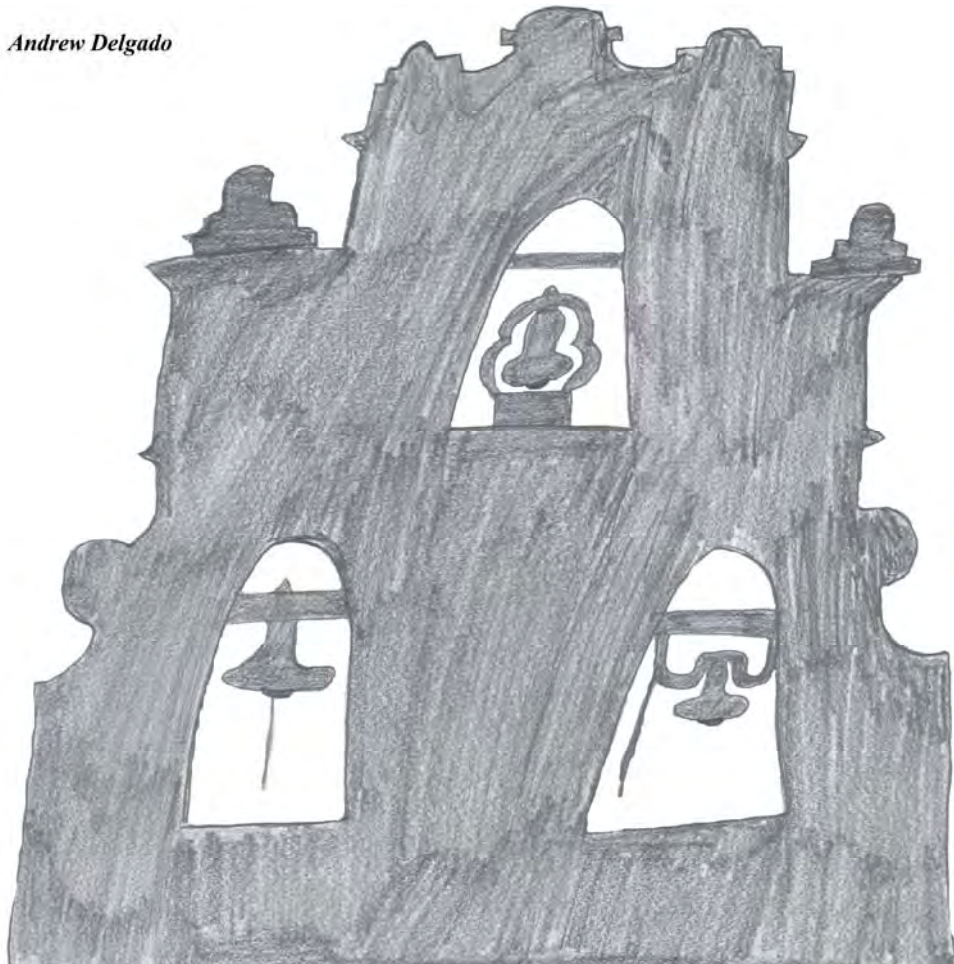

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Andrew Delgado



School children's artwork is used to decorate the front cover and blank filler pages of the *Texas Register*. 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.

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THE ATTORNEY GENERAL

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

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

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

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

Requests for Opinions

RQ-0992-GA

Requestor:

Mr. Douglas Oldmixon

Commissioner

Texas Appraiser Licensing and Certification Board

Post Office Box 12188

Austin, Texas 78711-2188

Re: Jurisdiction of the Appraiser Licensing and Certification Board
over a property tax appraiser's "uniform and equal" analysis (RQ-0992-
GA)

Briefs requested by September 29th, 2011

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

TRD-201103549

Jay Dyer

Deputy Attorney General

Office of the Attorney General

Filed: August 31, 2011



PROPOSED RULES

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

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

TITLE 1. ADMINISTRATION

PART 5. TEXAS FACILITIES COMMISSION

CHAPTER 123. FACILITIES DESIGN AND CONSTRUCTION

Introduction and Background

The Texas Facilities Commission (Commission) proposes amendments to its rules related to the operations and practices of the Facilities Design and Construction Division (Division), formerly known as Facilities Construction Section of the Commission's Facilities Construction and Space Management Division, found at Texas Administrative Code, Title 1, §§123.1, 123.2, 123.12, 123.13, 123.23 - 123.33, 123.43, and 123.44. The Commission also proposes a new rule designated as §123.34.

These proposed rule amendments and new rule are necessary and proper to reflect changes to the agency name and organizational structure, to comply with statutory rulemaking requirements, and to provide clear and well-organized guidance on the Division's current operations and practices to other state agencies and the public by deleting rule language that is no longer in use or provides no additional information than that found in governing statutes, adding new rules when appropriate or required by statute, and correcting typographical and grammatical errors. The revised rules are proposed pursuant to the Commission's rulemaking authority found in Texas Government Code, §§2166.062, 2166.202, 2166.2525, 2166.257, 2166.258, and 2166.404 (Vernon 2008).

Section by Section Summary

Section 123.1 defines terms used in Chapter 123 of the Commission's rules. Section 123.2 addresses delegation of authority from the Commission to its Executive Director.

Subchapter B concerning real property acquisitions by the Commission consists of §123.12 and §123.13 and relates to acquisition through requests for offers, direct negotiation, and exercises of the Commission's powers of condemnation, respectively.

Subchapter C focuses on construction project administration. Section 123.23 discusses general project responsibility, and §123.24 addresses the project analysis process. Section 123.25 outlines the Commission's processes related to construction projects, including initiation of a project and new language concerning proposed contingency expenditures. Section 123.26 outlines state agency requests for exclusions from the Commission's authority under Texas Government Code, Chapter 2166. Section 123.27 discusses selection of design profes-

sionals by the Commission for construction projects. Sections 123.28 and 123.29 further address contractor qualifications and Commission bidding procedures related to construction projects, including new language regarding proposal guaranties for competitive pricing. Section 123.30 addresses awards of construction contracts; §123.31 establishes procedures for emergency bidding and awards. Section 123.32 relates to construction contract administration. Section 123.33 discusses the Commission's Small Contractor Participation Assistance Program. Proposed new §123.34 establishes a required rule relating to the use of xeriscaping on state property associated with construction of new state buildings.

Lastly, Subchapter D contains administrative rules regarding prevailing wage rates. Section 123.43 discusses prevailing wage rate surveys. Section 123.44 addresses withholding of penalties by the Commission upon a finding that a contractor or subcontractor has failed to pay prevailing wages.

Fiscal Note

Terry Keel, Executive Director, has determined that for each year of the first five-year period the proposed rule amendments and new rule are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the proposed rules.

Public Benefit/Cost Note

Mr. Keel has also determined that for each year of the first five-year period the proposed rule amendments and new rule are in effect the public benefit will be further clarification by deleting rule language that is no longer in use or provides no additional information than that found in governing statutes, adding new rules when appropriate or required by statute, and correcting typographical and grammatical errors.

Mr. Keel has further determined that there will be no effect on individuals or large, small, and micro-businesses as a result of the proposed rule amendments and new rule. Consequently, an Economic Impact Statement and Regulatory Flexibility Analysis, pursuant to Texas Government Code, §2006.002 (Vernon 2008), are not required.

In addition, Mr. Keel has determined that for each year of the first five-year period the proposed rule amendments and new rule are in effect there should be no effect on a local economy; therefore, no local employment impact statement is required under the Administrative Procedure Act, Texas Government Code, §2001.022 (Vernon 2008).

Request for Comments

Interested persons may submit written comments on the proposed rule amendments and new rule to General Counsel, Legal Services Division, Texas Facilities Commission, P.O. Box

13047, Austin, Texas 78711-3047. Comments may also be sent via email to rulescomments@tfc.state.tx.us. For comments submitted electronically, please include "Proposed Facilities Design and Construction Rules" in the subject line. Comments must be received no later than thirty (30) days from the date of publication of the proposal to the *Texas Register*. Comments should be organized in a manner consistent with the organization of the proposed rule. Questions concerning the proposed amendments and new rule may be directed to Susan Maldonado, Assistant General Counsel, at (512) 463-3960.

SUBCHAPTER A. GENERAL MATTERS

1 TAC §123.1, §123.2

Statutory Authority

The amendments to existing rules and new rule are proposed under Texas Government Code §§2166.062, 2166.202, 2166.2525, 2166.257, 2166.258, and 2166.404 (Vernon 2008).

Cross Reference to Statute

The statutory provisions affected by the proposed rule amendments and new rule are those set forth in Chapter 2165 and 2166 of the Texas Government Code.

§123.1. Definitions.

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

(1) Commission--The Texas Facilities [Building and Procurement] Commission.

(2) Contractor's Qualification Form--A Commission promulgated form which contractors must complete and return to the Commission [agency] prior to consideration for a construction contract award.

(3) Cost of Services--Commission costs incurred in providing construction project administration services, including Project [project] management, professional inspection, staff time, prior Project Analysis [project analysis] cost, travel expense, the estimated cost of minor and incidental materials used in pursuit of a Project [project], and may include overhead employee benefit costs.

(4) Design Professional--Persons licensed by the State of Texas to practice architecture in accordance with Texas Occupations Code, Chapter 1051 or engineering in accordance with Texas Occupations Code, Chapter 1001.

(5) [Facilities Construction and Space Management] Division--The Commission division responsible for administration of construction projects under the Commission's jurisdiction[;] and such other projects that the Commission has agreed to manage.

(6) Executive Director--The Executive Director of the Commission.

~~[(6) Notice to Proceed--A Commission order issued to a general contractor under contract on a project which establishes the start date and projected completion date.]~~

~~[(7) Planning Fund--A fund administered by the Facilities Construction and Space Management Division from which authorized planning expenditures are initially paid.]~~

(7) ~~[(8) Project Analysis--A study done before the legislative appropriation process for a Project [project] to establish basic program elements and scope of work[;] and to develop a reliable estimate of the cost of the Project [project] to be used in the appropriations~~

process, and as authorized by Texas Government Code, Title 10, Subtitle D, Chapter 2166, Subchapter D.

~~(8) [(9) Project--A building construction project as defined in Texas Government Code, §2166.001(4).~~

~~(9) Purchasing Agency--An instrumentality of the State of Texas that is appropriated funds for a construction Project involving a real property acquisition.~~

~~[(10) Project Request Forms--The Commission promulgated form which using agencies must complete, including funds certification information, and return to TBPC prior to initiation of a construction project.]~~

~~(10) [(11) Using Agency--An instrumentality of the State of Texas [state] that occupies and uses a state-owned or state-leased building, or the Commission [commission], with respect to a state-owned building maintained by the Commission.~~

~~[(12) Uniform General Conditions (UGC)--The terms and conditions for state building construction projects promulgated in accordance with Texas Government Code, Title 10, Subtitle D, Chapter 2166, Subchapter G.]~~

~~[(13) Wage Rates--The schedule of the hourly rate of pay plus payments made to or on behalf of employees for benefits such as health insurance, pension plans, death benefits and vacation pay.]~~

§123.2. Delegation of Authority.

(a) The Commission [commission] may act to exercise any power or authority set out in this chapter [Chapter 123 of this title (relating to the Facilities Construction and Space Management Division)], or it may delegate such authority to the Executive Director [executive director]. The Executive Director [executive director], in exercising delegated authority, may further delegate this [his] authority to another member of the Division [FCSMD] staff.

(b) Operating Procedures for this chapter [Chapter 123 of this title] may be found in the Division's [FCSMD's] Internal Procedures Manual.

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

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

TRD-201103455

Kay Molina

General Counsel

Texas Facilities Commission

Earliest possible date of adoption: October 9, 2011

For further information, please call: (512) 463-7220



SUBCHAPTER B. REAL PROPERTY ACQUISITION

1 TAC §123.12, §123.13

Statutory Authority

The amendments to existing rules and new rule are proposed under Texas Government Code §§2166.062, 2166.202, 2166.2525, 2166.257, 2166.258, and 2166.404 (Vernon 2008).

Cross Reference to Statute

The statutory provisions affected by the proposed rule amendments and new rule are those set forth in Chapter 2165 and 2166 of the Texas Government Code.

§123.12. *Land and Real Property Acquisition, Negotiated.*

(a) Commission staff [FCSMD] shall establish procedures for the process to acquire real property in accordance with state law~~;~~ ~~per appropriate direction in legislation~~.

(b) Written responses to the request for offers ~~[Request for Offers]~~ to sell from property owners will be evaluated by ~~[TBPC]~~ staff of the Commission and the Purchasing Agency. All final recommendations shall be presented to the Commission ~~[commission]~~ or the Purchasing Agency ~~[purchasing agency]~~ for acceptance. All appropriate studies, appraisals and title work shall accompany such recommendations.

(c) The Commission ~~[TBPC]~~ or the Purchasing Agency ~~[purchasing agency]~~, shall accept offers which are in the best interest of the State of Texas. The Commission ~~[TBPC]~~ and the Purchasing Agency ~~[purchasing agency]~~ retain the right to reject any and all offers.

(d) The Commission ~~[TBPC]~~ or the Purchasing Agency ~~[purchasing agency]~~ after acceptance of a written offer to sell property, is authorized to complete the purchase as follows:

(1) A real estate contract will be executed by the seller and the Commission ~~[TBPC]~~ stating all specific conditions of the transfer of property, including delivery of draft deeds~~;~~~~;~~ acquisition of title insurance policies; ~~conducting[; conduct of]~~ surveys, environmental tests, and other such matters~~;~~ and other details of the individual transaction. A closing on the transaction shall be scheduled at the convenience of the parties.

(2) The terms and conditions under which the Commission or the Purchasing Agency ~~[TBPC]~~ purchases the real property shall be designed to comply with applicable law to protect the interests of the State of Texas and shall be reasonable and prudent under normal business practices.

§123.13. *Land and Real Property Acquisition, Condemnation.*

(a) When no agreement on purchase price between the seller and the buyer is reached through negotiations, the Commission ~~[TBPC]~~ may exercise its power of eminent domain.

(b) At least one appraisal as to fair market value shall be obtained from independent sources and a final offer presented to the seller based on an appraisal.

(c) The final offer to purchase shall contain a designated acceptance period stated in calendar days.

(d) If this final offer to purchase is not accepted by the seller within the designated time period, the Commission ~~[commission]~~ may proceed to make a finding of public purpose for the taking and seek assistance from the Office ~~[office]~~ of the Attorney General to proceed with the condemnation action.

(e) The ~~[Conduct of the]~~ condemnation proceedings shall be conducted in accordance with state law.

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

Filed with the Office of the Secretary of State on August 25, 2011.
TRD-201103456

Kay Molina
General Counsel
Texas Facilities Commission
Earliest possible date of adoption: October 9, 2011
For further information, please call: (512) 463-7220

◆ ◆ ◆
SUBCHAPTER C. CONSTRUCTION PROJECT ADMINISTRATION

1 TAC §§123.23 - 123.34

Statutory Authority

The amendments to existing rules and new rule are proposed under Texas Government Code §§2166.062, 2166.202, 2166.2525, 2166.257, 2166.258, and 2166.404 (Vernon 2008).

Cross Reference to Statute

The statutory provisions affected by the proposed rule amendments and new rule are those set forth in Chapter 2165 and 2166 of the Texas Government Code.

§123.23. *General Project Responsibility.*

(a) The Commission is responsible for the administration of Project Analyses ~~[project analyses]~~ and Projects ~~[construction projects]~~ for all state agencies except as otherwise provided in Texas Government Code, §§2165.007, 2166.003 and 2166.004, and other statutes.

(b) The Commission will act as the owner for the benefit of the Using Agency ~~[using agency]~~ and shall provide timely and complete information to the Using Agency ~~[using agency]~~ for any pending Project ~~[project]~~ for which it is responsible.

(c) The Commission shall act in the best interests of the State of Texas in administering Project ~~[project]~~ contracts for which it is responsible.

(d) Each Project ~~[construction project]~~ administered by the Commission shall bear the Cost of Services ~~[cost of services]~~ to be rendered. At the start of a Project ~~[construction project]~~, an estimate of the Cost of Services ~~[cost of services]~~ provided by the Commission will be provided to the Using Agency ~~[using agency]~~. This estimate may be changed by agreement of the Commission and the Using Agency ~~[using agency]~~.

(e) The funds for all costs of the Project, when allowed by law, ~~[project]~~ shall be transferred to the Commission by an agreement signed by both parties and an interagency transfer voucher to convey the funds. This process shall occur immediately after the Project ~~[project]~~ request is received and analyzed by the Commission and before work commences on the Project ~~[project]~~. Once the Project ~~[project]~~ is accepted and the initial funding requirements are identified, the voucher shall be processed and the funds transferred. For Projects where statute requires the funding to be controlled by the Using Agency, the Commission shall be responsible for oversight and approval of expenditures, and the Using Agency shall be responsible for payment.

§123.24. *Project Analysis Process.*

(a) The Using Agency ~~[using agency]~~ shall initiate a Project Analysis ~~[project analysis]~~ by submitting a request to the Commission or a proposed project analysis. Standard request forms are available on the Commission website, under the Division's ~~[Facility Design and Construction]~~ link to forms ~~[Forms]~~.

(b) Requests for Project Analyses ~~[project analyses]~~ shall be made no later than January 1 of even-numbered years in order to ensure

the Project Analysis [analysis] is completed in time to be submitted with the Using Agency's [using agency's] budget prior to a regular session of the legislature.

§123.25. *Construction Project Process.*

(a) Initiation of a Construction Project [~~construction project~~].

(1) The Using Agency [using agency] is responsible for initiating a construction project. The Using Agency [using agency] may commence the process by submitting a request to initiate work on the Project [project] on its [their] letterhead or on the Commission website, under the Division's [Facility Design and Construction] link to forms [Forms]; and

(2) Projects should be initiated not later than January 1 of even-numbered years. This is required for a contract award to be made within the fiscal year for which appropriated Project [project] funds are available.

(b) If a proposed contingency expenditure is requested for the Project and the Division refuses to concur with the request, the Using Agency may appeal to the Executive Director. The appeal shall be articulated in a letter to the Executive Director on the Using Agency's letterhead, including a description of the proposed expenditure, reason for the necessity of the change, and the Using Agency's justification for requesting the change. The Executive Director shall make the final decision concerning the acceptance of the contingency expenditure. [Selection of Construction Delivery Method: When a project has been requested by a using agency or appropriated to the Commission the agency shall ascertain the construction method that provides the state with the best value, including consideration of, but not limited to:]

- ~~[(1) Lowest and Best Bid;]~~
- ~~[(2) Design-Build;]~~
- ~~[(3) Construction Manager at Risk; and]~~
- ~~[(4) Competitive Sealed Proposals.]~~

§123.26. *Exclusions from Commission Authority.*

(a) Pursuant to the Texas Government Code, §§2166.003(a)(6) and (7), 2166.004 and 2166.063, certain types of repair and rehabilitation projects are not subject to Commission construction administration, or are otherwise excluded from Commission's jurisdiction.

(b) Applications for a determination that a project is excluded shall be provided to the Commission in writing on or before June 1 of each fiscal year. The Commission shall advise Using Agencies [using agencies] of this deadline, because an approval after the June 1 deadline may result in a lapse in unencumbered funds for that fiscal year. Each application must provide the proposed changes, budget information, and method of construction intended by the Using Agency [using agency]. Applications for exclusions shall be submitted to the Commission for final decision.

(c) Responses to applications shall be reasonably and promptly returned to the requesting agency.

§123.27. *Selection of Design Professionals for Construction Projects.*

The Commission is responsible for selecting any private Design Professional retained for a Project. The Commission shall conduct selections of Design Professionals in accordance with Texas Government Code, Chapter 2254, Subchapter A. The Commission shall request that the Using Agency make recommendations regarding private Design Professionals and may include a representative of the Using Agency in the selection process. The criteria upon which Design Professionals are evaluated may include, but not be limited to, relevant project experience and qualifications, previous recent project experience relative to

budget and schedule compliance, design methodology, quality assurance and quality control. Notification to Design Professionals for an interview on a Project shall be provided 30 days prior to the date of the interview. Notification may be provisional based on the Design Professional's selection and be included in the schedule of events in the original solicitation request for qualifications. [Prime and Non-prime design selections. The Commission shall conduct selections of design professionals for non-prime design work in accordance with Texas Government Code, Chapter 2254, Subchapter A, for non-prime design professionals and Chapter 2166, Subchapter D, for design professionals who may perform prime and non-prime design services. The Commission reserves the authority to award multiple, indefinite quantity services agreements to design professionals in the disciplines needed by the Commission.]

§123.28. *Contractor Qualifications.*

Interested contractors shall submit a Contractor's Qualification Form [~~contractor's qualification form~~] to the Commission no later than the date set forth in the notice to bidders. Forms are available with bid documents or on the Commission website, under the Division's [Facility Design and Construction] link to forms [Forms]. Incomplete forms shall be rejected.

§123.29. *Bidding Procedures.*

(a) Commission Projects [All TBPC construction projects] are bid competitively or bid [~~except those~~] using best value alternate delivery methods, and publicly opened in the office designated by the Commission [~~commission~~]. When Projects are bid using best value alternate delivery methods, the public opening only conveys the names of the respondents.

(b) The Division [FCSMD] shall develop detailed operating procedures [~~instructions~~] for the contractor selection and bidding process, including selection for best value alternate delivery methods.

(c) The Commission may require a proposal guaranty for competitive pricing submitted as a response to a request for proposal. The value of the guaranty will be established in the language of the request for proposal document. The guaranty may be in the form of a:

- (1) cashier's check or money order drawn on an account with a financial entity determined by the Commission;
- (2) bid bond issued by a surety authorized to do business in this state; or
- (3) any other method approved by the Commission.

(d) Upon award and execution of the construction contract, all proposal guaranties shall be returned to their respective issuers.

§123.30. *Construction Contract Award.*

(a) Award of construction contracts will be made by the Commission [~~commission~~] except in cases of emergency as outlined in §123.31(c) of this chapter (relating to Emergency Bidding and Award [Awards] Procedures). Award will be based upon the best value to the state for bids and proposals received from a qualified bidder.

(b) The Commission [FCSMD] shall develop detailed operating procedures for construction contract award.

§123.31. *Emergency Bidding and Award Procedures.*

(a) Emergency Bidding. The Division [FCSMD] may issue an advertisement for a bid and let a bid for a period of time less than required by Texas Government Code, §2166.253, when an emergency condition requires expedient action.

(b) Emergency conditions. Emergency conditions include, but are not limited to:

- (1) preventing undue additional cost to a state agency; or
- (2) preventing or removing a hazard to life or property.

(c) Emergency Award Procedures [~~award procedures~~]. The Executive Director [~~executive director~~], or his designee, is authorized to award construction contracts when conditions as described in subsection (b) of this section are determined to exist. The award shall be reported to the Commission [~~commission~~] at its next regularly scheduled meeting [~~for ratification~~].

(d) Documenting Emergency Conditions [~~emergency conditions~~]. Each time an emergency is determined to exist, a written statement describing the emergency condition shall be prepared for approval by the Executive Director [~~executive director~~]. Copies of the document shall be maintained in the Project [~~project~~] file.

§123.32. Construction Contract Administration.

The Division [FCSMD] shall develop detailed operating procedures for management of the construction process, which shall focus on administrative procedures, [~~and~~] successful compliance with the project schedule and budget, and successful completion of the Project [~~project~~].

§123.33. Small Contractor Participation Assistance Program.

The Commission [TBPC] operates a Small Contractor Participation Assistance Program as set forth in Texas Government Code, §2166.258. In the process of developing detailed operating procedures to implement a program in compliance with Texas Government Code, §2166.258, the Commission may contract with insurance company(ies), surety company(ies), agent(s), broker(s), or other public or private entities to provide surety technical assistance services for the benefit of small and historically underutilized businesses. [~~(amended by SB 4268, 77th Legislature (2001)) and §2166.259 and this section. In accordance with Texas Government Code, §2166.258, this shall include the contracting with insurance company(ies), surety company(ies), agent(s) or broker(s) to provide surety technical assistance services for the benefit of small and historically underutilized businesses. FCSMD shall develop detailed operating procedures for implementation of this process.]~~

§123.34. Xeriscaping.

The Division shall consult with the Texas Commission on Environmental Quality, the Texas Department of Transportation, the American Society of Landscape Architects, and the Texas Nursery and Landscape Association to develop design guidelines for the required use of xeriscape on state property associated with construction of a new state building.

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

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

TRD-201103457

Kay Molina

General Counsel

Texas Facilities Commission

Earliest possible date of adoption: October 9, 2011

For further information, please call: (512) 463-7220



SUBCHAPTER D. WAGE RATES

1 TAC §123.43, §123.44

Statutory Authority

The amendments to existing rules and new rule are proposed under Texas Government Code §§2166.062, 2166.202, 2166.2525, 2166.257, 2166.258, and 2166.404 (Vernon 2008).

Cross Reference to Statute

The statutory provisions affected by the proposed rule amendments and new rule are those set forth in Chapter 2165 and 2166 of the Texas Government Code.

§123.43. Wage Rate Surveys.

(a) The Commission [TBPC] has adopted the prevailing wage rates for the locality as determined by the United States Department of Labor in accordance with the Davis-Bacon Act, if the survey was conducted within three years before the Project [~~project~~] in question is to be bid, or the wage determination of the Texas Workforce Commission, or other available sources. For counties designated in Texas Government Code, §2258.022(b), [Section 14.05 of SB 311, 77th Legislature (2001)] the Commission [TBPC] will use the "Davis-Bacon" rates and the wage rate determinations of the Texas Workforce Commission, or other available surveys, for the local and state average wage rate determinations.

(b) Affected workers, [~~and~~] contractors and subcontractors are responsible for complying with Texas Government Code, Chapter 2258. The Commission [TBPC] is not a party to arbitration under Chapter 2258 of the Texas Government Code.

§123.44. Withholding of Penalties.

The Commission [TBPC] shall retain the amounts authorized by Texas Government Code, Chapter 2258 upon a finding that prevailing wages have not been paid. The Commission [TBPC] shall use any amounts retained to pay the affected worker in accordance with Texas Government Code, §2258.056.

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

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

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Kay Molina

General Counsel

Texas Facilities Commission

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For further information, please call: (512) 463-7220



TITLE 16. ECONOMIC REGULATION

PART 1. RAILROAD COMMISSION OF TEXAS

CHAPTER 3. OIL AND GAS DIVISION

16 TAC §3.29

The Railroad Commission of Texas (Commission) proposes new §3.29, relating to Hydraulic Fracturing Chemical Disclosure Requirements. The Commission proposes the new rule to implement Texas Natural Resources Code, Chapter 91, Subchapter S, §91.851, relating to Disclosure of Composition of Hydraulic Fracturing Fluids, as enacted by House Bill (HB) 3328 (82nd Legislature (Regular Session, 2011)).

The Commission has been very active from the beginning in the issue of disclosure of hydraulic fracturing chemicals through the

Interstate Oil and Gas Compact Commission and the Ground Water Protection Council, as well as other avenues. Commission staff was active in the development of FracFocus. In addition, Texas was the first state in the nation to enact disclosure legislation.

The Commission proposes new §3.29(a), relating to definitions, to define terms used in the proposed new rule.

The Commission proposes new §3.29(b), relating to applicability, to state that this proposed new section applies to a hydraulic fracturing treatment performed on a well in this state for which the Commission has issued an initial drilling permit on or after the effective date of this rule.

The Commission proposes new §3.29(c), relating to required disclosures, to detail the hydraulic fracturing treatment chemical disclosure requirements for suppliers, services companies, and operators. Consistent with the provisions of HB 3328, subsection (c) requires an operator to submit information about the chemical ingredients and volume of water used in the hydraulic fracturing treatment of a well to the hydraulic fracturing chemical registry Internet website of the Ground Water Protection Council and the Interstate Oil and Gas Compact Commission known as "FracFocus." Should this website be discontinued or become permanently inoperable, the Commission will amend the new rule to specify another publicly accessible Internet website on which this information must be posted.

Proposed new §3.29(d), relating to disclosures not required, states that a supplier, service company, or operator is not required to disclose ingredients that are not disclosed to it by the manufacturer, supplier, or service company; disclose ingredients that were not intentionally added to the hydraulic fracturing treatment; disclose ingredients that occur incidentally or are otherwise unintentionally present which may be present in trace amounts, may be the incidental result of a chemical reaction or chemical process, or may be constituents of naturally occurring materials that become part of a hydraulic fracturing fluid; or identify specific chemical ingredients that are eligible for trade secret protection based on the additive in which they are found or provide the concentration of such ingredients.

Proposed new §3.29(e), relating to trade secret protection, states that a supplier, service company, or operator is not required to disclose information that is entitled to trade secret protection, unless the claim has been successfully challenged under Texas Government Code, Chapter 552.

Proposed new §3.29(f), relating to trade secret challenge, codifies the eligibility requirements in Texas Natural Resources Code, §91.851, of a person who may challenge a claim of entitlement to trade secret protection, and outlines the procedures and requirements for such a challenge.

Proposed new §3.29(g), relating to trade secret confidentiality, requires that a health professional or emergency responder to whom trade secret information is disclosed under proposed new subsection (f) must hold the information confidential, except that the health professional or emergency responder may, for diagnostic or treatment purposes, disclose information provided under that subsection to another health professional, emergency responder or accredited lab.

Proposed new §3.29(h), relating to penalties, states that violations of this new section may subject a person to penalties and remedies specified in the Texas Natural Resources Code, Title 3, and any other statutes administered by the Commission, and

that the certificate of compliance for a well may be revoked in the manner provided in §3.73 of this title (relating to Pipeline Connection; Cancellation of Certificate of Compliance; Severance) (Rule 73) for violation of this section.

Leslie Savage, Chief Geologist, Oil and Gas Division, has determined that for each year of the first five years the new rule as proposed would be in effect, there will be some fiscal implications for the state as a result of enforcing or administering the rule. There will be no estimated reductions in costs or estimated loss or increase in revenue to the state. There will be additional costs to the state. All well completion reports and the required attachments are currently scanned and made public on the Commission's Internet website. The Commission proposes to include in that scanned information the copy of the Chemical Disclosure Registry form and the supplemental list of chemical ingredients provided by operators with their well completion reports. Some additional staff time will be required to scan the additional information. In addition, although the Commission cannot estimate how many persons will challenge a claim to entitlement of trade secret protection, some staff time and resources will be necessary to review each request and forward the information to the Office of the Attorney General for disposition, which would be required to devote some staff time and resources to resolving those matters referred by the Railroad Commission.

Ms. Savage has determined that for each year of the first five years the new rule as proposed would be in effect, there will be no fiscal implications for local governments.

Ms. Savage also has determined that for each year of the first five years that the new rule would be in effect, the public benefit would be efficient notice of the chemical composition of hydraulic fracturing treatments performed on wells in Texas to officials and the public.

The Commission finds that the proposed new rule likely would not affect a local economy. Therefore, the Commission has not prepared a local employment impact statement pursuant to Texas Government Code, §2002.022.

The Commission has determined that the proposed rule is not a major environmental rule, because the rule does not meet the requirements set forth in Texas Government Code, §2001.0225(a). The proposed rule does not exceed the express requirements of state law, and is not being adopted solely under the general powers of the agency.

Texas Government Code, §2006.002, relating to Adoption of Rules with Adverse Economic Effect, directs that, as part of the rulemaking process, a state agency prepare an economic impact statement that assesses the potential impact of a proposed rule on small businesses and micro-businesses, and a regulatory flexibility analysis that considers alternative methods of achieving the purpose of the rule if the proposed rule will have an adverse economic effect on small businesses or micro-businesses.

Entities that perform activities under the jurisdiction of the Commission are not required to report to the Commission the number of their employees or their annual gross receipts, which are elements of the definitions of "micro-business" and "small business" in Texas Government Code, §2006.001; therefore, the Commission has no factual bases for determining whether any persons engaged in activities associated with hydraulic fracturing treatment of the operation of oil and natural gas land wells that include wells that have not actively produced in at least 12 months will be classified as small businesses or micro-businesses, as

those terms are defined. Specifically, Texas Government Code, §2006.001(2), defines a "small business" as a legal entity, including a corporation, partnership, or sole proprietorship, that is formed for the purpose of making a profit; is independently owned and operated; and has fewer than 100 employees or less than \$6 million in annual gross receipts. Texas Government Code, §2006.001(1), defines "micro-business" as a legal entity, including a corporation, partnership, or sole proprietorship, that is formed for the purpose of making a profit; is independently owned and operated; and has not more than 20 employees. The Commission expects that there are entities engaged in activities associated with the hydraulic fracturing treatment of the operation of oil and natural gas wells that fall within the definition of a small business or micro-business.

The Commission anticipates that the proposed new rule may have an adverse economic impact on suppliers, service companies, and operators but it will be relatively minor. The economic impact on the regulated industry of the proposed rule to implement House Bill 3328 may include costs for new or increased record-keeping; for new or increased reporting requirements to the Commission; for modifying existing processes and procedures; and for consulting with professionals, including attorneys and engineers.

Based on the information available to the Commission regarding oil and gas operators, Ms. Savage concludes that, of the businesses that could be affected by the proposed new rule, it is possible that some would be classified as a small business, and possible that some could be classified as micro-businesses, as those terms are defined in Texas Government Code, §2006.001. The North American Industrial Classification System (NAICS) sets forth categories of business types. Operators of oil and gas wells fall within the category for crude petroleum and natural gas extraction. This category is listed on the Texas Comptroller of Public Accounts website page entitled "HB 3430 Reporting Requirements-Determining Potential Effects on Small Businesses" as business type 2111 (Oil & Gas Extraction), for which there are listed 2,784 companies in Texas. This source further indicates that 2,582 companies (92.7%) are small businesses or micro-businesses as defined in Texas Government Code, §2006.001.

Entities primarily engaged in providing support services, on a fee or contract basis, required for drilling or operating oil and gas wells, including hydraulic fracturing of wells on a contract basis, are classified in U.S. Industry 213112, Support Activities for Oil and Gas Operations. This category is listed on the Texas Comptroller of Public Accounts website as business type 2131 (Support Activities for Mining), for which there are listed 2,134 companies in Texas. This source further indicates that 1,841 companies (86.7%) are small businesses or micro-businesses as defined in Texas Government Code, §2006.001.

It is not possible to provide a general estimate of the cost of the proposed new rule because the cost will depend upon numerous variables that cannot be quantified. Nevertheless, while the Commission cannot provide a general estimate of the cost of compliance for any particular supplier, service company or operator, the Commission can estimate the type and general range of the costs for complying with those elements of the rule that could result in a cost to suppliers, service companies, and operators.

Commission information indicates that 15,466 drilling permits were issued for new drills in 2010. The Commission estimates that 85 percent of those wells were hydraulically fractured. Therefore, the Commission estimates that approximately 13,000

wells undergo hydraulic fracturing treatment in the State of Texas each year. The economic impact of the proposed new rule will be the same for small businesses and micro-businesses as for larger businesses.

Currently, operators are required to have the information on the Material Safety Data Sheet (MSDS) on the drill site. The MSDS contains much of the information required by the Chemical Disclosure Registry. The Commission assumes that the supplier and/or service company currently provides the operator with certain other information related to the chemical ingredients of a hydraulic fracturing treatment for a specific well. Therefore, the Commission assumes that the costs imposed by the proposed rule requirements relating to chemical disclosure involve the additional activities and associated costs of entering the data into the Chemical Disclosure Registry and preparing the supplemental list, if all chemical ingredients have not been entered into the Chemical Disclosure Registry. The Commission estimates these additional costs would range from \$50 to \$100 per well. The number of oil and/or natural gas wells on which an entity performs hydraulic fracturing treatments should be proportionate to the relative size of the entity. Therefore, the Commission anticipates that overall costs to small businesses and micro-businesses as a result of this new rule should be smaller than the overall costs for larger entities. Furthermore, the total cost of an oil or natural gas well on which hydraulic fracturing treatment is performed ranges from \$2 million to \$5 million, depending on factors such as the area, depth of the target formation, transportation costs, local taxes or restrictions, and leasing costs. Therefore, the compliance costs of this rule are relatively minor.

The Ground Water Protection Council (GWPC) and the Interstate Oil and Gas Compact Commission (IOGCC) launched the FracFocus Internet website on April 1, 2011. As of August 16, 2011, operators had entered into the voluntary FracFocus Chemical Registry chemical disclosure information for almost 950 wells in Texas. During that same period, operators submitted completion reports for 2,141 oil and natural gas wells, or approximately 1,820 wells that underwent hydraulic fracturing treatment, if the Commission assumes that 85% of all wells undergo hydraulic fracturing treatment. Therefore, the Commission estimates that operators already are voluntarily entering data into FracFocus for approximately 50% of all wells on which hydraulic fracturing treatment is performed. These operators include Anadarko Petroleum Corporation, Apache Corporation, BP America Production Company, Chesapeake Operating, Inc., Chevron USA Inc., ConocoPhillips Company, Devon Energy Production Company LP, El Paso E&P Company, Energen Resources Corporation, EnerVest, Ltd., EOG Resources, Inc., EXCO Resources Inc., Forest Oil Corporation, HighMount Exploration & Production, Newfield Exploration, Occidental Oil & Gas, Penn Virginia Oil & Gas Corporation, Petrohawk Energy Corporation, Pioneer Natural Resources, Plains Exploration & Production Company, Range Resources Corporation, Rosetta Resources, Shell Exploration & Production Company, SM Energy, Southwestern Energy, Talisman Energy USA Inc., Williams, and XTO Energy/ExxonMobil. The Commission commends these companies for being proactive in the disclosure of hydraulic fracturing chemicals.

In addition, the proposed rule provides for the opportunity for certain persons to challenge a claim of entitlement to trade secret protection. Should the Commission receive such a request, the owner of the trade secret will be required to provide certain information to the Office of the Attorney General, Open Records Division, to substantiate its claim of entitlement to trade secret

protection in accordance with Texas Government Code, Chapter 552. The owner of the trade secret must make a factual showing to the Office of the Attorney General, Open Records Division, that the information meets the following factors, in accordance with the definition of "trade secret" in the Restatement of Torts, Comment B to Section 757 (1939), as adopted by the Texas Supreme Court in *Hyde Corp. v. Huffines*, 314 S.W.2d 763, 776 (Tex. 1958):

- (1) the extent to which the information is known outside of the company;
- (2) the extent to which it is known by employees and others involved in the company's business;
- (3) the extent of measures taken by the company to guard the secrecy of the information;
- (4) the value of the information to the company and its competitors;
- (5) the amount of effort or money expended by the company in developing the information; and
- (6) the ease or difficulty with which the information could be properly acquired or duplicated by others.

Making such a showing could require the owner of the trade secret to consult with attorneys or other professionals, and thus would require the owner of the trade secret to bear the expense of those professional consultations. Other than the cost of preparing and filing the documents to substantiate the claim, there is no additional cost; there is no fee for filing the documents to substantiate the claim. The Commission estimates that the approximate cost of substantiating a claim of entitlement to trade secret protection would range between \$1,000 and \$5,000. The Commission further estimates that costs associated with any appeal of a decision by the Office of the Attorney General could range between \$5,000 and \$25,000. The Commission anticipates that there will be no difference in the cost of compliance borne by suppliers, service companies, and operators that are larger companies as compared to entities that are small businesses or micro-businesses.

The Commission also has determined that a regulatory flexibility analysis is not required because the amendments to the Texas Natural Resources Code enacted by HB 3328 were specifically intended by the Texas Legislature to make public information relating to chemical ingredients used in hydraulic fracturing treatments. The changes that will result from the proposed new rule concerning disclosure of the composition of hydraulic fracturing fluids are mandated by the Texas Legislature, 82nd Legislative Session (Regular Session, 2011). The Commission has developed rules that would have the minimum economic impact to all suppliers, service companies, and operators--regardless of whether or not they are small businesses or micro-businesses--and still be consistent with the intent of the legislation. Because the express legislative purpose for the enactment of the amendments to the Texas Natural Resources Code in HB 3328 is to make public the chemical ingredients in hydraulic fracturing treatments performed on wells in this state, the Commission concludes that a regulatory flexibility analysis is not required. There are no additional alternative regulatory methods that will achieve the purpose of the statutes while minimizing the adverse impacts on small businesses and micro-businesses; exempting small businesses and micro-businesses from the requirements of the rules would not be consistent with the health, safety, and environmental and economic welfare of the state.

Comments on the proposal may be submitted to Rules Coordinator, Office of General Counsel, Railroad Commission of Texas, P.O. Box 12967, Austin, Texas 78711-2967; online at www.rrc.state.tx.us/rules/commentform.php; or by electronic mail to rulescoordinator@rrc.state.tx.us. Comments should refer to O&G Docket No. 20-0272062, and will be accepted until 12:00 p.m. (noon) on Tuesday, October 11, 2011, which is 32 days after publication in the *Texas Register*. The Commission finds that this comment period is reasonable because the proposal and an online comment form will be available on the Commission's website no later than the day after the open meeting at which the Commission approves publication of the proposal, giving interested persons additional time to review and analyze the proposal and to draft and submit comments.

In addition, the Commission will hold a public hearing to receive public comments on the proposed new rule. The hearing will be held on Wednesday, October 5, 2011, at 1:00 p.m. Central Daylight Time, at the Commission's headquarters at the William B. Travis State Office Building, 1701 N. Congress Avenue, Room 1-111, First Floor, Austin, Texas.

The Commission encourages all interested persons to submit comments no later than the deadline. The Commission cannot guarantee that comments submitted after the deadline will be considered. For further information, call Ms. Savage at (512) 463-7308. The status of Commission rulemakings in progress is available at www.rrc.state.tx.us/rules/proposed.php.

The Commission proposes the new rule pursuant to Texas Natural Resources Code, §81.051 and §81.052, which give the Commission jurisdiction over all persons owning or engaged in drilling or operating oil or gas wells in Texas and the authority to adopt all necessary rules for governing and regulating persons and their operations under the jurisdiction of the Commission; Texas Natural Resources Code, Chapter 91, Subchapter S, as enacted by HB 3328, relating to Disclosure of Composition of Hydraulic Fracturing Fluids; Texas Natural Resources Code, §91.101, which gives the Railroad Commission authority to adopt rules and orders governing the operation, abandonment, and proper plugging of wells subject to the jurisdiction of the Commission; and Texas Government Code, §2001.006, which authorizes a state agency, in preparation for the implementation of legislation that has become law but has not taken effect, to adopt a rule or take other administrative action that the agency determines is necessary or appropriate and that the agency would have been authorized to take had the legislation been in effect at the time of the action.

Texas Natural Resources Code, §§81.051, 81.052, and 91.851 are affected by the proposed new rule.

Statutory authority: Texas Natural Resources Code, §§81.051, 81.052, and 91.851; Texas Government Code, §2001.006.

Cross reference to statute: Texas Natural Resources Code, Chapters 81 and 91.

Issued in Austin, Texas on August 29, 2011.

§3.29. Hydraulic Fracturing Chemical Disclosure Requirements.

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

(1) Accredited laboratory--A laboratory as defined in Texas Water Code, §5.801.

(2) Additive--Any chemical substance or combination of substances, including a proppant, contained in a hydraulic fracturing fluid that is intentionally added to a base fluid for a specific purpose whether or not the purpose of any such substance or combination of substances is to create fractures in a formation.

(3) API number--A unique, permanent, numeric identifier assigned to each well drilled for oil or gas in the United States.

(4) Base fluid--The continuous phase fluid type, such as water, used in a particular hydraulic fracturing treatment.

(5) Chemical Abstracts Service--The division of the American Chemical Society that is the globally recognized authority for information on chemical substances.

(6) Chemical Abstracts Service number or CAS number--The unique identification number assigned to a chemical by the Chemical Abstracts Service.

(7) Chemical Disclosure Registry--The chemical registry website known as FracFocus developed by the Ground Water Protection Council and the Interstate Oil and Gas Compact Commission.

(8) Chemical family--A group of chemical ingredients that share similar chemical properties and have a common general name.

(9) Chemical ingredient--A discrete chemical constituent with its own specific name or identity, such as a CAS number, that is contained in an additive.

(10) Commission--The Railroad Commission of Texas.

(11) Delegate--The person authorized by the director to take action on behalf of the Railroad Commission of Texas under this section.

(12) Director--The director of the Oil and Gas Division of the Railroad Commission of Texas or the director's delegate.

(13) Health professional or emergency responder--A physician, industrial hygienist, toxicologist, epidemiologist, nurse, or emergency responder providing medical or other health services to a person exposed to a chemical ingredient.

(14) Hydraulic fracturing fluid--The fluid, including the applicable base fluid and all additives, used to perform a particular hydraulic fracturing treatment.

(15) Hydraulic fracturing treatment--The act of stimulating a well by the application of hydraulic fracturing fluid under pressure for the purpose of creating fractures in a target geologic formation to enhance production of oil and/or natural gas.

(16) Landowner--The person listed on the appraisal roll as owning the real property on which the relevant well-head is located.

(17) Operator--An operator as defined in Texas Natural Resources Code, Chapter 89.

(18) Person--Natural person, corporation, organization, government or governmental subdivision or agency, business trust, estate, trust, partnership, association, or any other legal entity.

(19) Proppant--Sand or any natural or man-made material that is used in a hydraulic fracturing treatment to prop open the artificially created or enhanced fractures once the treatment is completed.

(20) Requestor--A person who is eligible to request information claimed to be entitled to trade secret protection in accordance with Texas Natural Resources Code, §91.851(a)(5).

(21) Service company--A person that performs well stimulation services, including hydraulic fracturing treatments, on a well in this state.

(22) Supplier--A company that sells or provides an additive for use in a hydraulic fracturing treatment.

(23) Total water volume--The quantity of water from all sources used in the hydraulic fracturing treatment, including surface water, ground water, produced water or recycled water.

(24) Trade name--The name given to an additive or a hydraulic fracturing fluid system under which that additive or hydraulic fracturing fluid system is sold or marketed.

(25) Trade secret--Any formula, pattern, device, or compilation of information that is used in a person's business, and that gives the person an opportunity to obtain an advantage over competitors who do not know or use it; and requires a factual showing to the Office of the Attorney General, Open Records Division, that the information meets the following factors, in accordance with the definition of "trade secret" in the Restatement of Torts, Comment B to Section 757 (1939), as adopted by the Texas Supreme Court in *Hyde Corp. v. Huffines*, 314 S.W.2d 763, 776 (Tex. 1958):

(A) the extent to which the information is known outside of the company;

(B) the extent to which it is known by employees and others involved in the company's business;

(C) the extent of measures taken by the company to guard the secrecy of the information;

(D) the value of the information to the company and its competitors;

(E) the amount of effort or money expended by the company in developing the information; and

(F) the ease or difficulty with which the information could be properly acquired or duplicated by others.

(26) Well--A well as defined in Texas Natural Resources Code, Chapter 89.

(27) Well completion report--The report an operator is required to file with the Commission following the completion or recompletion of a well, if applicable, in accordance with §3.16(b) of this title (relating to Log and Completion or Plugging Report.)

(b) Applicability. This section applies to a hydraulic fracturing treatment performed on a well in the State of Texas for which the Commission has issued an initial drilling permit on or after the effective date of this rule.

(c) Required disclosures.

(1) Supplier and service company disclosures. As soon as possible, but not later than 30 days following the completion of a hydraulic fracturing treatment on a well, the supplier or the service company must provide to the operator of the well each chemical ingredient intentionally added to the hydraulic fracturing fluid including:

(A) each chemical ingredient subject to the requirements of 29 Code of Federal Regulations §1910.1200(g)(2); and

(B) all other chemical ingredients not submitted under subparagraph (A) or this paragraph that were intentionally included in, and used for the purpose of creating, a hydraulic fracturing treatment for the well.

(2) Operator disclosures.

(A) On or before the well completion report for a well on which a hydraulic fracturing treatment was conducted is submitted to the Commission in accordance with §3.16(b) of this title, the operator of the well must complete the Chemical Disclosure Registry form and post the form on the Chemical Disclosure Registry, including:

- (i) the operator name;
- (ii) the date of the hydraulic fracturing treatment;
- (iii) the county in which the well is located;
- (iv) the API number for the well;
- (v) the well name and number;
- (vi) the longitude and latitude of the wellhead;
- (vii) the total vertical depth of the well;
- (viii) the total volume of water used in the hydraulic

fracturing treatment of the well or the type and total volume of the base fluid used in the hydraulic fracturing treatment, if something other than water;

(ix) each additive used in the hydraulic fracturing fluid and the trade name, supplier, and a brief descriptor of the intended use or function of each additive in the hydraulic fracturing treatment;

(x) each chemical ingredient used in the hydraulic fracturing treatment of the well that is subject to the requirements of 29 Code of Federal Regulations §1910.1200(g)(2), as provided by the chemical supplier or service company or by the operator, if the operator provides its own chemical ingredients;

(xi) all chemical ingredients intentionally added by the operator; and

(xii) the actual or maximum concentration of each chemical ingredient listed under clause (ix), (x), or (xi) of this subparagraph in percent by mass.

(B) If the Chemical Disclosure Registry known as FracFocus is temporarily inoperable, the operator of a well on which a hydraulic fracturing treatment was performed must supply the Commission with the required information with the well completion report and must enter the information on the FracFocus Internet website as soon as the website is again operable.

(C) The operator of the well on which a hydraulic fracturing treatment was conducted must submit to the Commission with the well completion report for the well:

(i) a copy of the disclosure form posted on the Chemical Disclosure Registry; and

(ii) a supplemental list of all chemicals and their respective CAS numbers, not listed on the Chemical Disclosure Registry, that were intentionally included in and used for the purpose of creating the hydraulic fracturing treatment for the well.

(D) An operator may provide all of the required information on the Chemical Disclosure Registry form.

(E) If the supplier, service company, or operator claim that the specific identity or amount of any additive or chemical ingredient used in the hydraulic fracturing treatment is entitled to protection as trade secret information pursuant to the criteria provided by Texas Government Code, Chapter 552, the operator of the well must indicate on the Chemical Disclosure Registry form or the supplemental list that the additive or chemical ingredient is entitled to trade secret protection. If a chemical ingredient name or CAS number is entitled to trade secret protection, the operator must provide the chemical family or other sim-

ilar descriptor associated with such chemical ingredient. The operator of the well on which the hydraulic fracturing treatment was performed must provide the contact information, including the name, authorized representative, mailing address, and phone number of the business organization claiming entitlement to trade secret protection.

(F) Unless the information is entitled to protection as a trade secret under Texas Government Code, Chapter 552, information submitted to the Commission or posted to the Chemical Disclosure Registry is public information.

(3) Inaccuracies in information. A supplier is not responsible for any inaccuracy in information that is provided to the supplier by a third party manufacturer of the additives. A service company is not responsible for any inaccuracy in information that is provided to the service company by the supplier. An operator is not responsible for any inaccuracy in information provided to the operator by the supplier or service company.

(4) Disclosure to health professionals and emergency responders. A supplier, service company or operator may not withhold information related to chemical ingredients used in a hydraulic fracturing treatment, including information identified as a trade secret, from any health professional or emergency responder who needs the information for diagnostic, treatment or other emergency response purposes subject to procedures set forth in 29 Code of Federal Regulations §1910.1200(i). A supplier, service company or operator must provide directly to a health professional or emergency responder, all information in the person's possession that is required by the health professional or emergency responder, whether or not the information may qualify for trade secret protection under subsection (e) of this section. In a medical emergency, the supplier, service company or operator must provide the information immediately on request. The person disclosing information to a health professional or emergency responder must include with the disclosure, as soon as circumstances permit, a statement of the health professional's confidentiality obligation.

(d) Disclosures not required. A supplier, service company, or operator is not required to:

(1) disclose ingredients that are not disclosed to it by the manufacturer, supplier, or service company;

(2) disclose ingredients that were not intentionally added to the hydraulic fracturing treatment;

(3) disclose ingredients that occur incidentally or are otherwise unintentionally present which may be present in trace amounts, may be the incidental result of a chemical reaction or chemical process, or may be constituents of naturally occurring materials that become part of a hydraulic fracturing fluid; or

(4) identify specific chemical ingredients that are eligible for trade secret protection based on the additive in which they are found or provide the concentration of such ingredients.

(e) Trade secret protection.

(1) A supplier, service company, or operator is not required to disclose trade secret information, unless the Office of the Attorney General or a court of proper jurisdiction determines that the information is not entitled to trade secret protection under Texas Government Code, Chapter 552.

