead of the acreage affected. The commenter recommended that the language of the amended §16.4(c)(2) be revised to track more closely the language of the existing shot size rule in §9.4 of this title (relating to Geophysical and Geochemical Exploration Permits), which distinguishes between allowable shot sizes for submerged and upland areas. The GLO and the SLB agree that the commenter's recommendation would make the threshold clearer and more closely reflect the agencies' intent in establishing the threshold. The proposed amendment is adopted with changes to reflect this comment.

The agency commenter agreed that the amendment of the threshold for real estate activities, as coordinated with the TNRCC, improves the threshold. The commenter suggested combining subparagraphs §16.4(b)(2)(B)-(H) into a single subparagraph §16.4(b)(2)(B). The GLO and the SLB believe that the existing format of the entire rule is clear, and that the suggested revision would not necessarily "make the thresholds more readable". No change to the proposed amendment was made on the basis of this comment.

The agency commenter also generally supported the thresholds for miscellaneous easements under §16.4(d) as being consistent with the Railroad Commission's thresholds for oil and gas development in critical areas. The agency commenter made no objections on consistency grounds.

Commenters submitting comments in favor of the section were: International Association of Geophysical Contractors; Texas Mid- Continent Oil & Gas Association; and Railroad Commission of Texas. Commenters submitting comments objecting to the section were: Providence Technologies, Inc.; and Western Geophysical Company.

The adopted rules ensure that the relevant actions listed in §505.11 of this title (relating to Actions and Rules Subject to the Coastal Management Program) taken by the GLO and the SLB comply with the goals and policies in §§501.12-501.15 of this title (relating to Goals; Administrative Policies; Policies for Specific Activities and Coastal Natural Resource Areas; and Policy for Major Actions, respectively), contained in Part XVI of this title (relating to Coastal Coordination Council). Amended §16.4 is consistent with the council's CMP goals and policies as those goals and policies relate to CNRAs, and establishes thresholds (typically based on quantitative measurements) for certain actions taken by the GLO or the SLB for the council's consistency review. The thresholds chosen for the CNRAs identified in §16.4 were based on the best scientific data currently available to the GLO and the SLB.

Because the adopted rule amendments reflect the results of the efforts of a task force appointed by the council, and otherwise are consistent with the section as originally adopted, the adopted rule amendments are consistent with all applicable CMP policies.

The GLO has prepared a takings impact assessment (TIA) for the adoption of these amendments. The GLO has determined that adoption of these amendments will not result in a taking of private real property. To receive a copy of the TIA, please send a written request to Sylvia Sissom, General Land Office, Legal Services Division, 1700 North Congress Avenue, Room 630, Austin, Texas, 78701-1495.

The legal basis for the new section is Texas Natural Resources Code, §31.051 and §33.064, which provide, respectively, that the commissioner of the GLO shall make and enforce suitable rules consistent with the law and that the SLB may adopt procedural and substantive rules which it considers necessary to administer, implement, and enforce Texas Natural Resources Code, Chapter 33.

§16.4. Thresholds for Referral.

(a) (No changes.)

(b) Real Estate Activities.

(1) Except for energy-related activities (i.e., activities related to oil, gas, or other mineral exploration and production), the GLO's or SLB's issuance of the following instruments exceeds the threshold if the authorized activities would adversely affect CNRA acreage greater than that in paragraph (2) of this subsection:

(A) a coastal easement pursuant to the Texas Natural Resources Code, §33.111, for dredging of basins and channels or construction of piers, docks, marinas, bulkheads, seawalls, and other waterfront structures on state-owned submerged land;

(B) a cabin permit pursuant to the Texas Natural Resources Code, §33.103, for the construction or use of fishing cabins on state-owned submerged land; or

(C) a surface lease pursuant to the Texas Natural Resources Code, §51.121, for construction of commercial facilities, artificial reefs, and other non-waterfront structures on state- owned land.

(2) The acreage thresholds for real estate activities are as follows:

(A) one-half acre of oyster reef;

(B) one acre of submerged aquatic vegetation;

(C) one acre of coastal wetland;

(D) one acre of algal flat;

(E) one acre of tidal mud flat;

(F) one acre of tidal sand flat;

(G) one acre of state submerged land; or

(H) one acre of upland area fitting the definition of coastal barrier, coastal shore area, Gulf beach, critical dune area, special hazard area, critical erosion area, coastal historic area, or

historic park, wildlife management area, preserve, as defined in §16.1 of this title (relating to Definitions and Scope).

(c) Energy-Related Activities (activities related to oil, gas, or other mineral exploration and production).

(1) The GLO's or SLB's approval of a mineral lease plan of operations for hard mineral exploration and production exceeds the threshold if the authorized activities would adversely affect CNRA acreage greater than the following:

(A) In the upper coast:

(i) one-half acre of oyster reef;

(ii) five acres of submerged aquatic vegetation;

(iii) five acres of coastal wetland;

(iv) five acres of algal flat;

(v) five acres of tidal mud flat;

(vi) ten acres of tidal sand flat;

(vii) 40 acres of waters in the open Gulf of Mexico;

(viii) 40 acres of open bay waters under tidal influence; or

(ix) 40 acres of upland area fitting the definition of coastal barrier, coastal shore area, Gulf beach, critical dune area, special hazard area, critical erosion area, coastal historic area, or coastal park, wildlife management area, or preserve, as defined in §16.1 of this title (relating to Definitions and Scope).

(B) In the lower coast:

(i) one-half acre of oyster reef;

(ii) 40 acres of submerged aquatic vegetation;

(iii) five acres of coastal wetland;

(iv) 20 acres of algal flat;

(v) 20 acres of tidal mud flat;

(vi) 40 acres of tidal sand flat;

(vii) 40 acres of waters in the open Gulf of Mexico;

(viii) 40 acres of open bay waters under tidal influence; or

(ix) 40 acres of upland area fitting the definition of coastal barrier, coastal shore area, Gulf beach, critical dune area, special hazard area, critical erosion area, coastal historic area, or coastal park, wildlife management area, or preserve, as defined in §16.1 of this title (relating to Definitions and Scope).

(2) The GLO's or SLB's issuance of a geophysical permit for exploration for oil, gas, or other minerals on state-owned lands exceeds the threshold if the permit authorizes one of the following:

(A) For upland areas, a shot in excess of 40 pounds of dynamite equivalent;

(B) For submerged areas, either;

(i) a shot in excess of 20 pounds of dynamite equivalent; or

(ii) a shot hole less than 120 feet below the mud line.

(3) With respect to energy-related activities not covered within the scope of a hard mineral plan of operations, the GLO's or SLB's issuance of a surface lease (pursuant to the Texas Natural Resources Code, §51.121), or a coastal easement (pursuant to the Texas Natural Resources Code, §33.111), exceeds the threshold only if the instrument authorizes:

(A) permanent disturbance of five acres or more of a critical area or removal of more than 10,000 cubic yards of material from a critical area, except with respect to submerged aquatic vegetation and tidal mud or sand flats in the lower coast; or

(B) permanent disturbance of ten acres or more of submerged aquatic vegetation or tidal mud or sand flats in the lower coast.

(d) A miscellaneous easement issued pursuant to the Texas Natural Resources Code, §51.291, exceeds the threshold for potential referral if the miscellaneous easement authorizes:

(1) permanent disturbance of five acres or more of a critical area or removal of more than 10,000 cubic yards of material from a critical area, except with respect to submerged aquatic vegetation and tidal mud or sand flats in the lower coast, or

(2) permanent disturbance of ten acres or more of submerged aquatic vegetation or tidal mud or sand flats in the lower coast.

(e) Any GLO or SLB action described in §16.1 of this title (relating to Definitions and Scope) that may adversely affect a CNRA that has not been specifically addressed in this section, exceeds the threshold if the action would adversely affect greater than 40 acres of any such CNRA.

(f) Any GLO or SLB action described in §16.1 of this title (relating to Definitions and Scope) that may adversely affect a CNRA must be consistent with the goals and policies in §16.2 and §16.3 of this chapter (relating to Policy for Major Actions, and Policies for Specific Activities and Coastal Natural Resource Areas), whether above or below the applicable threshold.

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.

Issued in Austin, Texas, on October 1, 1996.

TRD-9614387
Garry Mauro
Commissioner, General Land Office
General Land Office
Effective date: October 23, 1996
Proposal publication date: June 14, 1996
For further information, please call: (512) 305–9129

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TITLE 34. PUBLIC FINANCE

Part I. Comptroller of Public Accounts

Chapter 3. Tax Administration

Subchapter V. Franchise Tax

34 TAC §3.573

The Comptroller of Public Accounts adopts an amendment to §3.573, concerning provisional exemptions, without changes to the proposed text as published in the June 25, 1996, issue of the *Texas Register* (21 TexReg 5849).