(2) If the specific identity of a chemical ingredient, the concentration of a chemical ingredient, or both the specific identity and concentration of a chemical ingredient are claimed or have been finally determined to be entitled to protection as a trade secret under Texas Government Code, Chapter 552, the supplier, service company, or op-

erator, as applicable, may withhold the specific identity, the concentration, or both the specific identity and concentration, of the chemical ingredient, as the case may be, from the information provided to the operator. If the supplier, service company, or operator, as applicable, elects to withhold that information, the supplier, service company, or operator, as applicable, must provide to the Commission information that:

(A) discloses the chemical family associated with the chemical ingredient;

(B) states that the specific identity of the chemical ingredient, the concentration of the chemical ingredient, or both the specific identity and concentration of the chemical ingredient are entitled to protection as trade secret information; and

(C) discloses the properties and effects of the chemical(s), the identity of which is withheld.

(f) Trade secret challenge.

(1) The following persons may challenge a claim of entitlement to trade secret protection:

(A) the landowner on whose property the relevant well-head is located;

(B) the landowner who owns real property adjacent to property described in subparagraph (A) of this paragraph; or

(C) a department or agency of this state with jurisdiction over a matter to which the claimed trade secret information is relevant.

(2) A requestor must certify in writing to the director, over the requestor's signature, to the following:

(A) the requestor's name, address, and daytime phone number;

(B) if the requestor is a landowner, a statement that the requestor is listed on the appraisal roll as owning the property on which the relevant well-head is located or is listed on the appraisal roll as owning property adjacent to the property on which the relevant well-head is located;

(C) the county in which the well-head is located; and

(D) the API number or other Railroad Commission of Texas identifying information, such as field name, oil lease name and number, gas identification number, and well number.

(3) A requestor may use the following format to provide the written certification required by paragraph (2) of this subsection: Figure: 16 TAC §3.29(f)(3)

(4) A requestor must file a request no later than 24 months from the date the operator filed the final well completion report.

(5) Within 10 business days of receiving a request that complies with paragraph (2) of this subsection, the director must:

(A) submit to Office of the Attorney General, Open Records Division, a request for decision regarding the challenge;

(B) notify the owner of the claimed trade secret information of the submission of the request to the Office of the Attorney General and of the requirement that the owner of the claimed trade secret information submit directly to the Office of Attorney General, Open Records Division, the claimed trade secret information, clearly marked "confidential," submitted under seal; and

(C) inform the owner of the claimed trade secret information of the opportunity to substantiate to the Office of the Attorney

General, Open Records Division its claim of entitlement of trade secret protection, in accordance with Texas Government Code, Chapter 552.

(6) If the Office of the Attorney General determines that the claim of entitlement to trade secret protection is valid under Texas Government Code, Chapter 552, the owner of the claimed trade secret information may not be required to disclose the trade secret information, subject to appeal.

(7) A final determination by the Office of the Attorney General regarding the challenge to the claim of entitlement of trade secret protection of any withheld information may be appealed within 10 business days to a district court of Travis County pursuant to Texas Government Code, Chapter 552.

(8) If the Office of the Attorney General or a court of proper jurisdiction on appeal of a determination by the Office of the Attorney General determines that the withheld information is not entitled to trade secret protection under Texas Government Code, Chapter 552, the owner of the claimed trade secret information must disclose such information to the director within 30 days of the final disposition of the case or cease the use of such chemical ingredient in hydraulic fracturing treatments performed in this state.

(g) Trade secret confidentiality. A health professional or emergency responder to whom information is disclosed under subsection (c)(4) of this section must hold the information confidential, except that the health professional or emergency responder may, for diagnostic or treatment purposes, disclose information provided under that subsection to another health professional, emergency responder or accredited laboratory. A health professional, emergency responder or accredited laboratory to which information is disclosed by another health professional or emergency responder under this subsection must hold the information confidential and the disclosing health professional or emergency responder must include with the disclosure, or in a medical emergency, as soon as circumstances permit, a statement of the recipient's confidentiality obligation pursuant to this subsection.

(h) Penalties. A violation of this section may subject a person to any penalty or remedy specified in the Texas Natural Resources Code, Title 3, and any other statutes administered by the Commission. The certificate of compliance for any oil, gas, or geothermal resource well may be revoked in the manner provided in §3.73 of this title (relating to Pipeline Connection; Cancellation of Certificate of Compliance; Severance) (Rule 73) for violation of this section.

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

Filed with the Office of the Secretary of State on August 29, 2011.

TRD-201103509

Mary Ross McDonald

Managing Director

Railroad Commission of Texas

Earliest possible date of adoption: October 9, 2011

For further information, please call: (512) 475-1295



16 TAC §3.78

The Railroad Commission of Texas (Commission) proposes amendments to §3.78 relating to Fees and Financial Security Requirements, to implement portions of Article 19 of Senate Bill (SB) 1, 82nd Legislature (First Called Session, 2011) that become effective September 28, 2011. SB 1, Article 19, amended the Texas Natural Resources Code by adding new §§81.067 -

81.070 to create the Oil and Gas Regulation and Cleanup Fund and to provide for the imposition of reasonable surcharges as necessary on fees imposed by the Commission in amounts sufficient to enable the Commission to recover from those fees and surcharges the costs of performing the functions specified in the Oil and Gas Regulation and Cleanup Fund's purpose (new Texas Natural Resources Code, §81.068).

In addition, the Commission proposes amendments to §3.78 to implement portions of House Bill (HB) 2694, relating to the continuation and functions of the Texas Commission on Environmental Quality (TCEQ), 82nd Legislature (Regular Session, 2011), which becomes effective September 1, 2011. Article 2 of HB 2694 transfers from the TCEQ to the Commission those duties related to determining the depth to which fresh water must be protected by surface casing when drilling an oil or gas well under the jurisdiction of the Commission. New Texas Natural Resources Code, §91.0115(b), relating to casing; letter of determination, as added by HB 2694, allows the Commission to charge a fee for a request from an applicant for a permit for a well to be drilled into oil or gas bearing rock, a letter of determination stating the total depth of surface casing required for the well by Texas Natural Resources Code, §91.011. That subsection also provides that the fee amount is to be determined by the Commission. In addition, Texas Natural Resources Code, §91.0115(c), requires that the Commission charge a fee not to exceed \$75, in addition to the application fee allowed by §91.0115(b), for processing a request to expedite a letter of determination. Section 91.0115(c) further states that money collected from the expedite fee may be used to study and evaluate electronic access to geologic data and surface casing depths under Texas Natural Resources Code, §91.020. The TCEQ currently charges a fee of \$75 for each request to expedite a letter of determination. (See 30 Texas Administrative Code §339.3, relating to Groundwater Protection Letter Requests, Expedited Processing, and Fee.) The Commission proposes amendments to §3.78 to include the expedite fee. At this time, the Commission is not proposing to include a fee for a non-expedited letter of determination, but may include such a fee at some time in the future.

The statutory amendments in SB 1 provide that money deposited in the Oil and Gas Regulation and Cleanup Fund may be used by the Commission or its employees or agents for any purpose related to: the regulation of oil and gas development, including oil and gas monitoring and inspections, oil and gas remediation, oil and gas well plugging, public information and services related to those activities, and administrative costs and state benefits for personnel involved in those activities. SB 1 limits the amount of a surcharge to 185 percent of the fee on which the surcharge is to be imposed.

SB 1 amended the Texas Natural Resources Code to address the funding issues raised by the Sunset Advisory Commission in its analysis of the Commission. With the creation of the Oil and Gas Regulation and Cleanup Fund as a General Revenue-Dedicated account and the imposition of fee surcharges, SB 1 implements the Sunset Advisory Commission's recommendation that funding from General Revenue for regulatory functions and staff, including benefits, be offset by fees or other collections from the regulated industry.

The Commission proposes to amend its rules to implement the new statutorily allowed surcharges. As set forth in the amendments to the Texas Natural Resources Code, the surcharges will be set by the Commission at amounts determined, in aggregate, to cover the costs of strategies in the 2012-2013 biennium mak-

ing up the Oil and Gas program, including Energy Resource Development, Oil and Gas Monitoring and Inspections, Oil and Gas Remediation, Oil and Gas Well Plugging, and Public Information and Services. Consistent with the statutes, the surcharge will not be added to the oil-field cleanup regulatory fee imposed on crude petroleum produced in this state in the amount of five-eighths of one cent on each barrel of 42 standard gallons or added to the oil-field cleanup regulatory fee imposed on gas initially produced and saved in this state in the amount of one-fifteenth of one cent for each thousand cubic feet.

The Commission proposes new §3.78(b)(14) to impose the \$75 expedite fee for each application for a letter of determination regarding the total depth of surface casing required for a well by Texas Natural Resources Code, §91.0115(b).

The Commission proposes new §3.78(n) to add surcharges for existing oil and gas fees excluding regulatory fees. In accordance with Texas Natural Resources Code, §81.070(c), which requires that the Commission by rule establish the methodology for determining the amount of a surcharge, the Commission took into account various factors and determined that:

(1) For all fees subject to a surcharge under §3.78, the Commission will employ a projected cost-based recovery methodology derived from budgeted cost projections approved by the Legislature in the General Appropriations Act, which is dependent upon revenue projections issued by the Comptroller in the most recent Biennial Revenue Estimate.

(2) The time required to complete the regulatory work associated with the activity in connection with which the surcharge is imposed by using the number of full-time equivalent positions (FTEs) (533.1) authorized by the Legislature for that purpose multiplied by the work hours in a fiscal year (2,080) and then divided by the anticipated number of total permit applications processed in a fiscal year (23,000). Using this methodology for fiscal year 2012, the Commission assumes 48.21 hours of regulatory work to be associated with each permit application processed through the life cycle of the permit.

(3) The Commission used the number of P-5 Organization Reports as a proxy to determine the number of individual or entities from which the Commission's costs may be recovered. An Organization Report must be filed and renewed annually by any organization, including any person, firm, partnership, corporation, or other organization, domestic or foreign, operating wholly or partially within this state, that performs operations within the jurisdiction of the agency. The Commission developed its surcharge methodology based on approximately 7,900 individuals or entities operating oil or gas wells.

(4) The Commission determined that the surcharge will affect four operators considered to be large, based on operating more than 10,000 oil or gas wells; 45 operators considered to be medium, based on operating more than 1,000 oil or gas wells but fewer than 10,000 wells; and 7,851 operators considered to be small, based on operating fewer than 1,000 oil or gas wells. The surcharge will affect operators in proportion to the number of wells they operate.

(5) When creating the methodology to develop a surcharge rate, the Commission assumed a fund balance of approximately \$18 million for the fiscal year beginning September 1, 2011.

(6) When creating the methodology to develop a surcharge rate the Commission depended heavily on the assumption of legislative intent that the agency's oil and gas regulatory program be

self-funded. The Commission also sought to maintain an adequate fund balance for the Oil and Gas Regulation and Cleanup Fund such that the regulatory program can withstand a decrease in industry activity without sacrificing the health and public safety aspects of its regulatory work, while having funds available to respond to any emergency related to oil and gas activity throughout the state. The Commission also sought to maintain an unencumbered fund balance that is within the statutory fund limit of \$20 million.

Using all of these factors, the Commission determined that for fiscal years 2012 and 2013, a surcharge rate of 150% would be necessary on all eligible fees to be deposited in the Oil and Gas Regulation and Cleanup Fund.

David Pollard, Chief Financial Officer, has determined that for each year of the first five years that the proposed amendments will be in effect there will be fiscal implications for state government. The Commission expects that it will receive surcharge revenue equal to \$21.5 million in fiscal year 2012 and \$25.8 million in fiscal year 2013. The surcharge projections are based current industry activity and surcharge collections beginning November 1, 2011. Such revenue is appropriated to fund programs associated with the Commission's oil- and gas-related activities and will be deposited to the Oil and Gas Regulation and Cleanup (OGRC) Fund created by SB 1. The revenue collections for fiscal years 2014-2016 should be comparable depending on industry activity.

The Commission also has determined that the fiscal impact to the state includes the transfer of the fund balance of approximately \$18 million in September 2011, from the Oil Field Cleanup Dedicated Account to the Oil and Gas Regulation and Cleanup Fund. In addition, existing fee and permit revenue deposited to the Oil Field Cleanup Dedicated Account will transfer to the Oil and Gas Regulation and Cleanup Fund. The estimated fee revenue is \$25.5 million in fiscal year 2012 and \$25.5 million in fiscal year 2013. The oil and gas violations revenue will be deposited into General Revenue when the provisions in Article 19 of SB 1 become effective. The estimated fees and surcharges will total \$98.3 million for the biennium. This revenue collection plus the fund balance transferred from the Oil Field Cleanup Fund is sufficient to fund the Commission's legislative appropriations for 2012 and 2013 plus employee benefits. There are no fiscal implications for local governments.

The Commission finds that the proposed amendments will not affect a local economy. Therefore, the Commission has not prepared a local employment impact statement pursuant to Texas Government Code, §2002.022.

Texas Government Code, §2006.002, relating to Adoption of Rules with Adverse Economic Effect, directs that, as part of the rulemaking process, a state agency prepare an economic impact statement that assesses the potential impact of a proposed rule on small businesses and micro-businesses, and a regulatory flexibility analysis that considers alternative methods of achieving the purpose of the rule if the proposed rule will have an adverse economic effect on small businesses or micro-businesses.

Entities that perform activities under the jurisdiction of the Commission are not required to report to the Commission their number of employees or their annual gross receipts, which are elements of the definitions of "micro-business" and "small business" in Texas Government Code, §2006.001; therefore, the Commission has no factual bases for determining whether any persons

engaged in the operation of oil and natural gas activities subject to fee surcharges will be classified as small businesses or micro-businesses, as those terms are defined. Specifically, Texas Government Code, §2006.001(2), defines a "small business" as a legal entity, including a corporation, partnership, or sole proprietorship, that is formed for the purpose of making a profit; is independently owned and operated; and has fewer than 100 employees or less than \$6 million in annual gross receipts. Texas Government Code, §2006.001(1), defines "micro-business" as a legal entity, including a corporation, partnership, or sole proprietorship, that is formed for the purpose of making a profit; is independently owned and operated; and has not more than 20 employees. The Commission expects that there are entities engaged in the operation of oil and natural gas activities subject to fee surcharges that fall within the definition of a small business or micro-business.

The Commission anticipates that the proposed amendments may have an adverse economic impact on those entities engaged in the operation of oil and natural gas activities subject to fee surcharges. The economic impact on the regulated industry of the proposed amendments to implement SB 1 will include a surcharge on oil and gas well drilling permits, organization report fees, voluntary cleanup application fees, rule exception fees, oil and gas completion certificate reissue fees, waste disposal facility fees and inactive well filing fees (abeyance of plugging report and fluid level/hydraulic pressure test fees).

Based on the information available to the Commission regarding the entities that operate oil and gas activities, it is extremely likely that a business that potentially could be affected by the proposed amendments would be classified as a small business or micro-business, as those terms are defined in Texas Government Code, §2006.001. The North American Industrial Classification System (NAICS) sets forth categories of business types. Operators of oil and gas activities fall within the category for crude petroleum and natural gas extraction. This category is listed on the Texas Comptroller of Public Accounts website page entitled "HB 3430 Reporting Requirements-Determining Potential Effects on Small Businesses" as business type 2111 (Oil & Gas Extraction), for which there are listed 2,784 companies in Texas. This source further indicates that 2,582 companies (92.7 percent) are small businesses or micro-businesses as defined in Texas Government Code, §2006.002.

The Commission cannot accurately estimate the cost of compliance with the Commission's proposed amendments for any specific individual operator because the amendments to the Texas Natural Resources Code enacted by SB 1 expressly allow for surcharges on existing fees, but the amount of a fee and its subsequent surcharge will be determined by various unique and independent variables specific to each oil and gas operator. Using drilling permits as a general example, under the current fee schedule the average drilling permit costs \$416. With a surcharge set at 150 percent the average drilling permit would cost \$1,040, with \$624 as an average additional cost to all oil and gas operators, regardless of business size.

The economic impact of the cost of compliance with the proposed surcharges will be the same for small businesses and micro-businesses as for larger businesses. Every operator, whether it is a small business or micro-business or not, must pay the same surcharge rate. Because the cost of compliance is not dependent on the size of the company but is based on the costs of the fee associated with each specific oil and gas activity, there will be no difference in the cost of compliance

between operators that are larger companies and operators that are small businesses or micro-businesses.

The Commission also has determined that a regulatory flexibility analysis is not required, for two reasons. First, the amendments to the Texas Natural Resources Code enacted by SB 1 were specifically intended by the Texas Legislature to provide a self-funding mechanism for the oil and gas activities regulated by the Commission. Second, an alternative regulatory method could not achieve the purpose of the proposed rule while minimizing the adverse impacts on small businesses and micro-businesses and thus is not consistent with the economic welfare of the state.

The Commission has determined that the proposed amendments are not major environmental rules, because the proposed amendments do not meet the requirements set forth in Texas Government Code, §2001.0225(a). The proposed amendments do not exceed the express requirements of state law, and are not being adopted solely under the general powers of the agency.

Mr. Pollard has determined that for each year of the first five years that the proposed amendments will be in effect, the public benefit will be to the economic welfare of the state through General Revenue savings of approximately to \$16.8 million in fiscal year 2012 and \$16.7 million in fiscal year 2013, and similar savings anticipated in fiscal years 2014-2016. Additionally, a public benefit will be to prevent or remediate threats to public health and safety that may result from improperly monitored and inspected oil and gas activities.

Comments on the proposal may be submitted to Rules Coordinator, Office of General Counsel, Railroad Commission of Texas, P.O. Box 12967, Austin, Texas 78711-2967; online at www.rrc.state.tx.us/rules/commentform.php; or by electronic mail to rulescoordinator@rrc.state.tx.us. Comments should refer to Surcharge Rule Making and will be accepted until 12:00 p.m. (noon) on Tuesday, October 11, 2011, which is 32 days after publication in the *Texas Register*. The Commission finds that this comment period is reasonable because the proposal and an online comment form will be available on the Commission's website no later than the day after the open meeting at which the Commission approves publication of the proposal, giving interested persons more than two additional weeks to review and analyze the proposal and to draft and submit comments. Comments should refer to O&G Docket No. 20-0271942. The Commission encourages all interested persons to submit comments no later than the deadline. The Commission cannot guarantee that comments submitted after the deadline will be considered. For further information, call Mr. Pollard at (512) 463-5011. The status of Commission rulemakings in progress is available at www.rrc.state.tx.us/rules/proposed.php.

The Commission proposes the amendments pursuant to Texas Natural Resources Code, §81.051 and §81.052, which give the Commission jurisdiction over all persons owning or engaged in drilling or operating oil or gas wells in Texas and the authority to adopt all necessary rules for governing and regulating persons and their operations under the jurisdiction of the Commission; Texas Natural Resources Code, §81.067, related to Oil and Gas Regulation and Cleanup Fund, and §81.070, relating to Establishment of Surcharges on Fees, as enacted by SB 1, 82nd Legislature (First Called Session, 2011), which become effective on September 28, 2011; and Texas Government Code, §2001.006, which authorizes the Commission, in preparation for the implementation of legislation that has become law but has not taken effect, to adopt a rule or take other administrative action that

the agency determines is necessary or appropriate and that the agency would have been authorized to take had the legislation been in effect at the time of the action.

Texas Natural Resources Code, §81.051, §81.052, §81.067, and §81.070 are affected by the proposed amendments.

Statutory authority: Texas Natural Resources Code, §81.051, §81.052, §81.067, and §81.070; Texas Government Code, §2001.006.

Cross-reference to statute: Texas Natural Resources Code, §81.051, §81.052, §81.067, and §81.070.

Issued in Austin, Texas, on August 23, 2011.

§3.78. *Fees and Financial Security Requirements.*

(a) (No change.)

(b) Filing fees. The following filing fees are required to be paid to the Railroad Commission.

(1) - (13) (No change.)

(14) With each individual application for an expedited letter of determination stating the total depth of surface casing required for a well in accordance with Texas Natural Resources Code, §91.0115(b), the applicant shall submit to the Commission a nonrefundable fee of \$75.

(15) [~~14~~] An operator must make a check or money order for any of the aforementioned fees payable to the Railroad Commission of Texas. If the check accompanying an application is not honored upon presentment, the Commission or its delegate may suspend or revoke the permit issued on the basis of that application, the allowable assigned, the exception to a statewide rule granted on the basis of the application, the certificate of compliance reissued, or the Natural Gas Policy Act category determination made on the basis of the application.

(16) [~~15~~] If an operator submits a check that is not honored on presentment, the operator shall, for a period of 24 months after the check was presented, submit any payments in the form of a credit card, cashier's check, or cash.

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

(i) Conditions for cash deposits and escrow funds. Operators must tender cash deposits and escrow funds in United States currency or certified cashiers check only. The Commission or its delegate will place all cash deposits and escrow funds in a special account within the Oil and Gas Regulation and Cleanup [Oil Field Clean Up] Fund account. The Commission or its delegate will deposit any interest accruing on cash deposits and escrow funds into the Oil and Gas Regulation and Cleanup [Oil Field Clean Up] Fund pursuant to Texas Natural Resources Code, §81.067 [~~§91.111(e)(8)~~]. The Commission or its delegate may not refund a cash deposit until either financial security is accepted by the Commission or its delegate as provided for under this section or an operator ceases all activity. The Commission or its delegate may release escrow funds to the current operator of the well only if the well for which the operator tendered the escrow funds is either restored to active status or plugged in accordance with Commission rules. In the event that the well is plugged through the use of state funds, the Commission may collect from the escrow account in the amount necessary to reimburse the state for any expenditure.

(j) (No change.)

(k) Reimbursement liability. Filing any form of financial security does not extinguish a person's liability for reimbursement for the expenditure of state oilfield clean-up funds pursuant to ~~the~~ Texas Natural Resources Code, §89.083 and §91.113.

(l) - (m) (No change.)

(n) Mandatory surcharges. The Commission adopts this subsection pursuant to Texas Natural Resources Code, §81.070, to assess surcharges as necessary on fees that are required to be deposited to the credit of the oil and gas regulation and cleanup fund, as provided by Texas Natural Resources Code, §81.067, in an amount sufficient to enable the Commission to recover the costs of performing the functions specified by Texas Natural Resources Code, §81.068, from those fees and surcharges.

(1) This paragraph establishes the methodology the Commission uses to determine the amount of the surcharge on each fee, as required by Texas Natural Resources Code, §81.070(c).

(A) For all fees subject to a surcharge under this section, the Commission employs a projected cost-based recovery methodology derived from budgeted cost projections approved by the Legislature in the General Appropriations Act, which is dependent upon revenue projections issued by the Comptroller in the most recent Biennial Revenue Estimate. In establishing the surcharge amounts, the Commission took into account the factors and values set forth in the following clauses.

(i) The Commission ascertained the time required to complete the regulatory work associated with the activity in connection with which the surcharge is imposed using 533.1, the number of full-time equivalent positions (FTEs) appropriated by the Legislature for that purpose, multiplied by the work hours in a fiscal year (2,080), and then divided by the anticipated number of permit applications processed in a fiscal year (23,000). Using this methodology for fiscal year 2012, the Commission assumes 48.21 hours of regulatory work to be associated with each permit application processed through the life cycle of the permit.

(ii) The Commission used the number of P-5 Organization Reports as a proxy to determine the number of individual or entities from which the Commission's costs may be recovered. An Organization Report must be filed and renewed annually by any organization, including any person, firm, partnership, corporation, or other organization, domestic or foreign, operating wholly or partially within this state, that performs operations within the jurisdiction of the agency. The Commission developed its surcharge methodology based fee collections from 7,900 individuals or entities operating oil or gas wells.

(iii) The Commission determined that the surcharge will affect four operators considered to be large, based on operating more than 10,000 oil or gas wells; 45 operators considered to be medium, based on operating more than 1,000 oil or gas wells, but fewer than 10,000 wells; and 7,851 operators considered to be small, based on operating fewer than 1,000 oil or gas wells. The surcharge will affect operators in proportion to the number of wells they operate.

(iv) When creating the methodology to develop a surcharge rate, the Commission assumes a fund balance of approximately \$18 million for the fiscal year beginning September 1, 2011.

(v) When creating the methodology to develop a surcharge rate, the Commission depends on the assumption of legislative intent that the agency's oil and gas regulatory program should be self-funded. The Commission also seeks to maintain an adequate fund balance for the Oil and Gas Regulation and Cleanup Fund such that the regulatory program can withstand a decrease in industry activity without sacrificing the health and public safety aspects of its regulatory work, while also having funds available to respond to any emergency related to oil and gas activity throughout the state. The Commission also seeks to maintain a fund balance that is within the statutory fund limit of \$20 million.

(B) The Commission used the factors set forth in subparagraph (A) of this paragraph in the following manner:

(i) To determine the surcharge applicable to all fees deposited to the Oil and Gas Regulation and Cleanup Fund, the Commission first applied the premise that the oil and gas regulatory program should be self-funded; the Commission then applied a cost-based recovery analysis to the funding levels determined by the Legislature. Relying primarily on these two factors, but also reviewing the above factors and values, the Commission will apply the same surcharge rate to all applicable fees as detailed in paragraph (2) of this subsection; and

(ii) Using all of these factors, the Commission determined that for fiscal year 2012 and fiscal year 2013 a surcharge rate of 150 percent will be necessary on all fees as detailed paragraph (2) of this subsection.

(2) Table 1 sets forth the statutory fee, the surcharge, and the total amount for due for each fee subject to a surcharge.

Figure: 16 TAC §3.78(n)(2)

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

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

TRD-201103435

Mary Ross McDonald

Managing Director

Railroad Commission of Texas

Earliest possible date of adoption: October 9, 2011

For further information, please call: (512) 475-1295



CHAPTER 8. PIPELINE SAFETY REGULATIONS

SUBCHAPTER C. REQUIREMENTS FOR NATURAL GAS PIPELINES ONLY

16 TAC §8.201, §8.209

The Railroad Commission of Texas (Commission) proposes to amend §8.201, relating to Pipeline Safety Program Fees, and §8.209, relating to Distribution Facilities Replacements, to implement Senate Bill 1, Sections 19.25 and 19.26, enacted by the 82nd Legislature (First Called Session, 2011), which become effective September 28, 2011, and Senate Bill 2, Section 7(b), enacted by the 82nd Legislature (First Called Session, 2011), which became effective July 19, 2011. These new laws expand the pipeline safety fee to include the Commission's natural gas regulatory functions and authorize the Commission to allocate a portion of the fee revenue, for the first time, to those regulatory programs. Sections 19.25 and 19.26 of Senate Bill 1 amend Texas Utilities Code, §121.211, to authorize the Commission to recover the costs of administering both the pipeline safety program and its natural gas utility regulatory program. Section 7(b) of Senate Bill 2 makes the appropriation of revenue to the natural gas regulatory program contingent upon the Commission increasing the fee.

General revenue funding of the Commission's natural gas utility regulatory functions has been reduced. Expansion of the current fee will allow the Commission's current natural gas utility regulatory functions to continue to operate and to be funded, in part, through a portion of the fee increase in the proposed amend-

ments, rather than solely through general revenue funds. The remaining portion of the fee increase in the proposed amendments will fund Commission activities related to pipeline safety programs. Natural gas utilities affected by the proposed amendments are authorized to recover pipeline safety and regulatory program fees from their customers by applying an annual surcharge to customer bills.

The Commission proposes to change the title of §8.201 to Pipeline Safety and Regulatory Program Fees. The Commission also proposes to amend some terms in the rule to match those used in Senate Bill 1, including changing references to "inspection fee" and "pipeline safety fee" to "the pipeline safety and regulatory program fee." The Commission proposes to clarify the title of the Gas Distribution Annual Report to refer to Form PHMSA F7100.1-1.

In the proposed amendments, the pipeline safety and regulatory program fee, which is assessed by the Commission upon certain natural gas systems, is clearly distinguished from the surcharge assessed by a natural gas distribution system operator upon its customers. In §8.201(b), the Commission proposes to increase the pipeline safety and regulatory program fee from \$0.70 to \$0.75 annually for each service (service line) reported to be in service at the end of each calendar year, as required by the contingent appropriation in Senate Bill 2.

In 2003, a pipeline safety inspection fee was established to support the Commission's pipeline safety program, which is funded partially by federal funds and partially by state general revenue funds. By Commission rule, the initial pipeline safety inspection fee was established at \$0.37 annually for each service reported by a natural gas distribution system. In 2007, the fee increased to \$0.50. In 2010, the fee increased to \$0.70 to fund the Commission's hiring of additional personnel within the Pipeline Safety Division because the Commission's program had been adversely affected by under-staffing and because federal funding for the pipeline safety program was tied to the Commission's staffing levels. With the Commission's proposed increase of the renamed pipeline safety and regulatory program fee to \$0.75, the fee will remain well below the \$1 annual fee ceiling authorized by prior legislation and unchanged by Senate Bill 1.

The Commission proposes to amend §8.209(i) to change the title in the citation to §8.201.

Bill Geise, Director, Gas Services Division, and Mary Ross McDonald, Acting Director, Pipeline Safety Division, have determined that for each year of the first five years that the proposed amendments are in effect, there will be an estimated increase in revenue for state government of \$238,838. The estimated revenue increase is calculated by multiplying the \$0.05 increase in the pipeline safety and regulatory program fee by the 4,776,768 services reported to be in service at the end of calendar year 2010.

Revenue derived from the proposed pipeline safety and regulatory program fee will be appropriated to the Commission, subject to contingencies and limitations outlined in Senate Bill 2, to supplement funds received from the U.S. Department of Transportation's Office of Pipeline Safety to support the Commission's existing pipeline safety program and the Commission's underground pipeline damage prevention program, and to fund, in part, the Commission's natural gas utility regulatory functions. If the number of services reported is lower than the 2010 level in any future year, the State's revenue will decrease accordingly, and the Commission's appropriation will be reduced as well.

Mr. Geise and Ms. McDonald anticipate there will be no new costs for state government as a result of enforcing or administering the proposed amendments, because state agencies are exempt from the surcharge applied by natural gas distribution system operators to their customers to recover pipeline safety and regulatory program fees assessed under §8.201(b).

Mr. Geise and Ms. McDonald have determined that there may be *de minimis* fiscal implications for local governments, such as municipalities and government housing authorities, that operate natural gas distribution systems. These entities will be required to remit to the Commission the increased fee amount; however, these entities are authorized to recover their costs by imposing an annual surcharge upon their customers. Their remittance and billing systems are already in place.

Mr. Geise and Ms. McDonald have determined that for each year of the first five years that the proposed amendments are in effect the public benefit will be the continuation of the Commission's natural gas utility regulatory program, which enables the Commission to ensure that rates charged by natural gas utilities to their customers are just and reasonable, as required by the Utilities Code, and the continuation of the Commission's pipeline safety and damage prevention programs.

Mr. Geise and Ms. McDonald developed the following analysis of the probable economic cost to persons required to comply with the proposed amendments for each year of the first five years that they will be in effect, as well as the analysis required by Texas Government Code, §2006.002. That statute requires that, before adopting a rule that may have an adverse economic effect on small businesses or micro-businesses, a state agency prepare an economic impact statement and a regulatory flexibility analysis. The economic impact statement must estimate the number of small businesses subject to the proposed rule, project the economic impact of the rule on small businesses, and describe alternative methods of achieving the purpose of the proposed rule. A regulatory flexibility analysis must include the agency's consideration of alternative methods of achieving the purpose of the proposed rule. The analysis must consider, if consistent with the health, safety, and environmental and economic welfare of the state, using regulatory methods that will accomplish the objectives of applicable rules while minimizing adverse impacts on small businesses. The state agency must include in the analysis several proposed methods of reducing the adverse impact of a proposed rule on a small business. The statute defines "small business" as a legal entity, including a corporation, partnership, or sole proprietorship, that is formed for the purpose of making a profit; is independently owned and operated; and has fewer than 100 employees or less than \$6 million in annual gross receipts. A "micro-business" is a legal entity, including a corporation, partnership, or sole proprietorship, that is formed for the purpose of making a profit; is independently owned and operated; and has no more than 20 employees.

Pursuant to Texas Government Code, §2006.002(c), Mr. Geise and Ms. McDonald estimate that there will be no net cost of compliance for natural gas distribution system operators that are small businesses or micro-businesses. While the pipeline safety and regulatory program fee will increase by \$0.05 for each service reported on the DOT Gas Distribution Annual Report, Form PHMSA 7100.1-1, natural gas distribution system operators are authorized to recover these costs through the application of an annual surcharge to their customers. Operators will not incur any additional administrative costs for remitting the fee to the Commission or for assessing the surcharge to customers because

the fee has been in effect since 2003, and remittance and billing systems are already in place.

Mr. Geise and Ms. McDonald expect that there will be a *de minimis* cost of compliance for customers of natural gas distribution systems. The current annual surcharge levied by natural gas distribution systems upon their customers will rise in order for distribution system operators to recover the increased natural gas pipeline and regulatory fee they remit to the Commission. For a customer of a natural gas distribution system who has one service line, the additional cost of compliance will be \$0.05 per year. Large commercial and industrial customers of natural gas distribution systems will have additional annual costs of compliance of \$0.05 for each service line. State agency customers of natural gas distributions systems are exempt from payment of such a surcharge.

The Commission concludes that there will be no adverse impact on small businesses or micro-businesses of adopting the proposed amendments. Because the Commission has determined that there will be no adverse impact on small businesses or micro-businesses, pursuant to Texas Government Code, §2001.006, the Commission is not required to consider whether there are alternative methods for achieving the purpose of the proposed amendments.

Comments on the proposal may be submitted to Rules Coordinator, Office of General Counsel, Railroad Commission of Texas, P.O. Box 12967, Austin, Texas 78711-2967; online at www.rrc.state.tx.us/rules/commentform.php; or by electronic mail to rulescoordinator@rrc.state.tx.us. The Commission will accept comments until 12:00 p.m. (noon) on Tuesday, October 11, 2011, which is 32 days after publication in the *Texas Register*. Comments should refer to Gas Utilities Docket No. 10104. The Commission encourages all interested persons to submit comments on the proposal no later than the deadline. The Commission cannot guarantee that comments submitted after the deadline will be considered. For further information, call Mr. Geise at (512) 463-8559 or Ms. McDonald at (512) 463-7008. The status of pending Commission rulemakings is available at www.rrc.state.tx.us/rules/proposed.php.

The Commission proposes the amendments pursuant to Texas Utilities Code, §121.211, as amended by Senate Bill 1, 82nd Legislature (First Called Session, 2011), which authorizes the Commission to adopt by rule a pipeline safety and regulatory fee not to exceed one dollar for each service line reported by a natural gas distribution system operator on the Gas Distribution Annual Report, Form PHMSA F7100.1-1; Senate Bill 2, 82nd Legislature (First Called Session, 2011), which makes the appropriation of revenue to the natural gas regulatory program contingent upon the Commission increasing the pipeline safety and regulatory program fee; and Texas Government Code, §2001.006, which authorizes a state agency, in preparation for the implementation of legislation that has become law but has not taken effect, to adopt a rule or take other administrative action that the agency determines is necessary or appropriate and that the agency would have been authorized to take had the legislation been in effect at the time of the action.

Texas Utilities Code, §121.211, as amended by Senate Bill 1, 82nd Legislature (First Called Session, 2011), is affected by the proposed amendments.

Statutory authority: Texas Utilities Code, §121.211, as amended by Senate Bill 1, 82nd Legislature (First Called Session, 2011);

Senate Bill 2, 82nd Legislature (First Called Session, 2011); and Texas Government Code, §2001.006.

Cross-reference to statute: Texas Utilities Code, §121.211, as amended by Senate Bill 1, 82nd Legislature (First Called Session, 2011); Senate Bill 2, 82nd Legislature (First Called Session, 2011); and Texas Government Code, §2001.006.

Issued in Austin, Texas, on August 23, 2011.

§8.201. *Pipeline Safety and Regulatory Program Fees.*

(a) Application of fees. Pursuant to Texas Utilities Code, §121.211, the Commission establishes a pipeline safety and regulatory program ~~[inspection]~~ fee, to be assessed annually against operators of natural gas distribution pipelines and pipeline facilities and natural gas master metered pipelines and pipeline facilities subject to the Commission's ~~[pipeline safety]~~ jurisdiction under Texas Utilities Code, Title 3 ~~[Chapter 124]~~. The total amount of revenue estimated to be collected under this section does not exceed the amount the Commission estimates to be necessary to recover the costs of administering the pipeline safety and regulatory programs ~~[program]~~ under Texas Utilities Code, Title 3 ~~[Chapter 124]~~, excluding costs that are fully funded by federal sources for any fiscal year.

(b) Natural gas distribution systems. The Commission hereby assesses each operator of a natural gas distribution system an annual pipeline safety and regulatory program fee of \$0.75 ~~[\$0.70]~~ for each service (service line) ~~[reported to be]~~ in service at the end of each calendar year as reported by each system operator on the U.S. Department of Transportation (DOT) Gas Distribution Annual Report, Form PHMSA F7100.1-1 ~~due on [; to be filed]~~ March 15 of each year.

(1) Each operator of a natural gas distribution system shall calculate the ~~[total amount of the]~~ annual pipeline safety and regulatory program total ~~[fee]~~ to be paid to the Commission by multiplying the \$0.75 fee ~~by the number of services listed in Part B, Section 3, of [Department of Transportation (DOT) Distribution Annual Report,] Form PHMSA F7100.1-1, due [to be filed]~~ on March 15 of each year ~~[by \$0.70]~~.

(2) (No change.)

(3) Each operator of a natural gas distribution system shall recover, by a surcharge to its existing rates, the amount the operator paid to the Commission under paragraph (1) of this subsection. The surcharge:

(A) (No change.)

(B) shall not be billed before the operator remits the pipeline safety and regulatory program fee to the Commission;

(C) (No change.)

(D) shall not exceed \$0.75 ~~[\$0.70]~~ per service or service line; and

(E) (No change.)

(4) No later than 90 days after the last billing cycle in which the pipeline safety and regulatory program fee surcharge is billed to customers, each operator of a natural gas distribution system shall file with the Commission's Gas Services Division and the Pipeline Safety Division a report showing:

(A) the pipeline safety and regulatory program fee amount paid to the Commission;

(B) - (D) (No change.)

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

(c) Natural gas master meter systems. The Commission hereby assesses each natural gas master meter system an annual pipeline safety and regulatory program [inspection] fee of \$100 per master meter system.

(1) Each operator of a natural gas master meter system shall remit to the Commission [pay] the annual pipeline safety and regulatory program [inspection] fee of \$100 per master meter system no later than June 30 of each year.

(2) The Commission shall send an invoice to each affected natural gas master meter system operator no later than April 30 of each year as a courtesy reminder. The failure of a natural gas master meter system operator to receive an invoice shall not exempt the natural gas master meter system operator from its obligation to remit to the Commission the annual pipeline safety and regulatory program fee on June 30 each year.

(3) Each operator of a natural gas master meter system shall recover as a surcharge to its existing rates the amounts paid to the Commission under paragraph (1) of this subsection.

(4) No later than 90 days after the last billing cycle in which the pipeline safety and regulatory program fee surcharge is billed to customers, each natural gas master meter system operator shall file with the Commission's Gas Services Division and the Pipeline Safety Division a report showing:

(A) the pipeline safety and regulatory program fee amount paid to the Commission;

(B) - (D) (No change.)

(d) Late payment penalty. If the operator of a natural gas distribution system or a natural gas master meter system does not remit [submit] payment of the annual pipeline safety and regulatory program [inspection] fee to the Commission within 30 days of the due date, the Commission shall assess a late payment penalty of 10 percent of the total assessment due under subsection (b) or (c) of this section, as applicable, and shall notify the operator of the total amount due to the Commission.

§8.209. *Distribution Facilities Replacements.*

(a) - (h) (No change.)

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

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

(j) (No change.)

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

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

TRD-201103434

Mary Ross McDonald

Managing Director

Railroad Commission of Texas

Earliest possible date of adoption: October 9, 2011

For further information, please call: (512) 475-1295



PART 3. TEXAS ALCOHOLIC BEVERAGE COMMISSION

CHAPTER 45. MARKETING PRACTICES SUBCHAPTER E. REGULATION OF CREDIT TRANSACTIONS

DIVISION 1. DELINQUENT LIST

16 TAC §45.121

The Texas Alcoholic Beverage Commission (commission) proposes an amendment to §45.121, relating to Credit Restrictions and Delinquent List for Liquor.

House Bill (H.B.) 2012, 82nd Regular Session, Texas Legislature amended Alcoholic Beverage Code ("Code") §102.32 to specify that, for purposes of credit restrictions and reporting delinquencies, a holder of a winery permit is considered a retailer when purchasing wine from a Chapter 19 wholesaler for resale to ultimate consumers in unbroken packages. Because 16 TAC §45.121 currently does not include wineries in the definition of "retailer," it should be amended to conform to H.B. 2012.

In addition, when this section was originally adopted in 2009, the commission indicated that it would periodically review it and shorten the time allowed from the end of the reporting period to the date of publication of the Delinquent List. The commission proposes to amend the section to give retailers two fewer days to pay a delinquent bill before their names appear on the Delinquent List. When a retailer's name appears on the Delinquent List, all wholesalers are on notice that they may not sell any liquor to that retailer until that delinquent account is paid in full, pursuant to Code §102.32(d).

Dexter K. Jones, Director of the Compliance and Marketing Practices Division, has determined that for each year of the first five years that the proposed amendment will be in effect, there will be no impact on state or local government.

The proposed amendment will have no fiscal or regulatory impact on micro-businesses and small businesses or persons regulated by the commission. There is no anticipated negative impact on local employment.

Mr. Jones has determined that for each year of the first five years the proposed amendment will be in effect, the public will benefit because the discrepancy between the rule and the Code, as amended, will be eliminated. In addition, the regulatory scheme established in the Code to encourage prompt payment of bills will be further promoted. This regulatory scheme is designed to protect the three-tier system, whereby the interests of retailers and wholesalers are distinguished and protected.

Comments on the proposed amendment may be submitted in writing to Martin Wilson, Assistant General Counsel, Texas Alcoholic Beverage Commission, at P.O. Box 13127, Austin, Texas 78711-3127, or by facsimile transmission to (512) 206-3480. They may also be submitted electronically through the commission's public website at http://www.tabc.state.tx.us/laws/proposed_rules.asp. Comments will be accepted for 30 days following publication in the *Texas Register*.

The staff of the commission will hold a public hearing to receive oral comments on September 28, 2011 in the Commission Meeting Room on the first floor of the commission's headquarters at 5806 Mesa Drive in Austin, Texas. The public hearing will begin at 1:30 p.m. Staff will not respond to comments at the

public hearing. The commission's response to comments received at the public hearing will be in the adoption preamble. The commission designates this public hearing as the opportunity to make oral comments if you wish to assure that the commission will respond to them formally under Government Code §2001.033. Persons with disabilities who plan to attend this hearing and who may need auxiliary aids or services (such as interpreters for persons who are deaf, hearing impaired readers, large print, or Braille) are requested to contact Gloria Darden Reed at (512) 206-3221 (voice), (512) 206-3259 (fax), or (512) 206-3270 (TDD), at least three days prior to the meeting so that appropriate arrangements can be made.

The proposed amendment is authorized by Texas Alcoholic Beverage Code §5.31, which grants authority to prescribe rules necessary to carry out the provisions of the Code, and §102.32(f), which requires the commission to adopt rules to give effect to that section.

Cross Reference: The proposed amendment affects Alcoholic Beverage Code §5.31 and §102.32.

§45.121. Credit Restrictions and Delinquent List for Liquor.

(a) Purpose. This rule implements §§102.32, 11.61(b)(2), and 11.66 of the Texas Alcoholic Beverage Code (Code).

(b) Definitions.

(1) Alcoholic beverage--As used in this section includes only liquor, as that term is defined in §1.04 of the Code.

(2) Cash equivalent--A financial transaction or instrument that is not conditioned on the availability of funds upon presentment, including, money order, cashier's check, certified check or completed electronic funds transfer.

(3) Delinquent payment--A financial transaction or instrument that fails to provide payment in full or is returned to the Seller as unpaid for any reason, on or before the day it is required to be paid by §102.32(c) of the Code.

(4) Event--A financial transaction or instrument that fails to provide payment to a Retailer and results in a Retailer making one or more delinquent payments to one or more Sellers.

(5) Incident--A single delinquent payment.

(6) Retailer--A package store permittee, wine only package store permittee, private club permittee, private club exemption certificate permittee, mixed beverage permittee, or other retailer, and their agents, servants and employees. For purposes of this section, the holder of a winery permit issued under Chapter 16 of the Code is a retailer when the winery permit holder purchases wine from the holder of a wholesaler's permit issued under Chapter 19 of the Code for resale to ultimate consumers in unbroken packages.

(7) Seller--A wholesaler, class B wholesaler, winery, wine bottler, or local distributor and their agents, servants and employees.

(c) Invoices. A delivery of alcoholic beverages by a Seller, to a Retailer, must be accompanied by an invoice of sale showing the name and permit number of the Seller and the Retailer, a full description of the alcoholic beverages, the price and terms of sale, and the place and date of delivery.

(1) The Seller's copy of the invoice must be signed by the Retailer to verify receipt of alcoholic beverages and accuracy of invoice.

(2) The Seller and Retailer must retain invoices in compliance with the requirements of §206.01 of the Code.

(3) Invoices may be created, signed and retained in an electronic or internet based inventory system, and may be retained on or off the licensed premise.

(d) Delinquent Payment Violation. A Retailer who makes a delinquent payment to a Seller for the delivery of alcoholic beverages violates this section unless an exception applies.

(1) A Retailer who violates this section must pay a delinquent amount, and a Seller may accept payment, only in cash or cash equivalent financial transaction or instrument.

(2) A Retailer whose permit or license expires or is cancelled for cause, voluntarily cancelled, suspended or placed in suspension while on the delinquent list will be disqualified from applying for or being issued an original or renewal permit or license until all delinquent payments are satisfied. For purposes of this section, the Retailer includes all persons who were owners, officers, directors and shareholders of the Retailer at the time the delinquency occurred.

(e) Reporting Violation and Payment; Failure to Report.

(1) A report of a violation or payment must be submitted electronically to the commission on the commission's web based reporting system at www.tabc.state.tx.us.

(2) A Seller who cannot access the commission's web based reporting system must either:

(A) submit a request for exception to submit reports by paper; or

(B) contract with another seller or service provider to make electronic reports on behalf of the Seller.

(3) All reports of violations or payment under this subsection must be made to the commission on or before the date the delinquent list is published.

(4) A Seller who fails to report a violation or a payment as required by this subsection is in violation of this section.

(f) Prohibited Sales and Delivery.

(1) Sellers are prohibited from selling or delivering alcoholic beverages to any licensed location of a Retailer who appears on the commission's Delinquent List from the date the violation appears on the Delinquent List until the Release Date on the Delinquent List, or until the Retailer no longer appears on the Delinquent List.

(2) A sale or delivery of alcoholic beverages prohibited by this section is a violation of this section.

(g) Prohibited Purchase or Acceptance.

(1) A Retailer who violates subsection (d) of this section is prohibited from purchasing or accepting delivery of alcoholic beverages from any source at any of Retailer's licensed locations from the date any violation occurs until all delinquent payment are paid in full.

(2) A prohibited purchase or acceptance of a delivery of alcoholic beverages is a violation of this section.

(h) Exception. A Retailer who wishes to dispute a violation of this section or inclusion on the commission's Delinquent List based on a good faith dispute between the Retailer and the Seller may submit a detailed electronic or paper written statement with the commission with an electronic or paper copy to the Seller explaining the basis of the dispute.

(1) The written statement must be submitted with documents and/or other records tending to support the Retailer's dispute, which may include:

(A) a copy of the front and back of the cancelled check of Retailer showing endorsement and deposit by Seller;

(B) bank statement or records of bank showing funds were available in the account of Retailer on the date the check was delivered to Seller; and

(C) bank statement or records showing:

(i) bank error or circumstances beyond the control of Retailer caused the check to be returned to Seller unpaid; or

(ii) the check cleared Retailer's account and funds were withdrawn from Retailer's account in the amount of the check.

(2) A disputed delinquent payment will not be removed from the delinquent list until documents and/or other records tending to support the Retailer's dispute are submitted to the commission.

(3) The Retailer must immediately submit an electronic notice of resolution of a dispute to the commission under this subsection.

(i) Penalty for Violation. An action to cancel or suspend a permit or license may be initiated under §11.61(b)(2) of the Code for one or more violations of this section. The commission may consider whether a violation is the result of an event or incident when initiating an action under this subsection.

(j) Delinquent List.

(1) The Delinquent List is published bi-monthly on the commission's public web site at <http://www.tabc.state.tx.us>. An interested person may receive the Delinquent List by electronic mail each date the Delinquent List is published by registering for this service online.

(2) The Delinquent List will be published the 1st ~~[3rd]~~ day of the month for purchases made from the 1st to the 15th day of the preceding month, for which payment was not made on or before the 25th day of the preceding month. The Delinquent List will be published the 16th ~~[18th]~~ day of the month for purchases made between the 16th and the last day of the preceding month for which payment was not made on or before the 10th day of the month.

(3) The Delinquent List is effective at 12:01 A.M. on the date of publication.

(4) The Delinquent List is updated hourly to reflect reports of payments submitted.

(k) Calculation of Time. A due date under this section or §102.32(c) of the Code or the publication date of the Delinquent List that would otherwise fall on a Saturday, Sunday or a state or federal holiday, will be the next regular business day. A payment sent by U.S. postal service or other mail delivery service is deemed made on the date postmarked or proof of date delivered to the mail delivery service. A payment hand delivered to an individual authorized to accept payment on behalf of the Seller is deemed made when the authorized individual takes possession of the payment.

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

Filed with the Office of the Secretary of State on August 29, 2011.
TRD-201103514

Alan Steen
Administrator
Texas Alcoholic Beverage Commission
Earliest possible date of adoption: October 9, 2011
For further information, please call: (512) 206-3443

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PART 4. TEXAS DEPARTMENT OF LICENSING AND REGULATION

CHAPTER 72. STAFF LEASING SERVICES

16 TAC §§72.10, 72.20 - 72.23, 72.40

The Texas Department of Licensing and Regulation (Department) proposes amendments to existing rules at 16 Texas Administrative Code ("TAC") Chapter 72, §§72.10, 72.20 - 72.23 and 72.40, regarding the Staff Leasing Services program. These changes will be referred to collectively in this notice as "proposed rules." These rule amendments are anticipated to become effective on or after December 31, 2011, but not before.

These proposed rules are necessary to implement the changes proposed as a result of the implementation of the final phase of changes brought by House Bill 2249, 81st Legislature (2009). That bill contained several changes to Chapter 91, Texas Labor Code (the Code), some of which became effective in 2009. This final phase change mandates that effective December 31, 2011, an applicant for a staff leasing license must demonstrate positive "working capital" to the Department, based on an audited financial statement.

The proposed amendment to §72.10 deletes reference to "Net Worth" as a financial qualification to obtain a staff leasing license. The definition of "Working Capital" is found in the statute.

The proposed amendments to §§72.20 - 72.23 are amended to replace "net worth" with "positive working capital" as a requirement for initial and renewal licensure.

The proposed amendment to §72.40 is rewritten and reorganized to set forth the information the Department requires to prove "positive working capital" and what kinds of financial security may be provided to satisfy any deficiencies in an applicant's positive working capital requirement.

William H. Kuntz, Jr., Executive Director, has determined that for each year of the first five-year period the proposed rules are in effect there will be no direct cost to state or local government as a result of enforcing or administering the proposed rules.

Mr. Kuntz also has determined that for each year of the first five-year period the proposed rules are in effect, there will be no increase or decrease in revenue to the state or local governments as a result of enforcing the amendments. The public benefit includes the implementation of the new law, and is also to be the security resulting from a more stringent standard of financial strength for staff leasing service providers as required by the statute.

The potential for additional cost to the staff leasing service providers will come from the higher cost of an audited financial statement as opposed to a lesser standard; however, some of the licensees have already been providing audited financial statements to the Department. Because the potential for additional cost is in the statute, and not due to the rule proposal, the agency has determined that the proposed rules themselves

will have no adverse economic effect on small businesses; therefore, preparation of an Economic Impact Statement and a Regulatory Flexibility Analysis, as detailed under Texas Government Code §2006.002, is not required.

Comments on the proposed rules may be submitted by mail to Caroline Jackson, Legal Assistant Team Lead, General Counsel's Office, Texas Department of Licensing and Regulation, P.O. Box 12157, Austin, Texas 78711, or by facsimile to (512) 475-3032, or electronically to erule.comments@license.state.tx.us. The deadline for comments is 30 days after publication in the *Texas Register*.

The amendments are proposed under Texas Occupations Code, Chapter 51, and Texas Labor Code, Chapter 91, both of which authorize the Texas Commission of Licensing and Regulation, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

The statutory provisions affected by the proposal are those set forth in Texas Occupations Code, Chapter 51, and Texas Labor Code, Chapter 91. No other statutes, articles, or codes are affected by the proposal.