The proposed changes reflect amendments made by Senate Bill 644, 74th Legislature, 1995. The definition of beginning date has been revised. Corporations who have applied for federal tax exemption under the provisions of Internal Revenue Code, §501(c)(8), (10), or (19) have been added to the corporations who may qualify for provisional franchise tax exemption.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Tax Code, §111.002, which provides the comptroller with the authority to prescribe, adopt, and enforce rules relating to the administration and enforcement of the provisions of the Tax Code, Title 2.

The amendment implements the Tax Code, §171.063.

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.

Issued in Austin, Texas, on October 1, 1996.

TRD-9614331
Martin Cherry
Chief, General Law
Comptroller of Public Accounts
Effective date: October 22, 1996
Proposal publication date: June 25, 1996
For further information, please call: (512) 463–4028

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Chapter 5. Funds Management (Fiscal Affairs)

Purchase Vouchers

34 TAC §5.55

The Comptroller of Public Accounts adopts the repeal of §5.55, concerning prompt payment law requirements for state agencies, without changes to the proposed text as published in the August 20, 1996, issue of the *Texas Register* (21 TexReg 7786).

The section is being repealed because it is unnecessary. The section repeals the requirements of the prompt payment statute without adding any significant substantive requirements or interpretations. In addition, the section's voucher requirements are more appropriate for the comptroller's State of Texas Purchase Voucher Guide than a formal rule.

No comments were received regarding adoption of the repeal.

The repeal is adopted under the Government Code, §2101.035, which authorizes the comptroller to adopt rules for the effective operation of the uniform statewide accounting system.

The repeal implements the Government Code, §2101.035.

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

Issued in Austin, Texas, on October 1, 1996.

TRD-9614330
Martin Cherry
Chief, General Law
The Comptroller of Public Accounts
Effective date: October 22, 1996
Proposal publication date: August 20,1996
For further information, please call: (512) 463–4028

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Voided Warrants

34 TAC §5.151

The Comptroller of Public Accounts adopts the repeal of §5.151, concerning the destruction of warrants, without changes to the proposed text as published in the August 20, 1996, issue of the *Texas Register* (21 TexReg 7787).

The section is being repealed because it is obsolete and unnecessary. The procedures for the destruction of warrants by comptroller employees do not need to be in a formal rule.

No comments were received regarding adoption of the repeal.

The repeal is adopted under the Government Code, §2101.035, which authorizes the comptroller to adopt rules for the effective operation of the uniform statewide accounting system.

The repeal implements the Government Code, §2101.035.

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

Issued in Austin, Texas, on October 1, 1996.

TRD-9614329
Martin Cherry
Chief, General Law
Comptroller of Public Accounts
Effective date: October 22, 1996
Proposal publication date: August 20, 1996
For further information, please call: (512) 463–4028

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TITLE 40. SOCIAL SERVICES AND ASSISTANCE

Part IV. Texas Commission for the Blind

Chapter 163. Vocational Rehabilitation Program

Subchapter D. Order of Selection for Payment of Services

40 TAC §§163.50–163.52

The Texas Commission for the Blind adopts the repeal of §§163.50-163.52, and simultaneously adopts new §§163.50-

163.52, concerning the provision of vocational rehabilitation services without changes to the proposed text as published in the August 27, 1996, issue of the *Texas Register* (21 TexReg 8091).

The commission adopts the repeal and new sections to comply with the Rehabilitation Act of 1973, §101(a)(5)(A), as amended. The rules will serve, in times of limited funding, as an order of selection for receiving services. The Act requires the agency to consider functional limitations when determining the severity of a person's disabilities.

No comments were received regarding adoption of the repeal and new sections.

The repeals are adopted under the Human Resources Code, Title 5, Chapter 91, §91.011(g), which authorizes the commission to adopt rules prescribing the policies and procedures followed by the commission in the administration of its programs.

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

Issued in Austin, Texas, on September 30, 1996.

TRD-9614305
Pat D. Westbrook
Executive Director
Texas Commission for the Blind
Effective date: November 1, 1996
Proposal publication date: August 27, 1996
For further information, please call: (512) 459–2611

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Subchapter D. Order of Selection for Services

40 TAC §§163.50–153.52

The new sections are adopted under the Human Resources Code, Title 5, Chapter 91, §91.011(g), which authorizes the commission to adopt rules prescribing the policies and procedures followed by the commission in the administration of its programs.

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

Issued in Austin, Texas, on September 30, 1996.

TRD-9614304
Pat D. Westbrook
Executive Director
Texas Commission for the Blind
Effective date: November 1, 1996
Proposal publication date: August 27, 1996
For further information, please call: (512) 459–2611

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Subchapter E. Consumer Participation in Cost of Services

40 TAC §163.61

The Texas Commission for the Blind adopts the repeal of §163.61, and simultaneously adopts new §163.61, concerning consumer participation in the cost of vocational rehabilitation services without changes to the proposed text as published in the August 27, 1996, issue of the *Texas Register* (21 TexReg 8092).

The commission adopts the repeal and new section to increase the services exempt from consumer participation in their cost. The new rule adds all training and assistive technology devices and equipment necessary for employment to the list of exempt services.

No comments were received regarding adoption of the repeal and new section.

The repeal is adopted under the Human Resources Code, Title 5, Chapter 91, §91.011(g), which authorizes the commission to adopt rules prescribing the policies and procedures followed by the commission in the administration of its programs.

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

Issued in Austin, Texas, on September 30, 1996.

TRD-9614303
Pat D. Westbrook
Executive Director
Texas Commission for the Blind
Effective date: November 1, 1996
Proposal publication date: August 27, 1996
For further information, please call: (512) 459–2611

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The new section is adopted under the Human Resources Code, Title 5, Chapter 91, §91.011(g), which authorizes the commission to adopt rules prescribing the policies and procedures followed by the commission in the administration of its programs.

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

Issued in Austin, Texas, on September 30, 1996.

TRD-9614302
Pat D. Westbrook
Executive Director
Texas Commission for the Blind
Effective date: November 1, 1996
Proposal publication date: August 27, 1996
For further information, please call: (512) 459–2611

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Part XIX. Texas Department of Protective and Regulatory Services

Chapter 705. Adult Protective Services

The Texas Department of Protective and Regulatory Services (TDPRS) adopts new §§705.1001, 705.3101, and 705.3102 in its Adult Protective Services chapter. New §705.1001 is

adopted with changes to the proposed text as published in the June 7, 1996, issue of the *Texas Register* (21 TexReg 5162). New §705.3101 and §705.3102 are adopted without changes to the proposed text and will not be republished.

The justification for the new sections is to incorporate changes needed because of recent legislation and implementation of the Child and Adult Protective System (CAPS) automated system.

The new sections will function by providing an increased awareness of services for victims of family violence.

No comments were received regarding adoption of the new sections. TDPRS, however, has initiated two clarifications to the text of §705.1001. In the definition of caretaker, the words "and medical" are deleted and the word "or" is added. In the definition of sexual abuse the words "including conduct" are added after the phrase "any involuntary or nonconsensual sexual conduct."

Definitions

40 TAC §705.1001

The new section is adopted under the Human Resources Code, Title 2, Chapters 40 and 48, which authorizes the department to administer protective services for elderly persons and adults with disabilities.

The new section further implements Chapter 48 of the Human Resources Code.

§705.1001. Definitions.
The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise:

Abuse-The negligent or willful infliction of injury, unreasonable confinement, intimidation, or cruel punishment with resulting physical or emotional harm or pain by a caretaker, family member, or other individual with whom the elderly or disabled person has an ongoing relationship.

Adult-A person 18 or older, or an emancipated minor. Aged or elderly person-A person 65 or older.

Allegation-An assertion that an elderly person or an adult with a disability is in a state of or at risk of harm due to abuse, neglect, or exploitation.

Alleged perpetrator-A person who is reported to be responsible for the abuse, neglect, or exploitation of an elderly person or an adult with a disability.

Alleged victim-An elderly person or an adult with a disability who has been reported to adult protective services staff to be in a state of or at risk of abuse, neglect, or exploitation.

Alleged victim/perpetrator-An elderly person or an adult with a disability who has been reported to adult protective services staff to be in a state of or at risk of self neglect or suicidal threat.

Authorized representative-A person appointed by an alleged victim or a client to speak for him or act on his behalf.

Capacity to consent-Having the mental and physical ability to understand the current problems and the services offered and to accept or reject those services knowing the consequences of the decision.

Caretaker-A guardian, representative payee, or other person who by act, words, or course of conduct has acted so as to cause a reasonable person to conclude that he has accepted the responsibility for protection, food, shelter, or care for an elderly person or an adult with a disability.