§72.10. Definitions.

The following words and terms, as used in this chapter and Texas Labor Code, Chapter 91, have the following meanings, unless the context clearly indicates otherwise.

(1) Department--Texas Department of Licensing and Regulation.

~~(2) Net Worth--The applicant's assets minus the applicant's liabilities, as shown on the applicant's financial statement or most recent federal tax return, plus the sum of any guarantees, letters of credit, or securities that may be submitted to the department.~~

(2) ~~(3)~~ Person--Any individual, partnership, corporation, or any other business entity.

(3) ~~(4)~~ The Code--The Texas Labor Code, Chapter 91.

§72.20. License Requirements--Full License.

(a) (No change.)

(b) To obtain an original staff leasing services license, a person must provide the department with all of the following required information, on forms prescribed by the executive director:

(1) a completed registration form, including any applicable attachments or application forms;

(2) a completed personal information form from each controlling person as defined in Texas Labor Code §91.001(7);

(3) fingerprint cards for the applicant and any controlling persons;

(4) a completed criminal history questionnaire, as applicable;

(5) documentation from the Texas Secretary of State recognizing the person's authority to do business in this state;

(6) proof of positive working capital ~~[net worth]~~ as described under §72.40; and

(7) the required fees.

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

§72.21. License Renewal Requirements--Full License.

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

(c) To renew a staff leasing services license, a person must provide the department with all of the following required information, on forms prescribed by the executive director:

(1) a completed registration form, including any applicable attachments or application forms;

(2) a completed personal information form from each controlling person as defined in Texas Labor Code §91.001(7), or a form indicating there has been no change in the personal information form since the previous license application or renewal from each controlling person;

(3) fingerprint cards for any new controlling persons;

(4) a completed criminal history questionnaire, as applicable;

(5) proof of positive working capital ~~[net worth]~~ as described under §72.40; and

(6) the required fees.

(d) Each individual applicant and all controlling persons of the staff leasing service company must submit to a ~~[pass the]~~ background investigation as described in §72.20(c) each year at the time of renewal.

(e) - (g) (No change.)

§72.22. License Requirements--Limited License.

(a) (No change.)

(b) A person applying for a limited license must provide the department with all of the following required information, on forms prescribed by the executive director:

(1) a completed registration form, including any applicable attachments or application forms;

(2) a completed personal information form from each controlling person as defined in Texas Labor Code §91.001(7);

(3) a completed criminal history questionnaire, as applicable;

(4) proof of current licensure as a staff leasing services company, in good standing, if licensed in another state;

(5) documentation from the Texas Secretary of State recognizing the person's authority to do business in this state;

(6) proof of positive working capital ~~[net worth]~~ as described under §72.40; and

(7) the required fees.

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

§72.23. License Renewal Requirements--Limited License.

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

(d) To renew a limited license, a person must provide the department with all of the following required information, on forms prescribed by the executive director:

(1) a completed registration form, including any applicable attachments or application forms;

(2) a completed personal information form from each controlling person as defined in Texas Labor Code §91.001(7), or a form indicating there has been no change in the personal information form since the previous license application or renewal from each controlling person;

- (3) a completed criminal history questionnaire, as applicable;
 - (4) proof of current licensure as a staff leasing services company, in good standing, if licensed in another state;
 - (5) proof of positive working capital [~~net worth~~] as described under §72.40; and
 - (6) the required fees.
- (e) - (g) (No change.)

§72.40. *Proof of Positive Working Capital* [~~Net Worth~~].

(a) A person applying for an original license or a renewal license must demonstrate the person's positive working capital [~~net worth~~] according to the schedule set out in Texas Labor Code §91.014(a). Positive Working Capital must [~~§91.014. Net worth may~~] be demonstrated [~~established~~] by[~~z~~]

[(1)] ~~the~~ [The] financial statement of the applicant [~~business entity~~] that[~~z~~]

(1) [(A)] is prepared in accordance with generally accepted accounting principles [~~or certified by an independent certified public accountant~~];

(2) is audited by an independent certified public accountant, and is without qualification as to the going concern status of the applicant;

(3) [(B)] reflects positive working capital [~~net worth~~] on a date not earlier than 12 [~~nine~~] months before the date of the application; and

(4) [(C)] is based on adequate reserves for taxes, insurance, and incurred claims that are not paid[~~z~~]

[(2)] ~~The most recent federal tax return of the business entity;~~

(b) An applicant that has not had sufficient operating history to have audited financial statements based on at least 12 months of operations must meet the financial capacity requirements required by the schedule in Texas Labor Code §91.014(a) and must provide the department with financial statements that have been reviewed by a certified public accountant.

(c) An applicant may satisfy any deficiencies in the working capital requirement as set forth in subsection (a) or (b), with one or more of the following:

(1) [(3)] A guaranty with the most recent audited financial statement of the guarantor, demonstrating positive working capital according to the schedule set out in Texas Labor Code §91.014(a) [~~supporting financial documentation~~];

(2) [(4)] A surety bond that:

(A) is issued by a surety authorized to do business in the State of Texas;

(B) conforms to the Texas Insurance Code;

(C) is on a department-approved form;

(D) is payable to the executive director on behalf of persons who are injured because of a licensee's violation of Texas Labor Code, Chapter 91 or this chapter; and

(E) states that the surety will provide the department 60 days prior written notice of its intent to cancel the bond;

(3) [(5)] An original letter of credit that:

(A) is irrevocable;

(B) is issued by a qualified financial institution which is financially responsible in the amount of the letter of credit;

(C) does not require examination of the performance of the underlying transaction between the department and the licensee;

(D) is payable to the department on sight or within a reasonably brief period of time after presentation of all required documents; and

(E) does not include any condition that makes payment to the department contingent upon the consent of or other action by the licensee or other party; or

(4) [(6)] Another form of security acceptable to the executive director.

(d) [(b)] Any form of financial security used to satisfy a deficiency in applicant's positive working capital [~~proof of net worth~~] under subsection (a) or (b) that is issued or written for a specified term must be replaced or renewed in accordance with this chapter.

(e) [(e)] Any form of financial security used to satisfy a deficiency in applicant's positive working capital [~~proof of net worth~~] under subsection (a) or (b) must be maintained by the licensee for the entire time the licensee continues to do business in this state.

(f) [(d)] Any form of financial security used to satisfy a deficiency in applicant's positive working capital [~~proof of net worth~~] under subsection (a) or (b) must be kept in effect until the later of:

(1) two years after the licensee ceases to do business in this state;

(2) two years after the licensee's license expires; or

(3) the executive director receives satisfactory proof from the licensee and determines that the licensee has discharged or otherwise adequately met all its obligations under Texas Labor Code, Chapter 91 and this chapter.

(g) [(e)] If any form of financial security [~~proof of net worth~~] under subsection (c) [(a)] is canceled or lapses during the term of the licensee's license, the licensee may not continue operations after the effective date of the cancellation or lapse, unless and until the licensee files with the executive director a valid form of financial security [~~new proof of net worth~~] that meets the requirements provided by Texas Labor Code, Chapter 91 and this chapter and that provides coverage after that date.

(h) [(f)] Cancellation or lapse of the financial security [~~proof of net worth~~] under subsection (c) [(a)] does not affect the licensee's liability before or after the effective date of the cancellation or lapse.

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

Filed with the Office of the Secretary of State on August 29, 2011.

TRD-201103516

Brad Bowman

General Counsel

Texas Department of Licensing and Regulation

Earliest possible date of adoption: October 9, 2011

For further information, please call: (512) 463-7348



TITLE 19. EDUCATION

PART 1. TEXAS HIGHER EDUCATION COORDINATING BOARD

CHAPTER 4. RULES APPLYING TO ALL PUBLIC INSTITUTIONS OF HIGHER EDUCATION IN TEXAS

SUBCHAPTER E. LEARNING OUTCOMES FOR UNDERGRADUATE COURSES

19 TAC §§4.101 - 4.104

The Texas Higher Education Coordinating Board (Coordinating Board) proposes new §§4.101 - 4.104, regarding Learning Outcomes for Undergraduate Courses. The intent of the new sections is to foster a transparent student learning environment and to facilitate the transfer of credits among all institutions of higher education. Each public institution of higher education is to adopt measurable learning outcomes for each undergraduate course offered by the institution and make them available for public inspection.

Dr. MacGregor M. Stephenson, Assistant Commissioner for Academic Affairs and Research, has determined that for the first five years there will be no fiscal implications for state or local governments as a result of amending the rule listed above.

Dr. Stephenson has also determined that for the first five years the new sections are in effect, the public benefits anticipated as a result of administering the sections will be to improve accountability to students, administrators, and the general public that undergraduate courses in public institutions of higher education are meeting their educational goals. There is no effect on small businesses. There are no anticipated economic costs to persons who are required to comply with the section as proposed. There is no impact on local employment.

Comments on the new sections may be submitted by mail to MacGregor M. Stephenson, Assistant Commissioner, Texas Higher Education Coordinating Board, P.O. Box 12788, Austin, Texas, 78711 or via email at macgregor.stephenson@thehb.state.tx.us. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register*.

The new sections are proposed under the Texas Education Code, Chapter 61, Subchapters G and H, which provide the Coordinating Board with the authority to administer the laws regulating private and out-of-state public postsecondary institutions operating in Texas. The proposed rules are in response to a provision enacted by the 82nd Texas Legislature, Regular Session (Senate Bill 1726), as codified in Education Code, Chapter 51, §51.96851.

The new sections affect the Texas Education Code, Chapter 61, Subchapters G and H.

§4.101. Purpose.

To foster a transparent student learning environment and to facilitate the transfer of credits among all institutions of higher education, each public institution of higher education shall identify and adopt measurable learning outcomes for undergraduate courses (exclusive of independent studies, labs, practicums, or discussion sections) offered by the institution.

§4.102. Authority.

Texas Education Code, Chapter 51, Subchapter Z, §51.96851 and §51.974(g) authorize the Texas Higher Education Coordinating Board

to adopt rules necessary to administer these sections. The Texas Education Code, §61.051, describes the Board's role in the Texas system of higher education.

§4.103. Definitions.

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

(1) Institutions of Higher Education or Institution--Any public technical institute, public junior college, public senior college or university, medical or dental unit, or other agency of higher education as defined in Texas Education Code, §61.003.

(2) Measurable Learning Outcomes--The knowledge and skills a student is expected to acquire or achieve upon completion of a course. Measurement may be quantitative or qualitative, depending upon the subject matter of the course.

(3) Undergraduate Course--Any lower- or upper-division credit course offered to five or more students. This includes on-campus, off-campus, distance education, and dual-credit courses (including those taught on high school campuses). It excludes courses with highly variable subject content that are tailored specifically to individual students, such as Independent Study and Directed Reading courses. It excludes laboratory, practicum, or discussion sections that are intrinsic and required parts of larger lecture courses and are directly supervised by the same instructor(s) of record for those large courses.

§4.104. Measurable Learning Outcomes for Undergraduate Courses.

(a) Each public institution of higher education shall identify, adopt, and make available for public inspection measurable learning outcomes for undergraduate courses (exclusive of independent studies, labs, practicums, or discussion sections) offered by the institution.

(b) The measurable learning outcomes shall be kept on file for at least two years after the course is taught and made available for public inspection upon request to the Provost's office of each institution.

(c) If the institution is in compliance with Subchapter N, §§4.225 - 4.228 of this chapter (relating to Public Access to Course Information), then the institution is also in compliance with this section since learning outcomes are required to be a part of each course syllabus posted on the institution's website.

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

Filed with the Office of the Secretary of State on August 29, 2011.

TRD-201103501

Bill Franz

General Counsel

Texas Higher Education Coordinating Board

Proposed date of adoption: October 27, 2011

For further information, please call: (512) 427-6114



CHAPTER 21. STUDENT SERVICES SUBCHAPTER A. GENERAL PROVISIONS

19 TAC §21.11

The Texas Higher Education Coordinating Board (Coordinating Board) proposes new §21.11, concerning General Provisions.

Specifically, this new section is proposed to reflect a new requirement for state financial assistance, as mandated by Senate Bill 851, passed by the 82nd Texas Legislature, Regular Session. Senate Bill 851 calls for the Coordinating Board, working with financial aid personnel at institutions of higher education, to set a uniform priority application deadline for state financial assistance for an academic year. The new deadline will apply beginning with aid awarded for the 2013-2014 academic year, only to general academic teaching institutions. The deadline is not to serve as a determination of eligibility for state aid.

Mr. Dan Weaver, Assistant Commissioner for Business and Support Services, has determined that for each year of the first five years the amendments are in effect, there will be no significant fiscal implications to state or local government as a result of enforcing or administering the rules.

Mr. Weaver has also determined that for each year of the first five years the amendments are in effect the public benefit anticipated as a result of administering the sections will be a clearer understanding of the requirements and restrictions of benefits under this subchapter. There is no effect on small businesses. There are no anticipated economic costs to persons who are required to comply with the section as proposed. There is no impact on local employment.

Comments on the proposal may be submitted to Dan Weaver, P.O. Box 12788, Austin, Texas 78711, (512) 427-6165, Dan.Weaver@thecb.state.tx.us. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register*.

The new section is proposed under the Texas Education Code, §56.007 which provides the Coordinating Board authority to adopt rules related to the establishment of an application deadline for state financial aid programs.

The new section affects Texas Education Code, Chapter 56, Subchapters E, M, P, and Q, and Chapter 61, Subchapters F and L.

§21.11. Priority Deadline for Applying for State Aid.

(a) All general academic teaching institutions, in awarding financial assistance for the 2013-2014 academic year or later, shall use March 15 as their priority application deadline for application for state financial assistance for the following year.

(b) The priority deadline is not to serve as a determination of eligibility for state financial assistance, but otherwise eligible students who apply on or before the deadline shall be given priority consideration for available state financial assistance before other applicants.

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

Filed with the Office of the Secretary of State on August 29, 2011.

TRD-201103502

Bill Franz

General Counsel

Texas Higher Education Coordinating Board

Proposed date of adoption: October 27, 2011

For further information, please call: (512) 427-6114



TITLE 22. EXAMINING BOARDS

PART 1. TEXAS BOARD OF ARCHITECTURAL EXAMINERS

CHAPTER 3. LANDSCAPE ARCHITECTS SUBCHAPTER A. SCOPE; DEFINITIONS

22 TAC §3.12

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

The Texas Board of Architectural Examiners proposes the repeal of §3.12, concerning Joint Advisory Committee of the Texas Board of Architectural Examiners and the Texas Board of Professional Engineers. The repeal is necessary to eliminate the implementation of the joint advisory committee of architecture, engineering and landscape architecture. The proposed repeal is responsive to House Bill 2284 by the 82nd Legislature. The Bill repeals §1051.212 of the Texas Occupations Code, which was the enabling legislation for the creation and functions of the joint advisory committee. The repeal is effective September 1, 2011. In the absence of authority delegated by the legislature, the board had no power or authority to continue the operations of the joint advisory committee.

Cathy L. Hendricks, Executive Director, Texas Board of Architectural Examiners, has determined that for the first five-year period the repeal is in effect, the repeal will have no fiscal impact upon state government and no fiscal impact on local government.

Ms. Hendricks also has determined that for the first five-year period after the rule is repealed the public will benefit from the removal of obsolete and unauthorized rules within the administrative code.

The repeal of the rule will have no impact upon individuals required to comply with it. The repeal will have no fiscal impact on small or micro-business. Therefore no Economic Impact Statement or Regulatory Flexibility Analysis is required.

Comments may be submitted to Cathy L. Hendricks, ASID/IIDA, Executive Director, Texas Board of Architectural Examiners, P.O. Box 12337, Austin, Texas 78711-2337.

The repeal is proposed pursuant to §1051.202, Texas Occupations Code, which provides the Texas Board of Architectural Examiners with authority to adopt rules to implement Chapter 1051, Texas Occupations Code.

The proposed repeal does not affect any other statutes.

§3.12. Joint Advisory Committee of the Texas Board of Architectural Examiners and the Texas Board of Professional Engineers.

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

Filed with the Office of the Secretary of State on August 29, 2011.

TRD-201103487

Cathy L. Hendricks, RID, ASID/IIDA

Executive Director

Texas Board of Architectural Examiners

Earliest possible date of adoption: October 9, 2011

For further information, please call: (512) 305-9040

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PART 6. TEXAS BOARD OF PROFESSIONAL ENGINEERS

CHAPTER 131. ORGANIZATION AND ADMINISTRATION

SUBCHAPTER A. ORGANIZATION OF THE BOARD

22 TAC §131.15

The Texas Board of Professional Engineers (Board) proposes amendments to §131.15, regarding Committees.

The proposed rule change removes the Joint Advisory Committee with the Texas Board of Architectural Examiners pursuant to the changes made to the Texas Engineering Practice Act by House Bill 2284 in the 82nd legislative session.

David Howell, P.E., Director of Licensing for the Board, has determined that for the first five-year period the proposed amendment is in effect there is no adverse fiscal impact for the state and local government as a result of enforcing or administering the section as amended. There is no additional cost to licensees or other individuals. There is no adverse fiscal impact to the estimated 1,000 small or 6,400 micro businesses regulated by the Board. A Regulatory Flexibility Analysis is not needed because there is no adverse economic effect to small or micro businesses.

Mr. Howell also has determined that for the first five years the proposed amendment is in effect, the public benefit anticipated as a result of enforcing the proposed amendment is an improvement in the flexibility of the licensure processes and the ability to issue international temporary licenses to qualified engineers.

Any comments or request for a public hearing may be submitted no later than 30 days after the publication of this notice to David Howell, P.E., Director of Licensing, Texas Board of Professional Engineers, 1917 IH-35 South, Austin, Texas 78741, faxed to his attention at (512) 440-0417 or sent by email to rules@tbpe.state.tx.us.

The amendment is proposed pursuant to the Texas Engineering Practice Act, Occupations Code §1001.202, which authorizes the board to make and enforce all rules and regulations and by-laws consistent with the Act as necessary for the performance of its duties, the governance of its own proceedings, and the regulation of the practice of engineering in this state.

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

§131.15. *Committees.*

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

[(e) Joint Advisory Committee on Practice of Engineering and Architecture. Pursuant to §1001.216 of the Act, the advisory committee shall work to resolve issues that result from the overlap between activities that constitute the practice of engineering and those that constitute the practice of architecture. The chair shall appoint three members of the board and one practicing architectural engineer to the Joint Advisory Committee on Practice of Engineering and Architecture.]

[(+) Members of the advisory committee serve staggered six-year terms with the terms of one or two members appointed by the board expiring each odd-numbered year.]

[(2) The advisory committee shall meet at least twice a year.]

[(3) The advisory committee shall assist each agency in protecting the public rather than advancing the interests of either agency or the profession it regulates.]

[(4) The advisory committee shall issue advisory opinions to the board and to the Texas Board of Architectural Examiners on matters relating to the practice of engineering and the practice of architecture, including:]

[(A) opinions on whether certain activities constitute the practice of engineering or the practice of architecture;]

[(B) specific disciplinary proceedings initiated by either agency; and]

[(C) the need for persons working on particular projects to be licensed by the board or registered by the Texas Board of Architectural Examiners.]

[(5) If the advisory committee issues an advisory opinion to the board and/or the Texas Board of Architectural Examiners on a matter, that agency shall notify the committee of the final action taken with regard to the matter. The advisory committee shall consider the action taken by the agency on the matter in any advisory opinion subsequently issued by the committee on a related matter.]

[(6) The board and the Texas Board of Architectural Examiners shall enter into a memorandum of understanding regarding the advisory committee that includes the composition and purpose of the committee.]

[(7) The joint advisory committee is abolished on September 1, 2011.]

(e) [(f)] Committee actions. The actions of the committees are recommendations only and are not binding until ratification by the board at a regularly scheduled meeting or if authorized by rule.

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

Filed with the Office of the Secretary of State on August 26, 2011.

TRD-201103460

Lance Kinney, P.E.

Executive Director

Texas Board of Professional Engineers

Earliest possible date of adoption: October 9, 2011

For further information, please call: (512) 440-7723

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CHAPTER 137. COMPLIANCE AND PROFESSIONALISM

SUBCHAPTER A. INDIVIDUAL AND ENGINEER COMPLIANCE

22 TAC §137.19

The Texas Board of Professional Engineers (Board) proposes new §137.19, regarding Engineers Qualified to be Texas Windstorm Inspectors.

The proposed new rule implements changes made to the Texas Engineering Practice Act by House Bill 3 in the 82nd Special Legislative Session, which requires the Board to establish a list of

professional engineers who are qualified to perform engineering services related to design of structures in windstorm areas. Only professional engineers on this roster will be allowed to request appointment by the Texas Department of Insurance as Qualified Windstorm Inspectors.

David Howell, P.E., Director of Licensing for the Board, has determined that for the first five-year period the proposed new rule is in effect there is no adverse fiscal impact for the state and local government as a result of enforcing or administering the section as proposed. There is no additional cost to licensees or other individuals. There is no adverse fiscal impact to the estimated 1,000 small or 6,400 micro businesses regulated by the Board. A Regulatory Flexibility Analysis is not needed because there is no adverse economic effect to small or micro businesses.

Mr. Howell also has determined that for the first five years the proposed new section is in effect, the public benefit anticipated as a result of enforcing the proposal is an improvement in the records of the agency regarding licensed engineers.

Any comments or request for a public hearing may be submitted no later than 30 days after the publication of this notice to David Howell, P.E., Director of Licensing, Texas Board of Professional Engineers, 1917 IH-35 South, Austin, Texas 78741, faxed to his attention at (512) 440-0417 or sent by email to rules@tbpe.state.tx.us.

The new rule is proposed pursuant to the Texas Engineering Practice Act, Occupations Code §1001.202, which authorizes the board to make and enforce all rules and regulations and by-laws consistent with the Act as necessary for the performance of its duties, the governance of its own proceedings, and the regulation of the practice of engineering in this state and §1001.652 regarding Qualifications; Roster.

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

§137.19. Engineers Qualified to be Texas Windstorm Inspectors.

(a) Pursuant to §1001.652 of the Act, the board shall create and maintain a roster of windstorm inspector candidates composed of licensed engineers who have demonstrated the knowledge, understanding, and professional competence to be qualified to provide engineering design services related to compliance with applicable windstorm certification standards under Subchapter F, Chapter 2210, Insurance Code.

(b) To be considered qualified for the roster described under subsection (a) of this section, a licensed engineer must demonstrate sufficient competence in each of the following subject areas:

(1) Applicable building codes and design standards for the design and construction of buildings or other structures located in high wind areas;

(2) Determination of wind loads on buildings and other structures;

(3) Lateral wind load resisting systems;

(4) Vertical wind load resisting systems;

(5) Wood frame structure design;

(6) Roof and wall framing connections to the foundation;

(7) Foundation design; and

(8) Roof cladding and exterior wall cladding design.

(c) A license holder may request that the Executive Director or designee review his or her competency to be placed on the roster in

subsection (a) of this section. In order to be approved to be placed on the roster, a licensed engineer must:

(1) Receive a passing score on the Wind Design Competence Verification, and

(2) Demonstrate competence in the subject areas specified in subsection (b) of this section by providing one or more of the following:

(A) a transcript from an institution listed in §133.31(a) of this chapter (relating to Educational Requirements for Applicants) showing coursework in the subject area;

(B) a supplementary experience record documenting at least 2 years of experience in the subject area verified by at least one PE reference provider who has documented competence in a related engineering discipline; or

(C) verification of successful passage of a principles and practice of engineering examination as specified in §133.67 of this chapter (relating to Examination on the Principles and Practice of Engineering), which tests competence in the subject area.

(d) The Wind Design Competence Verification shall be self-administered by the applicant and shall be furnished by the board. The verification will consist of questions to verify an applicant's knowledge in applicable building codes and design standards for the design and construction of buildings or other structures located in high wind areas. Each licensee requesting to be placed on the roster in subsection (a) of this section must submit this verification in a format prescribed by the board with the request and must receive a score of at least 90%.

(e) If the Executive Director or designee determines that the licensed engineer has not demonstrated sufficient competency as set forth above to be placed on the roster, the licensed engineer shall be notified of the denial and the reasons therefore.

(1) Within 15 working days after receiving the notice, which shall be sent by verifiable means of delivery, the licensed engineer may file a response addressing the reasons for the denial.

(2) If no response is received with fifteen working days, the decision is final effective the following day.

(3) If a response is timely received, the Executive Director or designee will consider the matters presented in the response and may either place the licensed engineer on the roster or affirm the denial on the roster. The licensed engineer will be notified by the same means specified in paragraphs (1) and (2) of this subsection.

(4) Any candidate may appeal the roster denial decision to the Board. Board review of and action on the roster denial decision shall be in accordance with §133.93 of this chapter (relating to Personal Interviews of Applicants).

(f) A licensed engineer may be removed from the roster in subsection (a) of this section for any violation of the Texas Engineering Practice Act or Board rules. A removal action is subject to and will be governed by the provisions and procedures in Chapter 139 of this title (relating to Enforcement).

(g) If a licensed engineer is removed from the roster under subsection (a) of this section, a licensed engineer may reapply to be on the roster. To be reinstated on the roster, the licensed engineer must be in good standing with TDI and the Board, have no pending or ongoing enforcement actions with either TDI or the Board, and provide additional documentation or other information sufficient to demonstrate that reinstatement to the roster serves the public interest.

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

Filed with the Office of the Secretary of State on August 26, 2011.

TRD-201103461

Lance Kinney, P.E.

Executive Director

Texas Board of Professional Engineers

Earliest possible date of adoption: October 9, 2011

For further information, please call: (512) 440-7723



SUBCHAPTER C. PROFESSIONAL CONDUCT AND ETHICS

22 TAC §137.51

The Texas Board of Professional Engineers (Board) proposes amendments to §137.51, regarding General Practice.

The proposed rule change clarifies that license holders will respond to the board within 21 days or as specified in board correspondence.

C. W. Clark, P.E., Director of Compliance and Enforcement for the Board, has determined that for the first five-year period the proposed amendment is in effect there is no adverse fiscal impact for the state and local government as a result of enforcing or administering the section as amended. There is no additional cost to licensees or other individuals. There is no adverse fiscal impact to the estimated 1,000 small or 6,400 micro businesses regulated by the Board. A Regulatory Flexibility Analysis is not needed because there is no adverse economic effect to small or micro businesses.

Mr. Clark also has determined that for the first five years the proposed amendment is in effect, the public benefit anticipated as a result of enforcing the proposed amendment is an improvement in the timeline for responses to enforcement requests and therefore quicker resolution of complaints filed by the public of Texas.

Any comments or request for a public hearing may be submitted no later than 30 days after the publication of this notice to C. W. Clark, P.E., Director of Compliance and Enforcement, Texas Board of Professional Engineers, 1917 IH-35 South, Austin, Texas 78741, faxed to his attention at (512) 440-5715 or sent by email to rules@tbpe.state.tx.us.

The amendment is proposed pursuant to the Texas Engineering Practice Act, Occupations Code §1001.202, which authorizes the board to make and enforce all rules and regulations and by-laws consistent with the Act as necessary for the performance of its duties, the governance of its own proceedings, and the regulation of the practice of engineering in this state and §1001.207 regarding rules for Standards of Conduct and Ethics.

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

§137.51. General Practice.

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

(c) A license holder shall respond to the board in writing to all written requests for information regarding [promptly answer] all inquiries [concerning matters] under the jurisdiction of the board within 21 days of receipt or by the date specified in board correspondence. A

license holder[- and] shall fully comply with final decisions and orders of the board. Failure to comply with these matters will constitute a separate offense of misconduct and will subject the license holder to any of the penalties provided under §1001.451(2), (3), or (4) and §1001.502 of the Act.

(d) - (e) (No change.)

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

Filed with the Office of the Secretary of State on August 26, 2011.

TRD-201103462

Lance Kinney, P.E.

Executive Director

Texas Board of Professional Engineers

Earliest possible date of adoption: October 9, 2011

For further information, please call: (512) 440-7723



CHAPTER 139. ENFORCEMENT SUBCHAPTER C. ENFORCEMENT PROCEEDINGS

22 TAC §139.35

The Texas Board of Professional Engineers (Board) proposes amendments to §139.35, regarding Sanctions and Penalties.

The proposed rule change modifies some sanctions, adds two additional sanctions, and adds a note to four subsections of the rule, subsections (b) - (e), to clarify how the ultimate sanction could be higher or lower depending on the results of the investigation. For subsection (b) the note also stated that a suspension could be partially or completely probated depending on other investigative factors.

C.W. Clark, P.E., Director of Compliance and Enforcement for the Board, has determined that for the first five-year period the proposed amendment is in effect there is no adverse fiscal impact for the state and local government as a result of enforcing or administering the section as amended. There is no additional cost to licensees or other individuals. There is no adverse fiscal impact to the estimated 1,000 small or 6,400 micro businesses regulated by the Board. A Regulatory Flexibility Analysis is not needed because there is no adverse economic effect to small or micro businesses.

Mr. Clark also has determined that for the first five years the proposed amendment is in effect, the public benefit anticipated as a result of enforcing the proposed amendment is an improvement in the timeline for responses to enforcement requests and therefore quicker resolution of complaints filed by the public of Texas.

Any comments or request for a public hearing may be submitted no later than 30 days after the publication of this notice to C.W. Clark, P.E., Director of Compliance and Enforcement, Texas Board of Professional Engineers, 1917 IH-35 South, Austin, Texas 78741, faxed to his attention at (512) 440-5715 or sent by email to rules@tbpe.state.tx.us.

The amendment is proposed pursuant to the Texas Engineering Practice Act, Occupations Code §1001.202, which authorizes the board to make and enforce all rules and regulations and by-laws consistent with the Act as necessary for the performance of

its duties, the governance of its own proceedings, and the regulation of the practice of engineering in this state and §1001.207 regarding rules for Standards of Conduct and Ethics.

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

§139.35. *Sanctions and Penalties.*

(a) (No change.)

(b) The following is a table of suggested sanctions the board may impose against license holders for specific violations of the Act or board rules. NOTE: In consideration of subsection (a)(1) - (6) of this section, the sanction issued could be less than or greater than the suggested sanctions shown in the following table. Also, for those suggested sanctions that list 'suspension', all or any portion of the sanction could be probated depending on the severity of each violation and the specific case evidence.[:]

Figure: 22 TAC §139.35(b)

(c) The following is a table of suggested sanctions that may be imposed against a person or business entity for specific violations of the Act or board rules. NOTE: In consideration of subsection (a)(1) - (6) of this section, the sanction issued could be less than or greater than the suggested sanctions shown in the following table.[:]

Figure: 22 TAC §139.35(c) (No change.)

(d) The following is a table of suggested sanctions that may be imposed against a person or business entity for violations of the Act or board rules involving firm registration. NOTE: In consideration of subsection (a)(1) - (6) of this section, the sanction issued could be less than or greater than the suggested sanctions shown in the following table.[:]

Figure: 22 TAC §139.35(d) (No change.)

(e) The following is a table of suggested sanctions that may be imposed against a governmental entity and/or its representative for violations of the Act or board rules. NOTE: In consideration of subsection (a)(1) - (6) of this section, the sanction issued could be less than or greater than the suggested sanctions shown in the following table. Injunctive action could also result from a second or later occurrence of these violations.[:]

Figure: 22 TAC §139.35(e)

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

Filed with the Office of the Secretary of State on August 26, 2011.

TRD-201103463

Lance Kinney, P.E.

Executive Director

Texas Board of Professional Engineers

Earliest possible date of adoption: October 9, 2011

For further information, please call: (512) 440-7723



PART 24. TEXAS BOARD OF VETERINARY MEDICAL EXAMINERS

CHAPTER 575. PRACTICE AND PROCEDURE

22 TAC §575.26

(Editor's note: The text of the following section proposed for repeal will not be published. The section may be examined in the offices of the Texas Board of Veterinary Medical Examiners or in the Texas Register

office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin, Texas.)

The Texas Board of Veterinary Medical Examiners (Board) proposes the repeal of §575.26, concerning Complaint Form.

The repeal of §575.26 is necessary because the rule is obsolete, no longer necessary, and redundant of the amendment proposed for §575.27. The limited methods through which the public could deliver a complaint to the Board as set out in §575.26 do not reflect the modern realities of electronic communication by facsimile and email. The location of the complaint form, which is set out in §575.26, is proposed to be added as an amendment to §575.27, which is contemporaneously proposed elsewhere in this issue of the *Texas Register*.

Nicole Oria, Executive Director, has determined that for each year of the first five years the repeal will be in effect, there are no foreseeable implications related to cost or revenues of the state or local governments expected as a result of enforcing or administering the repeal. Ms. Oria has also determined that there would be no adverse effect on small businesses, micro businesses, or local or state employment. Ms. Oria has also determined that there would be no probable economic cost to persons required to comply with the repeal as proposed.

Ms. Oria has also determined that for each year of the first five years the repeal is in effect, the anticipated public benefit of repealing the rule will be the modernization and clarification of the methods through which the Board accepts complaints, as well as the simplification of the Board's rules on accepting complaints. This will make it easier for members of the public to complain to the Board.

The Texas Board of Veterinary Medical Examiners invites comments on the proposed amendment to the rule from any member of the public. A written statement should be mailed or delivered to Loris Jones, Texas Board of Veterinary Medical Examiners, 333 Guadalupe, Ste. 3-810, Austin, Texas 78701-3942, by facsimile (FAX) to (512) 305-7574, or by e-mail to vet.board@tbvme.state.tx.us. Comments will be accepted for 30 days following publication in the *Texas Register*.

The repeal is proposed under the authority of the Veterinary Licensing Act, Occupations Code, §801.151(a) which states that the Board may adopt rules necessary to administer the chapter.

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

§575.26. *Complaint Form.*

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

Filed with the Office of the Secretary of State on August 26, 2011.

TRD-201103485

Loris Jones

Executive Assistant

Texas Board of Veterinary Medical Examiners

Earliest possible date of adoption: October 9, 2011

For further information, please call: (512) 305-7563



22 TAC §575.27

The Texas Board of Veterinary Medical Examiners (Board) proposes an amendment to §575.27, concerning Complaints--Receipt.

The amendment to §575.27 seeks to reflect the modern reality of the diverse communications technologies through which the Board accepts complaints. The proposed rule sets out how a member of the public can obtain the Board's complaint form--either in hard-copy from the Board's offices or downloaded from the Board's website. This information had previously appeared in §575.26, along with a requirement that the complainant deliver the completed, signed complaint form to the Board either by physical delivery or by mail. The proposed rule does not incorporate the limitations from §575.26 on how the complaint can be physically submitted to the Board, so as to not preclude would-be complainants from submitting completed, signed complaint forms via email or facsimile, in addition to mail or hand delivery. In conjunction with this proposal, the Board is also proposing the repeal of §575.26, which is also published elsewhere in this issue of the *Texas Register*.

Nicole Oria, Executive Director, has determined that for each year of the first five years that the rule is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the rule as proposed. Ms. Oria has also determined that there will be no reductions in costs and no loss in revenue to the state or to local governments as a result of enforcing or administering the rule. Ms. Oria has also determined that the amendment to the rule will have no local employment impact.

Ms. Oria has also determined that for each year of the first five years the rule is in effect, the anticipated public benefit will be the modernization and clarification of the methods through which the Board accepts complaints, as well as the simplification of the Board's rules on accepting complaints, to make it easier for members of the public to complain to the Board allowing members of the public seeking to make a complaint to the Board. Ms. Oria has determined that there will be no economic cost to individuals required to comply with the rule, and no impact on local employment or on small businesses and micro businesses.

The Texas Board of Veterinary Medical Examiners invites comments on the proposed amendment to the rule from any member of the public. A written statement should be mailed or delivered to Loris Jones, Texas Board of Veterinary Medical Examiners, 333 Guadalupe, Ste. 3-810, Austin, Texas 78701-3942, by facsimile (FAX) to (512) 305-7574, or by e-mail to vet.board@tbvme.state.tx.us. Comments will be accepted for 30 days following publication in the *Texas Register*.

The amendment is proposed under the authority of the Veterinary Licensing Act, Occupations Code, §801.151(a) which states that the Board may adopt rules necessary to administer the chapter.

No other statutes, articles or codes are affected by the proposal. §575.27. *Complaints--Receipt*.

(a) Complaints against licensees.

(1) All complaints filed by the public against Board [board] licensees must be in writing on a complaint form provided by the board and signed by the complainant. The Board-approved complaint form can be obtained free of charge from the Board office or downloaded from the Board's website at <http://www.tbvme.state.tx.us>. If a complaint is transmitted to the Board [board] orally or by means other than in writing and the complaint alleges facts showing a continuing of imminent threat to the public welfare, the requirement of a written complaint may be waived until later in the investigative process.

(2) The Board [board] may file a complaint on its own initiative.

(3) Complaints by the Board [board's] enforcement section shall be initiated by the opening of a complaint file.

(4) Anonymously [~~Anonymous~~] written complaints will normally not be investigated, but may be investigated if sufficient information exists for the Board [board] to file a complaint under paragraph (2) of this subsection.

(5) The Board [board] shall utilize violation code numbers to distinguish between categories of complaints.

(b) Complaints against non-licensees. Complaints against persons alleged to be practicing veterinary medicine without a license may be investigated and resolved informally by the executive director with the consent of the non-licensee, or the Board may utilize formal cease and desist procedures specified in §801.508, Occupations Code. Complaints not resolved by the executive director may be referred to a local prosecutor or the attorney general for legal action, as well as addressed in §801.508 of the Occupations Code.

(c) Report to the Board [board] of dismissed complaints. The executive director or the executive director's designee shall advise the Board [board] at each scheduled meeting of the complaints dismissed since the last meeting.

(d) Use of Private Investigators. The executive director may approve the use of private investigators to assist in investigation of complaints where the use of Board [board] investigators is not feasible or economical or where private investigators could provide valuable assistance to the Board [board] investigators. Private investigators may be utilized in cases involving honesty, integrity and fair dealing; reinstatement applications; solicitation; fraud; dangerous drugs and controlled substances; and practicing veterinary medicine without a license. Private investigators will be utilized in accordance with existing purchasing rules of the Comptroller of Public Accounts.

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

Filed with the Office of the Secretary of State on August 26, 2011.

TRD-201103486

Loris Jones

Executive Assistant

Texas Board of Veterinary Medical Examiners

Earliest possible date of adoption: October 9, 2011

For further information, please call: (512) 305-7563



TITLE 34. PUBLIC FINANCE

PART 1. COMPTROLLER OF PUBLIC ACCOUNTS

CHAPTER 9. PROPERTY TAX ADMINISTRATION

SUBCHAPTER B. PERFORMANCE AUDIT ADMINISTRATION

34 TAC §9.301

The Comptroller of Public Accounts proposes an amendment to §9.301, concerning appraisal district reviews. Subsection (e) is being amended to change the date for providing draft reports of review findings and recommendations to provide additional time for conducting the reviews and developing recommendations. This subsection is also being amended to provide for delivery of reports and recommendations by electronic publication.

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

Mr. Heleman also has determined that for each year of the first five years the rule is in effect, the public benefit anticipated as a result of enforcing the rule will be by enhancing the procedures for disseminating appraisal district reviews. The proposed amendment would have no fiscal impact on small businesses. There is no significant anticipated economic cost to individuals who are required to comply with the proposed rule.

Comments on the amendment may be submitted to Deborah Cartwright, Director, Property Tax Assistance Division, P.O. Box 13528, Austin, Texas 78711-3528. Comments must be received no later than 30 days from the date of publication of the proposal in the *Texas Register*.

The amendment is proposed under Tax Code, §5.102(a) which allows the comptroller to adopt rules to establish procedures for conducting and scoring reviews after consulting with the comptroller's Property Value Study Advisory Committee.

This section implements Tax Code, §5.102(a).

§9.301. *Appraisal District Reviews.*

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

- (1) Comptroller--The Texas Comptroller of Public Accounts or the comptroller's designee.
- (2) District--A county appraisal district.
- (3) Division--The Property Tax Assistance Division of the Office of the Comptroller of Public Accounts.
- (4) Generally accepted appraisal standards, procedures, and methodology--Standards and procedures adopted or recommended by the International Association of Assessing Officers (IAAO) concerning appraisal, contracting, personnel, and administration of ad valorem taxation, and The Appraisal Foundation's Uniform Standards of Professional Appraisal Practice.
- (5) Review--The comptroller's review of the governance of each appraisal district, taxpayer assistance provided, and the operating and appraisal standards, procedures, and methodology used by each appraisal district as required by Tax Code, §5.102.
- (6) Score--The measure of performance indicated at the conclusion of a review.
- (7) Study--The property value studies required by Government Code, §403.302 and Tax Code, §5.10.
- (8) Remedial action--Activities and decisions made by the board of directors of a district that demonstrate awareness of and concern for implementing the review's recommendations and actions taken which demonstrate significant progress towards implementing the recommendations in a timely manner.

(b) Biennial Review. A review of every district shall be conducted once every two years according to a schedule in which approximately one-half of the districts are subject to reviews each year. The comptroller may determine the schedule of reviews and assignments of districts based on considerations which include, but are not limited to, the efficient use of comptroller resources and coordination with the schedule for conducting the study.

(c) Scope of Review. The review shall be based on requirements of the Tax Code, comptroller rules, other laws, and generally accepted appraisal standards, procedures and methodology. The division shall develop questions, conduct physical inspections of property and appraisal records, and use other methods that are designed to determine compliance with these requirements and to develop a score. Compliance with §§9.3001, 9.3002, 9.3003, and 9.3004 of this title (relating to Appraisal Cards; Tax Maps; Uniform Tax Records System; and Appraisal Records of All Property) is mandatory and required to obtain a passing score.

(d) Scores. The results of a district review shall be scored at the conclusion of the review. Scores shall include pass or fail determinations for compliance requirements deemed mandatory by the comptroller. A district must pass all mandatory compliance requirements in order for a school district to be in compliance with the requirements of Government Code, §403.3011(2)(D). A recommendation shall be made by the division for each indication of non-compliance. Scores for other requirements shall be divided into the following categories:

- (1) governance;
- (2) taxpayer assistance;
- (3) district operations; and
- (4) appraisal standards, procedures and methodology.

(e) Reporting. The division shall provide a draft report of the review findings and recommendations to the district's chief appraiser by September 1 [June 1] or as soon thereafter as practicable by United States Postal Service first-class mail or by e-mail. The review for each district shall be completed by the division no later than December 31. As soon thereafter as practicable, the division shall publish on the comptroller's website the comptroller's findings and recommendations for improvement resulting from the review. At or reasonably promptly after the findings and recommendations for improvement resulting from the review are published on the comptroller's website, the comptroller shall, by United States Postal Service first-class mail or by e-mail, notify the following that the findings and recommendations have been published: [the comptroller shall deliver by regular, first-class mail to] the district's chief appraiser and board of directors and the superintendent and board of trustees of each school district participating in the district [the comptroller's recommendations for improvement resulting from the review].

(f) Compliance with review recommendations. The district and its board of directors shall take remedial action reasonably designed to ensure substantial compliance with each recommendation in the review within 12 months from the date that the results of the review were delivered as required by this section. The comptroller shall determine substantial compliance during December of the year following the year of the review. Substantial compliance may be determined if the district has taken remedial action for each recommendation in the review. If the comptroller determines that the district has not achieved substantial compliance, the Texas Department of Licensing and Regulation shall be notified and provided copies of the results and recommendations of the review within 30 days of the comptroller's determination.

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

Filed with the Office of the Secretary of State on August 29, 2011.

TRD-201103488

Ashley Harden

General Counsel

Comptroller of Public Accounts

Earliest possible date of adoption: October 9, 2011

For further information, please call: (512) 475-0387



SUBCHAPTER I. VALIDATION PROCEDURES

34 TAC §9.4031

The Comptroller of Public Accounts proposes an amendment to §9.4031, concerning the manual for discounting oil and gas income. This section is being amended to implement Senate Bill 1505, 82nd Legislature, 2011, effective January 1, 2012, which changes the method to be used in the appraisal of oil and gas in place that is appraised by a method that takes into account the future income from the sale of oil or gas to be produced from the interest. The section is also being amended to separately identify the appendices and to delete the list of references.

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

Mr. Heleman also has determined that for each year of the first five years the rule is in effect, the public benefit anticipated as a result of enforcing the rule will be by improving the administration of property taxation and the appraisal of properties with oil and natural gas interest. The proposed amendment would have no fiscal impact on small businesses. There is no significant anticipated economic cost to individuals who are required to comply with the proposed rule.

Comments on the amendment may be submitted to Deborah Cartwright, Director, Property Tax Assistance Division, P.O. Box 13528, Austin, Texas 78711-3528. Comments must be received no later than 30 days from the date of publication of the proposal in the *Texas Register*.

The amendment is proposed under Senate Bill 1505's amendment to Tax Code, §23.175 which requires the comptroller by rule to develop and distribute to each appraisal office appraisal manuals that specify the formula to be used in computing the limit on the price for an interest used in the second through the sixth year of an appraisal and the methods and procedures to discount future income from the sale of oil or gas from the interest to present value.

The amendment implements Tax Code, §23.175(b).

§9.4031. *Manual for Discounting Oil and Gas Income.*

(a) The Comptroller of Public Accounts adopts a Manual for Discounting Oil and Gas Income, with text as follows.

(b) Basis of the Manual for Discounting Oil and Gas Income.

(1) Property Tax Code, §23.175, enacted by the 73rd Legislature, 1993, requires the comptroller's office to develop and distribute to each appraisal district an appraisal manual that specifies the methods and procedures to calculate the present value of oil and gas properties

using discounted future income. The 82nd Legislature, 2011, amended Property Tax Code, §23.175 to require the comptroller's office to specify the formula to be used in computing the limit on the price for an interest used in the second through the sixth year of an appraisal, beginning with the 2012 tax year. The formula is specified in subsection (p) of this section (Appendix 5).

(2) Section 23.175 also directs each appraisal district to use the specified methods and procedures.

(c) Introduction.

(1) This manual explains the concept of discounting, the discounted cash flow (DCF) equation, DCF appraisal, and three acceptable techniques for estimating a "discount rate" in the DCF method. The numbers used in the calculations are for illustrative purposes only.

(2) The three acceptable techniques for estimating discount rates are:

(A) market surveys;

(B) oil and gas sales analysis; and

(C) weighted average cost of capital (WACC), also called "band of investment."

(3) Together, these techniques provide a range of discount rates. The appraiser must estimate the risk for each oil or gas property to assign a discount rate from the discount rate range.

(4) Subsections (l) - (o) of this section (Appendices 1 - 4) [The appendices] provide examples to illustrate DCF appraisal, the WACC estimating technique, a standard deviation analysis, and a description of property specific risk factors.

(d) Discounting.

(1) Because investors prefer immediate cash returns over future cash returns, investors pay less for future cash flows--they "discount" them. The amount investors discount the future cash flows depends on the length of time until the cash is due, the amount of risk that the cash will not be tendered when due, and the rate of return available from other comparably risky investments. This discounting procedure converts future income to present value, usually using annual discount factors. The discount factor for each successive year declines to reflect the reduced value of revenue received in the future. The appraiser calculates the present worth of the forecast revenue stream by multiplying the projected net income (cash flow) for each year by the calculated discount factor for that year. These discount factors are derived from the discount rate (also known as the yield rate), and the process is known as discounted cash flow (DCF) analysis.

(2) The International Association of Assessing Officers in Property Appraisal and Assessment Administration (1990) defines "discount rate" as: "The rate of return on investment; the rate an investor requires to discount future income to its present worth. It is made up of an interest rate and an equity yield rate. Theoretical factors considered in setting a discount rate are the safe rate earned from a completely riskless investment (this rate may reflect anticipated loss of purchasing power due to inflation) and compensation for risk, lack of liquidity, and investment management expenses. The discount rate is most often estimated by band-of-investment analysis or a sales comparison analysis that estimates typical internal rates of return."

(3) The discount rate is a key variable in discounted cash flow analysis, making correct rate selection crucial. The market's expectations are critical when choosing a discount rate. According to the Appraisal of Real Estate by the Appraisal Institute (1992): "The selection of the yield discount rate is critical to DCF analysis. To select an appropriate rate an appraiser must verify and interpret the attitudes

and expectations of market participants, including buyers, sellers, advisers, and brokers. Although the actual yield on an investment cannot be calculated until the investment is sold, an investor may set a target yield for the investment before or during ownership. Historical yield rates derived from comparable sales may be relevant, but they reflect past, not future, benefits in the mind of the investor and may not be reliable indicators of current yield. Therefore, the selection of yield rates for discounting cash flows should focus on the prospective or forecast yield rates anticipated by typical buyers and sellers of comparable investments. An appraiser can verify investor assumptions directly by interviewing the parties to comparable sales transactions or indirectly by estimating the income expectancy and likely reversion for a comparable property and deriving a prospective yield rate."

(e) Discounted cash flow appraisal.

(1) The DCF method is versatile and widely used to appraise income producing property. An appraiser using DCF first projects an anticipated net income for each year of the property's remaining economic life. Each annual cash flow is discounted to present value, and then all the present values are added to obtain the total market value of the real property interest being appraised.

(2) The DCF equation is expressed as follows.
Figure: 34 TAC §9.4031(e)(2) (No change.)

(3) To estimate the present value (PV), an estimate of the income (cash flow) to be received in each period is necessary. The number of periods, n (usually years), used in the analysis is determined by the number of years that the mineral property is expected to produce a positive net income.

(4) There are many variations on the DCF formula. The formulas vary based on the time the money is received, i.e., continuously, beginning of period, middle of period or end of period. The period may be continuous, daily, monthly, quarterly, biannual, or annual. Many oil properties are evaluated using an annual mid-period discounting variation of the DCF formula. The appropriate present-worth factor for mid-year DCF analysis is:
Figure: 34 TAC §9.4031(e)(4) (No change.)

(5) Subsection (1) of this section (Appendix 1) illustrates how a discounted cash flow is calculated, using a midyear factor, for a mineral property.

(f) Discount rate components.

(1) Components. The discount rate used in discounted cash flow analysis has several components. These include:

- (A) inflation rate;
- (B) risk-free component;
- (C) general risk premium; and
- (D) property-specific risk premium.

(2) The inflation rate. The annual rate of price change for a basket of consumer goods. Inflation is normally measured by the Consumer Price Index for All Urban Consumers (CPI-U), calculated by the United States Bureau of Labor Statistics. The inflation rate is the most basic component of a discount rate. An investor's rate of return must equal the rate of inflation just to break even in real dollar terms.

(3) The risk-free component. A return to compensate the investor for a loss of liquidity. This component can also be defined as the risk-free rate minus the inflation rate. The risk-free rate is made up of the inflation rate plus a return to reimburse the investor for a loss of liquidity and is measured by the yield to maturity on federal government securities with a maturity period comparable to the investment

under consideration (oil or gas reserves in this case). The market perceives these securities as risk-free for all practical purposes since they are issued by the United States government.

(4) General risk premium.

(A) A return to compensate the investor for assuming diversified company-wide risk. The weighted average cost of capital (WACC) minus the risk-free rate is the general risk premium. The WACC is measured by weighting the typical oil company debt and equity costs by the typical oil company debt and equity capital structure percentages, and then adding the weighted costs. If one were appraising companies, the WACC would be the discount rate, since it reflects the market's expected yields from the stock and debt of a company. Calculation of a WACC will be explained in more detail later in this manual.

(B) For property tax purposes, appraisers estimate the value of individual mineral reserves, not the value of oil companies. Buyers of mineral reserves usually perceive these individual reserves as riskier than the stock and debt of an entire company. Companies can spread their risk over many individual mineral reserves and often over several kinds of assets (some of which are unrelated to the oil or gas business). This asset diversification reduces the company's risk and, as a result, the WACC derived from company financial data is usually lower than an individual producing property's discount rate. However, the WACC is always higher than the risk-free rate. This increase in the rate is a general risk premium to reward investors for assuming the diversified company-wide risk.

(5) Property-specific risk premium. A return that compensates the investor for assuming the unique risks associated with a particular mineral producing property. The discount rate minus the WACC is the property-specific risk premium. Investors demand a premium above the WACC to compensate them for this individual property risk. For certain high-risk properties, this premium can be quite high. See subsection (o) [~~(k)(3)~~] of this section (Appendix 4) for a list of property-specific risk factors.

(6) Component summary. These discount rate components can be summarized: INFLATION RATE + RISK FREE COMPONENT + GENERAL RISK PREMIUM + PROPERTY SPECIFIC RISK PREMIUM = DISCOUNT RATE.