Child and Adult Protective System (CAPS)-The software application by which Adult Protective Services (APS) and Child Protective Services (CPS) staff document cases.

Client-An elderly person or an adult with a disability who has been determined in a validated finding to be in need of protective services.

Collateral contact-Contact with a person, other than a principal, who has knowledge of the situation and is a source of information for completion of the investigation or the delivery of services.

Community care-Services provided within the client's own home, neighborhood, or community, as alternatives to institutional care. Community care is sometimes called alternate care.

Designated perpetrator-A person who has been determined in a validated finding to have abused, neglected, or exploited an elderly person or an adult with a disability.

Designated victim-An elderly person or an adult with a disability for which a finding of abuse, neglect, or exploitation has been validated.

Designated victim/perpetrator-An elderly person or an adult with a disability for which a finding of self neglect or suicidal threat has been validated.

Disabled person-A person with a physical, mental, or developmental disability that substantially impairs the personþs ability to provide adequately for the person's care or protection and who is 18 years of age or older or under 18 years of age and who has had the disabilities of minority removed. (Human Resources Code, §48.002)

Emancipated minor-A person under 18 years of age who has the power and capacity of an adult. This includes a minor who has had the disabilities of minority removed by a court of law or a minor who, with or without parental consent, has been married. Marriage includes common-law marriage.

Emotional or verbal abuse-Any use of verbal communication or other behavior to humiliate, intimidate, vilify, degrade, or threaten with harm. Exploitation-The illegal or improper act or process of a caretaker, family member, or other individual who has an ongoing relationship with an elderly or disabled person using the resources of the elderly or disabled person for monetary or personal benefit, profit, or gain without the informed consent of the elderly or disabled person. (Human Resources Code, §48.002)

Family violence-An act by a member of a family or household against another member of the family or household that is intended to result in physical harm, bodily injury, assault, or sexual assault or that is a threat that reasonably places the member in fear of imminent physical harm, bodily injury, assault, or sexual assault, but does not include defensive measures to protect oneself. (Texas Family Code, §71.01(b)(2))

Institution-An establishment that furnishes, in one or more facilities, food and shelter to four or more persons who are unrelated to the proprietor of the establishment and provides minor treatment under the direction and supervision of a physician licensed by the Texas State Board of Medical Examiners, or other services that meet some need beyond the basic provision of food, shelter, and laundry. (Health and Safety Code, §242.002(5))

Least restrictive alternative-An action or service that protects a client while allowing personal autonomy to the fullest degree possible.

Neglect-The failure to provide for one's self the goods or services, including medical services, which are necessary to avoid physical or emotional harm or pain or the failure of a caretaker to provide the goods or services. (Human Resources Code, §48.002)

Personal care facility-An establishment, including a board and care home, that furnishes, in one or more facilities, food and shelter to four or more persons who are unrelated to the proprietor of the establishment and provides personal care services. (Health and Safety Code, §247.002(3))

Primary worker-The APS worker assigned primary responsibility for a case and serves the area where the client is located. Principal-The alleged victim/client or perpetrator in an APS case.

Protective services-The services furnished by the department or by a protective services agency to an elderly or disabled person who has been determined to be in a state of abuse, exploitation, or neglect. These services may include social casework, case management, and arranging for psychiatric and health evaluation, home care, day care, social services, health care, and other services consistent with the Human Resources Code, Chapter 48. (Human Resources Code, §48.002)

Provider agency (contractor)-An agency that has contracted with the Texas Department of Protective and Regulatory Services to provide authorized services for adult protective service clients.

Reporter-A person who makes a referral to adult protective services staff about a situation of alleged abuse, neglect, or exploitation of an elderly person or an adult with a disability.

Secondary worker-A caseworker who assists the primary worker by conducting interviews, researching records, or providing other assistance in a case. This caseworker has access to the electronic case file and is able to perform any tasks for that case in CAPS that a primary worker can perform.

Sexual abuse-Any involuntary or nonconsensual sexual conduct including conduct that would constitute an offense under the Texas Penal Code, §21.08 or the Texas Penal Code, Chapter 22. (Human Resources Code, §48.002).

Sustained perpetrator-A person for which at least one validated finding of abuse, neglect, or exploitation of an elderly person or an adult with a disability has been sustained by an administrative review or a release hearing.

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.

Issued in Austin, Texas, on October 2, 1996.

TRD-9614369
C. Ed Davis
Deputy Director, Legal Services
Texas Department of Protective and Regulatory Services
Effective date: October 23, 1996
Proposal publication date: June 7, 1996
For further information, please call: (512) 438–3765

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Family Violence

40 TAC §705.3101, §705.3102

The new sections are adopted under the Human Resources Code, Title 2, Chapters 40 and 48, which authorizes the department to administer protective services for the elderly.

The new sections implement Chapter 54, Human Resources Code and Amendment by Acts 1995, 74th Legislature Chapter 559 §1 found in the note preceding Chapter 40 of the Human Resources Code.

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

Issued in Austin, Texas, on October 2, 1996.

TRD-9614370
C. Ed Davis
Deputy Director, Legal Services
Texas Department of Protective and Regulatory Services
Effective date: October 23, 1996
Proposal publication date: June 7, 1996
For further information, please call: (512) 438–3765

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TITLE 43. TRANSPORTATION

Part I. Texas Department of Transportation

Chapter 21. Right of Way

Subchapter I. Control of Outdoor Advertising Signs

43 TAC §21.142, §21.146, §21.150

The Texas Department of Transportation adopts amendments to §§21.142, 21.146, and 21.150. Section 21.150 is adopted with changes to the proposed text as published in the June 28, 1996, issue of the *Texas Register* (21 TexReg 5964). Sections 21.142 and 21.146 are adopted without changes and will not be republished.

The amended sections are necessary to ensure the department's proper administration of the laws concerning the control of outdoor advertising signs along the interstate and primary systems.

The National Highway System Designation Act of 1995 amended Title 23, United States Code, Section 101 to provide for the designation of the national highway system and for other purposes.

Title 23, United States Code, §131 requires the states to control outdoor advertising along the interstate and primary systems. Section 131(t) defines the primary system for purposes of the Federal Highway Beautification Act as the primary system in existence on June 1, 1991, and any highway which is not on such system but which is on the national highway system.

Transportation Code, Chapter 391, previously codified at Texas Civil Statutes, Article 4477-9a (the "Highway Beautification Act"), provides the department with authority to control outdoor signs on the interstate or primary system of highways.

The amendment to §21.142 modifies the definition of federal-aid primary highway to include those highways on the National Highway System as defined under Title 23, United States Code, §103(b) and those highways on the primary system as of June 1, 1991. The amendment also adds a definition for National Highway System.

The amendment to §21.146 allows the department to permit legally erected signs along highways which were not previously subject to the department's jurisdiction under the State Highway Beautification Act but which were later added to the interstate or primary system.

The amendment to §21.150 allows the department to convert a sign registration or permit issued under §21.431 or §21.441 of this title (relating to Control of Signs Along Rural Roads) to a permit for a sign under the State Highway Beautification Act. The holder of a converted permit will not be required to pay an initial permit fee; however, the holder will be required to pay annual renewal fees.

On July 18, 1996, the department conducted a public hearing on the proposed amended sections. One individual representing the Outdoor Advertising Association suggested abating or mitigating the fees in the initial stage of bringing the signs along the newly controlled routes under the department's control. Written comments from the same individual were received requesting (1) that a vote on the proposed rules be postponed to allow the association and its members to obtain a map of the new highways which will be added to the department's control, and (2) that the fees be lowered by 50% for the first year in order to mitigate the initial impact of the additional fees on the outdoor advertising operator, especially the "small business" operators.

Response to the request for maps: On August 12, 1996, the department provided maps to the Outdoor Advertising Association, depicting the highways on the National Highway System which were not previously subject to the department's jurisdiction.

Response for request to reduce initial permit fees: The department has revised §21.150(g)(1), (3) and (4) to provide for an initial permit fee of $50.00 for signs already in existence which later become subject to the department's jurisdiction in order to minimize the financial impact on small business owners.

The department has revised §21.150(b)(3) to clarify that the department may issue permits for signs lawfully in existence which do not meet all applicable requirements of the regulations.

The department has revised §21.150(l) to clarify that the renewals for signs converted from a rural road permit or registration are due on the date the rural road registration or permit would have been due.

The department has also revised §21.150(l) to clarify that a holder of a converted rural road permit or registration will not be required to pay to obtain an initial set of permit plates, since permit plates are not required under the Rural Road Act, Transportation Code, Chapter 394.