(A) There are other ways to "build up" a discount rate. This method's advantage is that the first three components are quantifiable from public data. The property-specific risk premium may be derived from available data in some cases, but in general, the appraiser must estimate it.

(B) Refer to subsection (o) [~~(k)(3)~~] of this section (Appendix 4) for mineral-property conditions that should be considered when estimating the property-specific risk premium.

(g) Using the three techniques.

(1) Components contained in the three techniques.

(A) Market surveys and sales analysis result in rates that include all of the discount rate components. However, in these two techniques, the rate included for the property-specific risk premium is the typical rate for the properties included in the survey or sales analysis. The appraiser must estimate the property-specific risk premium (unless the sales sample is directly comparable to the property being appraised) and adjust for atypically high or low risk. This means that the appraiser must reduce the risk premium for properties with less than the typical risk and increase the risk premium for properties with more than the typical risk.

(B) The third technique (WACC) produces a rate that does not contain a component for property-specific risk. Because it lacks this component, the typical WACC of potential purchasers sets a minimum value for a discount rate and the appraiser must calculate the typical WACC of potential purchasers to know this lower limit. On a case-by-case basis, the appraiser should exclude oil companies from the WACC calculation if they cannot participate in the market for the property he or she is currently appraising. For instance, small companies may not be able to bid on certain very valuable oil and gas properties because of insufficient capital. A typical WACC for larger oil companies would establish an appropriate minimum discount rate for appraising these properties.

(C) An investor should not buy a property at a lower discount rate than his or her WACC, otherwise the investor's net worth will decrease. The appraiser must add the property-specific risk premium to the typical WACC of potential purchasers to develop a discount rate. See subsection (o) [~~(k)(3)~~] of this section (Appendix 4) for a list of property-specific risk factors.

(2) Developing a range.

(A) Ideally, the appraiser should use these three techniques simultaneously to develop a range of discount rates. The typical WACC sets the lower limit, while surveys and direct sales analysis provide a set of discount rates that the appraiser can use as a database that will help to estimate a midrange discount rate and an upper limit to the discount rate. Examples of these techniques can be found in subsections (l) - (p) [subsection (k)(3)] of this section (the appendices).

(B) Some mineral properties may appear to sell at or below the purchaser's WACC. There are several reasons that a mineral property may appear to change hands at a discount rate equal to or less than the WACC. When a buyer (or appraiser) reduces the cash flows to account for reserve recovery risk the discount rate will not reflect the risk, but the purchase price will. To calculate a discount rate that is comparable to discount rates from other sales, the appraiser must quantify the risk adjustment and add it back to the cash flows. This discount rate will be higher than the non-risk-inclusive rate.

(C) Atypical income tax deductions, or abnormally high or low overhead can also create an artificially high or low discount rate. When faced with market evidence that would indicate a discount rate at less than a company's cost of capital, the appraiser should review all other appraisal parameters to determine why an abnormally low discount rate is indicated. An understated income stream is the most obvious reason. The appraiser may be able to adjust the cash flows and derive a market discount rate or may delete the sale from consideration.

(h) Market surveys.

(1) An appraiser may use market surveys as an indicator of the discount rate. Many studies and surveys are published to help the appraiser estimate an appropriate discount rate or range of rates for appraising oil and gas properties. The Society of Petroleum Evaluation Engineers' (SPEE) Annual Survey and the Western States Petroleum Association's (WSPA) Analysis of Oil and Gas Property Transfers and Sales and Derivation of a Band of Investment are good examples.

(2) The SPEE survey asks producers', consultants', and bankers' opinions on future prices, cost escalation and economic indices (including the discount rate) used in petroleum property evaluation.

(3) The WSPA study, conducted by Richard J. Miller and Associates, consists of two parts: an analysis of oil and gas property transactions and sales occurring in California from 1984 through the current year and an analysis of the weighted average cost of capital

(WACC) or "Band of Investment" of a representative group of companies for the same years. The WACC analysis is based on public data.

(i) Developing a discount rate from sales.

(1) Basic steps. To develop a discount rate from sales requires three basic steps:

(A) obtain recent sales prices from a variety of oil and gas producing properties;

(B) develop cash flow projections for each property; and

(C) calculate the internal rate of return (IRR) for each sale. This is also known as the discounted cash flow return on investment (DCFROI).

(2) Sales sources. Information about sales can be obtained from a variety of sources, but the best source is the buyer or seller. Other sources that list sales of oil and gas property include the Texas Railroad Commission, Oil and Gas Journal 300, Strevig and Associates, private firms and oil and gas companies. It is important to remember that the sale of an oil or gas property must be a market transaction when developing a discount rate from sales.

(3) Cash flow projections. After obtaining verified sales prices, the appraiser develops cash flow projections for each property. To the extent possible, the appraiser must talk with the parties to each sale to determine their expectations of the property and take those into account when making projections. The validity of the derived discount rate is a direct function of the amount of information obtained from the buyer and seller about their cash flow projections. The appraiser must incorporate this information into his or her projections. If the appraiser's projections differ from the buyer's and seller's expectations, the discount rate derived from the sale will be invalid.

(4) Calculating the IRR.

(A) The third step in developing a discount rate from sales is to calculate the internal rate of return (IRR) for each sale. The IRR is the yield (discount) rate at which the present value of a cash income stream equals the present value of the cash expenditures (the sales price in our analysis) necessary to produce that income stream. This discount rate is prospective; it does not depend on the historical performance of the property, but on the market participants' expectations of future performance. The discount rate at which the present value of the cash flows equals the sales price can be determined by trial and error. However, there are several calculators and personal computer software packages that can solve for the discount rate (IRR).

(B) Although computational procedures may vary slightly, this measure is also referred to as the profitability-index and investor's method. The IRR recognizes that funds received now are more valuable than those received at some future time. The investment outlay can be regarded as borrowed funds and the pre-tax cash flow as the payment of principle plus compound interest on the investment.

(j) Weighted average cost of capital.

(1) Definition. A widely used method for deriving a pre-tax base discount rate for valuation purposes is the band of investment, or WACC technique. The basis for this analysis is the financial data from a broad sample of oil companies that derive a majority of their operating revenues from oil and gas production. Since petroleum property valuation typically involves discounting cash flows over a long period of time, a long-term cost of capital is most appropriate for developing an oil or gas property discount rate. Thus, the appraiser should incorporate a broad time series of data to approximate a long-term cost of capital.

(2) Required calculations. Four sets of calculations are required to determine the WACC.

(A) The typical capital structure is derived and expressed as a proportion of debt and equity.

(B) The typical cost of outstanding debt is calculated based on bond yields.

(C) The typical cost of equity is computed using the Capital Asset Pricing Model (CAPM) or another method such as the DCF Model.

(D) Debt and equity costs are weighted according to the typical capital structure percentages and added to derive a typical cost of capital.

(3) Capital structure.

(A) "Capital structure" describes in percentage terms the sources of funds (capital) used to purchase the assets necessary to operate a company. The capital structure of any company consists of debt and equity. The debt portion consists of long-term debt (represented by outstanding bonds) and preferred stock, while the equity portion consists of outstanding common stock. If the company is funded by debt and equity of equal value, the capital structure is 50% debt and 50% equity.

(B) To estimate a discount rate for mass-appraisal purposes, the appraiser should use the typical market capital structure for a representative group of major and independent oil companies that derive a majority of their operating revenues from oil and gas production.

(4) Cost of debt. The yield-to-maturity is the best approximation of the cost of debt capital. This yield is observable in the marketplace and can be found by referring to Standard and Poor's Corporation Bond Guide, Moody's Bond Report, or a comparable publication.

(5) Cost of equity.

(A) The CAPM is the preferred approximation of equity cost since it considers both historical market yields and current expectations, plus a market-derived equity risk factor. The CAPM method measures the cost of equity by considering that an investor's required rate of return on common stock is comprised of a risk-free return plus a risk-adjustment factor related to the specific stock. This is represented by the following equation: $K = R_{fc} + B(R_m - R_{fh})$ where: K = cost of equity (after tax), %/year; R_{fc} = current risk-free rate, %/year; R_m = historic market return on equities, %/year; R_{fh} = historic market return on long-term government bonds, %/year; B = BETA coefficient.

(B) The current risk-free rate (R_{fc}) is typically based on current long-term government securities, i.e., the yield-to-maturity observed on an annual basis on a default-free treasury bond, note, or bill of the relevant time period. For oil and gas property appraisal, the yield on a long-term bond is an appropriate measure of the risk-free rate.

(C) The historical market return on equities (R_m) on common stocks and the historical arithmetic mean on long-term government bond income returns (R_{fh}) can be obtained from Ibbotson Associates' Stock, Bonds, Bills and Inflation. The beta coefficient (B) measures market risk by regressing the stock's total return against the market's total return. A more detailed description of the beta calculation can be found in the Ibbotson Associates report. The beta coefficient value can be obtained from Value Line Publishing, Incorporated's The Value Line Investment Survey, Standard and Poor's Corporation's S&P Stock Reports and similar investment services.

(D) The difference between the historical risk-free (R_{fh}) and market (R_m) rates of return is a measure of the non-sys-

tematic or non-market related risk caused by changes specific to the companies comprising the stock rate of return sample and is, in effect, an equity risk premium. Note that two different risk-free rates of return are used in the CAPM. The current risk-free rate (R_{fc}) is used to acknowledge the expectational function of the model. The historical risk-free rate (R_{fh}) is used in conjunction with the historical market return for the same time period when calculating the equity risk premium.

(E) The cost of equity resulting from this model is a nominal (current dollar) after tax rate. Conversion to a nominal, pre-tax rate requires dividing the equity cost (K) by one minus the federal statutory income tax rate for petroleum companies. The income tax rate is presently 35%. This is represented by the following equation: $K(\text{pre-tax}) = K / (1 - .35)$. If the appraiser calculates a typical effective income tax rate from a representative sample of petroleum companies that could participate in the market for the property that he or she is appraising, the appraiser may substitute that typical effective income tax rate for the statutory rate.

(6) Weighting debt and equity costs.

(A) Once capital structure, debt, and equity costs are determined, the final step in deriving the WACC is to weight the cost of debt and equity by the proportional share each has in the overall capital structure. This is represented by the following equations. Figure: 34 TAC §9.4031(j)(6)(A) (No change.)

(B) The WACC estimating technique is illustrated in subsection (m) ~~[(k)-(3)]~~ of this section (Appendix 2).

(7) Final discount rate selection.

(A) As discussed earlier, the typical WACC of potential purchasers sets the lower end of the discount rate range. To help establish the upper end of the discount rate range, the appraiser can calculate a standard deviation of all the discount rates indicated by the sales in the sales sample and the survey. One standard deviation above and below the mean contains 68% of all the observations in a normally distributed set of data. Two standard deviations above and below the mean contains over 99% of all the observations in a normally distributed set of data. The data may not be normally distributed. Even so, this kind of analysis may help the appraiser to establish the upper end of the discount rate range.

(B) Very high-risk properties (for example, a one-well lease with high water production near the end of its economic life) may be discounted by the market at two standard deviations above the mean. Properties with lesser risk will have correspondingly lower discount rates. One standard deviation above the mean may establish an upper limit for properties in a typical risk-range. The mean or median of the discount rates from the sales analysis and the survey indicates the mid-range discount rate.

(C) For a standard deviation analysis to have meaning in selecting an upper limit to the discount rate range, the survey or sales data set must contain properties with broadly varying risk. A high-end discount rate selected by this method will not apply to very risky properties (it will be too low) unless these risky properties are represented in the sales data set used in the analysis.

(D) To select a discount rate for an individual property, the appraiser must assess the property-specific risk inherent in the property. Subsection (o) ~~[(k)-(3)]~~ of this section (Appendix 4) lists risk factors that should be taken into account.

(k) Summary.

(1) This manual describes methods and procedures used to calculate the present value of oil and gas properties using discounted

future income. The discounted cash flow method, DCF, is the most widely used method to appraise mineral properties.

(2) Within the DCF equation, there are three generally accepted techniques for estimating a discount rate: market surveys, oil and gas sales analysis and the weighted average cost of capital. Ideally, the appraiser should use these three techniques simultaneously to develop a range of discount rates.

(3) The evaluation of oil and gas properties demonstrates the importance of viewing a discount rate in the context of the entire appraisal, including the production decline rate, price, and cost parameters. The discount rate should not be considered an isolated variable, for it is only one component of a complex interaction of variables that collectively determine an estimate of value.

[Figure: 34 TAC §9.4031(k)(3)]

(l) Appendix 1.

Figure: 34 TAC §9.4031(l)

(m) Appendix 2.

Figure: 34 TAC §9.4031(m)

(n) Appendix 3.

Figure: 34 TAC §9.4031(n)

(o) Appendix 4.

Figure: 34 TAC §9.4031(o)

(p) Appendix 5.

Figure: 34 TAC §9.4031(p)

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

Filed with the Office of the Secretary of State on August 29, 2011.

TRD-201103492

Ashley Harden

General Counsel

Comptroller of Public Accounts

Earliest possible date of adoption: October 9, 2011

For further information, please call: (512) 475-0387



TITLE 37. PUBLIC SAFETY AND CORRECTIONS

PART 1. TEXAS DEPARTMENT OF PUBLIC SAFETY

CHAPTER 2. CAPITOL ACCESS PASS

37 TAC §§2.1 - 2.13

The Texas Department of Public Safety (the department) proposes new §§2.1 - 2.13, concerning Capitol Access Pass. These new rules are necessary to comply with the requirements of House Bill 2131, 82nd Legislature, to be codified at Government Code, §411.0625. This bill requires that the department adopt rules establishing a procedure by which a resident of the state may apply for and be issued a Capitol access pass that allows a person to enter the Capitol building and the Capitol Extension, including any public space in the Capitol or Capitol Extension, in the same manner as the department currently allows entry to a person who presents a concealed handgun license issued under Government Code, Chapter 411, Subchapter H.

Denise Hudson, Assistant Director, Finance, has determined that for each year of the first five-year period the rules are in effect, there will be no fiscal impact for state and local government or local economies.

Ms. Hudson also has determined that there will be no adverse economic effect on small businesses or micro-businesses required to comply with the rules as proposed. There are no anticipated economic costs to individuals who are required to comply with rules as proposed. There is no anticipated negative impact on local employment.

In addition, Ms. Hudson has determined that for each year of the first five-year period the rules are in effect the public benefit anticipated as a result of enforcing the proposal will be current, updated rules that are in compliance with recent changes made by the 82nd Legislature.

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

The department has determined that Chapter 2007 of the Texas Government Code does not apply to this proposal. Accordingly, the department is not required to complete a takings impact assessment regarding these rules.

Comments on the proposal may be submitted to Steve Moninger, Office of Regulatory Counsel, Regulatory Services Division, Department of Public Safety, P.O. Box 4087, MSC-0246, Austin, Texas 78752-0246, (512) 424-5842. Comments must be received no later than thirty (30) days from the date of publication of this proposal.

The new sections are proposed pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work, and Texas Government Code, §411.0625, which mandates that the department adopt rules to administer that section.

Texas Government Code, §411.004(3) and §411.0625 are affected by this proposal.

§2.1. Definitions.

In this chapter, and unless otherwise defined in this section, all terms are defined by Government Code, §411.171 and §6.1 of this title (relating to Definitions).

(1) Capitol access pass (pass)--The authorization granted by the Texas Department of Public Safety allowing a person to enter the Texas State Capitol building and the Capitol Extension, including any public space in the Capitol or Capitol Extension, in the same manner as the department allows entry to a person who presents a concealed handgun license issued under Government Code, Chapter 411, Subchapter H.

(2) Concealed handgun license (CHL)--The license issued under Government Code, Chapter 411, Subchapter H.

(3) Department--The Texas Department of Public Safety.

(4) Pass holder--A person to whom a Capitol access pass has been issued.

§2.2. Eligibility.

To be eligible for a Capitol access pass, a person must be a resident of this state and must otherwise meet all eligibility requirements applicable to a concealed handgun license under Government Code, §411.172.

§2.3. Application Procedure, Required Materials and Fee.

(a) Applications must include the materials described in Government Code, §411.174, and §6.12 of this title (relating to Application Procedure and Required Materials), with the exceptions that:

- (1) the application fee is \$100;
- (2) evidence of handgun proficiency is not required;
- (3) the provisions regarding non-residents are not applicable; and

(4) application materials may only be submitted electronically through the department's approved vendor or as otherwise determined by the department.

(b) Applicants must provide proof of residency in the form of valid Texas driver license or Texas identification card. The address on file for the driver license or identification card must be current, or the application will be considered deficient under §2.7(b) of this title (relating to Application Review and Background Investigation).

(c) The application fee is nonrefundable.

§2.4. Method of Payment.

(a) Payment of the application fee must be made electronically by a department-approved credit/debit card, in the manner determined by the department.

(b) Should a pass be issued prior to notification of a declined or unauthorized payment, and proper payment (including an additional \$30 processing fee) is not made within 30 days of notification, revocation proceedings will be initiated under §2.11(c) of this title (relating to Suspension and Revocation).

§2.5. Address on File.

(a) All pass holders or applicants shall at all times maintain on file with the department a current electronic mail address and physical mailing address.

(b) All pass holders shall notify the department of any change to their addresses on file by completing the change of address on the program's website or as otherwise provided by the department prior to the effective date of the change of address.

§2.6. Notice.

(a) The department is entitled to rely on the physical mailing address and the electronic mail address currently on file for all purposes relating to notification. The failure to maintain current addresses with the department is not a defense to any action based on the pass holder's or applicant's failure to respond.

(b) Service of notice is complete and receipt is presumed upon the date the notice is sent, if sent before 5:00 p.m. by facsimile or electronic mail, and three days following the date sent, if notice is sent by regular United States mail.

(c) Notifications by the department may be by facsimile transmission, electronic mail, regular U.S. mail, certified mail, return receipt requested, or hand-delivery, at the discretion of the department.

§2.7. Application Review and Background Investigation.

(a) The review of an application for a Capitol access pass, and the background check of the applicant, will be based on a comparison of the eligibility criteria for a concealed handgun license and the criminal history information available to the department. The statutory deadlines provided in Government Code, Chapter 411, Subchapter H, relating to the processing such applications, are not applicable.

(b) If an application is found to be deficient, the department will notify the applicant of the deficiency. The applicant will have 30 days from the date of the notice of deficiency to amend the application. After this period has expired, the application will be terminated.

§2.8. Expiration.

A Capitol access pass expires on December 31st of each odd-numbered year, regardless of when issued. An expired pass may not be renewed. A new application is required if the pass is not renewed prior to expiration.

§2.9. Renewal.

The Capitol access pass may be renewed at any time during the six months prior to expiration by submitting the required fee of \$100.

§2.10. Issuance or Denial.

(a) Upon completion of the department's review of the application and the applicant's background, the pass will either be issued or the applicant will be notified in writing that the application has been denied.

(b) The appeal of a denial is governed by §2.12 of this title (relating to Informal Review of Denials, Suspensions or Revocations based on Criminal History Disqualifiers).

§2.11. Suspension and Revocation.

(a) A Capitol access pass shall be suspended upon notification of the department that a basis for suspension exists, as provided in Government Code, §411.187. The bases provided in §411.187(a)(3) or (4) are not applicable to the pass.

(b) A Capitol access pass shall be revoked upon notification of the department that a basis for revocation exists, as provided in Government Code, §411.186.

(c) A pass shall be revoked if the application fee is subsequently dishonored, reversed, or determined to be insufficient, if the pass holder fails to submit valid payment in the amount of the fee and an additional \$30 processing fee within 30 days of being notified by the department that the fee was dishonored, reversed, or insufficient. A new application may be submitted at any time following a revocation under this subsection. This subsection operates in lieu of Government Code, §411.186(a)(6).

§2.12. Informal Review of Denials, Suspensions or Revocations Based on Criminal History Disqualifiers.

(a) A person whose application for a Capitol access pass is denied, or whose pass is suspended or revoked, based on a criminal history disqualifier, may request an informal review by department staff by submitting to the department a written request for the review in compliance with subsection (b) of this section.

(b) A written request for review of the department's determination, along with any supporting documentation, must be submitted to the department by facsimile or electronic mail to the address or number provided in the notice of denial, suspension, or revocation within 20 calendar days after receipt of the notice. If a written request for a

review is not submitted within 20 calendar days of the date notice was received, the proposed action will become final.

(c) An informal review will be conducted by department personnel in the manner prescribed by the department. The department will issue a final determination to the applicant or pass holder at the address on file.

§2.13. No Relationship to Concealed Handgun License.

(a) The pass confers no rights or privileges beyond the access to the Capitol and the Capitol Extension otherwise provided to a person who presents a concealed handgun license issued under Government Code, Chapter 411, Subchapter H. The possession of a Capitol access pass does not authorize a person to carry a concealed handgun.

(b) The approval of an application for a Capitol access pass has no bearing on a person's eligibility for a concealed handgun license. All applications, fees, reviews, or adverse actions relating to a pass are independent of such matters as they may relate to a concealed handgun license or application for such license.

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

Filed with the Office of the Secretary of State on August 29, 2011.

TRD-201103507

D. Phillip Adkins

General Counsel

Texas Department of Public Safety

Earliest possible date of adoption: October 9, 2011

For further information, please call: (512) 424-5848



CHAPTER 16. COMMERCIAL DRIVER LICENSE

SUBCHAPTER A. LICENSING REQUIREMENTS, QUALIFICATIONS, RESTRICTIONS, AND ENDORSEMENTS

37 TAC §16.2

The Texas Department of Public Safety (the department) proposes amendments to §16.2, concerning Commercial Motor Vehicles. Amendments to §16.2 are necessary to comply with Federal Rules specific to commercial driver licensing.

Denise Hudson, Assistant Director, Finance, has determined that for each year of the first five-year period the rule is in effect there will be no fiscal implications for state or local government, or local economies.

Ms. Hudson has also determined that there will be no adverse economic effect on small businesses or micro-businesses required to comply with the rule as proposed. There is no anticipated economic cost to individuals who are required to comply with the rule as proposed. There is no anticipated negative impact on local employment.

In addition, Ms. Hudson has also determined that for each year of the first five-year period the rule is in effect, the public benefit anticipated as a result of enforcing the rule will be clarification of state and federal regulations to ensure any conflicts between both are removed.

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

The department has determined that Chapter 2007 of the Texas Government Code does not apply to this rule. Accordingly, the department is not required to complete a takings impact assessment regarding this rule.

Comments on this proposal may be submitted to Ron Coleman, Texas Department of Public Safety, Driver License Division, P.O. Box 4087 (MSC 0300), Austin, Texas 78773, by fax to (512) 424-5233; or by email to ron.coleman@dps.texas.gov. Comments must be received no later than thirty (30) days from the date of publication of this proposal.

The amendments are proposed pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work and Texas Transportation Code, §522.005 which authorizes the department to adopt rules necessary to carry out Chapter 522 and the federal act and to maintain compliance with Code of Federal Regulations, Title 49, Part 383 and Part 384.

Texas Government Code, §411.004(3) and Texas Transportation Code, Chapter 522 are affected by this proposal.

§16.2. Commercial Motor Vehicles and Licensing Definitions.

(a) The following words and terms, when used in this chapter, or in Texas Transportation Code, Chapter 522 shall have the following meanings, unless the context shall clearly indicate otherwise.

(1) Commercial motor vehicles (CMV)--~~A~~ [means a] motor vehicle or combination of motor vehicles used to transport passengers or property if the motor vehicle:

(A) [~~1~~] has a gross combination weight rating (GCWR) of 26,001 or more pounds inclusive of a towed unit with a gross vehicle weight rating (GVWR) of more than 10,000 pounds. In determining the GVWR of the towed unit, the weight of all vehicles being towed will be added together;

(B) [~~2~~] has a GVWR of 26,001 or more pounds;

(C) [~~3~~] is designed to transport 16 or more passengers, including the driver; or

(D) [~~4~~] is transporting hazardous materials and is required to be placarded in accordance with 49 Code of Federal Regulations, Part 172, Subpart F.

(2) [~~b~~] Gross combination weight rating (GCWR)--~~The~~ [means the] value specified by the manufacturer as the loaded weight of a combination (articulated) vehicle. If there is no manufacturer's specified value, gross combination weight rating is determined by adding the GVWR of the power unit and the total weight of the towed unit or units and any load on a towed unit. [~~Gross vehicle weight rating (GVWR) means the value specified by the manufacturer as the loaded weight of a single vehicle.~~]

(3) Gross vehicle weight rating (GVWR)--The value specified by the manufacturer as the loaded weight of a single vehicle.

(4) Employer--A person who owns or leases a commercial motor vehicle or assigns a person to drive a commercial motor vehicle. For purposes of this chapter, the definition of a person also includes the United States, a State, District of Columbia or a political subdivision of a State.

(5) Out-of-service order--

(A) a temporary prohibition against driving a commercial motor vehicle issued under §522.101, the law of another state, 49 C.F.R. §383.5; or 49 C.F.R. §§386.72, 395.5, 395.13, 396.9, or compatible laws, or the North American Uniform Out-of-Service Criteria, or

(B) a declaration by the Federal Motor Carrier Safety Administration or an authorized enforcement officer of a state or local jurisdiction that a driver, commercial motor vehicle, or motor carrier operation is out of service under 49 C.F.R. §383.5 or 49 C.F.R. §§386.72, 395.5, 395.13, 396.9, or compatible laws, or the North American Uniform Out-of-Service Criteria.

(b) [(+)] If the GVWR or GCWR cannot be determined, then the registered gross weight or the actual gross weight of the vehicle(s), whichever is greater, can be used for enforcement purposes in determining CDL requirements.

(c) [(2)] For purposes of determining whether a vehicle can be used for taking a skills test to obtain a CDL, only vehicle(s) for which the GVWR or GCWR (as defined or calculated under 49 Code of Federal Regulations, §383.5 [~~Part 383.5~~], and Texas Transportation Code, §522.003(17)(18)) is known may be used. If the GVWR or GCWR cannot be determined, the vehicle(s) cannot be used for taking a skills test. If the GVWR plate is missing from the vehicle(s) but, based on the driver license employee's knowledge and experience, he/she believes the vehicle(s) is over 26,000 pounds, then the employee may permit the vehicle(s) to be used for a skills test.

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

Filed with the Office of the Secretary of State on August 29, 2011.

TRD-201103508

D. Phillip Adkins

General Counsel

Texas Department of Public Safety

Earliest possible date of adoption: October 9, 2011

For further information, please call: (512) 424-5848



PART 3. TEXAS YOUTH COMMISSION

CHAPTER 81. INTERACTION WITH THE PUBLIC

37 TAC §81.35, §81.83

The Texas Youth Commission (TYC) proposes amendments to §81.35, concerning Rights of Victims, and §81.83, concerning Advocacy and Support Group Access. The sections will be amended to reflect updates to staff titles and terminology.

Janie Ramirez Duarte, Chief Financial Officer, has determined that for the first five-year period the sections are in effect, there

will be no significant fiscal impact for state or local government as a result of enforcing or administering the sections.

James Smith, Director of Youth Services, has determined that for each year of the first five years the sections are in effect, the public benefit anticipated as a result of administering the sections will be the provision of agency rules that are current and up-to-date.

There will be no effect on small businesses or micro-businesses. There is no anticipated economic cost to persons who are required to comply with the sections as proposed. No private real property rights are affected by adoption of these sections.

Comments on the proposal may be submitted within 30 days of the publication of this notice to Erica Knutsen, Policy Writer, Texas Youth Commission, P.O. Box 4260, Austin, Texas 78765, or emailed to policy.proposals@tyc.state.tx.us.

The amended sections are proposed under Human Resources Code §61.034 (§242.003 as of September 1, 2011), which provides TYC with the authority to adopt rules appropriate to the proper accomplishment of its functions.

The proposed rules affect Human Resources Code, §61.034.

§81.35. *Rights of Victims.*

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

(c) Definitions. [~~Explanation of Terms Used.~~]

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

(d) - (e) (No change.)

(f) Victim's Right to Information.

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

(3) For a victim who has requested information, the appropriate TYC staff may [~~MAY~~] reveal only the following:

(A) youth is under TYC's jurisdiction;[~~]~~

(B) (No change.)

(C) the committing [~~committing/classifying~~] offense in which the victim was involved;

(D) - (G) (No change.)

(H) information about the agency's rehabilitation [~~TYC's Resocialization~~] program (do not reveal specific information regarding the youth's treatment).

(g) - (h) (No change.)

§81.83. *Advocacy and Support Group Access.*

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

(d) Registration Procedures.

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

(4) A determination that an organization does not qualify as an advocacy or support group under this rule, or that a request for 24-hour access has been denied, must be in writing and may be appealed to the executive director [~~TYC chief executive officer~~] or his/her designee. The appeal must be in writing and clearly state the reason the organization should be considered an advocacy or support group under this rule or the reason that denial of 24-hour access would prevent the group from effectively performing its primary function.

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

(e) (No change.)

(f) Revocation of Access.

(1) (No change.)

(2) Revocation of access may be appealed to the executive director ~~[TYC's chief executive officer]~~ or his/her designee. The appeal must be in writing and clearly state the reason the person's access should not be revoked.

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

Filed with the Office of the Secretary of State on August 29, 2011.

TRD-201103519

Cheryl K. Townsend

Executive Director

Texas Youth Commission

Earliest possible date of adoption: October 9, 2011

For further information, please call: (512) 424-6475



37 TAC §81.36

The Texas Youth Commission (TYC) proposes to amend §81.36, concerning Notices to Public and Private Schools.

In accordance with House Bill 1907 (82nd Legislature), the amended rule will require TYC to include additional information in the notices it provides to school officials upon the enrollment of youth who are under TYC community supervision. The notices will contain the pertinent details of the youth's offense, which includes a description of the facts of the offense and any details regarding assaultive behavior or other violence or weapons used or possessed during the commission of the offense.

The amended rule will also require verbal notice to be provided to school officials within 24 hours or before the next school day, whichever is sooner, after learning of the enrollment in school.

Janie Ramirez Duarte, Chief Financial Officer, has determined that for the first five-year period the section is in effect, there will be no significant fiscal impact for state or local government as a result of enforcing or administering the section.

James Smith, Director of Youth Services, has determined that for each year of the first five years the section is in effect, the public benefit anticipated as a result of administering the section will be compliance with recently enacted legislation.

There will be no effect on small businesses or micro-businesses. There is no anticipated economic cost to persons who are required to comply with the section as proposed. No private real property rights are affected by adoption of this section.

Comments on the proposal may be submitted within 30 days of the publication of this notice to Steve Roman, Policy Coordinator, Texas Youth Commission, P.O. Box 4260, Austin, Texas 78765, or emailed to policy.proposals@tyc.state.tx.us.

The amended section is proposed under Article 15.27, Code of Criminal Procedure, which requires TYC to provide notification to school officials of certain offense-related information for youth under TYC community supervision, and Human Resources Code §61.034 (§242.003 as of September 1, 2011), which provides TYC with the authority to adopt rules appropriate to the proper accomplishment of its functions.

The proposed rule affects Human Resources Code, §61.034.

§81.36. Notices to Public and Private Schools.

(a) Purpose. The purpose of this rule is to provide guidelines ~~[a procedure]~~ for Texas Youth Commission (TYC) staff to notify public and/or private elementary and secondary school officials regarding offense-related information concerning TYC youth in a community placement or on parole.

(b) Definitions. As used in this rule, the following terms shall have the following meanings, unless the context clearly indicates otherwise. ~~[Explanation of Terms Used.]~~

(1) Offense--Any felony or misdemeanor offense listed in Article 15.27, Code of Criminal Procedure.

(2) Pertinent Details--The name and date of the offense and a description of the facts of the offense, including details of any assaultive behavior or other violence or weapons used or possessed during the commission of the offense.

(3) School Officials--For public schools it is the superintendent or designee ~~[and the principal]~~ of the school/district in which the youth is enrolled; for private schools it is the principal or designee ~~[administrator]~~ of the school in which the youth is enrolled.

(c) Notification Requirements.

(1) For youth in a non-secure placement or on TYC parole, TYC staff shall provide the following information ~~[, in oral and written form,]~~ to school officials:

(A) the pertinent details of any offense that resulted in:

(i) ~~[(A)]~~ [the offense(s), including dates of action, resulting in] commitment to [and classification within] TYC;

~~[(B) whether or not the youth is a registered sex offender;]~~

(ii) ~~[(C)]~~ [an adjudication or conviction [any court adjudication/conviction] subsequent to commitment to TYC [, including the date of the action and the offense/allegation]; and

[(iii) [(D)] an arrest or referral [any arrest/detention/referral] to juvenile court that is [still] pending final disposition; and[-]

(B) information concerning whether the youth is required to register as a sex offender.

(2) TYC staff must provide oral notice within ~~[no later than]~~ 24 hours after learning of a youth's transfer or re-enrollment in school, or before the next school day, whichever is sooner. Within seven calendar days after the oral notice, TYC staff will provide [enrollment and] written notice [no later than seven (7) calendar days after enrollment to the school officials of the information listed in paragraph (1) of this subsection].

(3) Electronic notice of the information listed in paragraph (1) of this subsection provided to school officials within 24 hours after learning of a youth's transfer or re-enrollment in school satisfies all notice requirements set forth in this rule.

~~[(3) TYC staff shall notify school officials of any new arrest, referral to court, parole revocation, detention or adjudication/conviction of a youth already enrolled in school. Oral notification shall be provided within 24 hours of TYC staff first becoming aware of the event. Written notification shall be provided within seven (7) days of TYC staff first becoming aware of the event.]~~

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

Filed with the Office of the Secretary of State on August 29, 2011.

TRD-201103515

Cheryl K. Townsend

Executive Director

Texas Youth Commission

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For further information, please call: (512) 424-6014



37 TAC §81.75

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

The Texas Youth Commission (TYC) proposes the repeal of §81.75, concerning Copying Costs. The Office of the Attorney General has adopted statewide rules for charges relating to providing copies of public information, therefore there is no requirement for TYC to maintain a separate rule with this information.

Janie Ramirez Duarte, Chief Financial Officer, has determined that for the first five-year period the repeal is in effect, there will be no significant fiscal impact for state or local government as a result of enforcing or administering the repeal.

Toysa Martin, General Counsel, has determined that for each year of the first five years the repeal is in effect, the public benefit anticipated as a result of administering the repeal will be consistency and compliance with statewide rules for charges relating to providing copies of public information.

There will be no effect on small businesses or micro-businesses. There is no anticipated economic cost to persons who are required to comply with the repeal as proposed. No private real property rights are affected by adoption of this repeal.

Comments on the proposal may be submitted within 30 days of the publication of this notice to Erica Knutsen, Policy Writer, Texas Youth Commission, P.O. Box 4260, Austin, Texas 78765, or emailed to policy.proposals@tyc.state.tx.us.

The repeal is proposed under Human Resources Code §61.034 (§242.003 as of September 1, 2011), which provides TYC with the authority to adopt rules appropriate to the proper accomplishment of its functions.

The proposed repeal affects Human Resources Code, §61.034.

§81.75. Copying Costs.

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

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Cheryl K. Townsend

Executive Director

Texas Youth Commission

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For further information, please call: (512) 424-6475

CHAPTER 85. ADMISSION, PLACEMENT, RELEASE, AND DISCHARGE

The Texas Youth Commission (TYC) proposes amendments to §85.25, concerning Minimum Length of Stay/Minimum Period of Confinement, §85.75, concerning Temporary Admission Awaiting Permanent Placement, and §85.95, concerning Parole Completion and Discharge.

Section 85.25 will be amended to reflect updates to staff titles and terminology.

Section 85.75 will be amended to clarify that youth may be temporarily placed at any residential facility.

Section 85.95 will be amended to clarify that youth are not discharged upon recommitment. Staff titles and terminology have also been updated.

Janie Ramirez Duarte, Chief Financial Officer, has determined that for the first five-year period the sections are in effect, there will be no significant fiscal impact for state or local government as a result of enforcing or administering the sections.

James Smith, Director of Youth Services, has determined that for each year of the first five years the sections are in effect, the public benefit anticipated as a result of administering the sections will be the provision of agency rules that are current and up-to-date.

There will be no effect on small businesses or micro-businesses. There is no anticipated economic cost to persons who are required to comply with the sections as proposed. No private real property rights are affected by adoption of these sections.

Comments on the proposal may be submitted within 30 days of the publication of this notice to Erica Knutsen, Policy Writer, Texas Youth Commission, P.O. Box 4260, Austin, Texas 78765, or emailed to policy.proposals@tyc.state.tx.us.

SUBCHAPTER B. PLACEMENT PLANNING

37 TAC §85.25

The amended section is proposed under Human Resources Code §61.034 (§242.003 as of September 1, 2011), which provides TYC with the authority to adopt rules appropriate to the proper accomplishment of its functions.

The proposed rule affects Human Resources Code, §61.034.

§85.25. *Minimum Length of Stay/Minimum Period of Confinement.*

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

(e) Minimum Period of Confinement. The minimum period of confinement applies only to sentenced offenders. The minimum period of confinement is:

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

(3) two years for a felony of the second degree; or [and]

(4) (No change.)

(f) - (h) (No change.)

(i) Reductions to Minimum Length of Stay [stay].

(1) The minimum length of stay requirement may be reduced by the TYC executive director [~~commissioner~~] when it is determined that the minimum length of stay is not justified because of the

nature of the offense and offense history or when it is determined that the youth has made sufficient progress in treatment programs.

(2) (No change.)

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

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Cheryl K. Townsend

Executive Director

Texas Youth Commission

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For further information, please call: (512) 424-6475



SUBCHAPTER E. PAROLE PLACEMENT AND DISCHARGE

37 TAC §85.75, §85.95

The amended sections are proposed under Human Resources Code §61.034 (§242.003 as of September 1, 2011), which provides TYC with the authority to adopt rules appropriate to the proper accomplishment of its functions.

The proposed rules affect Human Resources Code, §61.034.

§85.75. *Temporary Admission Awaiting Permanent Placement.*

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

(c) Staff may place a youth temporarily at any residential facility ~~[the Marlin Orientation and Assessment Unit (MOAU)]~~ while waiting for assignment to a permanent placement if no disciplinary hearing is involved and if no alternative temporary placement within the youth's placement region can be found.

(d) - (e) (No change.)

§85.95. *Parole Completion and Discharge.*

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

(c) Discharge Criteria.

(1) Discharge Due to Successful Completion of Parole.

(A) (No change.)

(B) The executive director ~~[commissioner]~~ or designee may approve the discharge of a youth prior to completion of the requirements in paragraph (1)(A) of this subsection when consideration of a youth's committing offense, behavior, history, and progress towards completion of parole conditions justifies an earlier discharge.

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

(4) Special Circumstances.

(A) Youth who have never been classified as a Type A Violent Offender and do not have a committing offense of high severity may be discharged prior to completion of parole requirements to enlist in the military. The executive director ~~[commissioner]~~ must approve such a discharge.

(B) Youth placed out of the state may be discharged when requested by the placement state for satisfactory adjustment or when court action is taken by the placement state ~~[in accordance with §85.85 of this title]~~. The parole director must approve such a discharge.

(C) (No change.)

(D) Youth who have never been classified as a Type A violent offender and do not have a committing offense of high severity who are age 18 or older may be discharged prior to completion of parole requirements in order to obtain appropriate services. The executive director ~~[commissioner]~~ must approve such discharge.

(E) Youth may be discharged for special circumstances, other than those addressed in subparagraphs (A) - (D) of this paragraph, upon the executive director's ~~[commissioner's]~~ approval.

(5) Other Types of Discharges.

(A) (No change.)

(B) Youth shall be discharged:

(i) (No change.)

(ii) upon closing of records following a youth's death ~~[or recommitment]~~.

(C) (No change.)

(d) (No change.)

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

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Cheryl K. Townsend

Executive Director

Texas Youth Commission

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CHAPTER 87. TREATMENT SUBCHAPTER B. SPECIAL NEEDS OFFENDER PROGRAMS

37 TAC §87.91

The Texas Youth Commission (TYC) proposes to amend §87.91, concerning Family Reintegration of Sex Offenders.

The amended rule will remove references to terms associated with rehabilitation programs previously used by TYC. The rule will also be revised to include only those requirements that must be met prior to a determination by TYC to approve the placement of a youth in a home where the victim or potential victim resides.

Janie Ramirez Duarte, Chief Financial Officer, has determined that for the first five-year period the section is in effect, there will be no significant fiscal impact for state or local government as a result of enforcing or administering the section.

James Smith, Director of Youth Services, has determined that for each year of the first five years the section is in effect, the public benefit anticipated as a result of administering the section will be the protection of victims or potential victims of sexual offenses, as well as the provision of requirements to enhance the successful re-entry of TYC youth into their communities.

There will be no effect on small businesses or micro-businesses. There is no anticipated economic cost to persons who are re-

quired to comply with the section as proposed. No private real property rights are affected by adoption of this section.

Comments on the proposal may be submitted within 30 days of the publication of this notice to Steve Roman, Policy Coordinator, Texas Youth Commission, P.O. Box 4260, Austin, Texas 78765, or emailed to policy.proposals@tyc.state.tx.us.

The amended section is proposed under §61.075 (§245.005 as of September 1, 2011), which provides TYC with the authority to permit a child liberty under supervision and on conditions TYC believes are conducive to acceptable behavior.

The proposed rule affects Human Resources Code, §61.034 (§242.003 as of September 1, 2011).

§87.91. Family Reintegration of Sex Offenders.

(a) (No change.)

(b) Definitions. As used in this rule, the following terms shall have the following meanings, unless the context clearly indicates otherwise. ~~[Explanation of Terms Used.]~~

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

(c) Requirements for Family Reintegration. Prior to TYC's approval of youth's return to a home where a victim or potential victim resides, TYC shall:

(1) verify that the [The] parole officer has completed [con-
ducts] a home evaluation, parole individual case plan, conditions of
parole, and a checklist that identifies strategies to minimize [and com-
pletes a checklist of] risk factors associated with sexual re-offending;[-]

(2) contact [The primary service worker (PSW) contacts]
the Texas Department of Family and Protective Services [(DFPS) 90
days prior to the youth's scheduled release] to determine whether there
is an open or closed Child Protective Service (CPS) case and [to] con-
sider any concerns of CPS staff related to the victim or other vulnerable
children in the home;[-]

(3) if [if] the victim is in treatment, notify [the PSW noti-
fies] the victim's therapist that the youth [offender] is returning to the
home where the victim resides and consider any concerns raised by the
therapist regarding the youth's return; and[-]

(4) verify that the youth [The offender] has:

(A) demonstrated sufficient progress in treatment to be
ready to return home as evidenced by the completion of the highest
stage in the agency's rehabilitation program [Phase 4 of the Resocial-
ization Program] and/or completion of the assigned sexual behavior
treatment program; and [Sexual Behavior Treatment Program (SBTP)-]

(B) [{5}] participated in the development and presenta-
tion to the family of a safety and family reintegration [The offender
must have provided the family with his/her success] plan that contains
specific plans to cope with high-risk situations [that will ensure the vic-
tim/potential victim's safety in the home].

[{6} The residential PSW, the parole officer, youth, and
family develop the youth's family reintegration and transition plans
and are all in agreement with the plan.]

[{7} The parole officer completes the parole individual case
plan and parole conditions and a checklist that identifies strategies to
minimize risk factors for sexual re-offending.]

[{8} For those youth that have received primary sex of-
fender specialized treatment, aftercare services are secured for the
youth while on parole.]

~~[(9) A parole officer conducts at least one (1) contact per
month in the home while the youth is on double intensive, intensive,
or moderate surveillance. At least one (1) in-home contact per quarter
must be made while the youth is on minimum surveillance.]~~

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

Filed with the Office of the Secretary of State on August 29, 2011.

TRD-201103518

Cheryl K. Townsend

Executive Director

Texas Youth Commission

Earliest possible date of adoption: October 9, 2011

For further information, please call: (512) 424-6014



CHAPTER 91. PROGRAM SERVICES SUBCHAPTER A. BASIC SERVICES

37 TAC §91.25

The Texas Youth Commission (TYC) proposes amendments to §91.25, concerning Youth with Limited English Proficiency. The section will be amended to reflect updates to terminology.

Janie Ramirez Duarte, Chief Financial Officer, has determined that for the first five-year period the section is in effect, there will be no significant fiscal impact for state or local government as a result of enforcing or administering the section.

Amy Lopez, Acting Superintendent of Education, has determined that for each year of the first five years the section is in effect, the public benefit anticipated as a result of administering the section will be the provision of agency rules that are current and up-to-date.

There will be no effect on small businesses or micro-businesses. There is no anticipated economic cost to persons who are required to comply with the section as proposed. No private real property rights are affected by adoption of this section.

Comments on the proposal may be submitted within 30 days of the publication of this notice to Erica Knutsen, Policy Writer, Texas Youth Commission, P.O. Box 4260, Austin, Texas 78765, or emailed to policy.proposals@tyc.state.tx.us.

The amended section is proposed under Human Resources Code §61.034 (§242.003 as of September 1, 2011), which provides TYC with the authority to adopt rules appropriate to the proper accomplishment of its functions.

The proposed rule affects Human Resources Code, §61.034.

§91.25. Youth with Limited English Proficiency.

(a) Purpose. The Texas Youth Commission will provide reasonable access to all programs and services for youth that are determined to be English language learners. ~~[have a Limited English Proficiency (LEP).]~~

(b) Definitions. English Language Learners [Explanation of Terms Used. Limited English Proficiency (LEP)] - is the term to identify youth who have insufficient English to succeed in the English-only environment within TYC.

~~[(c) Assessment Criteria in Determining LEP.]~~

(c) [(4)] Upon admission to an orientation and assessment unit [~~Marlin Orientation and Assessment Unit (MOAU)~~], all youth are screened to determine if a language other than English is primary. Youth with a primary language other than English are assessed for the degree of English proficiency.

(d) [(2)] The results and conclusions of all educational, psychological, and other assessments will consider the possible influence of [the] limited English proficiency on the outcome or test scores.

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

Filed with the Office of the Secretary of State on August 29, 2011.

TRD-201103529

Cheryl K. Townsend

Executive Director

Texas Youth Commission

Earliest possible date of adoption: October 9, 2011

For further information, please call: (512) 424-6475



SUBCHAPTER D. HEALTH CARE SERVICES

37 TAC §91.98

The Texas Youth Commission (TYC) proposes amendments to §91.98, concerning Therapeutic Restraints. The section will be amended to reflect updates to staff titles and terminology.

Janie Ramirez Duarte, Chief Financial Officer, has determined that for the first five-year period the section is in effect, there will be no significant fiscal impact for state or local government as a result of enforcing or administering the section.

Dr. Rajendra Parikh, Medical Director, has determined that for each year of the first five years the section is in effect, the public benefit anticipated as a result of administering the section will be the provision of agency rules that are current and up-to-date.

There will be no effect on small businesses or micro-businesses. There is no anticipated economic cost to persons who are required to comply with the section as proposed. No private real property rights are affected by adoption of this section.

Comments on the proposal may be submitted within 30 days of the publication of this notice to Erica Knutsen, Policy Writer, Texas Youth Commission, P.O. Box 4260, Austin, Texas 78765, or emailed to policy.proposals@tyc.state.tx.us.

The amended section is proposed under Human Resources Code §61.034 (§242.003 as of September 1, 2011), which provides TYC with the authority to adopt rules appropriate to the proper accomplishment of its functions.

The proposed rule affects Human Resources Code, §61.034.

§91.98. *Therapeutic Restraints.*

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

(e) General Provisions.

(1) (No change.)

(2) Only therapeutic restraint equipment approved by the executive director [~~commissioner~~] or designee may be used in TYC facilities.

(3) - (6) (No change.)

(f) (No change.)

(g) Therapeutic Restraints for Mental Health Purposes.

(1) Authorized Facilities. Mental health restraints are authorized only at facilities designated by the executive director [~~commissioner~~] or designee.

(2) (No change.)

(3) Authorization for Use.

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

(E) Approval from a psychiatric provider or a licensed doctoral psychologist must be obtained to continue the restraint beyond one hour. If a determination is made that the behavior is due to a mental health problem, the youth shall be provided appropriate mental health services, including referral to a TYC stabilization unit [~~the Corsicana Stabilization Unit~~] or state hospital if he/she meets the admission criteria under §87.67 or §87.69 of this title.

(F) - (I) (No change.)

(4) (No change.)

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

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Cheryl K. Townsend

Executive Director

Texas Youth Commission

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For further information, please call: (512) 424-6475



CHAPTER 93. YOUTH RIGHTS AND REMEDIES

37 TAC §93.31, §93.53

The Texas Youth Commission (TYC) proposes amendments to §93.31, concerning the Youth Grievance System, and §93.53, concerning Appeals to the Executive Commissioner. The sections will be amended to reflect updates to staff titles and terminology.

Janie Ramirez Duarte, Chief Financial Officer, has determined that for the first five-year period the sections are in effect, there will be no significant fiscal impact for state or local government as a result of enforcing or administering the sections.

Toysha Martin, General Counsel, has determined that for each year of the first five years the sections are in effect, the public benefit anticipated as a result of administering the sections will be the provision of agency rules that are current and up-to-date.

There will be no effect on small businesses or micro-businesses. There is no anticipated economic cost to persons who are required to comply with the sections as proposed. No private real property rights are affected by adoption of these sections.

Comments on the proposal may be submitted within 30 days of the publication of this notice to Erica Knutsen, Policy Writer, Texas Youth Commission, P.O. Box 4260, Austin, Texas 78765, or emailed to policy.proposals@tyc.state.tx.us.

The amended sections are proposed under Human Resources Code §61.034 (§242.003 as of September 1, 2011), which provides TYC with the authority to adopt rules appropriate to the proper accomplishment of its functions.

The proposed rules affect Human Resources Code, §61.034.

§93.31. *Youth Grievance System.*

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

(d) Grievances.

(1) Methods for Filing a Grievance.

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

(C) Youth Grievance Forms.

(i) - (ii) (No change.)

(iii) In residential facilities, secure drop boxes will be provided in easily accessible locations for youth to submit completed grievance forms. Access to the drop boxes is restricted to staff members designated by the executive director [~~commissioner~~] or designee.

(iv) - (v) (No change.)

(2) (No change.)

(3) Appeal of a Grievance Resolution.

(A) A grievant may file an appeal if dissatisfied with the response. Except for healthcare-related grievances, TYC will designate a staff member to provide a written response to the appeal. Appeals of responses to healthcare-related grievances will be submitted as direct appeals to the executive director [~~commissioner~~] or designee in accordance with §93.53 of this title.

(B) For grievances that are not healthcare-related, a grievant may submit an appeal to the executive director [~~commissioner~~] or designee if dissatisfied with the appeal response in accordance with §93.53 of this title.

(C) A grievant may submit a direct appeal to the executive director [~~commissioner~~] or designee if no written response is received within 15 work days after submitting a grievance or an appeal of a grievance response.

(D) An appeal to the executive director [~~commissioner~~] or designee exhausts all administrative remedies on the issue(s) raised in the grievance.

§93.53. *Appeals to the Executive Director* [~~Commissioner~~].

(a) Purpose. The purpose of this rule is to permit Texas Youth Commission (TYC) youth and their parents or guardians to appeal decisions made by TYC or contract program employees to the TYC executive director [~~commissioner~~].

(b) Direct Appeals to the Executive Director [~~Commissioner~~]. A direct appeal to the executive director [~~commissioner~~] or designee may be filed in matters limited to:

(1) - (13) (No change.)

(c) Filing Deadline. All appeals must be submitted in writing and clearly describe the grounds for the appeal and filed within six months of the decision being appealed. Appeals filed after that time may be considered at the discretion of the executive director [~~commissioner~~] or designee.

(d) Action of the Executive Director [~~Commissioner~~].

(1) The executive director [~~commissioner~~] or designee responds in writing to each appeal. Failure to respond to an appeal within

30 working days will constitute an exhaustion of administrative remedies for purposes of appeal to the courts, but will not be construed as acceptance or rejection of any contention made in the appeal.

(2) The executive director [~~commissioner~~] or designee will consider the recommendations of the Office of General Counsel in reaching a decision on appeals of investigation findings, including any additional findings or information that resulted from further investigation.

(3) The executive director [~~commissioner~~] may uphold, reverse or modify the grievance resolution or return the grievance to the chief local administrator with directions. The executive director [~~commissioner~~] or designee's disposition of a youth grievance may also be in the form of a determination that the complaint involves operational issues that have been adequately addressed and resolved at the facility level.

(4) The executive director [~~commissioner~~] or designee may determine that an issue has not been sufficiently developed to render an informed appeal resolution. If so, the executive commissioner or designee may, prior to the issuance of a response:

(A) - (C) (No change.)

(e) (No change.)

(f) Appropriate TYC staff must assist youth in interpreting appeal decisions from TYC's executive director [~~commissioner~~] or designee.