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 Texas Department of Transportation, and more specifically Texas Transportation Code, §391.065, which authorizes the commission to adopt rules to regulate the erection and maintenance of outdoor advertising signs along the interstate and primary system of highways.

§21.150. Permits.

(a) Eligibility. Except as provided in subsection (k) of this section, a permit under this section may only be issued to a sign owner holding a valid license issued pursuant to §21.149 of this title (relating to Licenses).

(b) Application and issuance.

(1) Except as provided in §21.151 of this title (relating to Local Control) a sign owner who desires a permit to erect or maintain a sign as required in §21.146 of this title (relating to Signs Controlled) must file an application in a form prescribed by the department, which shall include, but not be limited to:

(A) the name and address of the applicant;

(B) proposed location and description of the sign;

(C) name and address of the site owner;

(D) indication that the site owner has consented to the erection of the sign;

(E) verification of the applicant's nonprofit status if the sign is a nonprofit sign; and

(F) such additional information as the department deems necessary.

(2) The application must be signed under oath by the sign owner and filed with the district engineer in whose district the sign is to be erected or maintained, and shall be accompanied by the prescribed fee or fees.

(3) An application will not be approved unless the sign for which the permit is requested meets all applicable requirements of the sections under this subchapter, or was lawfully in existence when the sign became subject to the department's jurisdiction.

(4) If approved, a copy of the application, endorsed by the district engineer, or his or her designee, and a Texas sign permit plate will be issued to the applicant. Not later than 30 days after erection of the permitted sign, or after the issuance of a permit if the sign is lawfully in existence when the highway along which it is located becomes subject to control by the department, the sign owner shall cause the permit plate to be securely attached to that portion of the sign structure nearest the highway and visible from the main traveled way.

(c) Renewals.

(1) Subject to the terms and location stated in the permit application, a permit issued or renewed under this section shall be valid for a period of one year, provided that the sign is erected and maintained in accordance with the applicable sections under this subchapter. The permitted sign must be erected within one year from the date the original permit is issued in order for a sign permit to be eligible for renewal.

(2) A permit issued by the department prior to September 6, 1985, must be renewed no later than October 1, 1991.

(3) An annual permit issued subsequent to September 5, 1985, must be renewed prior to the expiration date of that permit.

(4) To renew a permit under this subsection a permit holder must file with the district engineer a written request in a form prescribed by the department, together with the prescribed renewal fee; and further provided that the sign continues to meet all applicable requirements.

(d) Refunds and prorations.

(1) All payments not in accordance with the fees described in subsection (g) of this section which were received after September 5, 1985, and before September 1, 1991, for renewals of permits issued by the department prior to September 6, 1985, will be refunded. This refund does not release the current owner of an advertising sign from complying with the renewal provisions prescribed in subsection (c) of this section.

(2) All payments for renewals of annual permits due subsequent to September 1, 1990, that were in excess of the fees described in subsection (g) of this section, will be prorated to provide credit for subsequent renewals of the applicable permit. The credit shall be equal to the product of the amount which is in excess of the fee which would be assessed under subsection (g) of this section, multiplied by a fraction, the numerator of which is equal to the number of days from September 1, 1991, remaining for which the permit is valid, and the denominator of which is equal to 365 days; provided, however, this amount will be refunded if requested by the permit holder for the permit or the amount will be refunded if deemed appropriate by the department. The credit is calculated by using the following formula.
Figure: 43 TAC §21.150 (d)(2)

(e) Transfer.

(1) A permit may only be assigned or transferred with the written approval of the district engineer. At the time of the transfer, both the transferor and the transferee must hold a valid outdoor advertising license issued pursuant to §21.149 of this title (relating to Licenses), except as provided in paragraphs (3) and (4) of this subsection.

(2) The holder of a permit or permits who desires to transfer one or more permits must file with the district engineer a request in a form prescribed by the department together with the prescribed transfer fee. The transferor and transferee will each be issued a copy of the approved permit transfer form.

(3) A permit issued under subsection (k) of this section may be transferred to a nonprofit organization that does not hold a valid outdoor advertising license issued under §21.149 of this title (relating to Licenses) if the permit is transferred for the purpose of maintaining a nonprofit sign.

(4) A permit issued under subsection (k) of this section may be transferred for a purpose other than maintaining a nonprofit sign if the transferee holds a valid outdoor advertising license at the time of the transfer.

(f) Replacement. In the event a permit plate is lost or stolen, is missing from the sign structure, or becomes illegible, the sign owner must submit to the district engineer a request for a replacement plate in a form prescribed by the department, together with the prescribed replacement fee.

(g) Fees.

(1) Except as provided in paragraphs (2) and (3) of this subsection, for a permit issued pursuant to this section:

(A) the original fee is $96 for each sign;

(B) the annual renewal fee is $40;

(C) the transfer fee for one or more permits transferred in a single transaction is $25 per permit or a total of $2,500, whichever is less; and

(D) the replacement fee is $25.

(2) For a nonprofit sign:

(A) the original fee is $10 for each sign;

(B) the annual renewal fee is $10; and

(C) the transfer fee is waived for the transfer of a permit issued under subsection (k) of this section if the permit is transferred under subsection (e)(3) of this section. Any other permit transfer is subject to the provisions of paragraph (1) of this subsection.

(3) For a sign lawfully in existence which becomes subject to the Act the initial fee shall be $50.

(4) A fee prescribed in this subsection is payable by check, cashier's check, or money order, and is nonrefundable.

(h) Expiration or cancellation. The director of right of way may cancel a permit issued pursuant to this section if the sign subject to the permit is acquired by the state, is removed, or is not maintained in accordance with applicable sections under this subchapter or Transportation Code, Chapter 391.

(i) Removal. If a permit expires without renewal, is canceled without reinstatement, or if a sign other than an exempt sign is erected or maintained without a permit, the owner of the involved sign and sign structure shall, upon written notification by the district engineer, effect their removal at no cost to the state.

(j) Notice and appeal. Upon determination that a permit should be canceled, the director of right of way shall mail a notice of cancellation to the last known address of the permit holder by certified mail.

(1) The notice shall clearly state:

(A) the reasons for the cancellation;

(B) the effective date of the cancellation; and

(C) the right of the permit holder to request an administrative hearing on the question of the cancellation.

(2) A request for an administrative hearing under this subsection must be made in writing to the director of right of way within 10 days of the receipt of the notice of cancellation.

(3) If timely requested, an administrative hearing shall be conducted in accordance with §§1.21-1.63 of this title (relating to Contested Case Procedure), and shall serve to abate the cancellation unless and until that cancellation is affirmed by order of the commission.

(k) Nonprofit signs.

(1) A nonprofit organization may obtain a permit under this section to erect or maintain a nonprofit sign.

(2) In order to qualify for a permit issued under this subsection, a sign must comply with all applicable requirements under this subchapter from which it is not specifically exempted.

(3) An application for a permit under this section must include, in detail, the content of the message to be displayed on the sign. Prior to changing the message on any sign permitted under this section, the permit holder must obtain the approval of the district engineer in whose district the sign is maintained.

(4) If at any time the sign ceases to be a nonprofit sign, the permit will be subject to cancellation pursuant to subsection (h) of this section.

(5) If the holder of a permit issued under this subsection loses its nonprofit status or wishes to advertise or promote something other than the municipality or political subdivision, an outdoor advertising license must be obtained pursuant to §21.149 of this title (relating to Licenses), the permit must be converted to a permit for a sign other than a nonprofit sign, and the holder must pay the original permit fee set forth in subsection (g)(1) and annual renewal fees set forth in subsection (g)(2) of this section.

(6) A nonprofit organization that holds a valid permit for a nonconforming sign that would otherwise qualify for a permit under this subsection may convert its permit to one issued under this subsection.

(l) Conversion of rural road permits and registrations. The department will convert a registration issued under §21.431 of this title (relating to Registration of Existing Off-Premise Signs) or a permit issued under §21.441 of this title (relating to Permit for Erection of Off-Premise Sign) to a permit under this section if a highway previously controlled in accordance with Transportation Code, Chapter 394 becomes subject to control under the Act. A holder of a permit or registration converted under this subsection will not be required to pay an original permit fee under subsection (c)(A) of this section; however, the permit must be renewed annually under subsection (c)(B) of this section, on the date the renewal of the permit or registration issued under §21.431 or §21.441 would have been due. In the event a sign owner has prepaid registration fees, the outstanding prepayment will be credited to the sign owner's annual renewal fee. The department will issue permit plates to a holder of a permit or a registration converted under this subsection at no charge. In the event replacement plates are needed after the initial issuance, fees will be charged in accordance with this section.

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

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Bob Jackson
Deputy General Counsel
Texas Department of Transportation
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