(g) The appeal decision of the executive director [~~commissioner~~] or designee is the final administrative resolution of an issue appealed and constitutes an exhaustion of administrative remedies for purposes of appeal to the courts.

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

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Cheryl K. Townsend

Executive Director

Texas Youth Commission

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For further information, please call: (512) 424-6475



CHAPTER 95. BEHAVIOR MANAGEMENT AND YOUTH DISCIPLINE SUBCHAPTER B. DUE PROCESS HEARINGS PROCEDURES

37 TAC §§95.59, 95.61, 95.71

The Texas Youth Commission (TYC) proposes amendments to §95.59, concerning Detention for Youth with Pending Charges, §95.61, concerning Detention for Youth Pending Level I or II Hearing, and §95.71, concerning Mental Health Status Review Hearing Procedure. The sections will be amended to reflect updates to staff titles and terminology.

Janie Ramirez Duarte, Chief Financial Officer, has determined that for the first five-year period the sections are in effect, there will be no significant fiscal impact for state or local government as a result of enforcing or administering the sections.

Toysha Martin, General Counsel, has determined that for each year of the first five years the sections are in effect, the public benefit anticipated as a result of administering the sections will be the provision of agency rules that are current and up-to-date.

There will be no effect on small businesses or micro-businesses. There is no anticipated economic cost to persons who are required to comply with the sections as proposed. No private real property rights are affected by adoption of these sections.

Comments on the proposal may be submitted within 30 days of the publication of this notice to Erica Knutsen, Policy Writer, Texas Youth Commission, P.O. Box 4260, Austin, Texas 78765, or emailed to policy.proposals@tyc.state.tx.us.

The amended sections are proposed under Human Resources Code §61.034 (§242.003 as of September 1, 2011), which provides TYC with the authority to adopt rules appropriate to the proper accomplishment of its functions.

The proposed rules affect Human Resources Code, §61.034.

§95.59. *Detention for Youth with Pending Charges.*

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

(e) Procedure.

(1) - (6) (No change.)

(7) Appeal.

(A) The youth is notified in writing of his/her right to appeal.

(i) (No change.)

(ii) The appeal of the second Level IV Hearing will be to the executive director [~~commissioner~~] pursuant to §93.53 of this title.

(iii) An automatic appeal to the executive director [~~commissioner~~] will be filed on the third and subsequent Level IV Hearing, even if the youth waives the hearing. The staff requesting the detention will initiate the automatic appeal.

(B) (No change.)

§95.61. *Detention for Youth Pending Level I or II Hearing.*

(a) - (e) (No change.)

(f) Procedure.

(1) - (6) (No change.)

(7) Appeal.

(A) The youth is notified in writing of his/her right to appeal.

(i) For youth in institution detention:

(I) (No change.)

(II) appeal of the second Level IV Hearing will be to the executive director [~~commissioner~~] under §93.53 of this title; and

(III) an automatic appeal to the executive director [~~commissioner~~] will be filed on the third and subsequent Level IV Hearing, even if the youth waives the hearing. The referring staff will initiate the automatic appeal.

(ii) For youth in community detention, Level IV Hearing appeals will be to the executive director [~~commissioner~~] under §93.53 of this title.

(B) (No change.)

(g) (No change.)

§95.71. *Mental Health Status Review Hearing Procedure.*

(a) Purpose. The purpose of this rule is to establish the rules and procedure to be followed when the mental health status of a youth must be evaluated by professionals in order to provide appropriate care. A mental health status review hearing is the appropriate due process to admit a youth into a Texas Youth Commission (TYC) stabilization unit [~~the Corsicana Stabilization Unit~~] and also to extend the stay in order to treat the psychiatric disorder.

(b) Applicability.

(1) For criteria for admission to a TYC stabilization unit [~~the Corsicana Stabilization Unit~~], see §87.67 of this title.

(2) (No change.)

(c) Procedure.

(1) Decision Makers.

(A) The facility administrator of the TYC stabilization unit at which placement is sought [~~Corsicana Residential Treatment Center~~] will appoint a mental health professional, as defined in §91.87 of this title, to conduct the review hearing and serve as the hearing manager.

(B) - (D) (No change.)

(2) (No change.)

(3) Location. All mental health status review hearings will be conducted at a TYC stabilization unit [~~the Corsicana Residential Treatment Center~~] and are the responsibility of staff at that facility [~~the Corsicana staff~~].

(4) Advocate. The youth's advocate is appointed by the facility administrator or designee and must be a mental health professional or a caseworker assigned to the stabilization unit [~~Corsicana Stabilization Unit~~].

(5) Timing of Hearing. A mental health status review hearing shall be held for each youth within 96 hours of arrival at the stabilization unit [~~Corsicana Stabilization Unit~~]. If the 96-hour period ends on a Saturday, Sunday, or official holiday, the hearing must be held on the next regular work day. If the hearing manager determines an unavoidable absence would prevent a key witness or party from attending the hearing, the hearing may be rescheduled to the earliest possible time but not later than 96 hours from the original scheduled hearing.

(6) - (7) (No change.)

(8) Decision.

(A) (No change.)

(B) A hearing manager's decision to admit or extend a youth in the stabilization unit [~~Corsicana Stabilization Unit~~] must be supported by expert testimony of a psychiatrist that the youth meets the requisite criteria. The testimony should be given in-person when feasible.

(C) The youth shall be informed of his/her right to appeal to the executive director [~~commissioner~~]. The pendency of an appeal shall not preclude implementation of the decision.

(9) Hearing Reporting.

(A) (No change.)

(B) The facility administrator or designee will review the report to ensure accurate and consistent application of this rule and

criteria for admission to the stabilization unit [~~Corsicana Stabilization Unit~~], except that the person who conducted the hearing may not be the person who conducts this review. If necessary, the facility administrator or designee may return the report to the hearing manager for clarification or to reopen the hearing for the purpose of obtaining further information.

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

Filed with the Office of the Secretary of State on August 29, 2011.

TRD-201103525

Cheryl N. K. Townsend

Executive Director

Texas Youth Commission

Earliest possible date of adoption: October 9, 2011

For further information, please call: (512) 424-6475



CHAPTER 97. SECURITY AND CONTROL

SUBCHAPTER A. SECURITY AND CONTROL

37 TAC §97.23

The Texas Youth Commission (TYC) proposes amendments to §97.23, concerning Use of Force. The amended rule will update staff titles and terminology. The amended rule will also include language that was inadvertently omitted from the current version of the rule. In the August 14, 2009, issue of the *Texas Register* (34 TexReg 5572), TYC adopted the current version of the rule and provided notice of a change resulting from HB 3653 (81st Texas Legislature). The change included a prohibition on using restraints on a youth while she is in labor, during delivery, or recovering from delivery. Although TYC provided notice of this change in its adoption notice, the actual text of the revision was inadvertently omitted from the final rule text submitted to the *Texas Register*. That text will now be added.

Janie Ramirez Duarte, Chief Financial Officer, has determined that for the first five-year period the section is in effect, there will be no significant fiscal impact for state or local government as a result of enforcing or administering the section.

James Smith, Director of Youth Services, has determined that for each year of the first five years the section is in effect, the public benefit anticipated as a result of administering the section will be the provision of agency rules that are current and up-to-date.

There will be no effect on small businesses or micro-businesses. There is no anticipated economic cost to persons who are required to comply with the section as proposed. No private real property rights are affected by adoption of this section.

Comments on the proposal may be submitted within 30 days of the publication of this notice to Erica Knutsen, Policy Writer, Texas Youth Commission, P.O. Box 4260, Austin, Texas 78765, or emailed to policy.proposals@tyc.state.tx.us.

The amended section is proposed under Human Resources Code §61.034 (§242.003 as of September 1, 2011), which provides TYC with the authority to adopt rules appropriate to the proper accomplishment of its functions.

The proposed rule affects Human Resources Code, §61.034.

§97.23. *Use of Force.*

(a) (No change.)

(b) General Provisions.

(1) - (9) (No change.)

(10) Only restraint equipment approved by the executive director [~~commissioner~~] or his/her designee shall be used in TYC facilities. All restraint equipment shall be used in a manner consistent with its design and intended purpose.

(c) - (l) (No change.)

(m) Requirements for Use of Mechanical Restraints.

(1) (No change.)

(2) Restrictions on Use During or After Childbirth.

(A) TYC staff may not use mechanical restraints to control the movement of a youth who is in labor, during delivery, or during recovery from delivery unless the executive director or designee determines that the use of restraints is necessary to:

(i) ensure the safety and security of the youth, the infant, a staff member, or a member of the public; or

(ii) prevent a substantial risk that the youth will attempt to escape.

(B) If restraint is approved by the executive director or designee, staff must use the least restrictive type and method of restraint necessary to achieve the purpose of the restraint.

(3) [~~2~~] Mechanical Restraint Use by TYC Transportation Staff. Mechanical ankle and wrist restraints attached to a waist belt by a lead chain shall be used during secure transportation by designated TYC transportation staff. Exceptions may be made for youth being transported following release on parole from a residential program or when medically necessary.

(4) [~~3~~] Mechanical Restraint Use by Other Transporters.

(A) Mechanical ankle and wrist restraints attached to a waist belt by a lead chain shall be used during transportation when a youth is being transported to a high restriction program.

(B) Mechanical ankle and wrist restraints attached to a waist belt by a lead chain may be used when transporting a youth off-campus.

(n) Requirements for Use of OC Spray.

(1) Persons Authorized to Use OC Spray.

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

(C) The only staff authorized to routinely carry OC spray on-person are the facility administrator, assistant superintendent, administrative duty officer, juvenile correctional officer shift supervisor (one per shift), program supervisor [~~director of security~~], and security personnel whose primary responsibility is to patrol the campus and respond to security-related incidents. Any staff positions in addition to those listed must be authorized in writing by the executive director [~~commissioner~~] or his/her designee.

(D) (No change.)

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

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

Filed with the Office of the Secretary of State on August 29, 2011.

TRD-201103526
Cheryl K. Townsend
Executive Director
Texas Youth Commission
Earliest possible date of adoption: October 9, 2011
For further information, please call: (512) 424-6475



CHAPTER 99. GENERAL PROVISIONS SUBCHAPTER A. YOUTH RECORDS

37 TAC §99.19

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

The Texas Youth Commission (TYC) proposes the repeal of §99.19, concerning Youth Records Disposition. The Texas State Library and Archives Commission maintains official records retention schedules and submits them to the state records administrator. By rule, the Library and Archives Commission may prescribe a minimum retention period for any state record unless a minimum retention period for the record is prescribed by another federal or state law, regulation, or rule of court. There is no need for TYC to maintain a separate rule with this information. TYC maintains a comprehensive record retention schedule that must be approved by the Library and Archives Commission.

Janie Ramirez Duarte, Chief Financial Officer, has determined that for the first five-year period the repeal is in effect, there will be no significant fiscal impact for state or local government as a result of enforcing or administering the repeal.

Toysha Martin, General Counsel, has determined that for each year of the first five years the repeal is in effect, the public benefit anticipated as a result of administering the repeal will be consistency and compliance with statewide rules relating to records disposition.

There will be no effect on small businesses or micro-businesses. There is no anticipated economic cost to persons who are required to comply with the repeal as proposed. No private real property rights are affected by adoption of this repeal.

Comments on the proposal may be submitted within 30 days of the publication of this notice to Erica Knutsen, Policy Writer, Texas Youth Commission, P.O. Box 4260, Austin, Texas 78765, or emailed to policy.proposals@tyc.state.tx.us.

The repeal is proposed under Human Resources Code §61.034 (§242.003 as of September 1, 2011), which provides TYC with the authority to adopt rules appropriate to the proper accomplishment of its functions.

The proposed repeal affects Human Resources Code, §61.034.

§99.19. Youth Records Disposition.

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

Filed with the Office of the Secretary of State on August 29, 2011.

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Cheryl K. Townsend
Executive Director
Texas Youth Commission
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For further information, please call: (512) 424-6475



SUBCHAPTER C. MISCELLANEOUS

37 TAC §99.67, §99.90

The Texas Youth Commission (TYC) proposes amendments to §99.67, concerning Court Ordered Child Support, and §99.90, concerning Vehicle Fleet Management.

Section 99.67 clarifies when TYC may refer a delinquent child support collection account to the Office of the Attorney General. The amended rule also clarifies the disposition of funds for Title IV-E youth. Obsolete terminology has also been updated.

Section 99.90 will clarify that the chief inspector general may make individual vehicle assignments. Minor changes and updates will be made to certain definitions and descriptions of vehicle pool categories.

Janie Ramirez Duarte, Chief Financial Officer, has determined that for the first five-year period the sections are in effect, there will be no significant fiscal impact for state or local government as a result of enforcing or administering the sections.

Ms. Ramirez Duarte has also determined that for each year of the first five years the sections are in effect, the public benefit anticipated as a result of administering the sections will be the provision of agency rules that are current and consistent with state laws.

There will be no effect on small businesses or micro-businesses. There is no anticipated economic cost to persons who are required to comply with the sections as proposed. No private real property rights are affected by adoption of these sections.

Comments on the proposal may be submitted within 30 days of the publication of this notice to Erica Knutsen, Policy Writer, Texas Youth Commission, P.O. Box 4260, Austin, Texas 78765, or emailed to policy.proposals@tyc.state.tx.us.

Section 99.67 is proposed under Family Code, §54.06, which provides TYC with the authority to receive payments for court-ordered child support for youth committed to its care, and Human Resources Code §61.034 (§242.003 as of September 1, 2011), which provides TYC with the authority to adopt rules appropriate to the proper accomplishment of its functions.

Section 99.90 is proposed under Human Resources Code §61.034 (§242.003 as of September 1, 2011), which provides TYC with the authority to adopt rules appropriate to the proper accomplishment of its functions.

The proposed rules affect Human Resources Code, §61.034.

§99.67. Court Ordered Child Support.

(a) [~~Purpose.~~] The purpose of this rule is to establish a system whereby the Texas Youth Commission (TYC) complies with the Texas Family Code, §54.06, which specifies that the agency receives court ordered child support payments for youth committed to the agency's care and deposits these payments in the General Revenue Fund.

(b) (No change.)

(c) As part of the intake process, intake staff ensure [the Marlin Orientation and Assessment Unit (MOAU) reviews] commitment documentation for language ordering child support payments. When this documentation exists, intake staff ensure [MOAU ensures] that an entry is made to the correctional care information system detailing the payment amount and terms of rendition.

(d) - (e) (No change.)

(f) The committing court is notified by TYC when one payment is past due. ~~[For procedures, refer to TYC's Accounting Procedure Manual (ACC) 17.05 (relating to Court Ordered Child Support Payments).]~~

(g) Not later than the 90th day after the date the agency determines the normal agency collection procedures for an obligation to the agency have failed, the account may be referred to the Child Support Division of the Office of the Attorney General if determined by a contractual legal agreement between TYC and the Office of the Attorney General. [The account is referred to the Child Support Division of the Office of the Attorney General when the account is 90 days delinquent. For procedures, refer to ACC 17.05.]

(h) If TYC receives court ordered child support for a Title IV-E youth, TYC will inquire into the Attorney General's system and determine if the support is for an open Title IV-E case. If the support is for an open case, the funds will be forwarded to the Office of the Attorney General. If the support is for a closed case, the funds will be forwarded to the Texas Department of Protective and Regulatory Services. [If payments are received for youth certified Title IV-E, those payments are immediately forwarded to the Texas Department of Family and Protective Services.]

(i) (No change.)

§99.90. *Vehicle Fleet Management.*

(a) (No change.)

(b) Definitions.

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

(3) Vehicle Control Officer (VCO)--a TYC employee responsible for managing the assigned vehicle fleet at each agency location and acting as liaison with the agency fleet manager. In Central Office, the fleet manager is the VCO. In TYC regions, the finance/business chief local administrator [regional business manager] is the VCO.

(4) (No change.)

(5) Mission Critical Vehicles--the vehicles assigned to individuals identified as critical to the needs and mission of the agency. [by the executive director or designee. The individuals are required to commute in designated vehicles.]

(6) - (7) (No change.)

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

(e) Explanation of Motor Pool.

(1) TYC will form statewide motor pools based on the primary function or utilization of each vehicle. Each agency vehicle will be assigned within an agency motor pool at a specific location and made available for checkout for official duty purposes where applicable. Each agency location will be authorized a specific number of vehicles within each designated utilization pool based on relative size or unique mission requirements. Vehicles will be rotated among locations and pools as necessary to meet utilization and efficiency criteria. Sub-pools may be formed at a location for more efficient management or utilization purposes. The following statewide pools will be formed.

(A) Mission Critical Vehicles. The executive director or his/her designee and the chief inspector general will assign vehicles to individual agency staff only after a written determination is made that the assignment is critical to the needs and mission requirements of the agency. No personal use of these vehicles is authorized other than commuting or de minimis use (such as a stop for personal errand on the way between a business delivery and the employee's home) while commuting. TYC will report to the OVFM the information required by the *State Vehicle Fleet Management Plan* on each vehicle as individual assignments occur. TYC maintains specific policy and procedural requirements regarding individual state vehicle assignments in the agency's personnel manual.

(B) (No change.)

(C) Maintenance and Supply Vehicles. All agency locations are encouraged to minimize the requirements for registered motor vehicles and place more reliance on low speed utility vehicles. Cargo vans and trucks are used for maintenance and supply functions. Vehicles are equipped and assigned specifically for these functions.

(D) Student Security and Client Support Vehicles. Passenger vans [Vans] are used in conjunction with the campus security or youth transport functions. Statewide youth transportation vehicles will be part of this pool. Vehicles will be outfitted with security enclosures where needed.

(E) Special Requirements Vehicles. Heavy equipment or special purpose vehicles, to include trailers, are specifically authorized at some TYC locations because of unique circumstances or need.

(F) (No change.)

(2) Individual Vehicle Assignments. The executive director or his/her designee and the chief inspector general may assign state owned vehicles to an individual only with written documentation that the assignment is critical to the needs and mission of the agency. The following information must be reported to the OVFM as individual assignments occur.

(A) (No change.)

(B) name and position of the individual to whom it is assigned, except law enforcement officers when this reporting could jeopardize the individual's security, as determined by the executive director or his/her designee and the chief inspector general; and

(C) (No change.)

(3) - (9) (No change.)

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

Filed with the Office of the Secretary of State on August 29, 2011.

TRD-201103528

Cheryl K. Townsend

Executive Director

Texas Youth Commission

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For further information, please call: (512) 424-6475

PART 5. TEXAS BOARD OF PARDONS AND PAROLES

CHAPTER 141. GENERAL PROVISIONS

SUBCHAPTER A. BOARD OF PARDONS AND PAROLES

37 TAC §141.1

The Texas Board of Pardons and Paroles proposes amendments to 37 TAC §141.1, concerning presiding officer (chair). The amendments to §141.1 are proposed to clean up the language of the rule.

Rissie Owens, Chair of the Board, has determined that for each year of the first five-year period the proposed amendments are in effect, no fiscal implications exist for state or local government as a result of enforcing or administering this section.

Ms. Owens also has determined that for each year of the first five years the proposed amendments are in effect, the public benefit anticipated as a result of enforcing the amendments to this section will be to bring the rules into compliance with current Board practice. There will be no effect on small businesses. There is no anticipated economic cost to persons required to comply with the amended rule as proposed.

An Economic Impact Statement and Regulatory Flexibility Analysis is not required because the proposed amendment will not have an economic effect on small businesses as defined in Texas Government Code §2006.001(2).

Comments should be directed to Bettie Wells, General Counsel, Texas Board of Pardons and Paroles, 209 W. 14th Street, Suite 500, Austin, Texas 78701, or by e-mail to bettie.wells@tdcj.state.tx.us. Written comments from the general public should be received within 30 days of the publication of this proposal.

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

No other statutes, articles, or codes are affected by these amendments.

§141.1. *Presiding Officer (Chair).*

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

(c) The presiding officer shall:

(1) develop and implement policies that clearly separate the policy-making responsibilities of the board and the management responsibilities of the board administrator, parole commissioners, and the staff of the board;

(2) establish caseloads and required work hours for members of the board and parole commissioners;

(3) develop policies to ensure board members and parole commissioners implement the updated parole guidelines and assign precedential value to previous decisions of the board relating to the granting of parole and the revocation of parole or mandatory supervision, and develop policies to ensure that members of the board and parole commissioners use updated parole guidelines and previous decisions of the board and parole commissioners in making decisions [under this chapter];

(4) require members of the board and parole commissioners to file activity reports that provide information on release decisions

made by members of the board and parole commissioners, the workload and hours worked of the members of the board and parole commissioners, and the use of parole guidelines by members of the board and parole commissioners;

(5) report annually on all board activities of the board and parole commissioners, parole release decisions and the use of parole guidelines by the board and parole commissioners to the governor and the legislature; and

(6) designate the composition of each parole panel and designate panels composed of at least one board member and any combination of board members and parole commissioners.

(d) (No change.)

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

Filed with the Office of the Secretary of State on August 29, 2011.

TRD-201103498

Bettie Wells

General Counsel

Texas Board of Pardons and Paroles

Earliest possible date of adoption: October 9, 2011

For further information, please call: (512) 406-5388



37 TAC §141.3

The Texas Board of Pardons and Paroles proposes amendments to 37 TAC §141.3, concerning board administration. The amendments to §141.3 are proposed to clean up the language of the rule.

Rissie Owens, Chair of the Board, has determined that for each year of the first five-year period the proposed amendments are in effect, no fiscal implications exist for state or local government as a result of enforcing or administering this section.

Ms. Owens also has determined that for each year of the first five years the proposed amendments are in effect, the public benefit anticipated as a result of enforcing the amendments to this section will be to bring the rules into compliance with current Board practice. There will be no effect on small businesses. There is no anticipated economic cost to persons required to comply with the amended rule as proposed.

An Economic Impact Statement and Regulatory Flexibility Analysis is not required because the proposed amendment will not have an economic effect on small businesses as defined in Texas Government Code §2006.001(2).

Comments should be directed to Bettie Wells, General Counsel, Texas Board of Pardons and Paroles, 209 W. 14th Street, Suite 500, Austin, Texas 78701, or by e-mail to bettie.wells@tdcj.state.tx.us. Written comments from the general public should be received within 30 days of the publication of this proposal.

The amended rule is proposed under §§508.036, 508.0441 and 508.045, Government Code. Section 508.036 authorizes the board to adopt rules relating to the decision-making processes used by the board and parole panels. Section 508.0441 and §508.045 authorize the Board to adopt reasonable rules as proper or necessary relating to the eligibility of an offender

for release to mandatory supervision and to act on matters of release to mandatory supervision.

No other statutes, articles, or codes are affected by these amendments.

§141.3. *Board Administration.*

(a) (No change.)

(b) The board shall:

(1) adopt rules which govern the decision-making processes of the board and parole panels.

(2) prepare information of public interest describing the functions of the board and make the information available to the public and appropriate state agencies;

(3) comply with federal and state laws related to program and facility accessibility;

(4) prepare annually a complete and detailed written report that meets the reporting requirements applicable to financial reporting provided in the General Appropriations Act and accounts for all funds received and disbursed by the board during the preceding fiscal year;

(5) develop for board members and parole commissioners a comprehensive training and education program on the criminal justice system, with special emphasis on the parole process;

(6) develop and implement a training program that each newly hired employee of the board designated to conduct hearings under §508.281, Government Code must complete before conducting a hearing without the assistance of a board member or experienced parole commissioner or designee;

(7) develop and implement a training program to provide an annual update to designees of the board on issues and procedures relating to the revocation process;

(8) prepare and biennially update a procedural manual to be used by designees of the board. The board shall include in the manual:

(A) descriptions of decisions in previous hearings determined by the board to have value as precedents for decisions in subsequent hearings;

(B) laws and court decisions relevant to decision making in hearings; and

(C) case studies useful in decision making in hearings;

(9) prepare and update as necessary a handbook to be made available to participants in hearings under §508.281, Government Code such as defense attorneys, persons released on parole or mandatory supervision, and witnesses. The handbook must describe in plain language the procedures used in a hearing under §508.281, Government Code;

(10) develop and implement a policy that clearly defines circumstances under which a board member or parole commissioner should disqualify himself or herself from voting on:

(A) a parole decision; or

(B) a decision to revoke parole or mandatory supervision;

(11) after consultation with the governor and the Texas Board of Criminal Justice, adopt a mission statement that reflects the responsibilities for the operation of the parole process that are assigned to the board, the division, the department, or the Texas Board of Criminal Justice;

(12) include in the mission statement a description of specific locations at which the board intends to conduct business related to the operation of the parole process;

(13) adopt rules relating to:

(A) the submission and presentation of information and arguments to the board, a parole panel, and the department for and in behalf of an inmate; and

(B) the time, place, and manner of contact between a person representing an inmate and:

(i) a member of the board or a parole commissioner;

(ii) an employee of the board; or

(iii) an employee of the department;

(14) develop according to an acceptable research method the parole guidelines that are the basic criteria on which a parole decision is made; and

(15) adopt a policy establishing the date on which the board may reconsider for release an inmate who has previously been denied release.

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

Filed with the Office of the Secretary of State on August 30, 2011.

TRD-201103535

Bettie Wells

General Counsel

Texas Board of Pardons and Paroles

Earliest possible date of adoption: October 9, 2011

For further information, please call: (512) 406-5480

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**SUBCHAPTER C. SUBMISSION AND
PRESENTATION OF INFORMATION AND
REPRESENTATION OF OFFENDERS**

37 TAC §141.71

The Texas Board of Pardons and Paroles proposes amendments to 37 TAC §141.71, concerning Minutes of the Board. The amendments to §141.71 are proposed to clean up the language of the rule.

Rissie Owens, Chair of the Board, has determined that for each year of the first five-year period the proposed amendments are in effect, no fiscal implications exist for state or local government as a result of enforcing or administering this section.

Ms. Owens also has determined that for each year of the first five years the proposed amendments are in effect, the public benefit anticipated as a result of enforcing the amendments to this section will be to bring the rules into compliance with current Board practice. There will be no effect on small businesses. There is no anticipated economic cost to persons required to comply with the amended rule as proposed.

An Economic Impact Statement and Regulatory Flexibility Analysis is not required because the proposed amendment will not have an economic effect on small businesses as defined in Texas Government Code §2006.001(2).

Comments should be directed to Bettie Wells, General Counsel, Texas Board of Pardons and Paroles, 209 W. 14th Street, Suite 500, Austin, Texas 78701, or by e-mail to bettie.wells@tdcj.state.tx.us. Written comments from the general public should be received within 30 days of the publication of this proposal.

The amended rule is proposed under §§508.036, 508.0441, 508.045 and 508.313, Government Code. Section 508.036 authorizes the board to adopt rules relating to the decision-making processes used by the board and parole panels. Section 508.0441 and §508.045 authorize the board to adopt reasonable rules as proper or necessary relating to the eligibility of an offender for release to mandatory supervision and to act on matters of release to mandatory supervision. Section 508.313 authorizes the board to adopt rules involving the availability of information as it relates to the parole and mandatory supervision system.

No other statutes, articles, or codes are affected by these amendments.

§141.71. Minutes of the Board [and Board Records].

All minutes of the board and parole panels, final decisions relating to parole, mandatory supervision, pardons, and clemency, statistical and general information concerning the parole and mandatory supervision program and system, including the names of releasees [paroled prisoners] and data recorded relating to parole and mandatory supervision services [in connection with parole services] shall be matters of public record and subject to public inspection during normal business hours except as limited by exceptions recognized under common law and the Texas Public Information Act.

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

Filed with the Office of the Secretary of State on August 29, 2011.

TRD-201103499

Bettie Wells

General Counsel

Texas Board of Pardons and Paroles

Earliest possible date of adoption: October 9, 2011

For further information, please call: (512) 406-5388



37 TAC §141.72

The Texas Board of Pardons and Paroles proposes amendments to 37 TAC §141.72, concerning record of decisions. The amendments to §141.72 are proposed to clean up the language of the rule.

Rissie Owens, Chair of the Board, has determined that for each year of the first five-year period the proposed amendments are in effect, no fiscal implications exist for state or local government as a result of enforcing or administering this section.

Ms. Owens also has determined that for each year of the first five years the proposed amendments are in effect, the public benefit anticipated as a result of enforcing the amendments to this section will be to bring the rules into compliance with current Board practice. There will be no effect on small businesses. There is no anticipated economic cost to persons required to comply with the amended rule as proposed.

An Economic Impact Statement and Regulatory Flexibility Analysis is not required because the proposed amendment will not have an economic effect on small businesses as defined in Texas Government Code §2006.001(2).

Comments should be directed to Bettie Wells, General Counsel, Texas Board of Pardons and Paroles, 209 W. 14th Street, Suite 500, Austin, Texas 78701, or by e-mail to bettie.wells@tdcj.state.tx.us. Written comments from the general public should be received within 30 days of the publication of this proposal.

The amended rule is proposed under §§508.036, 508.0441, 508.045 and 508.313, Government Code. Section 508.036 authorizes the board to adopt rules relating to the decision-making processes used by the board and parole panels. Section 508.0441 and §508.045 authorize the board to adopt reasonable rules as proper or necessary relating to the eligibility of an offender for release to mandatory supervision and to act on matters of release to mandatory supervision. Section 508.313 authorizes the board to adopt rules involving the availability of information as it relates to the parole and mandatory supervision system.

No other statutes, articles, or codes are affected by these amendments.

§141.72. Record of Decisions.

(a) All board and parole panel decisions are maintained by the division as the official custodian of all electronic and paper records obtained and maintained for offenders eligible for parole or mandatory supervision.

(b) The board [and parole panels] shall keep records of their acts concerning clemency matters.

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

Filed with the Office of the Secretary of State on August 30, 2011.

TRD-201103536

Bettie Wells

General Counsel

Texas Board of Pardons and Paroles

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For further information, please call: (512) 406-5388



SUBCHAPTER D. REGISTRATION OF VISITORS AND FEE AFFIDAVITS

37 TAC §141.81

The Texas Board of Pardons and Paroles proposes amendments to 37 TAC §141.81, concerning registration of visitors. The amendments to §141.81 are proposed to clean up the language of the rule.

Rissie Owens, Chair of the Board, has determined that for each year of the first five-year period the proposed amendments are in effect, no fiscal implications exist for state or local government as a result of enforcing or administering this section.

Ms. Owens also has determined that for each year of the first five years the proposed amendments are in effect, the public benefit anticipated as a result of enforcing the amendments to

this section will be to bring the rules into compliance with current Board practice. There will be no effect on small businesses. There is no anticipated economic cost to persons required to comply with the amended rule as proposed.

An Economic Impact Statement and Regulatory Flexibility Analysis is not required because the proposed amendment will not have an economic effect on small businesses as defined in Texas Government Code §2006.001(2).

Comments should be directed to Bettie Wells, General Counsel, Texas Board of Pardons and Paroles, 209 W. 14th Street, Suite 500, Austin, Texas 78701, or by e-mail to bettie.wells@tdcj.state.tx.us. Written comments from the general public should be received within 30 days of the publication of this proposal.

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

No other statutes, articles, or codes are affected by these amendments.

§141.81. Registration of Visitors.

Any person who appears before the board or a parole panel, or before any board member, parole commissioner, or any board employee whether in an interview or at a hearing, except those appearing as witnesses at a preliminary and/or revocation hearing or a sex offender condition hearing, for the purpose of submitting or presenting information or arguments for and in behalf of any person within the jurisdiction of the board, shall register in the record of the board as required by law (Government Code, §2004.002).

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

Filed with the Office of the Secretary of State on August 29, 2011.

TRD-201103500

Bettie Wells

General Counsel

Texas Board of Pardons and Paroles

Earliest possible date of adoption: October 9, 2011

For further information, please call: (512) 406-5388



SUBCHAPTER F. SUBPOENAS

37 TAC §141.101

The Texas Board of Pardons and Paroles proposes amendments to 37 TAC §141.101, concerning issuance of subpoenas. The amendments to §141.101 are proposed to clean up the language of the rule.

Rissie Owens, Chair of the Board, has determined that for each year of the first five-year period the proposed amendments are in effect, no fiscal implications exist for state or local government as a result of enforcing or administering this section.

Ms. Owens also has determined that for each year of the first five years the proposed amendments are in effect, the public benefit

anticipated as a result of enforcing the amendments to this section will be to bring the rules into compliance with current board practice. There will be no effect on small businesses. There is no anticipated economic cost to persons required to comply with the amended rule as proposed.

An Economic Impact Statement and Regulatory Flexibility Analysis is not required because the proposed amendments will not have an economic effect on small businesses as defined in Texas Government Code §2006.001(2).

Comments should be directed to Bettie Wells, General Counsel, Texas Board of Pardons and Paroles, 209 W. 14th Street, Suite 500, Austin, Texas 78701, or by e-mail to bettie.wells@tdcj.state.tx.us. Written comments from the general public should be received within 30 days of the publication of this proposal.

The amended rule is proposed under §§508.036, 508.0441, 508.045, and 508.048, Government Code. Section 508.036 authorizes the board to adopt rules relating to the decision-making processes used by the board and parole panels. Section 508.0441 and §508.045 authorize the board to adopt reasonable rules as proper or necessary relating to the eligibility of an offender for release to mandatory supervision and to act on matters of release to mandatory supervision. Section 508.048 authorizes the board to issue subpoenas.

No other statutes, articles, or codes are affected by these amendments.

§141.101. Issuance of Subpoenas.

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

~~{(d) A designee of the board may cause the issuance of subpoenas signed by a board member when necessary to obtain the attendance of witnesses or the production of any of the items referred to in subsection (a) of this section in accordance with §508.048, Government Code.}~~

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

Filed with the Office of the Secretary of State on August 29, 2011.

TRD-201103503

Bettie Wells

General Counsel

Texas Board of Pardons and Paroles

Earliest possible date of adoption: October 9, 2011

For further information, please call: (512) 406-5388



SUBCHAPTER G. DEFINITION OF TERMS

37 TAC §141.111

The Texas Board of Pardons and Paroles proposes amendments to 37 TAC §141.111, concerning definition of terms. The amendments to §141.111 are proposed to clarify the acronym for the Texas Department of Criminal Justice.

Rissie Owens, Chair of the Board, has determined that for each year of the first five-year period the proposed amendments are in effect, no fiscal implications exist for state or local government as a result of enforcing or administering this section.

Ms. Owens also has determined that for each year of the first five years the proposed amendments are in effect, the public benefit anticipated as a result of enforcing the amendments to this section will be to bring the rules into compliance with current board practice. There will be no effect on small businesses. There is no anticipated economic cost to persons required to comply with the amended rule as proposed.

An Economic Impact Statement and Regulatory Flexibility Analysis is not required because the proposed amendments will not have an economic effect on small businesses as defined in Texas Government Code §2006.001(2).

Comments should be directed to Bettie Wells, General Counsel, Texas Board of Pardons and Paroles, 209 W. 14th Street, Suite 500, Austin, Texas 78701, or by e-mail to bettie.wells@tdcj.state.tx.us. Written comments from the general public should be received within 30 days of the publication of this proposal.

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

No other statutes, articles, or codes are affected by these amendments.

§141.111. Definition of Terms.

The following words and terms used within these rules shall have the following meanings, unless the context clearly indicates otherwise.

(1) - (37) (No change.)

(38) TDCJ--Texas Department of Criminal Justice.

(39) [(38)] Treatment--Refers to rehabilitation programs also referred to as counseling or therapy.

(40) [(39)] Trial officials--The present sheriff, each chief of police, prosecuting attorney, and judge in the county and court of conviction and release.

(41) [(40)] Victim--A person who is the victim of the offense of sexual assault, kidnapping, aggravated robbery, trafficking of persons, or injury to a child, elderly individual, or disabled individual or who has suffered personal injury or death as a result of the criminal conduct of another, as defined in the Texas Code of Criminal Procedure, Article 56.01 §3.

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

Filed with the Office of the Secretary of State on August 29, 2011.

TRD-201103504

Bettie Wells

General Counsel

Texas Board of Pardons and Paroles

Earliest possible date of adoption: October 9, 2011

For further information, please call: (512) 406-5388



CHAPTER 145. PAROLE

SUBCHAPTER A. PAROLE PROCESS

37 TAC §145.1

The Texas Board of Pardons and Paroles proposes amendments to 37 TAC §145.1, concerning parole decision-maker. The amendments to §145.1 are proposed to add to the list of offenses for offenders who are eligible for parole and require a two-thirds vote.

Rissie Owens, Chair of the Board, has determined that for each year of the first five-year period the proposed amendments are in effect, no fiscal implications exist for state or local government as a result of enforcing or administering this section.

Ms. Owens also has determined that for each year of the first five years the proposed amendments are in effect, the public benefit anticipated as a result of enforcing the amendments will be to conform with recent legislation. There will be no effect on small businesses. There is no anticipated economic cost to persons required to comply with the amended rule as proposed.

An Economic Impact Statement and Regulatory Flexibility Analysis is not required because the proposed amendments will not have an economic effect on small businesses as defined in Texas Government Code §2006.001(2).

Comments should be directed to Bettie Wells, General Counsel, Texas Board of Pardons and Paroles, 209 W. 14th Street, Suite 500, Austin, Texas 78701, or by e-mail to bettie.wells@tdcj.state.tx.us. Written comments from the general public should be received within 30 days of the publication of this proposal.

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

No other statutes, articles, or codes are affected by these amendments.

§145.1. Parole Decision-Maker.

(a) Unless otherwise provided, parole decisions shall be made by two-thirds vote of a parole panel. The board is the parole release decision-maker of persons convicted of a capital felony offense, who are eligible for parole, or an offense under §§20A.03, 21.02, 21.11(a)(1), 22.021, or 12.42(c)(2) of the Penal Code. In these cases, the board may grant parole only upon a two-thirds vote. The board is not required to meet as a body to perform this duty.

(b) In all other matters of parole and mandatory supervision and revocation of parole and mandatory supervision, three-member parole panels are parole decision-makers. A parole panel may consider any eligible offender for release and, upon a majority vote of the panel may approve or deny release to supervision. If a majority of the panel does not concur, the case is forwarded to a panel designated by the presiding officer (chair) to revote. The members of a parole panel are not required to meet as a body to perform these decision-making duties.

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

Filed with the Office of the Secretary of State on August 29, 2011.

TRD-201103505
Bettie Wells
General Counsel
Texas Board of Pardons and Paroles
Earliest possible date of adoption: October 9, 2011
For further information, please call: (512) 406-5388



37 TAC §145.15

The Texas Board of Pardons and Paroles proposes amendments to 37 TAC §145.15, concerning action upon review; extraordinary vote. The amendments to §145.15 are proposed to add to the list of offenses for offenders who are eligible for parole and require a two-thirds vote.

Rissie Owens, Chair of the Board, has determined that for each year of the first five-year period the proposed amendments are in effect, no fiscal implications exist for state or local government as a result of enforcing or administering this section.

Ms. Owens also has determined that for each year of the first five years the proposed amendments are in effect, the public benefit anticipated as a result of enforcing the amendments will be to ensure compliance with Senate Bill 198, 81st Legislature. There will be no effect on small businesses. There is no anticipated economic cost to persons required to comply with the amended rule as proposed.

An Economic Impact Statement and Regulatory Flexibility Analysis is not required because the proposed amendments will not have an economic effect on small businesses as defined in Texas Government Code §2006.001(2).

Comments should be directed to Bettie Wells, General Counsel, Texas Board of Pardons and Paroles, 209 W. 14th Street, Suite 500, Austin, Texas 78701, or by e-mail to bettie.wells@tdcj.state.tx.us. Written comments from the general public should be received within 30 days of the publication of this proposal.

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

No other statutes, articles, or codes are affected by these amendments.

§145.15. Action Upon Review; Extraordinary Vote.

(a) This section applies to any offender convicted of a capital offense, who is eligible for parole, an offense under §§20A.03, 21.02, 21.11(a)(1) or 22.021 of the[-] Penal Code, or who is required under §508.145(c), Government Code, to serve 35 calendar years before becoming eligible for parole review. All members of the board shall vote on the release of an eligible offender. At least two-thirds of the members must vote favorably for the offender to be released to parole. Members of the board shall not vote until they receive and review a copy of a written report from the department on the probability of the offender committing an offense after being released.

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

(b) - (e) (No change.)

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

Filed with the Office of the Secretary of State on August 31, 2011.

TRD-201103548
Bettie Wells
General Counsel
Texas Board of Pardons and Paroles
Earliest possible date of adoption: October 9, 2011
For further information, please call: (512) 406-5388



PART 9. TEXAS COMMISSION ON JAIL STANDARDS

CHAPTER 269. RECORDS AND PROCEDURES

SUBCHAPTER A. GENERAL

37 TAC §269.1

The Texas Commission on Jail Standards proposes an amendment to §269.1, concerning Record Systems, in order to comply with changes mandated by the 82nd Legislative Session.

Adan Munoz, Executive Director, has determined that for the first five-year period the amendment is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the amended section.

Mr. Munoz has determined that for each year of the first five years the amendment is in effect the public benefits anticipated as a result of enforcing the amendment as proposed will be clarification of existing standards. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the amendment as proposed.

Comments on the proposal may be submitted to Brandon S. Wood, P.O. Box 12985, Austin, Texas 78711, (512) 463-5505.

The amendment is proposed under Government Code, Chapter 511, which provides the Texas Commission on Jail Standards with the authority to adopt reasonable rules and procedures establishing minimum standards for the construction, equipment, maintenance, and operation of county jails.

The statutes that are affected by this amendment are Local Government Code, Chapter 351, §351.002 and §351.015.

§269.1. Record System.

The sheriff/operator shall maintain the following records:

(1) - (5) (No change.)

(6) Information on Licensed Jailer Turnover Report. On or before the fifth day of each month, each jail under the Commission's purview shall submit a report, on a form prescribed by the Commission, the number of licensed jailers who left employment at the jail during the previous month.

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

Filed with the Office of the Secretary of State on August 29, 2011.

TRD-201103510
Brandon S. Wood
Assistant Director
Texas Commission on Jail Standards
Earliest possible date of adoption: October 9, 2011
For further information, please call: (512) 463-8236



TITLE 40. SOCIAL SERVICES AND ASSISTANCE

PART 2. DEPARTMENT OF ASSISTIVE AND REHABILITATIVE SERVICES

CHAPTER 109. OFFICE FOR DEAF AND HARD OF HEARING SERVICES

SUBCHAPTER A. GENERAL RULES

40 TAC §109.109

The Texas Health and Human Services Commission (HHSC), on behalf of the Texas Department of Assistive and Rehabilitative Services (DARS), proposes amending its rules in Title 40, Part 2, Chapter 109, Office for Deaf and Hard of Hearing Services, Subchapter A, General Rules, by adding new §109.109, Examination Accommodations for Persons with Dyslexia.

DARS is proposing to add new §109.109, Examination Accommodations for Persons with Dyslexia, to provide rules relating to reasonable examination accommodations for applicants, who have been diagnosed as having dyslexia, taking any of the DARS interpreter certification examinations; and to establish the eligibility criteria persons with dyslexia must meet for accommodation.

This new rule is being proposed under the authority of Texas Occupations Code §54.003, Examination Accommodations for Persons with Dyslexia; and Human Resources Code, Chapters 81 and 117.

Mary Wright, DARS Chief Financial Officer, estimates that for each year of the first five years that the proposed new rule is in effect, there will be no foreseeable fiscal implications for state or local governments' costs or revenues as a result of enforcing or administering the proposed rule. She has determined that there is no probable economic cost to persons who are required to comply with the proposed rule.

Ms. Wright also has determined that for each year of the first five years the proposed rule is in effect, the public benefit anticipated as a result of this new rule will be an established means for persons with dyslexia to request reasonable accommodations in taking the interpreter certification examinations.

Additionally, in accordance with Texas Government Code §2001.022, Ms. Wright has determined that the proposed rule will not affect a local economy, and, therefore, no local employment impact statement is required. Finally, Ms. Wright has also determined that the proposed rule will have no adverse economic effect on small businesses or micro-businesses.

Written comments on this proposal may be submitted within 30 days of publication of this proposal in the *Texas Register* to Nancy Mikulencak, Rules Coordinator, Texas Department of Assistive and Rehabilitative Services, 4800 North Lamar

Boulevard, Suite 200, Austin, Texas, 78756 or electronically to DARS.Rules@dars.state.tx.us.

This new rule is proposed pursuant to HHSC's statutory rulemaking authority under Government Code, Chapter 531, §531.0055(e), which provides the Executive Commissioner of HHSC with the authority to promulgate rules for the operation and provision of health and human services by health and human services agencies.

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

§109.109. Examination Accommodations for Persons with Dyslexia.

(a) "Dyslexia" has the meaning assigned by §51.970 of the Texas Education Code.

(b) Applicants who request a reasonable accommodation based upon a claimed disability of dyslexia shall be provided with reasonable accommodation(s) if they meet the eligibility criteria set forth in subsection (c) of this section.

(c) To be eligible for a reasonable accommodation based upon a diagnosis of dyslexia, an applicant must make a written request and must:

(1) Provide written documentation from a licensed medical professional (a physician, psychiatrist, or psychologist), specifically indicating that the applicant has a diagnosis of dyslexia;

(2) Provide written documentation that includes an explanation from a certifying medical professional that:

(A) explains how the applicant's dyslexia substantially limits his or her ability to take this test under current testing procedures;

(B) provides guidance about recommended modifications that enable the applicant to test; and

(C) is dated less than two years from the application submission date of the test for which the applicant is seeking an accommodation; and

(3) Submit all documentation under cover of the certifying medical professional's letterhead and signature to the Office.

(d) DARS shall make the final determination on what reasonable accommodations eligible applicants shall receive.

(e) Determinations on reasonable accommodations by DARS shall be final.

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

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

TRD-201103429

Sylvia F. Hardman

General Counsel

Department of Assistive and Rehabilitative Services

Earliest possible date of adoption: October 9, 2011

For further information, please call: (512) 424-4050



TITLE 43. TRANSPORTATION

PART 1. TEXAS DEPARTMENT OF TRANSPORTATION

CHAPTER 1. MANAGEMENT

SUBCHAPTER F. ADVISORY COMMITTEES

43 TAC §§1.82, 1.84 - 1.87

The Texas Department of Transportation (department) proposes amendments to §1.82, Statutory Advisory Committee Operations and Procedures, §1.84, Statutory Advisory Committees, §1.85, Department Advisory Committees, §1.86, Corridor Advisory Committees, and §1.87, Corridor Segment Advisory Committees.

EXPLANATION OF PROPOSED AMENDMENTS

The amendments are the result of the Texas Transportation Commission's (commission) review of the need to continue the existence of the commission's advisory committees and changes made by House Bill 699, 82nd Legislature, Regular Session, 2011, concerning the funding of port security, facility projects, and port studies, and House Bill 1201, 82nd Legislature, Regular Session, 2011, repealing the authority for the establishment and operation of the Trans-Texas Corridor.

Amendments to §1.82, Statutory Advisory Committee Operations and Procedures, subsection (i), revise the sunset dates of commission advisory committees that are created by statute. Section 1.82 currently provides that each statutory advisory committee is abolished December 31, 2011. This sunset date was established under Government Code, §2110.008, which authorizes a state agency to establish by rule a date on which advisory committees will automatically be abolished unless continued. The commission determines that the continued existence of its statutory advisory committees is necessary for improved communication between the department and the public. Therefore, §1.82(i) is amended to revise the sunset date to December 31, 2013.

Section 1.84, Statutory Advisory Committees, provides information concerning the advisory committees of the commission that were created by statute. Subsection (c) of that section relates to the Port Authority Advisory Committee. H.B. 699 made various changes to Transportation Code, Chapter 55, including changes related to the Port Authority Advisory Committee. The amendments to subsection (c) of §1.84 are made to adjust the subsection to changes of law made by that act.

Amendments throughout §1.84(c) clarify that the Port Authority Advisory Committee advises the commission on issues relating to ocean ports. Legislative changes made to Transportation Code, Chapter 55, by H.B. 699 emphasize that the committee's authority is limited to maritime ports and does not extend to other types of ports, such as ports of entry, inland ports, air cargo facilities, and intermodal terminals that may be located hundreds of miles from the nearest ocean.

Amendments to §1.84(c)(3) also remove the requirement that the committee maintain trade data information that will assist ports and add a requirement that the committee prepare and submit a report on Texas maritime ports. These modifications reflect the statutory changes made by H.B. 699. New §1.84(c)(3)(D)(i) expressly refers to Transportation Code, §55.007, which was amended by H.B. 699, rather than listing the requirements stated in that section. Finally, amendments to §1.84(c)(3) provide that the committee is required to prepare a port capital program, in accordance with Transportation Code, §55.008, and submit the program and its updates every two years as required by that section. While this has been a statutory requirement for many years, it has not been mentioned

in the commission's rules. This provision is added to provide additional information in the rules about the committee's duties.

Section 1.85, Department Advisory Committees, provides for the creation of advisory committees by the commission and provides the operating procedures for those committees.

Amendments to §1.85 delete subsection (a)(3), which relates to Intelligent Transportation Systems (ITS) Steering Committee, because those types of committees are not currently used by the department. When a district needs local input regarding an ITS project, it typically works with the appropriate Metropolitan Planning Organization. Furthermore, if the department needs to form an advisory committee related to the development and implementation of an ITS project, it has the authority to create such a committee as a Project Advisory Committee under §1.85(a)(1). Current paragraph (4) is redesignated as paragraph (3).

Amendments to §1.85 also delete subsection (a)(5), which relates to the creation of Trans-Texas Corridor advisory committees, and redesignates current paragraph (6) as paragraph (4). H.B. 1201 repeals the authority for the establishment and operation of the Trans-Texas Corridor. Therefore, Trans-Texas Corridor advisory committees are no longer needed.

Amendments to §1.85 change the date that advisory committees created under that section are abolished. Subsection (c) of §1.85 currently provides a December 31, 2011 sunset date, which was established in accordance with Government Code, §2110.008. Except for the committees whose authority is being repealed by these amendments, the commission determines that each existing advisory committee created under §1.85 is necessary for improved communication between the department and the public. Therefore, amendments to subsection (c) extend the sunset date to December 31, 2013.

Amendments to §1.86, Corridor Advisory Committees, similarly change the date that advisory committees created under that section are abolished. Subsection (e) of §1.86 currently provides that each advisory committee created under that section is abolished December 31, 2011. This sunset date was established in accordance with Government Code, §2110.008. The commission determines that each existing corridor advisory committee is necessary for improved communication between the department and the public. Therefore, amendments to §1.86(e) change the sunset date to December 31, 2013.

Amendments to §1.87, Corridor Segment Advisory Committees, change the date that corridor segment advisory committees are abolished. Subsection (e) of §1.87 currently provides that each corridor segment advisory committee is abolished December 31, 2011. This sunset date was established in accordance with Government Code, §2110.008. The commission determines that each existing corridor segment advisory committee is necessary for improved communication between the department and the public. Therefore, amendments to §1.87(e) extend the sunset date to December 31, 2013.

FISCAL NOTE

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

Bob Jackson, General Counsel, has certified that there will be no significant impact on local economies or overall employment as a result of enforcing or administering the amendments.

PUBLIC BENEFIT AND COST

Mr. Jackson has also determined that for each year of the first five years in which the sections are in effect, the public benefit anticipated as a result of enforcing or administering the amendments will be accuracy of the rules and improved communication between the department and the public. There are no anticipated economic costs for persons required to comply with the sections as proposed. There will be no adverse economic effect on small businesses.

SUBMITTAL OF COMMENTS

Written comments on the proposed amendments to §1.82 and §§1.84 - 1.87 may be submitted to Bob Jackson, General Counsel, Texas Department of Transportation, 125 East 11th Street, Austin, Texas 78701-2483. The deadline for receipt of comments is 5:00 p.m. on October 11, 2011.

STATUTORY AUTHORITY

The amendments are proposed under Transportation Code, §201.101, which provides the commission with the authority to establish rules for the conduct of the work of the department, and more specifically, Transportation Code, §201.117, which provides the commission with the authority to establish, as it considers necessary, advisory committees on any of the matters under its jurisdiction, and Government Code, §2110.008, which provides that, if a state agency committee designates the date on which an advisory committee will automatically be abolished or changes such a date, the designation or change must be by rule.

CROSS REFERENCE TO STATUTE

Government Code, Chapter 2110, and Transportation Code, Chapter 55.

§1.82. *Statutory Advisory Committee Operations and Procedures.*

(a) **Applicability.** This section applies to statutory advisory committees and governs the operation of statutory advisory committees unless it is superseded by a specific provision in §1.84 of this subchapter (relating to Statutory Advisory Committees).

(b) **Election of officers and terms of members.**

(1) Unless otherwise specified with regard to a particular committee, each committee shall elect a chair and vice-chair by majority vote of the members of the committee. The chair and vice-chair shall each be elected for a term of not less than one year and not more than two years. Once elected, the chair and vice-chair may stand for reelection, without limit on the number of consecutive terms.

(2) Members shall serve on an advisory committee until new members are appointed.

(c) **Meetings.**

(1) **Meeting requirements.** The office designated for an advisory committee under subsection (f) of this section shall submit to the Office of the Secretary of State notice of a meeting of the advisory committee at least 10 days before the date of the meeting. The notice must provide the date, time, place, and subject of the meeting. A meeting of an advisory committee must be open to the public. An advisory committee will follow the agenda set for each meeting under paragraph (2) of this subsection. Filing of notice of meetings with the Office of the Secretary of State shall be coordinated through the department's Office of General Counsel.

(2) **Scheduling of meetings.** Meeting dates, times, places, and agendas will be set by the office designated under subsection (f) of

this section. Any committee member may suggest the need for a meeting or an agenda item, provided that the committee may only discuss items that are within the committee's and the department's jurisdiction. The office designated under subsection (f) of this section will provide notice of the time, date, place, and purpose of meetings to the members, by mail, email, telephone or any combination of the three, at least 10 calendar days in advance of each meeting. All meetings must take place in Texas and must be held in a location that is readily accessible to the general public.

(3) **Quorum.** A majority of the membership of an advisory committee, including the chairman, constitutes a quorum. The committee may act only by majority vote of the members present at the meeting.

(4) **Removal.** A committee member may be removed at any time without cause by the person or entity that appointed the member or by that person's or entity's successor.

(5) **Parliamentary procedure.** Parliamentary procedures for all committee meetings shall be in accordance with the latest edition of Robert's Rules of Order, except that the chair may vote on any action as any other member of the committee, and except to the extent that Robert's Rules of Order are inconsistent with any statute or this subchapter.

(6) **Record.** Minutes of all committee meetings shall be prepared and filed with the commission. The complete proceedings of all committee meetings must also be recorded by electronic means.

(7) **Public information.** All minutes, transcripts, and other records of the advisory committees are records of the commission and as such may be subject to disclosure under the provisions of Government Code, Chapter 552.

(d) **Reimbursement.** The department may, if authorized by law and the executive director, reimburse a member of a committee for reasonable and necessary travel expenses. Current rules and laws governing reimbursement of expenses for state employees shall govern reimbursement of expenses for advisory committee members.

(e) **Conflict of interest.** Advisory committee members are subject to the same laws and policies governing ethical standards of conduct as those for commission members and employees of the department.

(f) **Administrative support.** For each advisory committee, the executive director will designate an office of the department that will be responsible for providing any necessary administrative support essential to the functions of the committee.

(g) **Advisory committee recommendations.** In developing department policies, the commission will consider the recommendations submitted by advisory committees.

(h) **Manner of reporting.**

(1) The office designated under subsection (f) of this section shall, in writing, report to the commission an official action of a statutory advisory committee, including any advice and recommendations, prior to commission action on the issue. The chair of the advisory committee or the chair's designee will also be invited by the department to appear before the commission prior to commission action on a posted agenda item to present the committee's advice and recommendations.

(2) In the event a written report cannot be furnished to the commission prior to commission action, the report may be given orally, provided that a written report is furnished within 10 days of commission action.

(i) Duration. Except as otherwise specified in this subchapter, each statutory advisory committee is abolished December 31, 2013 [2011], unless the commission amends its rules to provide for a different date.

§1.84. Statutory Advisory Committees.

(a) Aviation Advisory Committee.

(1) Purpose. Created pursuant to Transportation Code, §21.003, the Aviation Advisory Committee provides a direct link for general aviation users' input into the Texas Airport System. The committee provides a forum for exchange of information concerning the users' view of the needs and requirements for the economic development of the aviation system. The members of the committee are an avenue for interested parties to utilize to voice their concerns and have that data conveyed for action for system improvement. Additionally, committee members are representatives of the department and its Aviation Division, able to furnish data on resources available to the Texas aviation users.

(2) Membership. The commission will appoint the members of the Aviation Advisory Committee to staggered terms of three years with two members' terms expiring August 31 of each year. A committee member must have five years of successful experience as an aircraft pilot, an aircraft facilities manager, or a fixed-base operator.

(3) Duties. The committee shall:

(A) periodically review the adopted capital improvement program;

(B) advise the commission on the preparation and adoption of an aviation facilities development program;

(C) advise the commission on the establishment and maintenance of a method for determining priorities among locations and projects to receive state financial assistance for aviation facility development;

(D) advise the commission on the preparation and update of a multi-year aviation facilities capital improvement program; and

(E) perform other duties as determined by order of the commission.

(4) Meetings. The committee shall meet once a calendar year and such other times as requested by the Aviation Division Director.

(5) Rulemaking. Section 1.83 of this subchapter (relating to Rulemaking) does not apply to the Aviation Advisory Committee.

(b) Public Transportation Advisory Committee.

(1) Purpose. Created pursuant to Transportation Code, §455.004, the Public Transportation Advisory Committee provides a forum for the exchange of information between the department, the commission, and committee members representing the transit industry and the general public. Advice and recommendations expressed by the committee provide the department and the commission with a broader perspective regarding public transportation matters that will be considered in formulating department policies.

(2) Membership. Members of the Public Transportation Advisory Committee shall be appointed and shall serve pursuant to Transportation Code, §455.004.

(3) Duties. The committee shall:

(A) advise the commission on the needs and problems of the state's public transportation providers, including recommending

methods for allocating state public transportation funds if the allocation methodology is not specified by statute;

(B) comment on proposed rules or rule changes involving public transportation matters during their development and prior to final adoption unless an emergency requires immediate action by the commission;

(C) advise the commission on the implementation of Transportation Code, Chapter 461; and

(D) perform other duties as determined by order of the commission.

(4) Meetings. The committee shall meet as requested by the commission or the office designated under §1.82(f) of this subchapter (relating to Statutory Advisory Committee Operations and Procedures).

(5) Public transportation technical committees.

(A) The Public Transportation Advisory Committee may appoint one or more technical committees to advise it on specific issues, such as vehicle specifications, funding allocation methodologies, training and technical assistance programs, and level of service planning.

(B) A technical committee shall report any findings and recommendations to the Public Transportation Advisory Committee.

(c) Port Authority Advisory Committee.

(1) Purpose. Created pursuant to Transportation Code, §55.006, the purpose of the Port Authority Advisory Committee is to provide a forum for the exchange of information between the commission, the department, and committee members representing the maritime port industry in Texas and others who have an interest in maritime ports. The committee's advice and recommendations will provide the commission and the department with a broad perspective regarding maritime ports and transportation-related matters to be considered in formulating department policies concerning the Texas maritime port system.

(2) Membership.

(A) The commission will appoint seven members to staggered three-year terms unless removed sooner at the discretion of the commission.

(B) The commission will appoint:

(i) one member from the Port of Houston Authority of Harris County;

(ii) three members from maritime ports located on the upper Texas coast; and

(iii) three members from maritime ports located on the lower Texas coast.

(3) Duties. The committee shall:

(A) prepare a maritime port mission plan;

(B) review each project eligible to be funded under Transportation Code, Chapter 55, and make recommendations for approval or disapproval to the department;

~~{(C) maintain trade data information that will assist ports in this state and international trade;}~~

~~{(D) annually prepare a list of projects that have been recommended by the committee, including;}~~

~~and~~ ~~/(i) the recommended funding level for each project;~~

~~/(ii) if staged implementation of the project is appropriate, the funding requirements for each stage; and~~

~~(C) [(E)] advise the commission and the department on matters relating to port authorities; and[-]~~

~~(D) not later than December 1 of each even-numbered year:~~

~~(i) prepare and submit a report on Texas maritime ports, in accordance with Transportation Code, §55.007, subsections (a)(3) and (b);~~

~~(ii) prepare and submit a port capital program, in accordance with Transportation Code, §55.008.~~

(4) Meeting. The committee shall meet at least semiannually and such other times as requested by the commission, the executive director, or the executive director's designee. The chair may request the department to call a meeting.

(d) Border Trade Advisory Committee.

(1) Purpose. Created pursuant to Transportation Code, §201.114, the Border Trade Advisory Committee provides a forum for the exchange of communications among the commission, the department, the governor, and committee members representing border trade interests. The committee's advice and recommendations will provide the governor, the commission, and the department with a broad perspective regarding the effect of transportation choices on border trade in general and on particular communities. The members of the committee also provide an avenue for interested parties to express opinions with regard to border trade issues.

(2) Membership. The border commerce coordinator designated under Government Code, §772.010, shall serve as the chair of the committee. The commission will appoint the other members of the committee in accordance with Transportation Code, §201.114. The commission will appoint members to staggered three-year terms expiring on August 31 of each year, except that the commission may establish terms of less than three years for some members in order to stagger terms.

(3) Duties. The committee shall:

(A) define and develop a strategy for identifying and addressing the highest priority border trade transportation challenges;

(B) make recommendations to the commission regarding ways in which to address the highest priority border trade transportation challenges;

(C) advise the commission on methods for determining priorities among competing projects affecting border trade; and

(D) perform other duties as determined by the commission, the executive director, or the executive director's designee.

(4) Meetings. The committee shall meet at least once a calendar year. The dates and times of meetings shall be set by the committee. The committee shall also meet at the request of the department.

(5) Rulemaking. Sections 1.82(i) and 1.83 of this subchapter do not apply to the Border Trade Advisory Committee.

§1.85. Department Advisory Committees.

(a) Creation.

(1) Project advisory committees.

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

(B) Duties. A project advisory committee shall:

(i) maintain community and local government communication; and

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

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

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

(2) Rulemaking advisory committees.

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

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

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

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

~~/(3) Intelligent Transportation Systems (ITS) Steering Committees;]~~

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

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

~~/(i) ITS project priorities;]~~

~~/(ii) the approval of projects;]~~

- ~~[(iii) seeking project funding;]~~
- ~~[(iv) coordinating public and private ventures; and]~~
- ~~[(v) promoting ITS at local, state, and national levels.]~~

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

~~(3) [(4)] Bicycle Advisory Committee.~~

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

~~(B) Duties. The committee shall:~~

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

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

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

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

~~[(5) Trans-Texas Corridor advisory committees.]~~

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

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

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

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

~~(4) [(6)] TxDOT Strategic Research Program Advisory Committee.~~

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

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

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

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

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

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

~~(b) Operating procedures.~~

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

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

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

~~(2) Meetings.~~

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

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

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

(c) Duration. Except as otherwise specified in this section, a committee created under this section is abolished December 31, 2013 [2014], unless the commission amends its rules to provide for a different date.

(d) Reimbursement. The department may, if authorized by law and the executive director, reimburse a member of a committee for reasonable and necessary travel expenses. Current rules and laws governing reimbursement of expenses for state employees shall govern reimbursement of expenses for advisory committee members.

§1.86. Corridor Advisory Committees.

(a) Purpose. The commission by order will create advisory committees to assist the department in the transportation planning process for the Interstate Highway 35 corridor and in the corridor planned as part of Interstate Highway 69 and may create an advisory committee for any other corridor. The purpose of an advisory committee is to facilitate and achieve support and consensus from affected communities, governmental entities, and other interested parties in the planning of transportation improvements in the corridor for which it is created and in the establishment of development plans for that corridor. An advisory committee's advice and recommendations will provide the department with an enhanced understanding of public, business, and private concerns about the corridor for which it is created, facilitating the department's communications and project development objectives and resulting in greater cooperation between the department and all affected parties during project planning and development.

(b) Membership. An advisory committee may be composed of members of the following groups as deemed appropriate by the commission: affected property owners and owners of business establishments; technical experts; representatives of local governmental entities; members of the general public; economic development officials; chambers of commerce officials; members of the environmental community; department staff; and professional consultants representing the department.

(c) Duties. An advisory committee shall report to the executive director its advice and recommendations on transportation improvements to be made in the corridor for which it is created, including facilities to be included in a development plan for that corridor and upgrades and other improvements to be made to existing facilities located in that corridor, and on other corridor level planning and development matters as requested by the department. The corridor advisory committee may also provide information to, coordinate with, or request information relating to the planning and development of a segment of the corridor from a corridor segment advisory committee established under §1.87 of this subchapter (relating to Corridor Segment Advisory Committees). In developing advice and recommendations, an advisory committee will evaluate economic, political, societal, and demographic population trends affecting transportation, and will consider existing facilities, upgrades to existing facilities, new or planned facilities, multimodal solutions, and available financing options.

(d) Additional requirements. An advisory committee is subject to the requirements for operating procedures and reimbursement of expenses applicable to a department advisory committee under §1.85 of this subchapter (relating to Department Advisory Committees).

(e) Duration. An advisory committee created under this section is abolished December 31, 2013 [2014], unless the commission amends its rules to provide for a different date.

§1.87. Corridor Segment Advisory Committees.

(a) Purpose. The commission by order will create a corridor segment advisory committee to assist the department in the transportation planning process for the Interstate Highway 35 corridor and in the corridor planned as part of Interstate Highway 69 and may create an advisory committee for any other corridor. The purpose of an advisory committee is to facilitate and achieve support and consensus from affected communities, governmental entities, and other interested parties in the planning of transportation improvements in the segment of a corridor for which it is created and in the establishment of development plans for that segment. An advisory committee's advice and recommendations will provide the department with an enhanced understanding of public, business, and private concerns about the segment for which it is created, facilitating the department's communications and project development objectives and resulting in greater cooperation between the department and all affected parties during project planning and development.

(b) Membership. A corridor segment advisory committee consists of the following members:

(1) one member appointed by the county judge of each county in which the proposed segment may be located, representing the general public within the county;

(2) one member appointed by each metropolitan planning organization within whose boundaries all or part of the proposed segment may be located, representing the general public within the metropolitan planning organization;

(3) additional members representing the general public within cities designated by the commission, in which all or part of a proposed segment may be located, each of whom will be appointed by the mayor of a designated city; and

(4) additional members, each of whom:

(A) will represent, and be appointed by the governing body of, a port, chamber of commerce, economic development council or corporation, or other organization that has an interest in transportation, within whose service area all or part of a proposed segment may be located and that is designated by the commission to appoint a member of the committee; or

(B) is an individual who resides or has a business in the area in which the segment may be located, has an interest in transportation, and is appointed to the committee by the commission.

(c) Duties. An advisory committee shall report to the executive director its advice and recommendations on transportation improvements to be made in the segment of a corridor for which it is created, including facilities to be included in a development plan for that segment and upgrades and other improvements to be made to existing facilities located in that segment, and other segment level planning, development, and financing matters as requested by the department. A corridor segment advisory committee may provide information to, coordinate with, or request information from a corridor advisory committee created under §1.86 of this subchapter (relating to Corridor Advisory Committees). In developing advice and recommendations, a corridor segment advisory committee will evaluate economic, political, societal, and demographic population trends affecting transportation, and will consider existing facilities, upgrades to existing facilities, new or planned facilities, multimodal solutions, and available financing options.

(d) Additional requirements. A corridor segment advisory committee is subject to the requirements for operating procedures applicable to a department advisory committee under §1.85 of this subchapter (relating to Department Advisory Committees).

(e) Duration. A corridor segment advisory committee may be abolished at any time by the commission, but in no event may a committee continue beyond completion of the segment for which the committee is created. Except as otherwise specified in this paragraph, a committee created under this section is abolished December 31, 2013 [2011], unless the commission amends its rules to provide for a different date.

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

Filed with the Office of the Secretary of State on August 26, 2011.

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Bob Jackson

General Counsel

Texas Department of Transportation

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For further information, please call: (512) 463-8683



CHAPTER 11. DESIGN

The Texas Department of Transportation (department) proposes the repeal of §§11.200 - 11.205, concerning Statewide Transportation Enhancement Program, and new §§11.200 - 11.221, concerning Transportation Enhancement Program.

EXPLANATION OF PROPOSED REPEALS AND NEW SECTIONS

The department is currently modifying the process for selecting projects under the Transportation Enhancement Program. To achieve this goal the department has determined that changes to the existing rules are necessary. To streamline this process the department is repealing the sections relating to the existing program and simultaneously proposing new sections.

Many of the new sections contain nonsubstantive changes. The new rule organizational structure subdivides the current rules into smaller sections and reorganizes them so that the new rules are easier to read. The revision permits easier location of and access to specific provisions and makes them more understandable.

The department has made substantive changes to reflect recent revisions to the department's rules regarding the planning and development of transportation projects, found at 43 TAC Chapter 16, specifically relating to provisions which allocate Transportation Enhancement Program funds to metropolitan planning organizations operating in transportation management areas. In addition, the revisions also clarify and refine the existing language to improve the effectiveness of the program.

Subchapter E is retitled "Transportation Enhancement Program" to reflect the current federal program title.

New §11.200, Purpose, contains the purpose and scope of the subchapter and incorporates language from the department's rules regarding the planning and development of transportation projects, specifically, the allocation of one-half of the Transportation Enhancement Program funds to metropolitan planning organizations operating in transportation management areas. The language clarifies that the Texas Transportation Commission (commission) may allocate funds to the department for activities that qualify for the Transportation Enhancement Program and are located on the state highway system, and may

also make funds available in a statewide competitive program call. The reference to the "Safe Routes to Schools Program" has been eliminated since that program is no longer part of the federal Transportation Enhancement Program.

New §11.201, Definitions, incorporates many of the definitions from current §11.201 without change. Several previously-defined terms are removed. The definitions for "Allowable costs," "Local funding match" and "TEPEC" are deleted and moved to new sections which provide substantive information and clarify programmatic requirements. The definition for "State highway system" has been removed because it is used only in §11.200, Purpose, and can therefore be eliminated for brevity. The definition for "In-kind contribution" has been eliminated as the department will no longer accept in-kind contributions. The definitions for "Function" and "Impact" are deleted as these definitions are no longer referenced in current federal law or regulations. The definitions for "Appropriate local officials," "Metropolitan transportation plan," "Reimbursable costs," and "Sponsor" are deleted as these terms are not referenced in the rules. The definitions for "Local transit operator," "Metropolitan area," and "Program" are no longer necessary due to other changes or clarifications in the rules and are also deleted.

Several definitions are modified due to changes in the department's rules regarding the planning and development of transportation projects. The definitions for "Metropolitan planning organization" and "Statewide Transportation Improvement Program" are modified and new definition "Transportation management area" is added for consistency with those rules. The definitions for "Candidate project" and "Selected project" are revised to recognize that certain metropolitan planning organizations will select projects.

Several definitions are modified to reflect changes to the Transportation Enhancement Program as reflected in the new sections or to clarify existing practices. The definition of "Nominating entity" has been expanded to include all political subdivisions eligible to receive funds from the Federal Highway Administration (FHWA). The definition of "Project" has been revised to clarify that project development is no longer considered an allowable cost. The definition of "Transportation enhancement activities" has been revised to remove the specific reference to each of the twelve federally eligible categories so that any future federal changes will not necessitate changes to the department's rules.

New §11.202, Allowable Costs, clarifies that the use of federal funds is limited to construction-related project expenditures. Exceptions are provided for those transportation enhancement activities that specifically address planning, right-of-way, environmental mitigation, or expenditures for routine operation and maintenance. The department is proposing this change because in past program calls much of the funding for selected projects was expended on the development of plans, specifications, and estimates. As a result, many projects were left with inadequate funding and could not be built as originally proposed.

New §11.203, Local Funding Match, clarifies that a local funding match is a cash match provided by or through the nominating entity. In-kind donations will no longer be considered part of the local funding match. The use of in-kind items, such as plans, property, and materials, is eliminated because this type of local match is difficult to properly account for and quantify. While an in-kind contribution appears to help the nominator reach the minimum cash match requirement, it still does not provide the cash needed to ultimately develop the project. Further, an in-kind

match reduces the amount of cash that is available for the plans or construction of the project. Unless specifically authorized by federal statute or regulation, funds from other federal programs may not be used as a local funding match. Donated services will not be accepted as a match, but may be used to reduce the overall project cost.

New §11.204, Transportation Enhancement Project Evaluation Committee (TEPEC), lists the members of the committee, which is composed of directors or their designees from the department and other state agencies. The composition of the committee remains unchanged from current §11.204(b)(1), but changes to two agency names are reflected in the new section.

New §11.205, Project Eligibility, incorporates and refines the language and concepts of existing §11.202. References to "function" and "impact" are deleted because these terms are no longer referenced in federal law or regulation. Language is added in §11.205(a)(3) to clarify that the required 20% local commitment must be a cash commitment. The cross reference in §11.205(a)(5) is updated. Language is added in §11.205(a)(6) to tighten project qualifications and expectations. In §11.205(a)(7), the percentage of project activity deemed eligible for federal reimbursement is increased from 50% to 75% because past history has demonstrated that projects with less than 75% eligibility pose financial challenges for the nominator; specifically, the nominator cannot provide the local match on eligible activities in addition to the entire cost of non-eligible items. As a result, many of these projects are never completed. New §11.205(d) adds conditions associated with eligible candidate projects that were not selected in a previous program call if resubmitted for subsequent program calls.

New §11.206, Call for Nominations, incorporates the language from former §11.203(a) with no substantive changes.

New §11.207, Receipt of Nominations, moves and consolidates language from former §11.203(b) and (c) to improve clarity and readability of the section and to facilitate the project selection process. The chart contained in former §11.203(b)(1) has been eliminated and new §11.207(a) provides that the department will accept nominations from state agencies and political subdivisions eligible to receive funding from FHWA. This change simplifies the nomination process and will increase the number of entities that may participate in the Transportation Enhancement Program. New §11.207(c) provides that if multiple jurisdictions are involved in the nomination, the nomination may be sent to the department division responsible for the Transportation Enhancement Program. This simplifies the submittal process for projects taking place in more than one district. New §11.207(d) provides that nomination packages that fail to include specified items will be deemed incomplete and will not be considered for funding. The language contained in former §11.203(d) has been eliminated. Nomination packages will no longer be returned upon request due to the department's record retention requirements.

New §11.208, Nomination Documents, incorporates information from former §11.203(c) with minor changes. An outdated reference to the department's environmental policy rules at subsection (c)(1)(K) is not incorporated into new §11.208(a)(11). New §11.208(a)(15) - (18) add requirements that the nominator provide documentary evidence of scenic or historic designation from an appropriate entity; proposed environmental mitigation from an appropriate agency; railroad granting a right of entry or an executed encroachment agreement; and the project's inclusion in the city or county bicycle plan. The intent of these new documentation requirements is to ensure that the nominator has thor-

oughly considered all aspects of the project, understands that the project must be vetted by other entities, and has allocated enough funding to the project. In previous program calls, a particular project may have been selected, but due to the lack of necessary agreements was never completed.

New §11.208(c) removes references to "design, plans, specifications and estimates, environmental mitigation, construction, construction management, real property acquisition, department administrative expenses, and other costs associated with development and implementation" found in former §11.203(c)(1)(B) to reflect changes to allowable costs as previously described.

New §11.208(e) clarifies the documentation required for any property associated with the project and specifies that if real property has already been acquired, a copy of the appropriate documents demonstrating ownership must be provided. New §11.208(f) clarifies that the community involvement documentation must include evidence of support from public authorities with jurisdiction over the transportation-related activities in the project area.

New §11.209, Provision of Nomination Documents to Other Local Governments, consists of information formerly found in §11.203(c)(3) and clarifies that copies of nominations must be provided to public officials that have jurisdiction over the transportation-related activities in the project area.

New §11.210, Eligibility and Technical Screening, consists of information formerly found in §11.204(a)(1) and clarifies that project eligibility means "federal" project eligibility. In addition, language indicating that the department will coordinate with appropriate state and federal agencies has been removed. The documentation pertaining to these reviews is now required to be obtained by the nominator prior to submitting the nomination, as described in new §11.208(a)(15) - (18).

New §11.211, Notification of Ineligibility, incorporates information formerly found in §11.204(a)(2) and includes necessary grammatical revisions.

New §11.212, Evaluation and Selection of Projects by Certain MPOs, creates a new process whereby a metropolitan planning organization located in a transportation management area will be responsible for the selection of projects located within its planning area. This process implements the changes to the department's rules regarding the planning and development of transportation projects, which specifically provide for the allocation of one-half of the Transportation Enhancement Program funds to metropolitan planning organizations operating in transportation management areas. The department is not mandating how the metropolitan planning organization will conduct the selection process. The new section also includes language that allows projects which are not selected by the metropolitan planning organization to be considered in the statewide competitive program, as further described in new §11.213.

New §11.213, Evaluation of Project Benefits by the Transportation Enhancement Project Evaluation Committee (TEPEC), contains information formerly found in §11.204(a)(1) and (b)(2). References to "function" and "impact" are removed because these terms are no longer referenced in federal law or regulation.

New §11.214(a) is created from information formerly found in §11.204(c) and includes minor changes to clarify the selection process. New §11.214(a)(1) provides that, in addition to submitting comments and recommendations from TEPEC, the department will also provide the commission with comments and

recommendations received from any governmental entity with jurisdiction over the transportation-related activities included in the project. This change will ensure that any local transportation policy opinions will be considered. The language in new §11.214(b)(3) has been modified by deleting the reference to the "safe, effective, and efficient movement of people and goods" and replacing it with "whether the candidate project enhances the surface transportation system." This change more accurately reflects the goals of the Transportation Enhancement Program. New §11.214(d) has been modified to recognize that some projects are selected by metropolitan planning organizations, as described in new §11.212. New §11.214(e) includes language to clarify that funds are limited to those authorized by the commission and the nominating entity will be responsible for any additional costs.

New §11.215, Notification of Selection, is created from §11.205(a) without change.

New §11.216, Inclusion in the STIP, is created from §11.205(b) without change.

New §11.217, Development of Project, is derived from §11.205(d) - (j) and (l), with minor changes. New §11.217(a) recognizes that some projects will be selected by certain metropolitan planning organizations, as reflected in recent revisions to the department's rules regarding the planning and development of transportation projects, found at 43 TAC Chapter 16. New §11.217(a) reflects changes to allowable costs as set out in new §11.202 by deleting the reference to "real property acquisition." New §11.217(e) clarifies the acceptance of private cash donations and deletes references to existing items no longer eligible for federal reimbursement.

New §11.218, Payment of Costs, includes portions of existing §11.205(k) and (m). New §11.218(b) clarifies that the project must be completed as approved and includes language describing the consequences of the failure to operate the project for its intended purpose. New §11.218(c) seeks to clarify the fiscal responsibilities of the local government, depending on whether the project is administered locally or by the department.

New §11.219, Elimination of Project from Transportation Enhancement Program, incorporates information from existing §11.205(c) and (n) with minor changes. New §11.219(b)(4) provides specific guidance with regard to expected timeframes for award of a construction contract or initiation of construction. The language contained in current §11.205(n)(4) was vague and difficult to administer.

New §11.220, Transfer of Project to Another Agency; Approval of Change, adds language to outline the basic steps required to transfer a project from one agency to another in the event of legislative action and clarifies that the disposition action must be approved by FHWA.

New §11.221, Dedication for Public Use, adds language to offer guidance regarding the expected project lifespan as it relates to the federal investment.

FISCAL NOTE

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

Mark Marek, Director, Design Division, has certified that there will be no significant impact on local economies or overall employment as a result of enforcing or administering the repeals and new sections.

PUBLIC BENEFIT AND COST

Mr. Marek has also determined that for each year of the first five years in which the sections are in effect, the public benefit anticipated as a result of enforcing or administering the repeals and new sections will be clarity with regard to policies and procedures related to the eligibility, nomination, selection, and administration of projects under the Transportation Enhancement Program. There are no anticipated economic costs for persons required to comply with the sections as proposed. There will be no adverse economic effect on small businesses.

SUBMITTAL OF COMMENTS

Written comments on the proposed repeal of §§11.200 - 11.205 and new §§11.200 - 11.221 may be submitted to Mark Marek, Director, Design Division, Texas Department of Transportation, 125 East 11th Street, Austin, Texas 78701-2483. The deadline for receipt of comments is 5:00 p.m. on October 11, 2011.

SUBCHAPTER E. STATEWIDE TRANSPORTATION ENHANCEMENT PROGRAM

43 TAC §§11.200 - 11.205

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

STATUTORY AUTHORITY

The repeals are proposed under Transportation Code, §201.101, which provides the commission with the authority to establish rules for the conduct of the work of the department.

CROSS REFERENCE TO STATUTE

Title 23, United States Code, §133(d)(2) and §160(e)(2).

§11.200. *Purpose.*

§11.201. *Definitions.*

§11.202. *Project Eligibility.*

§11.203. *Project Nomination.*

§11.204. *Selection of Projects for Funding.*

§11.205. *Project Administration.*

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

Filed with the Office of the Secretary of State on August 26, 2011.

TRD-201103469

Bob Jackson

General Counsel

Texas Department of Transportation

Earliest possible date of adoption: October 9, 2011

For further information, please call: (512) 463-8683



SUBCHAPTER E. TRANSPORTATION ENHANCEMENT PROGRAM

43 TAC §§11.200 - 11.221

STATUTORY AUTHORITY

The new sections are proposed under Transportation Code, §201.101, which provides the commission with the authority to establish rules for the conduct of the work of the department.

CROSS REFERENCE TO STATUTE

Title 23, United States Code, §133(d)(2) and §160(e)(2).

§11.200. Purpose.

Title 23, United States Code, §133(d)(2) and §160(e)(2), require that 10% of certain funds apportioned to a state pursuant to Title 23, United States Code, §104(b)(3), be used for transportation enhancement activities, as defined. The commission will allocate one-half of those funds to metropolitan planning organizations operating in transportation management areas as provided by Chapter 16, Subchapter D, of this title (relating to Transportation Funding). The commission may allocate funds to the department for activities that qualify for the Transportation Enhancement Program and are located on the state highway system, and may also make funds available in a statewide competitive program that enhances the surface transportation systems and facilities within the state for the benefit of the users of those systems. The sections under this subchapter prescribe the policies and procedures for the implementation of the program.

§11.201. Definitions.

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

- (1) Candidate project--A project recommended by a nominating entity for inclusion in the Transportation Enhancement Program.
- (2) Commission--Texas Transportation Commission.
- (3) Department--Texas Department of Transportation.
- (4) District office--A headquarters office for one of the department's geographical districts into which the state is divided.
- (5) Executive director--The executive director of the Texas Department of Transportation or his or her designee not below the level of assistant executive director.
- (6) Federal funds--Financial assistance provided by the Federal Highway Administration for project development.
- (7) FHWA--Federal Highway Administration.
- (8) Jurisdiction--For a city, the area within the incorporated city limits, including a city's extraterritorial jurisdiction. For a county, any area within the boundaries of the county, excluding incorporated areas. For a state agency, any area within which its prescribed authority may be exercised.
- (9) Local agreement--An agreement between the nominating entity and the department which includes a commitment for the required local funding, describes the total scope and course of project activities, and outlines the responsibilities and duties of the participants.
- (10) Metropolitan planning organization (MPO)--The organization or policy board of an organization created and designated under Title 23, United States Code, §134 and Title 49, United States Code, §5303, as amended, to make transportation planning decisions for the metropolitan planning area and carry out the metropolitan planning process.
- (11) Nominating entity--The state agency or political subdivision eligible to receive funds from FHWA that nominates a particular candidate project for consideration, exercises jurisdiction over

the geographic area in which that project is located, and commits to the project's development, implementation, construction, maintenance, management, and financing.

(12) Operational income--Net income received by the owner of a facility constructed or enhanced using funds received through the Transportation Enhancement Program after deducting the costs incident to the generation of that income. The term includes, but is not limited to, income from fees for services performed, use or rental of real or personal property, or sale of commodities. Taxes, license fees, fines, royalties, and other such revenues received by the facility owner or paid within the facility are not considered income.

(13) Project--An undertaking to implement or construct a particular transportation enhancement at a specific location or locations, or, if the context so implies, the particular enhancement so implemented or constructed.

(14) Project area--The location in which project activities will take place.

(15) Public authority--A state agency, city, or county.

(16) Selected project--A project which the commission or both the commission and a metropolitan planning organization have elected to include in the Transportation Enhancement Program.

(17) State--The State of Texas or any of its political subdivisions.

(18) Statewide Transportation Improvement Program (STIP)--A four-year short-range program developed by the department as a compilation of all metropolitan transportation improvement programs, together with rural transportation improvement programs, that include recommendations from rural planning organizations and department districts for the areas of the state that are outside of the boundaries of a metropolitan planning organization, including transportation between cities.

(19) Surface transportation system--An interconnected transportation network for moving people and goods using various combinations of transportation modes.

(20) Transportation--Pertaining to the movement of people between their places of residence, employment, commerce, education, recreation, and entertainment; or of goods between places of manufacture, storage, sale, maintenance, repair, salvage, and disposition.

(21) Transportation Improvement Program (TIP)--A short-range program developed by each metropolitan planning organization in cooperation with the department and public transportation operators that covers a four-year period and contains a prioritized listing of all projects proposed for federal funding and regionally significant projects proposed for state, federal, and local funding in a metropolitan area.

(22) Transportation enhancement activities--Those activities so defined in Title 23, United States Code, §101(a), if such activities relate to the surface transportation system.

(23) Transportation management area--An urbanized area with a population over 200,000 as defined by the U.S. Bureau of Census and designated by the U.S. Secretary of Transportation, or any additional area where transportation management area designation is requested by the governor and the metropolitan planning organization and designated by the U.S. Secretary of Transportation.

§11.202. Allowable Costs.

(a) This section describes allowable costs related to the Transportation Enhancement Program. Allowable costs are the necessary construction-related project expenditures incurred after federal and

state authorization to proceed and otherwise eligible for reimbursement under applicable statutes and regulations.

(b) Generally, the costs of preliminary engineering (including planning, design, and plans, specifications, and estimates) are not allowable costs.

(c) Planning costs are allowable only for activities related to the provision of safety and educational activities for pedestrians and bicyclists, scenic or historic highway programs, control and removal of outdoor advertising, and archeological planning and research.

(d) The cost of right of way acquisition is allowable only for activities related to the acquisition of scenic easements and scenic or historic sites.

(e) The cost of environmental mitigation is allowable only for activities related to environmental mitigation to address water pollution due to highway runoff, reduce vehicle caused wildlife mortality while maintaining habitat connectivity, and asbestos or lead paint removal or containment, when it is required for the rehabilitation of an eligible project.

(f) Project costs incurred by the department are reimbursable. All other pre-construction costs are the responsibility of the nominating entity.

(g) Expenditures for routine operation and maintenance are not allowable costs unless specifically allowed under the individual federal category for which the project must qualify.

§11.203. Local Funding Match.

For the purposes of the Transportation Enhancement Program, a local funding match is a cash match provided by or through the nominating entity. Funds from other federal programs may be used as a local funding match only when specifically authorized by federal statute or regulation. Donated services may not be accepted as a local funding match, but may be used to reduce the overall cost of the project.

§11.204. Transportation Enhancement Project Evaluation Committee (TEPEC).

(a) The Transportation Enhancement Project Evaluation Committee is an evaluation committee that is composed of:

(1) the executive director of the department, or the executive director's designee;

(2) the State Land Commissioner, or the land commissioner's designee; and

(3) the director, or director's designee, of each of the following:

(A) the Economic Development and Tourism Division of the Governor's Office;

(B) the Texas Historical Commission;

(C) the Texas Parks and Wildlife Department; and

(D) the Texas Commission on Environmental Quality.

(b) The executive director of the department, or the executive director's designee, serves as the chair of the committee.

§11.205. Project Eligibility.

(a) To be eligible for consideration for inclusion in the Transportation Enhancement Program, a candidate project must:

(1) propose one or more transportation enhancement activities that have a relationship to the surface transportation system, yet go beyond activities customarily incorporated into transportation projects;

(2) consist of expenditures that conform to applicable provisions of state and federal laws;

(3) present persuasive evidence of support for the candidate project from the communities in which it would be implemented, to include a commitment to provide a cash amount of at least 20% of the allowable costs of the candidate project;

(4) propose to construct or enhance a facility from which all operational income will be used for the costs necessary for the proper operation and maintenance of the facility;

(5) be nominated for consideration by an eligible nominating entity in the manner prescribed in §11.207 of this subchapter (relating to Receipt of Nominations);

(6) be maintained and operated for the purpose for which it was approved and funded with federal-aid highway funds for a period of time commensurate with the project investment; and

(7) have at least 75% of the project's activities identified in the project description and budget of the nomination form deemed eligible for federal reimbursement (only eligible activities will be considered for funding).

(b) Projects which will require the acquisition of real property through the exercise of eminent domain by any entity are not eligible for participation in the Transportation Enhancement Program.

(c) Ineligible candidate projects may not be resubmitted for subsequent program calls without revision.

(d) Eligible candidate projects that were not selected in a previous program call may be resubmitted for subsequent program calls provided that they are submitted on the current form and with current supporting documentation.

§11.206. Call for Nominations.

The department will call for nominations of candidate projects by publication in the *Texas Register*. The department will also provide notice of the call for candidate projects to all MPOs, all councils of government (COGs), and all local transit operators in the state.

§11.207. Receipt of Nominations.

(a) The department will receive and consider for funding only candidate project nominations from state agencies and political subdivisions of the state eligible to receive and manage federal transportation funds.

(b) Activities in multiple jurisdictions should be segmented into separate candidate projects whenever practical.

(c) To nominate a candidate project, the eligible nominating entity must file its nomination, in the form prescribed by the department, with the district engineer of the district office responsible for the area in which the proposed enhancement would be implemented. The nomination for a single project in multiple jurisdictions may be filed with the department division responsible for the Transportation Enhancement Program.

(d) Complete nomination packages must be received by the department no later than the specified deadline published in the *Texas Register*. Nomination packages that fail to include any of the items specified in §11.208 of this subchapter (relating to Nomination Documents) are considered incomplete and will not be considered for funding.

§11.208. Nomination Documents.

(a) The nomination shall consist of information necessary for project evaluation, and must include to the maximum extent practicable:

(1) a clear and concise description of the proposed enhancement as described by subsection (b) of this section;

(2) an implementation plan for the candidate project, including both a schedule of project activities and an itemized budget as described by subsection (c) of this section;

(3) a map delineating the location or locations of the candidate project, which should show project limits, highlight any areas of major work, and show all existing or proposed transportation facilities and associated real property;

(4) photographs of the existing project site;

(5) a site plan of the proposed construction and illustrations of the proposed work that includes the information described by subsection (d) of this section, if appropriate;

(6) documentation related to real property associated with the project as described by subsection (e) of this section;

(7) if construction is proposed, a description of how it would be accomplished, including estimated cost;

(8) a description of all expected benefits from the proposed enhancement, particularly those benefits pertaining to the surface transportation system that includes expected use of any facilities involved, and a comparison of current and projected demand for use of those facilities;

(9) appropriate documentary evidence of community involvement in development of the proposed enhancement and public support for it as described by subsection (f) of this section;

(10) a plan covering the operation and maintenance of the facility created by or benefiting from the enhancement as described by subsection (g) of this section;

(11) documentary evidence that the environmental consequences of the proposed enhancement have been fully considered, and that the proposed enhancement will comply with all applicable local, state, and federal environmental laws, regulations, and requirements, which must provide evidence sufficient to allow the department to determine the necessity for environmental studies;

(12) a written statement showing that the proposed enhancement is consistent with any long-range transportation plans for that area in which it would be implemented;

(13) for any enhancement activity that would be implemented within a metropolitan area, a letter from the MPO stating that, should funding for the candidate project be made available, the MPO will include the candidate project in the TIP for that area if the candidate project has not yet been included;

(14) for a project proposing the restoration or rehabilitation of historic sites or properties, documentary evidence from the Texas Historical Commission that the property or site is currently listed in or eligible for listing in the National Register of Historic Places;

(15) for a project proposing acquisition of scenic easements and scenic or historic sites, documentary evidence from the appropriate city, county, state, or national entity indicating official designation;

(16) for a project proposing environmental mitigation, documentary evidence from the Texas Commission on Environmental Quality or the Texas Parks and Wildlife Department, as appropriate, indicating technical evaluation of the project;

(17) for a project proposing to encroach or cross railroad right of way, documentary evidence from the railroad granting a right of entry or an executed encroachment agreement; and

(18) for a project proposing to build facilities for bicycles, documentary evidence from the city or county stating that the project has been included in the entity's bicycle plan, if applicable, or the bicycle element of the transportation component of the entity's comprehensive plan.

(b) The description of the proposed enhancement must detail all work to be performed as part of the candidate project, the relationship between the proposed enhancement and the surface transportation system, any real property or easements required, any special land uses planned, and any relationships between the candidate project and any other work anticipated, planned, presently under way, or previously completed.

(c) The schedule of activities must indicate any circumstances known to the nominating entity that are likely to affect commencement of work on the candidate project or the time required to complete it, including environmental and historic issues. The budget must describe all proposed local financing of project costs and be accompanied by documentary evidence of the commitment of the nominating entity to pay those costs and of its ability to do so. The budget shall indicate that an appropriate amount has been included to cover costs for which reimbursement is being requested.

(d) If the candidate project is proposing restoration or rehabilitation work for a historic property, the site plan must include current and proposed floor plans for the property. The floor plan must indicate the proposed function to be served by each room.

(e) If real property is to be acquired, the real property documentation must include a written commitment from the current real property owner and a description of whether it is to be acquired through purchase, easement, or donation. The documentation must also include the estimated current fair market value of the property and proposed funding arrangements. The fair market value of real property shall be established as of the date the purchase becomes effective or when equitable title to the real property vests in the purchasing entity, whichever is earlier. If real property has already been acquired, a copy of the appropriate documents demonstrating ownership must be provided.

(f) At a minimum, evidence of community involvement must include a description of any opportunities for public participation, including public meetings, that were included in the process of selecting candidate projects by the nominating entity and a resolution or other official document from all of the governing bodies of any public authority with jurisdiction over the transportation-related activities located in the area in which the project will be implemented. The supporting document must state the governing body's support for the implementation of the proposed project, its recommendation that it be considered for funding, and, when appropriate, its commitment to provide a share of allowable project costs. For activities in metropolitan areas, one of these documents must be from the governing body of the MPO for that area.

(g) The plan covering the operation and maintenance of the facility must identify all parties responsible for operation and maintenance, estimate the annual cost to operate and maintain the facility, describe the source of those funds, identify all expected operational income from the facility, and describe the intended use of that income.

(h) A nominating entity may submit a written statement of the relative priority ranking assigned by the nominating entity to that candidate project among all candidate projects nominated by that entity for consideration in response to the current call for project nominations.

§11.209. Provision of Nomination Documents to Other Local Governments.

Nominating entities proposing candidate projects calling for work in multiple metropolitan areas, cities, or counties must provide copies of the nomination documents to affected local public officials that have jurisdiction over the transportation-related activities located in the project area.

§11.210. Eligibility and Technical Screening.

The department will review each candidate project to determine eligibility for funding according to federal and state law and to determine that each candidate project will meet technical standards established by applicable law and accepted professional practice. In determining federal eligibility, the department will coordinate with FHWA.

§11.211. Notification of Ineligibility.

(a) The department will by certified mail, return receipt requested, notify the nominating entity of each ineligible activity proposed and the reason for the determination.

(b) A request for reconsideration of a finding of ineligibility may be initiated only by a letter from the nominating entity to the executive director setting forth reasons in support of a finding of eligibility. The letter requesting reconsideration must be received by the department no later than 15 days after the nominating entity received the department's notification, as established by the return receipt. The determination of the executive director in response to the request for reconsideration will be final.

§11.212. Evaluation and Selection of Projects by Certain MPOs.

(a) All eligible projects located within the metropolitan planning area of an MPO operating in a transportation management area will be submitted to the respective MPO for evaluation and selection. The MPO must notify the department within 30 days of its project selections.

(b) Any projects not selected by the MPO will be eligible for consideration in the statewide competitive program and will be evaluated in accordance with §11.213 of this subchapter (relating to Evaluation of Project Benefits by the Transportation Enhancement Project Evaluation Committee (TEPEC)).

§11.213. Evaluation of Project Benefits by the Transportation Enhancement Project Evaluation Committee (TEPEC).

(a) Eligible candidate projects, together with the results of the technical review, will be submitted to the TEPEC. The TEPEC will evaluate the potential benefit of each eligible candidate project.

(b) The TEPEC will meet at the call of the chair to consider and discuss the relationship to the surface transportation system and potential benefit of eligible candidate projects. After discussing the candidate projects, the committee will evaluate each project based on the quality of the project, the geographic scope of the project's benefits, and the project's transportation enhancement value. The TEPEC will prepare recommendations as to which projects are suitable for funding and provide these recommendations to the department.

(c) The TEPEC will serve to advise the department of the benefit of candidate projects only and its decisions will in no way be binding on the ability of the commission to select from among all eligible candidate projects those projects approved for funding.

§11.214. Selection of Projects by the Commission.

(a) The department will recommend a program of candidate projects for consideration by the commission. To assist the commission in its decisions concerning selection and funding, the department

will, in addition to department staff recommendations, provide to the commission:

(1) the list of all eligible candidate projects and any comments and recommendations from any governmental entity with jurisdiction over the activities included in the project and the TEPEC;

(2) any other comments relevant to consideration of any candidate project for funding, including:

(A) evidence of support and opposition for the candidate project;

(B) evidence of the commitment from the nominating entity to provide more than the minimum required non-federal share of allowable project costs and its ability to do so;

(C) an evaluation of proposed projects indicating the extent to which each project will meet accepted standards as established by applicable law and by accepted professional practice;

(D) the views, comments, and certifications of an MPO or a governing body of a city or county; and

(E) all other project specific information as appropriate.

(b) The commission will select from among all eligible candidate projects those projects, if any, approved for funding. In selecting an eligible candidate project for funding, the commission will consider:

(1) all information provided under subsection (a)(1) and (2) of this section;

(2) the potential benefit to the state of the candidate project; and

(3) whether the candidate project enhances the surface transportation system.

(c) In evaluating the potential benefit to the state of the candidate project, the commission will consider, but is not bound by, recommendations and comments from the TEPEC.

(d) The commission will, by written order, designate the selected projects, including projects previously selected by MPOs.

(e) The funds approved by the commission are a fixed amount. Project costs in excess of this amount are the responsibility of the nominating entity. The nominating entity may seek additional funds through this program in subsequent program calls.

(f) Candidate projects that are not selected must be resubmitted to receive consideration during subsequent program calls.

§11.215. Notification of Selection.

When a project is selected for funding, the department will notify the nominating entity of its selection. If the selected project is to be implemented in a metropolitan area, the department will request that the MPO immediately begin the process required to include the selected project in its TIP.

§11.216. Inclusion in STIP.

The department will immediately begin the process required to include all selected projects in the STIP. Costs incurred prior to the inclusion of the activity in the STIP, execution of the local agreement, and prior to federal and state approval and authorization to proceed are not eligible for reimbursement.

§11.217. Development of Project.

(a) The MPO or the department will implement or arrange for implementation of each selected project in accordance with statutory requisites and contracting procedures applicable to the type and character of the project.

(b) All selected projects must be developed to current standards and specifications established or recognized by the federal government and the department. The department may allow project plans to be developed by other public authorities, provided the plans are reviewed by the department and determined to have been developed according to current department standards and specifications. The department will coordinate with other state and federal agencies as required by state or federal law or applicable policy.

(c) All agencies receiving federal funds for transportation enhancement activities must comply with all federal and state procedures and requirements applicable to development of federal-aid transportation projects.

(d) Before funding any construction activities, the department will ensure that required opportunities for public involvement have been provided and proper environmental documentation has been completed.

(e) Funds from other federal programs may be used only when specifically authorized by federal statute or regulation. Pursuant to Title 23, United States Code, §323, private cash donations may be accepted.

(f) Whether proposed as an independent project or as an element of a larger transportation project, the candidate project must be limited to a logical unit of work.

(g) The department is responsible for inspection and final acceptance of all selected projects and for certification of project completion.

(h) Projects must be developed in accordance with this subchapter. Any changes in the scope of work established in the nomination form, as approved by the commission, must have the advanced written approval of the executive director. A significant increase in the scope of work will require the advance approval of the commission.

§11.218. Payment of Costs.

(a) The department will submit all requests to FHWA for reimbursement of allowable costs. When the department implements appropriate projects through or in cooperation with other entities, those entities will request reimbursement from the department of allowable costs they incur using the forms and procedures specified by the department.

(b) If the nominating entity does not complete the project as originally approved, the department may seek reimbursement of the expended federal funds from the nominating entity. If at any time the nominating entity can no longer maintain and operate the project for its intended purpose, the nominating entity will return the federal share to the Transportation Enhancement Program in accordance with the federal recapture procedures set forth in Title 49, Code of Federal Regulations, §18.31.

(c) For locally administered projects, the entire project cost is borne by the nominating entity until reimbursement can be obtained from FHWA for eligible activities. For projects administered by the department, the nominating entity must provide the local cash match prior to the commencement of project activities.

§11.219. Elimination of Project from Transportation Enhancement Program.

(a) A candidate project will be eliminated from participation in the Transportation Enhancement Program if at any time prior to the execution of the local agreement, any municipality or county in which project activities are proposed notifies the department of its opposition to the project. Notification of opposition must be in the form of a resolution or other official document from the duly constituted governing

body of the entity opposing the project. Jurisdiction for the purposes of support or opposition to a candidate project does extend to a municipality's extraterritorial jurisdiction.

(b) The executive director may eliminate a project or a portion of a project from participation in the Transportation Enhancement Program if at any time:

(1) the nominating entity fails to satisfy any requirement of this subchapter;

(2) implementation of the project would involve significant deviation from the activities as proposed in the nomination form;

(3) the nominating entity withdraws from participation in the project;

(4) a construction contract has not been awarded or construction has not been initiated by the local entity within four years from the date of commission selection (for projects that do not involve construction, project activities must be completed within four years from the date of commission selection);

(5) a local agreement is not executed within one year after the project is selected by the commission; or

(6) the director determines that federal funding may be lost because the project has not been implemented or completed.

§11.220. Transfer of Project to Another Agency; Approval of Change.

(a) If at any time legislative action requires transfer of the project to another state agency, the department may terminate the existing project agreement and execute an agreement with the responsible agency.

(b) Any change in the project's disposition must receive approval from FHWA.

§11.221. Dedication for Public Use.

A project shall be dedicated for public use as approved by the commission for a period of time commensurate with the federal investment or at a minimum according to the following schedule:

(1) federal project cost up to \$1 million - 10 years;

(2) federal project cost over \$1 million and up to \$3 million - 20 years; or

(3) federal project cost over \$3 million - at least 30 years.

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

Filed with the Office of the Secretary of State on August 26, 2011.

TRD-201103468

Bob Jackson

General Counsel

Texas Department of Transportation

Earliest possible date of adoption: October 9, 2011

For further information, please call: (512) 463-8683



**CHAPTER 25. TRAFFIC OPERATIONS
SUBCHAPTER N. MEMORIAL SIGN
PROGRAM FOR VICTIMS OF IMPAIRED
DRIVING AND MOTORCYCLE CRASHES**

43 TAC §§25.950 - 25.957

The Texas Department of Transportation (department) proposes amendments to §§25.950 - 25.957, concerning a Memorial Sign Program for Victims of Impaired Driving and Motorcycle Crashes.

EXPLANATION OF PROPOSED AMENDMENTS

House Bill 2469, 82nd Legislature, Regular Session, 2011, added new Transportation Code, §201.911, requiring the department to establish and administer a program to memorialize the victims of motorcycle crashes. The legislation requires the Texas Transportation Commission (commission) to adopt rules to administer the program. In addition, House Bill 1486, 82nd Legislature, Regular Session, 2011, amended Transportation Code, §201.909(e), requiring the department to extend the posting period for memorial signs for victims of impaired driving. The amendments incorporate these statutory changes into the department's existing Memorial Sign Program rules.

Amendments to §25.950 add references to the new program as created under Transportation Code, §201.911 regarding memorial signs for victims of motorcycle crashes.

Amendments to §25.951 revise the term "applicant" to include reference to the new Memorial Sign Program for Victims of Motorcycle Crashes.

Amendments to §25.952 reference the new motorcycle memorial sign program. This requires that the applicant for a motorcycle memorial sign submit the same information required under the current memorial sign program.

Amendments to §25.953 reference the new motorcycle memorial sign program. The amendments require that to be eligible for a memorial sign a victim must have been killed while riding or operating a motorcycle on the state highway system. The language also requires that the officer's accident report indicate that the victim was operating or riding a motorcycle at the time of the accident. The officer is required to identify the vehicles involved in the accident in the report. Unlike determining intoxication, the involvement of a motorcycle is apparent to the officer at the time of the crash therefore there is no need for the department to accept additional documentation to establish eligibility for the sign.

Amendments to §25.954 establish a fee for both memorial signs at \$350. Both Transportation Code, §201.909 and §201.911 authorize the commission to establish a fee for the cost of the memorial sign. The fee is established based on the department's estimate to design, fabricate, and install a new sign. The increased fee provides a more realistic cost of the materials and resources required to post a memorial sign.

Amendments to §25.955 reference the specific sign elements for the new motorcycle memorial sign program as required under Transportation Code, §201.911. The description of the sign tracks the language from the statute and is repeated in the rule for convenience.

Amendments to §25.956 reflect the new posting limit for memorial signs for victims of impaired drivers as authorized by Transportation Code, §201.909(e).

Amendments to §25.957 extend the posting of a sign for victims of impaired drivers to two years as authorized by Transportation Code, §201.909(e). The rule is also amended to provide a one-year posting limit for a motorcycle memorial sign as required under Transportation Code, §201.911.

FISCAL NOTE

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

Carol Rawson, P.E., Director, Traffic Operations Division, has certified that there will be no significant impact on local economies or overall employment as a result of enforcing or administering the amendments.

PUBLIC BENEFIT AND COST

Ms. Rawson has also determined that for each year of the first five years in which the sections are in effect, the public benefit anticipated as a result of enforcing or administering the amendments will be a greater public awareness of the need for drivers to be aware of motorcyclists. There are no anticipated economic costs for persons required to comply with the sections as proposed. Although there is a fee for participation in the new sign program, participation is strictly voluntary on the part of the applicant. There will be no adverse economic effect on small businesses.

SUBMITTAL OF COMMENTS

Written comments on the proposed amendments to §§25.950 - 25.957 may be submitted to Carol Rawson, P.E., Director, Traffic Operations Division, Texas Department of Transportation, 125 East 11th Street, Austin, Texas 78701-2483. The deadline for receipt of comments is 5:00 p.m. on October 11, 2011.

STATUTORY AUTHORITY

The amendments are proposed under Transportation Code, §201.101, which provides the commission with the authority to establish rules for the conduct of the work of the department, and more specifically, Transportation Code, §201.909, which requires the department to establish and administer a memorial sign program to publicly memorialize the victims of alcohol or controlled substance-related vehicle accidents and Transportation Code, §201.911, which requires the department to establish and administer a memorial sign program to publicly memorialize the victims of motorcycle accidents.

CROSS REFERENCE TO STATUTE

Transportation Code, §201.909 and §201.911.

§25.950. Purpose.

Transportation Code, §201.909 and §201.911, require ~~requires~~ the department to establish and administer ~~a~~ memorial sign ~~programs~~ ~~program~~ to publicly memorialize the victims of alcohol or controlled substance-related vehicle crashes, which is referred to in this subchapter as the Memorial Sign Program for Victims of Impaired Driving, and persons killed while riding or operating a motorcycle, which is referred to in this subchapter as the Memorial Sign Program for Victims of Motorcycle Crashes.

§25.951. Definitions.

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

(1) Applicant--A person requesting a sign under the Memorial Sign Program for Victims of Impaired Driving or the Memorial Sign Program for Victims of Motorcycle Crashes in accordance with this subchapter.

(2) Department--The Texas Department of Transportation.

(3) Impaired--Under the influence of alcohol or a controlled substance while operating a vehicle.

(4) State highway system--The system of highways in the state included in a comprehensive plan approved by the Texas Transportation Commission, in accordance with Transportation Code, §201.103.

§25.952. *Application.*

(a) A person may request the construction and installation of a sign memorializing one or more victims of an alcohol or controlled substance-related vehicle crash, or a motorcycle crash by following the procedures set out in this subchapter.

(b) The applicant must submit on a form provided by the department an application that contains the following information:

- (1) the name of each victim for whom the sign is requested;
- (2) the location of the crash;
- (3) the date of the crash;
- (4) the name and contact information of the applicant; and
- (5) the name of one of the vehicle operators involved in the crash.

(c) If the department notifies the applicant that a copy of the officer's accident report required to be submitted to the department by the reporting law enforcement agency under Transportation Code, §550.062, is not on file with the department, the applicant must submit a copy of that report.

(d) The applicant may provide to the department additional government documents relating to the crash if necessary to establish that a driver was impaired.

§25.953. *Determination of Program Eligibility.*

(a) The officer's accident report for the crash will be used by the department to determine eligibility for a memorial sign.

(b) If the application is for a memorial sign for a victim of an alcohol or controlled substance related vehicle crash and the officer's accident report does not indicate that the driver of one of the vehicles was impaired or that the use of alcohol or a controlled substance [drinking] was a factor or condition of the accident, the department will review other governmental records provided by the applicant to determine eligibility for the [a memorial] sign.

(c) To be eligible for a memorial sign for a victim of a motorcycle crash, the officer's accident report must indicate that the victim was operating or riding on a motorcycle.

(d) [(e)] To be eligible for a sign the officer's accident report must indicate that the crash occurred on the state highway system.

(e) [(d)] A person is not eligible for a memorial sign for the victim an alcohol or controlled substance related vehicle crash if the victim was operating a vehicle involved in the crash and the officer's accident report or another submitted governmental document shows that the victim was impaired at the time of the crash.

(f) [(e)] A victim may be memorialized by only one sign, excluding a replacement sign, installed under this subchapter [the Memorial Sign Program for Victims of Impaired Driving]. The department will deny an application for a victim that is submitted after an application for the same victim has been approved.

§25.954. *Fee.*

(a) A fee for a memorial sign installed under this subchapter is \$350 [~~\$300~~].

(b) Upon approval of the application, the applicant must remit the fee to the department before construction of the sign may begin.

§25.955. *Sign Description.*

(a) A sign will have a blue background with a white legend and:

(1) the memorial sign for a victim of an impaired driver shall include the following elements:

(A) [(1)] the phrase "Please Don't Drink and Drive";

(B) [(2)] the phrase "In Memory of";

(C) [(3)] one line of text denoting the name of the victim, victims, or the phrase "The (family name) Family"; and

(D) [(4)] the date of the crash; or[-]

(2) the memorial sign for a victim of a motorcycle crash shall include the following elements:

(A) a red cross;

(B) the phrase "In Memory of";

(C) one line of text denoting the name of the victim, victims, or the phrase "The (family name) Family"; and

(D) the date of the crash.

(b) The name of more than one victim may appear on a sign only if the length of the victims' names does not exceed one line of text. If the length of the names exceeds one line of text, or if requested by the applicant, a sign may display the family name of the victims.

§25.956. *Sign Installation and Replacement.*

(a) A sign may be installed under this subchapter only on state highway system right-of-way.

(b) The department will install the sign as near the crash location as practical. In determining the sign location, the department will consider:

(1) the safety of the traveling public; and

(2) available space on state right-of-way for the sign.

(c) If the sign is damaged, vandalized, or destroyed, during the posting [~~one-year~~] period beginning on the date that the sign is installed, the department will reinstall the sign only if the applicant pays a replacement fee to cover the cost of the replacement sign. The amount of the replacement fee is equal to the amount of the fee set under §25.954 of this subchapter (relating to Fees).

(d) The department will replace a sign that is damaged by the department without the payment of the replacement fee.

§25.957. *Sign Removal.*

(a) The department will remove a sign installed under the Memorial Sign Program for Victims of Impaired Driving or its replacement on the second [~~first~~] anniversary of the date that the original sign was installed.

(b) The department will remove a sign installed under the Memorial Sign Program for Victims of Motorcycle Crashes or its replacement on the first anniversary of the date that the original sign was installed.

(c) [(b)] The department will notify the applicant after the sign has been removed. The notice will provide information on how the applicant may take possession of the sign. If the applicant fails to take possession of the sign within 30 days after the date on which notice is given under this subsection, the department will destroy the sign.

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

Filed with the Office of the Secretary of State on August 26, 2011.

TRD-201103470

Bob Jackson

General Counsel

Texas Department of Transportation

Earliest possible date of adoption: October 9, 2011

For further information, please call: (512) 463-8683



CHAPTER 26. REGIONAL MOBILITY AUTHORITIES

SUBCHAPTER B. CREATION OF A REGIONAL MOBILITY AUTHORITY

43 TAC §26.17

The Texas Department of Transportation (department) proposes new §26.17, Board Membership after Commission Approval, concerning the membership of the boards of Regional Mobility Authorities (RMA).

EXPLANATION OF PROPOSED NEW SECTION

Title 43, Texas Administrative Code, §26.11 authorizes one or more counties and certain specified cities to request that the Texas Transportation Commission (commission) approve the creation of an RMA. Section 26.21 provides the conditions for a county to be added to an existing RMA and §26.22 establishes the requirements for a county to withdraw from an RMA.

The purpose of new §26.17 is to clarify that after the creation of an RMA neither the commission nor the department has any role in approving the RMA's board appointments or the board appointment processes adopted by the counties that are members of the RMA or the city that created the RMA. The new section does not affect the authority of the commission to consider the fair representation of political subdivisions within the authority at the time of the RMA's creation, but rather clarifies that there is no ongoing review or approval of board appointments or the board appointment process.

New §26.17(a) provides that the authority to change the representation criteria or appointment process for an RMA's board members belongs to the governing bodies of the counties that are currently members of or the city that created the RMA.

New §26.17(b) clarifies that the authority described by subsection (a) is the exclusive authority of the counties or city and emphasizes that a change made under subsection (a) is not contingent on review by or approval of the commission.

New §26.17(c) similarly clarifies that whether or not a change is made under subsection (a), no appointment to an RMA's board other than an appointment to the initial board is subject to the review or approval of the commission.

FISCAL NOTE

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

Bob Jackson, General Counsel, has certified that there will be no significant impact on local economies or overall employment as a result of enforcing or administering the new section.

PUBLIC BENEFIT AND COST

Mr. Jackson has also determined that for each year of the first five years in which the section is in effect, the public benefit anticipated as a result of enforcing or administering the new section will be clarity regarding the requirements for the membership of and appointment to the board of an RMA. There are no anticipated economic costs for persons required to comply with the section as proposed. There will be no adverse economic effect on small businesses.

SUBMITTAL OF COMMENTS

Written comments on the proposed new §26.17 may be submitted to Bob Jackson, General Counsel, Texas Department of Transportation, 125 East 11th Street, Austin, Texas 78701-2483. The deadline for receipt of comments is 5:00 p.m. on October 11, 2011.

STATUTORY AUTHORITY

The new section is proposed under Transportation Code, §201.101, which provides the commission with the authority to establish rules for the conduct of the work of the department, and more specifically, Transportation Code, §370.038, which provides authority for the commission to adopt rules governing the creation of an RMA.

CROSS REFERENCE TO STATUTE

Transportation Code, Chapter 370, Subchapter B.

§26.17. Board Membership after Commission Approval.

(a) After the commission approves the composition and appointment method of the board of an RMA under §26.13 or §26.16 of this subchapter (relating to Approval and Alternate Board Composition and Method of Appointment, respectively) and the RMA has been created and the initial board members have been appointed, the representation criteria and appointment process for the RMA's board members may be revised by the governing body of each county that is a member of the RMA or the city that created the RMA.

(b) A revision under subsection (a) of this section is not subject to review or approval of the commission.

(c) After the appointment of the initial board members, an appointment to an RMA's board is not subject to review or approval of the commission.

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

Filed with the Office of the Secretary of State on August 26, 2011.

TRD-201103471

Bob Jackson

General Counsel

Texas Department of Transportation

Earliest possible date of adoption: October 9, 2011

For further information, please call: (512) 463-8683



WITHDRAWN RULES

Withdrawn Rules include proposed rules and emergency rules. A state agency may specify that a rule is withdrawn immediately or on a later date after filing the notice with the Texas Register. A proposed rule is withdrawn six months after the date of publication of the proposed rule in the Texas Register if a state agency has failed by that time to adopt, adopt as amended, or withdraw the proposed rule. Adopted rules may not be withdrawn. (Government Code, §2001.027)

TITLE 1. ADMINISTRATION

PART 15. TEXAS HEALTH AND HUMAN SERVICES COMMISSION

CHAPTER 355. REIMBURSEMENT RATES

SUBCHAPTER E. COMMUNITY CARE FOR AGED AND DISABLED

1 TAC §355.503, §355.507

The Texas Health and Human Services Commission withdraws the proposed amendments to §355.503 and §355.507, which appeared in the July 1, 2011, issue of the *Texas Register* (36 TexReg 4005).

Filed with the Office of the Secretary of State on August 29, 2011.

TRD-201103496

Steve Aragon
Chief Counsel

Texas Health and Human Services Commission

Effective date: August 29, 2011

For further information, please call: (512) 424-6900



TITLE 10. COMMUNITY DEVELOPMENT

PART 6. TEXAS DEPARTMENT OF RURAL AFFAIRS

CHAPTER 255. TEXAS COMMUNITY DEVELOPMENT PROGRAM

SUBCHAPTER C. DISASTER RECOVERY PROGRAM

10 TAC §255.100

Proposed new §255.100, published in the February 25, 2011, issue of the *Texas Register* (36 TexReg 1211), is withdrawn. The agency failed to adopt the proposal within six months of publication. (See Government Code, §2001.027, and 1 TAC §91.38(d).)

Filed with the Office of the Secretary of State on August 29, 2011.

TRD-201103495



TITLE 22. EXAMINING BOARDS

PART 9. TEXAS MEDICAL BOARD

CHAPTER 187. PROCEDURAL RULES

SUBCHAPTER I. PROCEEDINGS FOR CEASE AND DESIST ORDERS

22 TAC §187.83

The Texas Medical Board (Board) withdraws the emergency amendment to §187.83, which appeared in the April 29, 2011, issue of the *Texas Register* (36 TexReg 2639). The emergency amendment is withdrawn upon the effective date of the permanent adoption to §187.83, which is published elsewhere in this issue of the *Texas Register*.

Filed with the Office of the Secretary of State on August 29, 2011.

TRD-201103491

Mari Robinson, J.D.

Executive Director

Texas Medical Board

Effective date: September 18, 2011

For further information, please call: (512) 305-7016



ADOPTED RULES

Adopted rules include new rules, amendments to existing rules, and repeals of existing rules. A rule adopted by a state agency takes effect 20 days after the date on which it is filed with the Secretary of State unless a later date is required by statute or specified in the rule (Government Code, §2001.036). If a rule is adopted without change to the text of the proposed rule, then the *Texas Register* does not republish the rule text here. If a rule is adopted with change to the text of the proposed rule, then the final rule text is included here. The final rule text will appear in the Texas Administrative Code on the effective date.

TITLE 13. CULTURAL RESOURCES

PART 1. TEXAS STATE LIBRARY AND ARCHIVES COMMISSION

CHAPTER 8. TEXSHARE LIBRARY CONSORTIUM

13 TAC §8.1

The Texas State Library and Archives Commission adopts an amendment to 13 TAC §8.1(15), concerning the definition of non-profit library. The rule is being adopted without changes to the proposed text as published in the March 25, 2011, issue of the *Texas Register* (36 TexReg 1948).

The amendment updates references to the Texas Non-Profit Corporation Act to correct the legal citation. The provisions of Texas Non-Profit Corporation Act were repealed on January 1, 2010 and replaced by provisions of the Texas Nonprofit Corporation Law.

No comments were received on the proposed amendments.

The amendment is adopted under Government Code §441.225(b), which authorizes the commission to adopt rules to govern the operation of the consortium.

The amended section affects Government Code, §§441.221 - 441.230.

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

Filed with the Office of the Secretary of State on August 29, 2011.

TRD-201103513

Edward Seidenberg

Deputy Director

Texas State Library and Archives Commission

Effective date: September 18, 2011

Proposal publication date: March 25, 2011

For further information, please call: (512) 463-5459



TITLE 16. ECONOMIC REGULATION

PART 1. RAILROAD COMMISSION OF TEXAS

CHAPTER 3. OIL AND GAS DIVISION

16 TAC §3.80

The Railroad Commission of Texas (Commission) adopts amendments to §3.80, relating to Commission Oil and Gas Forms, Applications, and Filing Requirements, with changes to the proposed version published in the June 10, 2011, issue of the *Texas Register* (36 TexReg 3569) to revise three existing forms, delete five existing forms, and adopt five new forms. The only changes in the rule are found in the Table, where the revision dates for these forms are adopted as "9/11." The Commission also adopts some changes to four of the forms, as discussed in this preamble.

The Commission adopts revisions, as proposed, to three existing forms: Form H-10, Annual Disposal/Injection Well Monitoring Report; Form P-3, Authority to Transport Recovered Load or Frac Oil; and Form P-5, Organization Report.

The Commission adopts five new forms: Form PSA-12, Production Sharing Agreement Code Sheet; Form P-5A, Organization Report Non-Employee Agent Listing; Form P-5O, Organization Report Officer Listing; Form W-3C, Certification of Surface Equipment Removal for an Inactive Well; and Form W-3X, Application for an Extension of Deadline for Plugging an Inactive Well. Forms PSA-12, P-5A, W-3C, and W-3X are adopted with some changes from the proposed versions.

The Commission deletes five other forms: Form OW-1, Application for Authority to Conduct a Surface Inspection of Orphaned Oil or Gas Well; Form OW-2, Application for Certificate of Designation as the Operator of Orphaned Oil or Gas Well; Form P-5IWB, Individual Well Bond; Form P-5IWLC, Individual Well Irrevocable Documentary Letter of Credit; and Form P-5SS, P-5 Supplemental Officer Listing.

The Commission received one comment from the Texas Oil and Gas Association (TxOGA). TxOGA did not state support or opposition to the proposed amendments in their entirety, but offered suggestions for revisions to some of the rule provisions.

TxOGA agreed with the proposed revisions to Form P-3 and Form P-5, and the five forms proposed to be deleted.

Regarding Form H-10, TxOGA made the following suggestions. On Item 20, TxOGA suggested requiring the reporting of total volume of each injected fluid rather than the percentage of the total injected, because the volume percentage of a combination of both gaseous and liquid constituents is a function of the pressure used for the calculation, due to the variation in compressibilities. The reporting of volume percentages during a reporting cycle is not necessary for implementation of SB 1387.

The Commission disagrees with TxOGA's comments. Changing from volume percentages for this reporting would require reprogramming of various online, EDI, nightly process jobs, and mainframe processes. The Commission may consider this in the future, but at this time, the time and expense required to repro-

gram would be adverse. The Commission makes no changes with regard to these comments.

TxOGA also suggested using term "produced water" rather than "salt water" since not all water produced in association with oil and gas production is salt water. TxOGA also suggested including "fracture water flow back" as a constituent of "produced water" since it is often difficult, if not impossible, to differentiate between the two.

The Commission disagrees with TxOGA's comments regarding these terms. The Commission considers any water produced from an oil or gas well to be "salt water," understanding that there is a broad variation in the salinity of produced water. The term "salt water" also includes other types of saline wastewater within the Commission's jurisdiction, such as brine produced during the creation of a solution-mined salt cavern storage facility or potentially desalination wastewater used in enhanced recovery operations. The terms "salt water" and "fresh water" are used and "brackish water" is eliminated in the new form to differentiate between what is to be protected as "useable quality water," which is also sometimes used for enhanced recovery operations and is subject to specific additional requirements within the Water Code before a permit to inject it may be granted.

The Commission also disagrees with TxOGA's suggestion to include hydraulic fracturing flow back fluid with its proposed "produced water" because the operators will be reporting the volume of hydraulic fracturing fluid injected in the upcoming disclosure rules. Although there may not be an obvious point in time when an operator can distinguish between hydraulic fracturing flow back fluid and produced water, the flow back fluid will be some fraction (unlikely to be 100%) of the volume injected. Most operators, the Commission, and the general public are interested in having a better understanding of these processes.

Regarding the proposed revisions to Form PSA-12, in Item 4, TxOGA suggested changing "Operator P-5 No." to "Operator P-5 Name." The Commission agrees and has corrected this clerical error. In Item 9, TxOGA suggested changing "Proration Unit" to "Completion Report" so that this form will be consistent with the analogous Form P-12. Additionally, there may be instances without a proration unit, such as where there are no field rules or where acreage is not a factor in allocation, and then neither box would apply. The Commission agrees that the information on this form is properly associated with a completion report rather than a proration unit, and has made this change. In the description of individual tracts combined within the production sharing agreement, TxOGA suggested adding the option of "Non-Pooled" under "Indicated Undivided Interests." The Commission agrees and has added a third column for "Non-Pooled" under "Indicated Undivided Interests." TxOGA also suggested changing the term "Not-Participating" to "Non-Signing." First, "not-participating" is not an accurate description of a leased and/or pooled owner that cannot be located or declines to sign the Production Sharing Agreement. That person will participate; they are simply non-signing. Secondly, if there is only the unleased option, there may be instances where an owner is leased, but unpooled. Form P-12 provides both options: unleased or non-pooled. TxOGA suggested that Form PSA-12 provide three options: unleased, non-pooled, or non-signing. The Commission disagrees with this suggestion. If an owner cannot be located, by default that owner is "not participating," along with those who decline to participate.

The Commission also adds the option for an operator to provide an email address at the bottom of the form and as noted on the instructions.

Regarding Form P-5A, TxOGA suggested that a statement be added clarifying that this form can be filed at times other than Form P-5 renewal. The Commission agrees with TxOGA's comments regarding Form P-5A and has added the following language to the instructions on the form: "THIS FORM MAY BE FILED AT ANY TIME. If a change in an organization's representation has occurred, a revised Non-Employee Agent Listing may be filed at any time to update the Commission's records." This change will clarify that, although the form (if applicable) is required to be filed at P-5 renewal time, it also may be filed as a stand-alone form at other times should the need arise.

Regarding Form P-5O, TxOGA suggested adding three check boxes for each officer listing to indicate if this is a "change," "add," or "delete." This will clarify that changes can be made in the information for one officer without refiling all information for all officers at the same time. The Commission disagrees with TxOGA's comments regarding Form P-5O. Pursuant to Statewide Rule 1, §3.1 of this title (relating to Organization Report; Retention of Records; Notice Requirements), each filing of an Organization Report must include a full officer listing. Also, the Commission's intent is to pre-print Form(s) P-5O with all current information at the organization's P-5 renewal time, so changes to that information should be readily apparent without the need for additional boxes.

Regarding Form W-3C, TxOGA suggested that Box A be revised to read "electric service to the production sites for the well(s) identified above has been physically terminated *or the site does not have electrical service.*" TxOGA also suggested revising the first sentence of the Certification to read "I declare that the above certification(s) are based on my personal knowledge of the physical condition of the inactive well identified in this application, that this report was prepared by me or under my supervision *or direction*, and that I am authorized to make this report," instead of "supervision *and* direction." TxOGA also suggested adding a line to the end of the Certification: "Contact Name, if different from above" and phone number.

The Commission agrees with TxOGA's comments regarding Form W-3C and has made the suggested changes in Box A and in the language of the certification. The addition of language describing a site that does not have electrical service will clarify a point of frequent industry confusion. The substitution of "supervision or direction" in place of "supervision and direction" should allow increased flexibility for industry in the preparation and processing of W-3C forms. Finally, the inclusion of a contact name and phone number will enhance communications with the appropriate industry personnel.

Regarding Form W-3X, TxOGA suggested changing the certification on the form as recommended for Form W-3C and as provided for in recently passed House Bill (HB) 3134 (82nd Legislature, Regular Session, 2011). The Commission agrees with TxOGA's comments regarding Form W-3X. The Commission has changed the language of the certification on Form W-3X to delete language as provided in HB 3134 and will now read: "I certify under penalties prescribed by the Texas Natural Resources Code and the Texas Penal Code that, to the best of my knowledge, the information given in this application is true, complete, and correct." A space for a contact person, if other than the person certifying the form, has been added. The certification on Form W-3X does not include the language ". . . that this report was prepared by me or under my supervision and direction. . ." so that proposal has not been adopted. These changes will en-

hance communication and processing, and also will comply with the recent statutory amendments under HB 3134.

Amended Form H-10, Annual Disposal/Injection Well Monitoring Report

The Commission amends Form H-10, Annual Disposal/Injection Well Monitoring Report, to implement a portion of Senate Bill (SB) 1387 (81st Legislature, Regular Session, 2009), relating to implementation of projects involving the capture, injection, sequestration, or geologic storage of anthropogenic carbon dioxide. SB 1387 provides the statutory basis for the regulation of geologic storage of anthropogenic carbon dioxide within the existing framework of the Texas Injection Well Act (Texas Water Code, Chapter 27). SB 1387 delegated to the Railroad Commission jurisdiction over the injection of anthropogenic carbon dioxide into a reservoir that is initially or may be productive of oil, gas, or geothermal resources, and saline formations directly above and below the productive formations, for the purpose of geological storage. Implementation of SB 1387 requires that the Commission adopt new procedures and rules, including modification of Form H-10. The Commission modifies Form H-10 to require that injected fluids be reported as a percentage of total liquid/gas injected during the cycle year. The percentage reported must be rounded off to whole numbers and all fluid injected must total to a combined 100%. The percentage of anthropogenic carbon dioxide will be a subset of the overall carbon dioxide volume.

In addition, the Commission amends the instructions on the back of Form H-10 to provide the Internet address for filing Form H-10 electronically; to inform operators that the Commission ceased mailing pre-printed forms in April 2011; and to provide the Internet address from which a blank Form H-10 may be printed for those persons preferring to file on paper. The Commission now mails a listing of Form H-10 filings that are due.

Amended Form P-3, Authority to Transport Recovered Load or Frac Oil

The Commission amends Form P-3, Authority to Transport Recovered Load or Frac Oil, to add an advisory that the use of diesel fuel for hydraulic fracturing may be subject to the federal Safe Drinking Water Act since 2005, and that a permit for the hydraulic fracturing activity may be required under the underground injection control program. In Section 322 of the Energy Policy Act of 2005, Congress amended the Underground Injection Control (UIC) portion of the federal Safe Drinking Water Act (42 USC 300h(d)) to define "underground injection" to *exclude* ". . . the underground injection of fluids or propping agents (*other than diesel fuels*) pursuant to hydraulic fracturing operations related to oil, gas, or geothermal production activities" (emphasis added). Most operators in Texas do not use diesel fuel in hydraulic fracturing fluids. However, in light of reports that diesel fuel has been used in a few instances across the nation in the past few years, the Commission finds it prudent to issue this notice to Texas operators. Therefore, an operator must submit a written request to the Commission's Oil and Gas Division *if diesel fuel is used* in hydraulic fracturing.

Amended Form P-5, Organization Report

The Commission amends Form P-5, Organizational Report, to conform to changes in Commission rules that have occurred following the adoption of the current form in 1987. The revised form provides spaces for the operator to provide an emergency (after hours) phone number as required by §3.1 of this title (relating to Organization Report; Retention of Records; Notice Requirements), also called Statewide Rule 1. The revised form also pro-

vides for an organizational phone number separate from that of the person executing the form. The Commission has removed officer information from Form P-5 (and is relocating that information to new Form P-5O as a required attachment) to clarify the requirement in Statewide Rule 1 that operators must list all controlling entities. Finally, the revised form includes a space for an optional email address for the person executing the form to aid in communication.

New Form P-5A, Organization Report Non-Employee Agent Listing

The Commission adopts new Form P-5A, Organization Report Non-Employee Agent Listing, with some changes previously discussed, as an optional attachment to Form P-5, Organization Report, or, alternatively, as a stand-alone filing. Statewide Rule 1 specifies that an organization must include with its Form P-5 filing, "the name of any non-employee agent that the organization authorizes to act for the organization in signing Oil and Gas Division certificates of compliance which initially designate the operator or change the designation of the operator." Form P-5A provides organizations a vehicle for making that designation.

New Form P-5O, Organization Report Officer Listing

The Commission adopts new Form P-5O, Organization Report Officer Listing, as a required attachment to Form P-5. Form P-5O provides filers with blanks to provide information on the filing organization's controlling entities as required by Statewide Rule 1. This form will provide the three spaces that previously have been provided on Form P-5 (concurrently adopted with revisions) and on Form P-5S, Supplemental Officer Listing (concurrently deleted).

New Form PSA-12, Production Sharing Agreement Code Sheet

The Commission adopts new Form PSA-12, Production Sharing Agreement Code Sheet, with some changes previously discussed, on which an operator can provide data electronically or by hard copy in support of an application for a well on a tract covered by a production sharing agreement. The operator must provide the name and total acreage in each lease and pooled unit participating in the production sharing agreement; a list of all completed and permitted wells within each participating lease or unit; a list of all other PSA wells using any acreage from the lease/units contributing to the applied-for PSA well; and a list of the acreage assigned to each completed or permitted well using acreage from each of the component lease/units.

New Forms W-3C, Certification of Surface Equipment Removal for an Inactive Well, and W-3X, Application for Extension of Deadline for Plugging an Inactive Well

The Commission adopts two new forms: Form W-3C, Certification of Surface Equipment Removal for an Inactive Well, and Form W-3X, Application for Extension of Deadline for Plugging an Inactive Well, both with some changes previously discussed. The Commission adopts these new forms to comply with the changes enacted in House Bill (HB) 2259 (81st Legislature, Regular Session, 2009), relating to the plugging of certain inactive oil or gas wells and to standards for electrical power lines serving certain oil and gas facilities.

HB 2259, effective September 1, 2010, established new requirements for oil and gas operators related to surface equipment removal and inactive wells by amending the Texas Natural Resources Code to address two issues related to inactive land wells: the dangers posed by live electrical lines connected to

inactive wells and the increased costs to plug inactive wells. HB 2259 applies only to land wells, not to bay and offshore wells.

Previously, the Commission adopted amendments to §§3.1, 3.14, 3.21, and 3.78 of this title (relating to Organization Report; Retention of Records; Notice Requirements; Plugging; Fire Prevention and Swabbing; and Fees and Financial Security Requirements), also called Statewide Rules 1, 14, 21 and 78, to add the new statutory requirements, and adopted new §3.15 of this title (relating to Surface Equipment Removal Requirements and Inactive Wells), also called Statewide Rule 15, to add the surface equipment removal and inactive well requirements set out by HB 2259. (The previous version of §3.15 was repealed and its requirements relating to surface casing to be left in place were incorporated into §3.14.) With respect to the surface equipment removal, the amendments and new rule became effective September 13, 2010. Under new Statewide Rule 15, each operator annually must address its complete inventory of inactive wells to obtain approval of its annual organization report (Form P-5). Statewide Rule 15 also provides for an exception to the surface cleanup requirements based on issues related to safety or required maintenance of the wellsite. Additional rulemaking is expected to implement the provisions of HB 3134, 82nd legislature, regarding a 90-day extension and hearing process in connection with compliance under HB 2259.

New Form W-3C, Certification of Surface Equipment Removal for an Inactive Well, includes the option of requesting an exception based on issues related to safety or required maintenance of the wellsite, to be supported by a written affirmation of the facts of the situation and a \$150 fee, pursuant to Texas Natural Resources Code, §81.0521. An operator may file a Form W-3C for a single well or for multiple wells. The form will be the certification by an operator that the specified wells have been placed into compliance with the surface equipment requirements of Statewide Rule 15.

New Form W-3X, Application for Extension of Deadline for Plugging an Inactive Well, also implements HB 2259. Statewide Rule 15 incorporates the surface equipment removal requirements from HB 2259, which are based on how long a well has been inactive. For all wells inactive 12 months or longer, the operator must disconnect electrical lines. If a well has been inactive for five years, the operator must purge all tanks, lines and vessels of fluids. Finally, if a well has been inactive for 10 years or longer, the operator must remove all surface equipment. The requirements to purge fluids and remove surface equipment apply unless the operator owns the surface or obtains a waiver from the Commission based on safety or maintenance of the well site.

For 10-year inactive wells in an operator's inventory as of September 1, 2010, the requirement to remove surface equipment is phased in over five years. This will require an operator to remove the surface equipment for at least 20% of its 10-year inactive wells as of September 1, 2010, each year until all of the 10-year inactive wells in an operator's inventory as of September 1, 2010, have been addressed. The population of all 10-year inactive wells in Texas as of September 1, 2010, has been identified by the Commission and is posted on the Commission's website. (See <http://www.rrc.state.tx.us/compliance/hb2259/wellsidentified.php>.)

Wells that become 10-year inactive wells after September 1, 2010, or that are acquired by a new operator after September 1, 2010, are not subject to the five-year phase-in period. An operator must bring those 10-year inactive wells into compliance within six months after the Commission recognizes the new operator of

the well, or by the time the new operator's annual organization report is required to be filed, whichever is later.

Statewide Rule 15 also incorporates the statutory requirements regarding inactive well extensions, and provides operators with eight options for addressing their inactive wells. Three of these are blanket options that address an operator's complete inventory of inactive wells:

- (1) plug or restore to active status a number of wells equal to 10% of inactive wells;
- (2) if publicly traded, provided financial documents to the Commission that name the Commission as the secured creditor; or
- (3) post additional blanket financial security.

Of the five per-well options, two require additional fees for each inactive well:

- (1) filing an abeyance of plugging report with the Commission and paying a \$100 fee; and
- (2) if an operator is not otherwise required to test the well, filing a fluid level or pressure test and paying a \$50 fee.

Another two of the five per-well options allow an operator to file additional financial security based on estimated costs to plug an individual inactive wells in the form of:

- (1) a supplemental bond, letter of credit or cash deposit; or
- (2) an escrow account in which 10% of the estimated cost to plug the inactive well is deposited annually.

The fifth per-well option allows an operator to file a certification that the well is part of an approved enhanced recovery project.

If an operator acquires an inactive well from another operator, the rules give the new operator six months to bring the acquired well into compliance with both the surface equipment removal requirements and any of the eight inactive well options. If an operator fails to bring the acquired well into compliance, the rules provide for revocation of the operator's organization report after notice and opportunity for hearing.

Under the adopted rules for inactive wells, operators will be able to avoid any recurring cost of compliance for an individual inactive well by plugging the well or by restoring the well to active status. Operators with a significant inventory of inactive wells will be able to apply whichever options best suit their particular circumstances, either on a blanket basis or by selecting a mixture of options addressing each individual well.

In support of operator information needs regarding these new requirements, the Commission has created the Inactive Well Aging Report ("IWAR"). The IWAR is an online query containing information on inactive wells, including the time from which the Commission calculates the relevant time periods for compliance. Inactive well data can be downloaded on a per-operator basis, or via a complete file of all inactive well data for all operators statewide. The IWAR is available on the Commission's website at <http://webapps2.rrc.state.tx.us/EWA/ewaMain.do>.

Deleted Forms OW-1, Application for Authority to Conduct a Surface Inspection of Orphaned Oil or Gas Well, and OW-2, Application for Certificate of Designation as the Operator of Orphaned Oil or Gas Well

The Commission deletes Form OW-1, Application for Authority to Conduct a Surface Inspection of Orphaned Oil or Gas Well; and Form OW-2, Application for Certificate of Designation as the

Operator of Orphaned Oil or Gas Well. The Orphaned Well Reduction Program was established by HB 2161 (79th Legislature, Regular Session, 2005). The incentive was intended to encourage continued production of viable wells by responsible operators, and to reduce the population of orphaned wells for which the Oilfield Cleanup Fund would bear the cost of plugging. The incentive was enacted June 6, 2005, and was effective from January 1, 2006, through December 31, 2007. Therefore, these forms are no longer necessary.

Deleted Form P-5S, P-5 Supplemental Officer Listing

The Commission deletes Form P-5S, P-5 Supplemental Officer Listing. This form allowed organizations to identify more controlling entities than the three (for which spaces are available on Form P-5). In concurrent revisions to Form P-5 and adopted new Form P-5O, all controlling entities required by Statewide Rule 1 to be identified will be identified on Form(s) P-5O attached to the organization's Form P-5 filing. Therefore, Form P-5S is no longer necessary.

Deleted Forms P-5IWB, Individual Well Bond, and P-5IWLC, Individual Well Irrevocable Documentary Letter of Credit

The Commission deletes Form P-5IWB, Individual Well Bond, and Form P-5IWLC, Individual Well Irrevocable Documentary Letter of Credit. The Commission initially created these forms in November 2000 for use in connection with individual well bonding requirements for 36-month inactive wells operated by unbonded operators. The requirement was invalidated by court order in 2003, and subsequently rendered moot by statutory requirements that all operators provide organizational financial security beginning in September 2004. Therefore, these forms are no longer necessary.

The adopted forms may be viewed online at www.rrc.state.tx.us/rules/proposed.php and will be published in the *Texas Register* concurrently with these adopted amendments to §3.80.

The Commission adopts the amendments to §3.80 pursuant to Texas Natural Resources Code, §§81.051 and §81.052, which provide the Commission with jurisdiction over all persons owning or engaged in drilling or operating oil or gas wells and persons owning or operating pipelines in Texas and the authority to adopt all necessary rules for governing and regulating persons and their operations under Commission jurisdiction; Texas Natural Resources Code §§85.042, 85.202, 86.041, and 86.042, which require the Commission to adopt rules to control waste of oil and gas; Texas Natural Resources Code, Chapter 89, Subchapter B-1, as enacted by HB 2259, relating to Plugging of Certain Inactive Wells; Texas Natural Resources Code, §91.019, related to Standards for Construction, Operation, and Maintenance of Electrical Power Lines; Texas Natural Resources Code, Chapter 91, Subchapter R, as enacted by SB 1387, relating to authorization for multiple or alternative uses of wells; and Texas Water Code, Chapter 27, Subchapter C-1, as enacted by SB 1387, which gives the Commission jurisdiction over the geologic storage of CO₂ in, and the injection of CO₂ into, a reservoir that is initially or may be productive of oil, gas, or geothermal resources or a saline formation directly above or below that reservoir.

Statutory authority: Texas Natural Resources Code, §§81.051, 81.052, 85.024, 85.202, 86.041, and 86.042; Texas Natural Resources Code, Chapters 89 and 91; and Texas Water Code, Chapter 27.

Cross-reference to statute: Texas Natural Resources Code, §§81.051, 81.052, 85.042, 85.202, 86.041, and 86.042; Texas Natural Resources Code, Chapters 89 and 91; and Texas Water Code, Chapter 27.

Issued in Austin, Texas, on August 23, 2011.

§3.80. Commission Oil and Gas Forms, Applications, and Filing Requirements.

(a) Forms. Forms required to be filed at the Commission shall be those prescribed by the Commission as listed in Table 1 of this subsection. A complete set of all Commission forms listed on Table 1 required to be filed at the Commission shall be kept by the Commission secretary and posted on the Commission's web site. Notice of any new or amended forms shall be issued by the Commission. For any required or discretionary filing, an organization may either file the prescribed form on paper or use any electronic filing process in accordance with subsections (e) or (f) of this section, as applicable. The Commission may at its discretion accept an earlier version of a prescribed form, provided that it contains all required information and meets the requirements of subsection (e)(3) of this section.

Figure: 16 TAC §3.80(a)

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

(1) Commission--The Railroad Commission of Texas.

(2) Electronic filing process--An electronic transmission to the Commission in a prescribed form and/or format authorized by the Commission and completed in accordance with Commission instructions.

(3) Form--A printed or typed paper document or electronic submission, including any necessary instructions, with blank spaces for insertion of required or requested specific information.

(4) Organization--Any person, firm, partnership, joint stock association, corporation, or other organization, domestic or foreign, operating wholly or partially within this state, acting as principal or agent for another, for the purpose of performing operations within the jurisdiction of the Commission.

(5) Position of ownership or control--A person holds a position of ownership or control in an organization if the person is:

(A) an officer or director of the organization;

(B) a general partner of the organization;

(C) the owner of an organization which is a sole proprietorship;

(D) the owner of more than a 25 percent ownership interest in the organization; or

(E) the designated trustee of the organization.

(6) Violation--Non-compliance with a statute, Commission rule, order, license, permit, or certificate relating to safety or the prevention or control of pollution.

(c) Organization eligibility. The Commission may not accept an organization report or an application for a permit, or approve a certificate of compliance if:

(1) the organization that submitted the report, application, or certificate violated a statute or Commission rule, order, license, certificate, or permit that relates to safety or the prevention or control of pollution; or

(2) any person who holds a position of ownership or control in the organization has, within the seven years preceding the date on which the report, application, or certificate is filed, held a position of ownership or control in another organization, and during that period of ownership or control the other organization violated a statute or Commission rule, order, license, permit, or certificate that relates to safety or the prevention or control of pollution.

(d) Violations. An organization has committed a violation if there is either a Commission order against an organization finding that the organization has committed a violation and all appeals have been exhausted or an agreed order entered into by the Commission and an organization relating to an alleged violation, and:

(1) the conditions that constituted the violation or alleged violation have not been corrected;

(2) all administrative, civil and criminal penalties, if any, relating to the violation or agreed settlement relating to an alleged violation have not been paid; or

(3) all reimbursements of costs and expenses, if any, assessed by the Commission relating to the violation or to the alleged violation have not been collected.

(e) Authorization and standards for electronic filing.

(1) An organization may file electronically any form listed on Table 1 for which the Commission has provided an electronic version, provided that the organization pays all required filing fees and complies with all requirements, including but not limited to security procedures, for electronic filing.

(2) The Commission deems an organization that files electronically or on whose behalf is filed electronically any form, as of the time of filing, to have knowledge of and to be responsible for the information filed on the form, pursuant to the statutory requirements, restrictions, and standards found in and pertaining to:

(A) Texas Natural Resources Code, Title 3 (oil and gas well drilling, production, and plugging);

(B) Texas Natural Resources Code, Title 5 (geothermal resources);

(C) Texas Natural Resources Code, Title 11 (hazardous liquids storage);

(D) Texas Utilities Code, Chapter 121, Subchapter I (sour gas pipeline facilities);

(E) Texas Water Code, §26.131 (discharge permits);

(F) Texas Water Code, Chapter 27 (class II injection and disposal wells and class III brine mining wells);

(G) Texas Water Code, Chapter 29 (oil and gas waste haulers);

(H) Texas Health and Safety Code, §401.415 (oil and gas naturally occurring radioactive material (NORM) waste); and

(I) Texas Administrative Code, Title 16, Chapter 3 (Oil and Gas Division) and Chapter 4 (Environmental Protection).

(3) All forms that an organization submits or that are submitted on behalf of an organization shall be transmitted in the manner prescribed by the Commission that is compatible with its software, equipment, and facilities.

(4) The Commission may provide notice electronically to an organization of, and may provide an organization the ability to con-

firm electronically, the Commission's receipt of a form submitted electronically by or on behalf of that organization.

(5) The Commission deems that the signature of an organization's authorized representative appears on each form submitted electronically by or on behalf of the organization, as if this signature actually appears, as of the time the form is submitted electronically to the Commission.

(6) The Commission holds each organization responsible, under the penalties prescribed in Texas Natural Resources Code, §91.143, for all forms, information, or data that an organization files or that are filed on its behalf. The Commission charges each organization with the obligation to review and correct, if necessary, all forms or data that an organization files or that are filed on its behalf.

(f) Other electronic transmissions. The Commission may at its discretion accept other documents or data electronically transmitted.

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

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

TRD-201103433

Mary Ross McDonald

Managing Director

Railroad Commission of Texas

Effective date: September 12, 2011

Proposal publication date: June 10, 2011

For further information, please call: (512) 475-1295

PART 4. TEXAS DEPARTMENT OF LICENSING AND REGULATION

CHAPTER 63. PERSONNEL EMPLOYMENT SERVICES

16 TAC §§63.1, 63.10, 63.20, 63.21, 63.40, 63.70, 63.80 - 63.82, 63.90

The Texas Commission of Licensing and Regulation (Commission) adopts the repeal of 16 Texas Administrative Code (TAC) Chapter 63, §§63.1, 63.10, 63.20, 63.21, 63.40, 63.70, 63.80 - 63.82, and 63.90 regarding the Personnel Employment Services program without changes to the proposed text as published in the July 15, 2011, issue of the *Texas Register* (36 TexReg 4530). The repealed sections will not be republished. The adoption takes effect September 15, 2011.

Senate Bill (SB) 1168 and House Bill (HB) 3167, 82nd Legislature, Regular Session (2011), each repealed the Department's regulatory authority from Texas Occupations Code, Chapter 2501 relating to Personnel Employment Service (PES) providers effective May 20, 2011 and September 1, 2011, respectively. Due to the low number of complaints and limited authority to take disciplinary action under the statute, the regulatory burden outweighed the benefit to the public of having this occupation regulated by the Texas Department of Licensing and Regulation (Department).

Chapter 2501 continues to provide for civil and criminal causes of action for aggrieved persons. The repeal of the sections of Chapter 2501, Texas Occupations Code relating to the Department's

ability to regulate personnel employment service providers requires the repeal of the rules that implement this statute and the PES program. This rule adoption repeals all Commission rules relating to this program under 16 TAC, Chapter 63.

The Department drafted and distributed the proposed repeal to persons internal and external to the agency. The proposed repeal was published in the July 15, 2011, issue of the *Texas Register*. The 30-day public comment period closed on August 15, 2011. The Department did not receive any public comments on the proposed repeal.

The repeal is adopted under SB 1168 and HB 3167, 82nd Legislature, Regular Session (2011), which repealed the sections of Texas Occupations Code, Chapter 2501, which authorized the Department to regulate Personnel Employment Services providers; and Texas Occupations Code, Chapter 51, which authorizes the Commission, the Department's governing body, to adopt rules as necessary to implement this chapter and any other law establishing a program regulated by the Department.

The statutory provisions affected by the adoption are those set forth in Texas Occupations Code, Chapters 51 and 2501. No other statutes, articles, or codes are affected by the adopted repeal.

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

Filed with the Office of the Secretary of State on August 26, 2011.

TRD-201103482

Brian Francis

Deputy Executive Director

Texas Department of Licensing and Regulation

Effective date: September 15, 2011

Proposal publication date: July 15, 2011

For further information, please call: (512) 463-7348



CHAPTER 78. TALENT AGENCIES

16 TAC §§78.1, 78.10, 78.20, 78.21, 78.30, 78.40, 78.70, 78.72, 78.73, 78.75, 78.80, 78.90

The Texas Commission of Licensing and Regulation (Commission) adopts the repeal of 16 Texas Administrative Code (TAC) Chapter 78, §§78.1, 78.10, 78.20, 78.21, 78.30, 78.40, 78.70, 78.72, 78.73, 78.75, 78.80, and 78.90 regarding the Talent Agencies program without changes to the proposed text as published in the July 22, 2011, issue of the *Texas Register* (36 TexReg 4625). The repealed sections will not be republished. The adoption takes effect September 15, 2011.

House Bill 3167, 82nd Legislature, Regular Session (2011), repealed Texas Occupations Code, Chapter 2105 relating to Talent Agencies effective September 1, 2011. Due to the low number of complaints and limited authority to take disciplinary action under the statute, the regulatory burden outweighs the benefit to the public of having this occupation regulated by the Texas Department of Licensing and Regulation (Department).

The repeal of Texas Occupations Code, Chapter 2105 relating to Talent Agencies requires the repeal of the rules that implement this statute and the Talent Agencies program. Therefore,

this rule adoption repeals all Commission rules relating to this program under 16 TAC Chapter 78.

The Department drafted and distributed the proposed repeal to persons internal and external to the agency. The proposed repeal was published in the July 22, 2011, issue of the *Texas Register*. The 30-day public comment period closed on August 22, 2011. The Department received comments from the following interested parties: (1) Screen Actors Guild, (2) "A Casting Place," (3) an "actor writer" and a Casting Director. The comments are summarized below, together with the Department's responses.

The parties' comments were similar in that they each (a) expressed concern that without regulation, persons who are vulnerable, such as children and young adults, would be taken advantage of by unscrupulous agents, and (b) expressed concern that the Texas film industry would be harmed by this repeal because the film industry would not want to work with "non professionals" and would cease doing business in Texas.

The Screen Actors Guild and A Casting Place expressed concern that they did not receive advance notice of this legislation (impliedly from this agency). The Casting Director's comments mirrored the others and additionally requested that the Department hold a "hearing" before "taking this action."

Department Response: The Department recommends that the industry be monitored by these interested parties in Texas with an eye towards trending complaints or lawsuits alleging fraud or deceptive trade. Since the bill has passed and will become law, a hearing is not an appropriate Department action at this time. Additionally, the Texas movie and film industry could be monitored to see if there is a decrease in production and why. If the industry believes that the legislation is warranted, they may wish to discuss options with their Texas legislators for the 83rd Session, 2013. The Department had minimal complaints in this program, and only narrow regulatory authority under the statute. If new legislation is introduced, the Department would encourage that the statute be written addressing current business models and technology.

Department Response: The Department does not have a policy of informing interested parties in advance of any pending legislation that it may be aware of, affecting those parties. In the normal course, most stakeholders have persons designated to monitor legislation affecting their industries.

The repeal is adopted under HB 3167, 82nd Legislature, Regular Session (2011), that repealed Texas Occupations Code, Chapter 2105 which authorized the Department to regulate Talent Agencies; and Texas Occupations Code, Chapter 51, which authorizes the Commission, the Department's governing body, to adopt rules as necessary to implement this chapter and any other law establishing a program regulated by the Department.

The statutory provisions affected by the adoption are those set forth in Texas Occupations Code, Chapters 51 and 2105. No other statutes, articles, or codes are affected by the adopted repeal.

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

Filed with the Office of the Secretary of State on August 26, 2011.

TRD-201103483

Brian Francis
Deputy Executive Director
Texas Department of Licensing and Regulation
Effective date: September 15, 2011
Proposal publication date: July 22, 2011
For further information, please call: (512) 463-7348



TITLE 22. EXAMINING BOARDS

PART 6. TEXAS BOARD OF PROFESSIONAL ENGINEERS

CHAPTER 133. LICENSING

The Texas Board of Professional Engineers (Board) adopts amendments to §133.27, regarding Application for Temporary License for Engineers Currently Licensed Outside the United States, §133.61, regarding Engineering Examinations Required for a License to Practice as a Professional Engineer, §133.67, regarding Examination on the Principles and Practice of Engineering, and §133.73, regarding Examination Analysis, without changes to the proposed text as published in the June 3, 2011, issue of the *Texas Register* (36 TexReg 3386). The amended sections will not be republished.

The adopted change to §133.27 clarifies the number of reference statements required for an international temporary license.

The adopted change to §133.61 allows a contracted Exam Administration company to collect exam registration fees and handle fee refunds and transfers.

The adopted change to §133.67 clarifies that people taking the National Council of Examiners for Engineering and Surveying Structural Principles and Practice of Engineering (PE) exam must receive an "acceptable result" for both components of the two-day exam within four exam administrations.

The adopted change to §133.73 clarifies how examinees who fail the exams are notified, clarifies the grading verification options available and states that acceptable results must be received for both components of the Structural PE exam for the exam to be considered passed.

The Board received one comment on the proposed rule change to §133.61, which asked questions about the purpose and procedures associated with handling of exam registration fees. The Board felt that these comments are adequately addressed by the rule language and Board policies. No change was made in response to this comment.

SUBCHAPTER C. PROFESSIONAL ENGINEER LICENSE APPLICATION REQUIREMENTS

22 TAC §133.27

The amendments are adopted pursuant to the Texas Engineering Practice Act, Occupations Code §1001.202, which authorizes the board to make and enforce all rules and regulations and bylaws consistent with the Act as necessary for the performance of its duties, the governance of its own proceedings, and the regulation of the practice of engineering in this state.

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

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

TRD-201103445
Lance Kinney, P.E.
Executive Director
Texas Board of Professional Engineers
Effective date: September 13, 2011
Proposal publication date: June 3, 2011
For further information, please call: (512) 440-7723



SUBCHAPTER G. EXAMINATIONS

22 TAC §§133.61, 133.67, 133.73

The amendments are adopted pursuant to the Texas Engineering Practice Act, Occupations Code §1001.202, which authorizes the board to make and enforce all rules and regulations and bylaws consistent with the Act as necessary for the performance of its duties, the governance of its own proceedings, and the regulation of the practice of engineering in this state.

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

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

TRD-201103446
Lance Kinney, P.E.
Executive Director
Texas Board of Professional Engineers
Effective date: September 13, 2011
Proposal publication date: June 3, 2011
For further information, please call: (512) 440-7723



CHAPTER 137. COMPLIANCE AND PROFESSIONALISM

SUBCHAPTER A. INDIVIDUAL AND ENGINEER COMPLIANCE

22 TAC §137.5, §137.9

The Texas Board of Professional Engineers (Board) adopts amendments to §137.5, regarding Notification of Address Change, Employer Change and Criminal Conviction, and §137.9, regarding Renewal for Expired License, without changes to the proposed text as published in the June 3, 2011, issue of the *Texas Register* (36 TexReg 3388). The amended sections will not be republished.

The adopted change to §137.5 modifies notifications to include the requirement to notify the TBPE of any legal name change. It also removes the requirement to present a reason for an employment change.

The adopted change to §137.9 corrects the current rule language to be consistent with the current requirements in Texas Education Code §57.491 which require a licensing agency such as the TBPE to deny a renewal of a license if the license holder is

reported as delinquent by the Texas Guaranteed Student Loan Corporation.

The Board received one comment on the proposed rule change to §137.5, which opposed the amendment not because of the requirement to notify the Board of a change of name but because the Board did not accept a current valid Texas Driver License (TDL) as adequate documentation of the name change. The comment also expressed the opinion that requiring court documents from female engineers was sexist and discriminatory.

The Board addresses the comment by noting first that any Licensed Professional Engineer who wishes to file a change of name with the Board is required to provide the same documents, including court orders, regardless of sex or gender.

It has been Board policy, as evidenced by P.E. Name Change Form, to require a marriage certificate, passport, court documents, or nationalization documents to establish the legality of the name change. All Licensed Professional Engineers have been and are still treated exactly the same in so far as the documentation required to support a name change. In reviewing Texas Department of Public Safety regulations and requirements, it is noted that the Department requires an original or certified copy of a court order indicating an official change of name. Therefore, in addition to the existing forms of acceptable documentation for a name change in Board records, the Board will also accept a current, valid TDL as adequate proof of the legality of the name change. No change in the rule as proposed and adopted was made in response to this comment.

The amendments are adopted pursuant to the Texas Engineering Practice Act, Occupations Code §1001.202, which authorizes the board to make and enforce all rules and regulations and bylaws consistent with the Act as necessary for the performance of its duties, the governance of its own proceedings, and the regulation of the practice of engineering in this state.

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

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

TRD-201103447

Lance Kinney, P.E.

Executive Director

Texas Board of Professional Engineers

Effective date: September 13, 2011

Proposal publication date: June 3, 2011

For further information, please call: (512) 440-7723



PART 9. TEXAS MEDICAL BOARD

CHAPTER 175. FEES AND PENALTIES

22 TAC §175.1, §175.2

The Texas Medical Board (Board) adopts amendments to §175.1, concerning Application and Administrative Fees, and §175.2, concerning Registration and Renewal Fees, with changes to the proposed text as published in the July 22, 2011, issue of the *Texas Register* (36 TexReg 4626). The text of the rules will be republished.

The amendment to §175.1 raises the fees for initial registration to be a non-certified radiologic technician (NCT) to \$115.50 to be consistent for the fees for renewals of NCT certificates. The amendment to §175.1 also increases the application fees \$10 each for initial physician in training permits, physician in training permits for program transfer, and physician in training permits for applicants performing rotations in Texas.

The amendment to §175.2 increases the fees for initial and subsequent biennial permits for physician registration by \$13 each.

No comments were received regarding adoption of the rules.

The amendments are adopted under the authority of the Texas Occupations Code Annotated, §153.001, which provides authority for the Board to adopt rules and bylaws as necessary to: govern its own proceedings; perform its duties; regulate the practice of medicine in this state; enforce this subtitle; and establish rules related to licensure.

The amendments are also authorized by §153.051, Texas Occupations Code, and Chapter 601 of the Texas Occupations Code.

§175.1. Application and Administrative Fees.

The board shall charge the following fees for processing an application for a license or permit:

- (1) Physician Licenses:
 - (A) Full physician license (includes surcharge of \$215)-\$1002.
 - (B) Telemedicine license (includes surcharge of \$215)-\$1002.
 - (C) Administrative medicine license (includes surcharge of \$215)--\$1002.
 - (D) Reissuance of license following revocation (includes surcharge of \$205)--\$885.
 - (E) Temporary license:
 - (i) State health agency--\$50.
 - (ii) Visiting physician--\$0-
 - (iii) Visiting professor--\$167.
 - (iv) National Health Service Corps--\$0-
 - (v) Faculty temporary license (includes surcharges of \$280)--\$737.
 - (vi) Postgraduate Research Temporary License--\$0-
 - (vii) Provisional license--\$107.
 - (F) Licenses and Permits relating to Graduate Medical Education:
 - (i) Initial physician in training permit--\$212.
 - (ii) Physician in training permit for program transfer--\$141.
 - (iii) Evaluation or re-evaluation of postgraduate training program--\$250.
 - (iv) Physician in training permit for applicants performing rotations in Texas--\$130.
- (2) Physician Assistants:
 - (A) Physician assistant license (includes surcharge of \$5)--\$205.

(B) Reissuance of license following revocation (includes surcharge of \$5)--\$205.

(C) Temporary license--\$107.

(3) Acupuncturists/Acudetox Specialists/Continuing Education Providers:

(A) Acupuncture licensure (includes surcharge of \$5)--\$305.

(B) Temporary license for an acupuncturist--\$107.

(C) Acupuncturist distinguished professor temporary license--\$50.

(D) Acudetox specialist certification (includes surcharge of \$2)--\$52.

(E) Continuing acupuncture education provider--\$50.

(F) Review of a continuing acupuncture education course--\$25.

(G) Review of continuing acudetox acupuncture education courses--\$50.

(4) Non-Certified Radiologic Technician permit (includes surcharge of \$3)--\$115.50.

(5) Non-Profit Health Organization initial certification--\$2,500.

(6) Surgical Assistants:

(A) Surgical assistant licensure--\$300.

(B) Temporary license--\$50.

(7) Criminal History Evaluation Letter--\$100.

(8) Certifying board evaluation--\$200.

§175.2. *Registration and Renewal Fees.*

The board shall charge the following fees to continue licenses and permits in effect:

(1) Physician Registration Permits:

(A) Initial biennial permit--\$826.

(B) Subsequent biennial permit--\$822.

(C) Additional biennial registration fee for office-based anesthesia--\$210 (includes surcharge of \$10).

(2) Physician Assistant Registration Permits:

(A) Initial annual permit (includes surcharges of \$10)--\$257.50.

(B) Subsequent annual permit (includes surcharges of \$6)--\$253.50.

(3) Acupuncturists/Acudetox Specialists Registration Permits:

(A) Initial annual permit for acupuncturist (includes surcharges of \$10)--\$322.50.

(B) Subsequent annual permit for acupuncturist (includes surcharges of \$6)--\$318.50.

(C) Annual renewal for acudetox specialist certification--\$87.50.

(4) Non-Certified Radiologic Technician permit annual renewal (includes surcharge of \$3)--\$115.50.

(5) Non-Profit Health Organization biennial recertification--\$1,125.

(6) Surgical Assistants registration permits:

(A) Initial biennial permit (includes surcharges of \$6)--\$531.

(B) Subsequent biennial permit (includes surcharges of \$2)--\$527.

(7) Certifying board evaluation renewal--\$200.

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

Filed with the Office of the Secretary of State on August 29, 2011.

TRD-201103489

Mari Robinson, J.D.

Executive Director

Texas Medical Board

Effective date: September 18, 2011

Proposal publication date: July 22, 2011

For further information, please call: (512) 305-7016



CHAPTER 187. PROCEDURAL RULES SUBCHAPTER I. PROCEEDINGS FOR CEASE AND DESIST ORDERS

22 TAC §187.83

The Texas Medical Board (Board) adopts amendments to §187.83, concerning Proceedings for Cease and Desist Orders, without changes to the proposed text as published in the April 29, 2011, issue of the *Texas Register* (36 TexReg 2690) and will not be republished.

Elsewhere in this issue of the *Texas Register*, the Board contemporaneously withdraws the emergency amendment to §187.83, which was previously published in the April 29, 2011, issue of the *Texas Register* (36 TexReg 2639). The emergency amendment is withdrawn upon the effective date of the permanent adoption to §187.83.

The amendment to §187.83, relating to Proceedings for Cease and Desist Orders, sets out the requirements for conducting a cease and desist hearing related to the unlicensed practice of medicine.

No comments were received regarding the amendment.

The amendment is adopted under the authority of the Texas Occupations Code Annotated, §153.001, which provides authority for the Board to adopt rules and bylaws as necessary to: govern its own proceedings; perform its duties; regulate the practice of medicine in this state; enforce this subtitle; and establish rules related to licensure.

The amendment is also authorized by §165.052, Texas Occupations Code.

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

Filed with the Office of the Secretary of State on August 29, 2011.

TRD-201103490
Mari Robinson, J.D.
Executive Director
Texas Medical Board
Effective date: September 18, 2011
Proposal publication date: April 29, 2011
For further information, please call: (512) 305-7016



PART 15. TEXAS STATE BOARD OF PHARMACY

CHAPTER 281. ADMINISTRATIVE PRACTICE AND PROCEDURES

SUBCHAPTER A. GENERAL PROVISIONS

22 TAC §281.2, §281.9

The Texas State Board of Pharmacy adopted amendments to §281.2, concerning Definitions, and §281.9, concerning Grounds for Discipline for a Pharmacy Technician or Pharmacy Technician Trainee. The amendments are adopted without changes to the proposed text as published in the July 8, 2011, issue of the *Texas Register* (36 TexReg 4241).

The adopted amendments to §281.2 define confidential address of record, public address of record and diversion of dangerous drugs. The adopted amendments to §281.9 clarify the grounds for discipline for pharmacy technicians/trainees.

No comments were received.

The amendments are adopted under §§551.002, 554.051, and 555.001 of the Texas Pharmacy Act (Chapters 551 - 566 and 568 - 569, Texas Occupations Code). The Board interprets §551.002 as authorizing the agency to protect the public through the effective control and regulation of the practice of pharmacy. The Board interprets §554.051(a) as authorizing the agency to adopt rules for the proper administration and enforcement of the Act. The Board interprets §555.001(d) as authorizing the agency to consider the home address and telephone number of a person licensed or registered by the Board, including a pharmacy owner as confidential and not subject to disclosure but each person licensed or registered must provide the Board with an address of record that is subject to disclosure.

The statutes affected by the amendments: Texas Pharmacy Act, Chapters 551 - 566 and 568 - 569, Texas Occupations Code.

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

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

TRD-201103418
Gay Dodson, R.Ph.
Executive Director/Secretary
Texas State Board of Pharmacy
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Proposal publication date: July 8, 2011
For further information, please call: (512) 305-8028



SUBCHAPTER B. GENERAL PROCEDURES IN A CONTESTED CASE

22 TAC §281.30

The Texas State Board of Pharmacy adopts amendments to §281.30, concerning Notice and Service for Hearing. The amendments are adopted without changes to the proposed text as published in the July 8, 2011, issue of the *Texas Register* (36 TexReg 4242).

The adopted amendments clarify notice and service of hearing will be sent to the party's addresses including confidential and public address of record.

No comments were received.

The amendments are adopted under §§551.002, 554.051, and 555.001 of the Texas Pharmacy Act (Chapters 551 - 566 and 568 - 569, Texas Occupations Code). The Board interprets §551.002 as authorizing the agency to protect the public through the effective control and regulation of the practice of pharmacy. The Board interprets §554.051(a) as authorizing the agency to adopt rules for the proper administration and enforcement of the Act. The Board interprets §555.001(d) as authorizing the agency to consider the home address and telephone number of a person licensed or registered by the Board, including a pharmacy owner as confidential and not subject to disclosure but each person licensed or registered must provide the Board with an address of record that is subject to disclosure.

The statutes affected by the amendments: Texas Pharmacy Act, Chapters 551 - 566 and 568 - 569, Texas Occupations Code.

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

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TRD-201103415
Gay Dodson, R.Ph.
Executive Director/Secretary
Texas State Board of Pharmacy
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For further information, please call: (512) 305-8028



CHAPTER 283. LICENSING REQUIREMENTS FOR PHARMACISTS

22 TAC §§283.4, 283.7, 283.8

The Texas State Board of Pharmacy adopted amendments to §283.4, concerning Internship Requirements, §283.7, concerning Examination Requirements, and §283.8, concerning Reciprocity Requirements. The amendments are adopted without changes to the proposed text as published in the July 8, 2011, issue of the *Texas Register* (36 TexReg 4243).

The adopted amendments specify the application requirements for pharmacists and interns.

No comments were received.

The amendments are adopted under §§551.002, 554.051, and 555.001 of the Texas Pharmacy Act (Chapters 551 - 566 and 568

- 569, Texas Occupations Code). The Board interprets §551.002 as authorizing the agency to protect the public through the effective control and regulation of the practice of pharmacy. The Board interprets §554.051(a) as authorizing the agency to adopt rules for the proper administration and enforcement of the Act. The Board interprets §555.001(d) as authorizing the agency to consider the home address and telephone number of a person licensed or registered by the Board, including a pharmacy owner as confidential and not subject to disclosure but each person licensed or registered must provide the Board with an address of record that is subject to disclosure.

The statutes affected by the amendments: Texas Pharmacy Act, Chapters 551 - 566 and 568 - 569, Texas Occupations Code.

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

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

TRD-201103419

Gay Dodson, R.Ph.

Executive Director/Secretary

Texas State Board of Pharmacy

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Proposal publication date: July 8, 2011

For further information, please call: (512) 305-8028



CHAPTER 291. PHARMACIES

SUBCHAPTER A. ALL CLASSES OF PHARMACIES

The Texas State Board of Pharmacy adopted amendments to §291.1, concerning Pharmacy License Application, §291.6, concerning Pharmacy License Fees, and §291.29, concerning Professional Responsibility of Pharmacists. The amendments to §291.1 and §291.29 are adopted without changes to the proposed text as published in the July 8, 2011, issue of the *Texas Register* (36 TexReg 4244) and will not be republished. The amendments to §291.6 are adopted with changes to the proposed text as published in the July 8, 2011, issue of the *Texas Register* (36 TexReg 4244).

The adopted amendments to §291.1 clarify application requirements for pharmacies. The adopted amendments to §291.6 raise pharmacy license fees based on expenses. The adopted amendments to §291.29 clarify requirements for prescriptions issued for a partner or family member in accordance with the Texas Medical Board rules and establish guidelines for prescriptions issued by practitioners practicing at pain management clinics.

The Texas Pharmacy Business Council (TPBC) commented on the amendments to §291.29. TPBC commented that the amendments create a burden on pharmacists to determine if a prescription was based on a valid relationship for a legitimate medical need. The Board disagrees with the comments and believes these amendments are necessary to protect the public health of patients. The Board voted to delete the language regarding prorated license fees, since this no longer happens, and to change the wording regarding the initial licensure period to be more clear.

22 TAC §291.1, §291.29

The amendments are adopted under §§551.002, 554.051, and 555.001 of the Texas Pharmacy Act (Chapters 551 - 566 and 568 - 569, Texas Occupations Code). The Board interprets §551.002 as authorizing the agency to protect the public through the effective control and regulation of the practice of pharmacy. The Board interprets §554.051(a) as authorizing the agency to adopt rules for the proper administration and enforcement of the Act. The Board interprets §555.001(d) as authorizing the agency to consider the home address and telephone number of a person licensed or registered by the Board, including a pharmacy owner as confidential and not subject to disclosure but each person licensed or registered must provide the Board with an address of record that is subject to disclosure.

The statutes affected by the amendments: Texas Pharmacy Act, Chapters 551 - 566 and 568 - 569, Texas Occupations Code.

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

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

TRD-201103424

Gay Dodson, R.Ph.

Executive Director/Secretary

Texas State Board of Pharmacy

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Proposal publication date: July 8, 2011

For further information, please call: (512) 305-8028



22 TAC §291.6

The amendments are adopted under §§551.002, 554.051, and 555.001 of the Texas Pharmacy Act (Chapters 551 - 566 and 568 - 569, Texas Occupations Code). The Board interprets §551.002 as authorizing the agency to protect the public through the effective control and regulation of the practice of pharmacy. The Board interprets §554.051(a) as authorizing the agency to adopt rules for the proper administration and enforcement of the Act. The Board interprets §555.001(d) as authorizing the agency to consider the home address and telephone number of a person licensed or registered by the Board, including a pharmacy owner as confidential and not subject to disclosure but each person licensed or registered must provide the Board with an address of record that is subject to disclosure.

The statutes affected by the amendments: Texas Pharmacy Act, Chapters 551 - 566 and 568 - 569, Texas Occupations Code.

§291.6. Pharmacy License Fees.

(a) Initial License Fee.

(1) The fee for an initial license shall be \$371 for the initial registration period and for processing the application and issuance of the pharmacy license as authorized by the Act §554.006.

(2) In addition, the following fees shall be collected:

(A) \$13 surcharge to fund a program to aid impaired pharmacists and pharmacy students as authorized by the Act §564.051;

(B) \$10 surcharge to fund TexasOnline as authorized by Chapter 2054, Subchapter I, Government Code; and

(C) \$5 surcharge to fund the Office of Patient Protection as authorized by Chapter 101, Subchapter G, Occupations Code.

(b) Biennial License Renewal. The Texas State Board of Pharmacy shall require biennial renewal of all pharmacy licenses provided under the Act §561.002.

(c) Renewal Fee.

(1) The fee for biennial renewal of a pharmacy license shall be \$371 for processing the application and issuance of the pharmacy license as authorized by the Act §554.006.

(2) In addition, the following fees shall be collected:

(A) \$13 surcharge to fund a program to aid impaired pharmacists and pharmacy students as authorized by the Act §564.051;

(B) \$10 surcharge to fund TexasOnline as authorized by Chapter 2054, Subchapter I, Government Code; and

(C) \$2 surcharge to fund the Office of Patient Protection as authorized by Chapter 101, Subchapter G, Occupations Code.

(d) Duplicate or Amended Certificates. The fee for issuance of an amended pharmacy license renewal certificate shall be \$20.

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

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

TRD-201103426

Gay Dodson, R.Ph.

Executive Director/Secretary

Texas State Board of Pharmacy

Effective date: December 1, 2011

Proposal publication date: July 8, 2011

For further information, please call: (512) 305-8028



SUBCHAPTER B. COMMUNITY PHARMACY (CLASS A)

22 TAC §291.32, §291.33

The Texas State Board of Pharmacy adopted amendments to §291.32, concerning Personnel, and §291.33, concerning Operational Standards. The amendments are adopted without changes to the proposed text as published in the July 8, 2011, issue of the *Texas Register* (36 TexReg 4246).

The adopted amendments to §291.32 allow a pharmacist-in-charge to be the pharmacist-in-charge of more than one Class A pharmacy if the pharmacies are not open simultaneously or in the event of an emergency. The adopted amendments to §291.33 clarify the requirements for documenting patient counseling; outline the prescription labeling requirements for drugs dispensed pursuant to partner therapy; and outline the procedures for returning undelivered prescription medication to stock.

No comments were received.

The amendments are adopted under §551.002 and §554.051 of the Texas Pharmacy Act (Chapters 551 - 566 and 568 - 569, Texas Occupations Code). The Board interprets §551.002 as authorizing the agency to protect the public through the effective control and regulation of the practice of pharmacy. The Board interprets §554.051(a) as authorizing the agency to adopt rules for the proper administration and enforcement of the Act.

The statutes affected by the amendments: Texas Pharmacy Act, Chapters 551 - 566 and 568 - 569, Texas Occupations Code.

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

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

TRD-201103420

Gay Dodson, R.Ph.

Executive Director/Secretary

Texas State Board of Pharmacy

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Proposal publication date: July 8, 2011

For further information, please call: (512) 305-8028



SUBCHAPTER F. NON-RESIDENT PHARMACY (CLASS E)

22 TAC §291.104

The Texas State Board of Pharmacy adopts amendments to §291.104, concerning Operational Standards. The amendments are adopted without changes to the proposed text as published in the July 8, 2011, issue of the *Texas Register* (36 TexReg 4249).

The adopted amendments delete the specific language regarding generic substitution since this language is repetitive of language in Chapter 309 and references the requirements in §309.3 and §309.7.

No comments were received.

The amendments are adopted under §551.002 and §554.051 of the Texas Pharmacy Act (Chapters 551 - 566 and 568 - 569, Texas Occupations Code). The Board interprets §551.002 as authorizing the agency to protect the public through the effective control and regulation of the practice of pharmacy. The Board interprets §554.051(a) as authorizing the agency to adopt rules for the proper administration and enforcement of the Act.

The statutes affected by the amendments: Texas Pharmacy Act, Chapters 551 - 566 and 568 - 569, Texas Occupations Code.

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

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

TRD-201103416

Gay Dodson, R.Ph.

Executive Director/Secretary

Texas State Board of Pharmacy

Effective date: September 12, 2011

Proposal publication date: July 8, 2011

For further information, please call: (512) 305-8028



CHAPTER 295. PHARMACISTS

22 TAC §295.5

The Texas State Board of Pharmacy adopted amendments to §295.5, concerning Pharmacist License or Renewal Fees. The amendments are adopted without changes to the proposed text as published in the July 8, 2011, issue of the *Texas Register* (36 TexReg 4251).

The adopted amendments raise pharmacist license fees based on expenses.

No comments were received.

The amendments are adopted under §551.002 and §554.051 of the Texas Pharmacy Act (Chapters 551 - 566 and 568 - 569, Texas Occupations Code). The Board interprets §551.002 as authorizing the agency to protect the public through the effective control and regulation of the practice of pharmacy. The Board interprets §554.051(a) as authorizing the agency to adopt rules for the proper administration and enforcement of the Act.

The statutes affected by the amendments: Texas Pharmacy Act, Chapters 551 - 566 and 568 - 569, Texas Occupations Code.

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

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

TRD-201103427

Gay Dodson, R.Ph.

Executive Director/Secretary

Texas State Board of Pharmacy

Effective date: December 1, 2011

Proposal publication date: July 8, 2011

For further information, please call: (512) 305-8028



CHAPTER 297. PHARMACY TECHNICIANS AND PHARMACY TECHNICIAN TRAINEES

The Texas State Board of Pharmacy adopts amendments to §297.3, concerning Registration Requirements, and §297.4, concerning Fees. The amendments are adopted with changes to the proposed text as published in the July 8, 2011, issue of the *Texas Register* (36 TexReg 4251), as noted below. The amended sections will be republished.

The adopted amendments to §297.3 clarify the application requirements for pharmacy technicians and pharmacy technician trainees. The adopted amendments to §297.4 will raise pharmacy technician and pharmacy technician trainee fees based on expenses. The Board voted to change the distribution of the fees based on Texas Online requirements but did not change the overall amount of the fee for pharmacy technicians. The Board also voted to delete the references to prorated initial registration fees since this no longer happens.

No comments were received.

22 TAC §297.3

The amendments are adopted under §§551.002, 554.051, and 555.001 of the Texas Pharmacy Act (Chapters 551 - 566 and 568 - 569, Texas Occupations Code). The Board interprets §551.002 as authorizing the agency to protect the public through the effective control and regulation of the practice of pharmacy. The Board interprets §554.051(a) as authorizing the agency to adopt rules for the proper administration and enforcement of the Act.

The Board interprets §555.001(d) as authorizing the agency to consider the home address and telephone number of a person licensed or registered by the Board, including a pharmacy owner as confidential and not subject to disclosure but each person licensed or registered must provide the Board with an address of record that is subject to disclosure.

The statutes affected by the amendments: Texas Pharmacy Act, Chapters 551 - 566 and 568 - 569, Texas Occupations Code.

§297.3. Registration Requirements.

(a) General.

(1) Individuals who are not registered with the Board may not be employed as or perform the duties of a pharmacy technician or pharmacy technician trainee.

(2) Individuals who have previously applied and registered as a pharmacy technician, regardless of the pharmacy technician's current registration status, may not register as a pharmacy technician trainee.

(3) Individuals who apply and are qualified for both a pharmacy technician trainee registration and a pharmacy technician registration concurrently will not be considered for a pharmacy technician trainee registration.

(b) Registration for pharmacy technician trainees. An individual may register as a pharmacy technician trainee only once and the registration may not be renewed.

(1) Each applicant for pharmacy technician trainee registration shall:

(A) have a high school or equivalent diploma (e.g., GED), or be working to achieve a high school or equivalent diploma. For the purposes of this subparagraph, an applicant for registration may be working to achieve a high school or equivalent diploma for no more than two years;

(B) complete the Texas application for registration that includes the following information:

(i) name;

(ii) addresses, phone numbers, dates of birth, and social security numbers; however, if an individual is unable to obtain a social security number, an individual taxpayer identification number may be provided in lieu of a social security number along with documentation indicating why the individual is unable to obtain a social security number; and

(iii) any other information requested on the application.

(C) meet all requirements necessary in order for the Board to access the criminal history record information, including submitting fingerprint information and paying the required fees.

(2) Once an applicant has successfully completed all requirements of registration, and the board has determined there are no grounds to refuse registration, the applicant will be notified of registration as a pharmacy technician trainee and of his or her pharmacy technician trainee registration number.

(3) Pharmacy technician trainee registrations expire two years from the date of registration or upon issuance of registration as a registered pharmacy technician, whichever is earlier.

(c) Initial registration for pharmacy technicians.

(1) Each applicant for pharmacy technician registration shall:

(A) have a high school or equivalent diploma (e.g., GED), or be working to achieve a high school or equivalent diploma. For the purpose of this clause, an applicant for registration may be working to achieve a high school or equivalent diploma for no more than two years; and

(B) either have:

(i) taken and passed the Pharmacy Technician Certification Board's National Pharmacy Technician Certification Examination or other examination approved by the board and have a current certification certificate; or

(ii) been granted an exemption from certification by the board as specified in §297.7 of this title (relating to Exemption from Pharmacy Technician Certification Requirements); and

(C) complete the Texas application for registration that includes the following information:

(i) name;

(ii) addresses, phone numbers, dates of birth, and social security numbers; however, if an individual is unable to obtain a social security number, an individual taxpayer identification number may be provided in lieu of a social security number along with documentation indicating why the individual is unable to obtain a social security number; and

(iii) any other information requested on the application.

(D) meet all requirements necessary in order for the Board to access the criminal history record information, including submitting fingerprint information and paying the required fees; and

(E) pay the registration fee specified in §297.4 of this title (relating to Fees).

(2) Once an applicant has successfully completed all requirements of registration, and the board has determined there are no grounds to refuse registration, the applicant will be notified of registration as a registered pharmacy technician and of his or her pharmacy technician registration number. If the pharmacy technician applicant was registered as a pharmacy technician trainee at the time the pharmacy technician registration issued, the pharmacy technician trainee registration expires.

(d) Renewal.

(1) All applicants for renewal of a pharmacy technician registration shall:

(A) complete the Texas application for registration that includes the following information:

(i) name;

(ii) addresses, phone numbers, dates of birth, and social security numbers; however, if an individual is unable to obtain a social security number, an individual taxpayer identification number may be provided in lieu of a social security number along with documentation indicating why the individual is unable to obtain a social security number; and

(iii) any other information requested on the application.

(B) pay the renewal fee specified in §297.4 of this title; and

(C) complete 20 contact hours of continuing education per renewal period in as specified in §297.8 of this title (relating to Continuing Education).

(2) A pharmacy technician registration expires on the last day of the assigned expiration month.

(3) If the completed application and renewal fee are not received in the board's office on or before the last day of the assigned expiration month, the person's pharmacy technician registration shall expire. A person shall not practice as a pharmacy technician with an expired registration.

(4) If a pharmacy technician registration has expired, the person may renew the registration by paying to the board the renewal fee and a delinquent fee that is equal to the renewal fee as specified in §297.4 of this title.

(5) If a pharmacy technician registration has expired for more than one year, the pharmacy technician may not renew the registration and must complete the requirements for initial registration as specified in subsection (c) of this section.

(6) After review, the board may determine that paragraph (5) of this subsection does not apply if the registrant is the subject of a pending investigation or disciplinary action.

(e) An individual may use the title "Registered Pharmacy Technician" or "Ph.T.R." if the individual is registered as a pharmacy technician in this state.

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

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

TRD-201103422

Gay Dodson, R.Ph.

Executive Director/Secretary

Texas State Board of Pharmacy

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Proposal publication date: July 8, 2011

For further information, please call: (512) 305-8028



22 TAC §297.4

The amendments are adopted under §§551.002, 554.051, and 555.001 of the Texas Pharmacy Act (Chapters 551 - 566 and 568 - 569, Texas Occupations Code). The Board interprets §551.002 as authorizing the agency to protect the public through the effective control and regulation of the practice of pharmacy. The Board interprets §554.051(a) as authorizing the agency to adopt rules for the proper administration and enforcement of the Act. The Board interprets §555.001(d) as authorizing the agency to consider the home address and telephone number of a person licensed or registered by the Board, including a pharmacy owner as confidential and not subject to disclosure but each person licensed or registered must provide the Board with an address of record that is subject to disclosure.

The statutes affected by the amendments: Texas Pharmacy Act, Chapters 551 - 566 and 568 - 569, Texas Occupations Code.

§297.4. Fees.

(a) Pharmacy technician trainee. The fee for registration shall be \$42 and is composed of the following fees:

(1) \$35 for processing the application and issuance of the pharmacy technician trainee registration as authorized by the Act, §568.005;

(2) \$2 surcharge to fund TexasOnline as authorized by Chapter 2054, Subchapter I, Government Code; and

(3) \$5 surcharge to fund the Office of Patient Protection as authorized by Chapter 101, Subchapter G, Occupations Code.

(b) Pharmacy technician.

(1) Biennial Registration. The board shall require biennial renewal of all pharmacy technician registrations provided under Chapter 568 of the Act.

(2) Initial Registration Fee. The fee for initial registration shall be \$65 for a two year registration and is composed of the following fees:

(A) \$56 for processing the application and issuance of the pharmacy technician registration as authorized by the Act, §568.005;

(B) \$4 surcharge to fund TexasOnline as authorized by Chapter 2054, Subchapter I, Government Code; and

(C) \$5 surcharge to fund the Office of Patient Protection as authorized by Chapter 101, Subchapter G, Occupations Code.

(3) Renewal Fee. The fee for biennial renewal of a pharmacy technician registration shall be \$62 and is composed of the following:

(A) \$56 for processing the application and issuance of the pharmacy technician registration as authorized by the Act, §568.005;

(B) \$4 surcharge to fund TexasOnline as authorized by Chapter 2054, Subchapter I, Government Code; and

(C) \$2 surcharge to fund the Office of Patient Protection as authorized by Chapter 101, Subchapter G, Occupations Code.

(c) Duplicate or Amended Certificates. The fee for issuance of a duplicate or amended pharmacy technician trainee registration certificate or pharmacy technician registration renewal certificate shall be \$20.

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

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

TRD-201103423

Gay Dodson, R.Ph.

Executive Director/Secretary

Texas State Board of Pharmacy

Effective date: December 1, 2011

Proposal publication date: July 8, 2011

For further information, please call: (512) 305-8028



CHAPTER 303. DESTRUCTION OF DRUGS

22 TAC §303.1

The Texas State Board of Pharmacy adopts amendments to §303.1, concerning Destruction of Dispensed Drugs. The amendments are adopted without changes to the proposed text

as published in the July 8, 2011, issue of the *Texas Register* (36 TexReg 4253).

The adopted amendments clarify the requirements for the destruction of dispensed drugs with regard to controlled substances and rename the title of this chapter.

No comments were received.

The amendments are adopted under §551.002 and §554.051 of the Texas Pharmacy Act (Chapters 551 - 566 and 568 - 569, Texas Occupations Code). The Board interprets §551.002 as authorizing the agency to protect the public through the effective control and regulation of the practice of pharmacy. The Board interprets §554.051(a) as authorizing the agency to adopt rules for the proper administration and enforcement of the Act.

The statutes affected by the amendments: Texas Pharmacy Act, Chapters 551 - 566 and 568 - 569, Texas Occupations Code.

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

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

TRD-201103417

Gay Dodson, R.Ph.

Executive Director/Secretary

Texas State Board of Pharmacy

Effective date: September 12, 2011

Proposal publication date: July 8, 2011

For further information, please call: (512) 305-8028



PART 31. TEXAS STATE BOARD OF EXAMINERS OF DIETITIANS

CHAPTER 711. DIETITIANS

SUBCHAPTER A. LICENSED DIETITIANS

22 TAC §711.3

The Texas State Board of Examiners of Dietitians (board) adopts an amendment to §711.3, concerning the licensing and regulation of dietitians, specifically criminal history evaluations, without changes to the proposed text as published in the May 20, 2011, issue of the *Texas Register* (36 TexReg 3172). The section will not be republished.

BACKGROUND AND PURPOSE

The amendment complies with House Bill (HB) 963, 81st Legislature, 2009, which amended Occupations Code, §53.102, by setting out the requirements and procedures for issuance of criminal history evaluation letters.

SECTION-BY-SECTION SUMMARY

Section 711.3(d)(6) has been added which authorizes the board to charge a new fee of \$50 per person for pre-evaluation of a criminal history for future licensure. New subsections (l) - (p) stipulate the policies and procedures applicable in criminal history evaluation.

COMMENTS

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

STATUTORY AUTHORITY

The amendment is adopted under Occupations Code, §701.152, which authorizes the board to adopt rules necessary for the performance of the board's duties; and §53.102, which authorizes the adoption of rules regarding fees for criminal history evaluation letters.

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

Filed with the Office of the Secretary of State on August 26, 2011.

TRD-201103481

Janet Hall

Chair

Texas State Board of Examiners of Dietitians

Effective date: September 15, 2011

Proposal publication date: May 20, 2011

For further information, please call: (512) 776-6972



TITLE 25. HEALTH SERVICES

PART 1. DEPARTMENT OF STATE HEALTH SERVICES

CHAPTER 289. RADIATION CONTROL

The Executive Commissioner of the Health and Human Services Commission (commission), on behalf of the Department of State Health Services (department), adopts amendments to §289.202 concerning standards for protection against radiation from radioactive materials, §289.203 concerning radiation notices, instructions, reports to workers, and inspection protocol, §289.252 concerning licensing of radioactive material, §289.253 concerning radiation safety requirements for well logging service operations and tracer studies, §289.255 concerning radiation safety requirements and licensing and registration procedures for industrial radiography, §289.256 concerning medical and veterinary use of radioactive material, and §289.257 concerning packaging and transportation of radioactive material. The amendments to §§289.202, 289.256, and 289.257 are adopted with changes to the proposed text as published in the April 15, 2011, issue of the *Texas Register* (36 TexReg 2353). Sections 289.203, 289.252, 289.253, and 289.255 are adopted without changes and, therefore, the sections will not be republished.

BACKGROUND AND PURPOSE

Numerous amendments to §§289.202, 289.203, 289.252, 289.255, and 289.256 are necessary to comply with compatibility requirements of the United States Nuclear Regulatory Commission (NRC). The amendments are the result of the NRC's adoption of requirements for: reports of leaking or contaminated sealed sources; provisions for an annual written report to each worker that meets a new reporting criteria which is dependent on the individual's occupational dose; additional financial assurance for decommissioning criteria for source material; change in replacement interval for personnel dosimeters other than film badges; and training requirements and determination of dosages of radioactive material for medical use. Other amendments are made to §§289.202, 289.203, 289.252, and 289.255 - 289.257 to clarify program policies and procedures and incorporate requirements of Health and

Safety Code, Chapter 401. The amendments to §289.253 are necessary primarily to comply with the four-year rule review and correct minor grammatical, typographical, and unit of measure errors.

Government Code, §2001.039, requires that each state agency review and consider for reoption each rule adopted by that agency pursuant to the Government Code, Chapter 2001 (Administrative Procedure Act). Sections 289.202, 289.203, 289.252, 289.253, and 289.255 - 289.257 have been reviewed and the department has determined that the reasons for adopting these sections continue to exist because rules on this subject are needed.

SECTION-BY-SECTION SUMMARY

Section 289.202(ee)(1) and (ff)(1)(B) updates the rule reference citations.

Concerning §289.202(ee)(4)(A)(ii), the figure regarding the removable external radioactive contamination wipe limits corrects the maximum permissible limits and the "µCi/cm²" unit of measure is revised to read "pCi/cm²" to simplify the listed numerical values. The related footnote for this table is also revised to reflect the change in the unit of measure.

In §289.202(nn)(1), the words "and include a unique identification of survey instrument(s)" are added to provide a more detailed documentation of survey records.

Concerning §289.202(xx)(1)(A), the words "except a patient administered radiation for purposes of medical diagnosis or therapy," are added to be consistent with language used in applicable sections of the chapter.

Section 289.202(bbb) is revised to include the words "the date of the test, model and serial number, if assigned, of the leaking source, the radionuclide and its estimated activity," to maintain rules that are compatible to the NRC and as an agreement state, Texas must adopt them.

The figure for the table of acceptable surface contamination limits in §289.202(ggg)(6) adds "Tritium" and the applicable limit values to the list to provide additional limits for this radionuclide other than those currently listed for any beta emitter.

Section 289.202(ggg)(8) and the related figure for the cumulative occupational exposure form changes the form name from "BRC Form 202-2" to "RC Form 202-2" to reflect the current Radiation Control program name and to be consistent with form nomenclature used throughout the chapter.

Concerning §289.202(ggg)(9) and the related figure for the occupational exposure form, "BRC Form 202-3" is changed to "RC Form 202-3" to reflect the current Radiation Control program name and to be consistent with form nomenclature used throughout the chapter.

The notification and reports to individuals requirements specified in §289.203(d)(2) add an additional worker's dose reporting criteria that is dependent of the individual's occupational dose exceeding 100 millirem (mrem) (1 millisievert (mSv)) total effective dose equivalent or 100 mrem (1 mSv) to any individual organ or tissue, to maintain rules that are compatible to the NRC. Subsequently, the figure referenced in §289.203(i), regarding the notice to employees RC Form 203-1, is revised to incorporate the additional worker's dose reporting criteria, to maintain consistency with the requirements in §289.203(d)(2). The notice to employees form also deletes the department's physical address to comply with department policy.

New §289.252(gg)(1)(D), regarding financial assurance and record keeping for decommissioning requirements, adds a provision for when radioactive material requested or authorized on the license is in quantities more than 100 millicuries (mCi) of source material in a readily dispersible form because as an agreement state, Texas must adopt rules compatible to the NRC.

To maintain rules that are compatible with the NRC, new §289.252(gg)(3)(D) adds a required amount of financial assurance for decommissioning that is determined by the quantity of material authorized by the license to be \$225,000 for quantities of source material greater than 10 mCi but less than or equal to 100 mCi in a readily dispersible form.

New §289.252(ll) is added to clarify that persons who perform installation, repair, or maintenance of devices containing sealed sources of radioactive material shall apply for a specific license.

Section 289.253 is revised to correct minor grammatical, typographical, and unit of measure errors in §289.253(b), (c)(1), (l)(1)(C)(ii), (z)(1) and (2), (dd)(1)(A)(vii), and (dd)(1)(C)(v).

The requirements for qualifications of radiographic personnel in §289.255(e)(3)(A)(ii) are revised to clarify program policy relating to licensees and registrants which are no longer required to add qualified radiographer trainers to their specific license or certificate of registration. Language is added to clarify that qualified radiographer trainers shall be in possession of a valid trainer certification card.

Section 289.255(o)(2), relating to notification of incidents, is revised to clarify that each licensee or registrant shall make the initial notification report to the agency by telephone within 24 hours of when an event specified in §289.255(o)(2)(A) - (F) has occurred in addition to submitting a written report to the agency within 30 days.

Section 289.255(p)(2)(A) is revised to clarify that either a direct-reading pocket dosimeter, an electronic personal dosimeter, or an operable alarming ratemeter may be worn during industrial radiographic operations as long as the individual monitoring device meets the applicable requirements of §289.202(p)(3) or §289.231(s)(3).

To maintain rules that are compatible with the NRC, §289.255(p)(2)(l) is revised to differentiate that film badges shall be replaced at periods not to exceed one month and that other personnel dosimeters processed and evaluated by an accredited NVLAP processor shall be replaced at periods not to exceed three months.

Concerning new §289.255(p)(4)(E), language is added to require that an alarming ratemeter have an audible alarm sufficient to be heard by the individual wearing the device in a work environment or have other visual or physical notification of alarming conditions to provide adequate safety features for these devices in extreme work environments.

Section 289.255(u)(1)(B)(iv)(IV), regarding licensing requirements for industrial radiographic operations, changes the number of days that any licensee may conduct radiographic operations or storing radioactive material at any location not listed on the license to a period in excess of 180 days instead of 90 days. The equivalent change is made regarding when the licensee shall notify the agency prior to exceeding the 180 days instead of 90 days to conform to industry standards.

Section 289.256 is primarily revised to incorporate or modify training requirements that are designated as items of compatibility with the NRC and as an agreement state Texas must adopt them. The revisions are reflected in §289.256(a)(3); (c)(22); new (j)(2)(C) and (j)(3); new (l)(3); (x)(1), new (x)(2), (x)(2)(B)(iii), and new (x)(3); (ee)(1); (ff)(1) and (2); (gg)(1)(A), (gg)(2), (gg)(3)(B) and new (C); (hh)(1) and (2), new (hh)(3) and (4), and deletion of current (hh)(3); (ii)(1), new (ii)(3) and (4); (jj)(1)(A) and (B), (jj)(1)(C)(ii) and new (jj)(1)(C)(iii); (kk)(1) and (kk)(2)(A) and (C); (nn)(2)(B) and (C); (oo)(1), (2), (3)(B), and new (oo)(3)(C); (pp)(1) and (2), (pp)(3)(B), and new (pp)(3)(C); (qq)(1), (2), (4)(B), and new (qq)(4)(C); (yy); (zz)(2)(B), (C), and (D); (aaa)(1) and (2)(C); and (ttt)(2)(A), (B), (C) and (D). The revisions do not create additional training requirements for licensees but only clarify existing requirements and correct grammatical errors.

New §289.256(b)(3) is added to clarify that a "covered entity" as defined in the Health Insurance Portability and Accountability Act (HIPAA) and its rules at 45 CFR §160.103, may be subject to privacy standards governing how information that identifies a patient can be used and disclosed and that failure to follow HIPAA requirements may result in the department making a referral of a potential violation to the United States Department of Health and Human Services.

Existing §289.256(c)(21) is deleted and renumbered as new §289.256(c)(20) to place this definition in alphabetical order.

New §289.256(i)(4) is added to require that a record be made to document the Radiation Safety Committee (RSC) meeting and that the record include the date, names of individuals in attendance, minutes of the meeting, and any actions taken by the RSC committee to provide a means for inspectors to verify compliance of §289.256(i)(3) relating to the duties and responsibilities of the RSC.

Concerning §289.256(yy), relating to therapy-related computer systems, adds "for manual brachytherapy" after the first "systems" to clarify that these requirements are specific to these types of therapy-related computer systems.

New §289.256(bbb)(2) is added to require that the licensee document that the service provider who is performing installation and source exchange of devices containing sealed source(s) of radioactive material in medical imaging equipment, has a specific license issued by the agency and that a record of the documentation be maintained for inspection by the agency.

Section 289.256(sss) adds "for photon-emitting remote afterloader units, teletherapy units, and gamma stereotactic radiosurgery units" after therapy-related computer systems to clarify that these requirements are specific to these types of therapy-related computer systems.

The figure for §289.256(www) relating to records/documents for agency inspection, updates the record keeping table to reflect changes made throughout the section.

Throughout §289.256 minor grammatical and typographical corrections are made and rule reference citations are corrected.

Throughout §289.257, rule references to §289.254 relating to licensing of radioactive waste processing and storage facilities and §289.260 relating to licensing of uranium recovery and byproduct material disposal facilities are deleted because the regulatory authority for licensing and inspection of low-level waste processing and uranium recovery and disposal was transferred from the department to the Texas Commission on

Environmental Quality (TCEQ) as a result of Senate Bill 1604, 80th Legislature, Regular Session, 2007, codified at Health and Safety Code, Chapter 401.

Concerning §289.257 in its entirety, references to the "BRC Forms" were changed to "RC Forms" to reflect the current Radiation Control Program name and to be consistent with form nomenclature used throughout the chapter.

Section 289.257(e)(1)(I) adds a requirement that each licensee who transports radioactive material outside the site of usage as specified in the agency license, transports on public highways, or delivers radioactive material to a carrier for transport shall comply with the requirements of Title 49, Code of Federal Regulations (CFR), §387.7 and §387.9, regarding financial responsibility to incorporate the requirements of Health and Safety Code §401.052(b)(6). However, this new financial responsibility requirement will not generate additional costs to licensees because these shippers have already been carrying comparable financial liability insurance to comply with United States Department of Transportation rules.

In §289.257(e)(4), language is added to require that transporters of low-level radioactive waste (LLRW) to a Texas LLRW disposal site submit proof of financial responsibility required by Title 49, CFR, §387.7 and §387.9, to the agency's Radiation Safety Licensing Branch and receive approval of documentation from the agency prior to shipments, to ensure compliance with Health and Safety Code, §401.052(b)(6).

In §289.257(e)(5), language is added to clarify that the department will review and determine alternate routes for the transportation and routing of radioactive material in accordance with 49 CFR, §397.103, to maintain compliance with Health and Safety Code, §401.052.

Concerning §289.257(k)(2), the referenced standard unit of measure "(5 lb/in²)" is revised to correct the omission of "f" in the measurement to maintain rules that are compatible to the NRC.

Existing §289.257(s) regarding inspections, is deleted because this requirement was removed from Health and Safety Code, §401.052, and therefore the agency is no longer required to perform inspections of each shipment of LLRW to a licensed land disposal facility in Texas. Subsequent subsections and related figures are renumbered and applicable rule reference citations are updated throughout the section. Change is reflected in new §289.257(s) - (ff).

New §289.257(t), regarding quality assurance organization, adds the words "while the term 'licensee' is used in these criteria, the requirements are applicable to whatever design, fabricating, assembly, and testing of the package is accomplished with respect to a package before the time a package approval is issued" because as an agreement state Texas must adopt rules that are compatible to the NRC.

New §289.257(dd)(1)(B) concerning fees, deletes "compact waste disposal facility and remitted to the TCEQ" and replaces the words with "department" to clarify that the department shall collect the fees assessed for each shipper for shipments of LLRW originating in Texas or originating out-of-state being shipped to a licensed Texas LLRW disposal facility, as required by Health and Safety Code, §401.052(d)(2).

New §289.257(dd)(4), regarding fees, adds a definition of "shipper" to clarify that for purposes of this subsection, "shipper" means a person who generates LLRW and ships or arranges

with others to ship the waste to a disposal site, in accordance with Health and Safety Code, §401.052(f).

New §289.257(ff)(6)(E) corrects "hydrogren-3" and removes "radium-226" to maintain rules that are compatible with the NRC.

Throughout §289.257, minor grammatical and typographical corrections are made and rule reference citations are corrected.

COMMENTS

The department, on behalf of the commission, has reviewed and prepared responses to the comments received regarding the proposed rules during the comment period, which the commission has reviewed and accepts. The commenters were individuals, associations, and/or groups, including the following: Southwest Research Institute, M.D. Anderson Cancer Center, Source Production and Equipment Company, United States Nuclear Regulatory Commission, and Baker Botts, L.L.P. The commenters were in favor of the rules; however, they suggested recommendations for change as discussed in the summary of comments.

COMMENT: Concerning §289.202(ee)(1) and (2)(B), a commenter stated that the rule reference "§289.257(ff)(6)" needs to be changed to "§289.257(ee)(6)" to reference the correct rule citation.

RESPONSE: The commission agrees and corrected the stated rule reference as noted.

COMMENT: Concerning §289.202(ggg)(8), a commenter suggested that the department add "or other equivalent clear legible record of all the information required on that form" after "The following, RC Form 202-2," for consistency with language in §289.202(k)(9) of this title.

RESPONSE: The commission agrees and made the suggested changes to §289.202(ggg)(8) and (9) for consistency.

COMMENT: Concerning §289.203(d)(2)(A), a commenter expressed that the new annual dose reporting limit is not an equivalent requirement in Title 10, CFR, Part 20, Subparts L and M. In addition, the commenter stated that the new annual dose reporting limit is onerous because 1 millisievert (mSv) represents only: (a) 1/50th of the annual occupational dose limit; (b) the annual limit to a member of the public, who is not considered a radiation worker; and (c) a mere 1/3rd of the average per person annual background dose of 3 mSv.

RESPONSE: The commission acknowledges the comment. The new annual dose reporting limit in §289.203(d)(2)(A) is equivalent to Title 10, CFR, §19.13 and as an agreement state, Texas must maintain rules that are compatible to the NRC. No change was made to the rule as a result of the comment.

COMMENT: Concerning §289.252(II)(1) and (3), a commenter recommended that the department add "at client locations" after "source exchanges" for clarification.

RESPONSE: The commission acknowledges the comment; however, the suggested change would unnecessarily restrict licensed companies. The intent was to allow these specific licensees to perform source exchanges at various locations. No change was made to the rule as a result of the comment.

COMMENT: Concerning §289.256(aaa)(2)(C), a commenter stated that the department needs to delete the rule reference "paragraphs (1) and (2)" and replace it with "paragraph (2)" to meet the NRC Compatibility Category B designation assigned to Title 10, CFR, §35.491.

RESPONSE: The commission agrees and made the suggested rule reference change to maintain rules that are compatible to the NRC.

COMMENT: Concerning §289.257(d)(32) and (ff)(1) and (3), a commenter inquired if the department has created the Radiation Control (RC) Form 541B and if a copy can be provided to stakeholders for review to ensure that the other identified RC forms (official NRC Form 540, 540A, 541, 541A, 542, and 542A) provide equivalent content, clarity, size, and location as a substitute for the 541B. In addition, the commenter expressed that if the department has not created the RC Form 541B then the department should delete the requirement of the 541B for shipments to the Texas LLRW disposal facility until it has been developed or clarify that lack of the form will not prevent shipments. The commenter inquired if stakeholders will be provided the opportunity to comment on the development of the new Form 541B and whether it is necessary.

RESPONSE: The commission acknowledges the comment and has deleted all references to RC Form 541B since this form was originally intended to be used by shippers of LLRW from waste processing and storage facilities to the Texas LLRW disposal site, but the regulatory authority for these facilities was transferred from the department to TCEQ as a result of Senate Bill 1604, 80th Legislative Session, 2007.

COMMENT: Concerning §289.257(e)(1)(I) and (e)(4), a commenter expressed that the new financial responsibility requirement is unclear as it pertains to a licensee's requirements. The commenter noted that the proposed preamble stated "Adds a requirement that each licensee who transports radioactive material outside the site of usage as specified in the agency license, transports on public highways, or delivers radioactive material to a carrier for transport shall comply with the requirements of Title 49, CFR, §387.7 and §387.9, regarding financial responsibility." In addition the commenter stated that Title 49, CFR, §387.7 and §387.9, does not seem to apply to a shipper (as opposed to a carrier) of radioactive material. The commenter further stated that if this requirement applies only to shippers of radioactive waste, then the regulation needs to be revised so that the requirement is stated in plain language.

RESPONSE: The commission agrees and deleted the reference to Title 49, CFR, §387.7 and §387.9 in §289.257(e)(1) and new proposed (e)(1)(I).

COMMENT: Concerning §289.257(e)(4), a commenter stated that this paragraph requires transporters of LLRW to the LLRW disposal facility to submit proof of financial responsibility as required in Title 49 CFR §387.7 and §387.9 to the agency's Radiation Safety Licensing Branch for approval. The commenter suggested that the department clarify that the "agency" in this provision is the Department of State Health Services. In addition, the commenter requested that the department confirm that this is a one-time submittal and approval for transporters and that it is not intended to be per shipment. The commenter inquired that if the department intended this requirement to be applicable per shipment, then can this requirement be fulfilled by the LLRW disposal facility on behalf of the transporters by submitting proof to the resident inspectors on site at the LLRW disposal facility.

RESPONSE: The commission acknowledges the comment. Section 289.201(b)(6) defines "Agency" as the Department of State Health Services and all radioactive material licensees are required to comply with §289.201 of this title (relating to General

Provisions for Radioactive Material) in addition to other applicable sections of this chapter. The word "initial" was added before "shipment" and the sentence "Proof of financial responsibility shall be submitted after each policy renewal, if the amount of liability coverage is reduced, or upon purchase of a new policy." was added to clarify the financial responsibility submittal and approval timeframe requirements.

COMMENT: Concerning §289.257(dd)(4), a commenter stated that this paragraph adds a definition of "shipper" to clarify the meaning of shipper under the subsection addressing fees for shipments to a Texas LLRW disposal site. The commenter added that the new definition provides that a "shipper" means a person who generates low-level radioactive waste and ships or arranges with others to ship the waste to a disposal site." The commenter requested that the department confirm that the new definition is intended only to cover shipments of LLRW to a disposal site, and not for shipments of LLRW to Texas for storage and processing. In addition, the commenter requested that the department confirm that waste transfers from a licensed LLRW storage and processing facility to an adjacent disposal site that would not have to use public roads are not subject to the fees applicable to shippers.

RESPONSE: The commission acknowledges the comment and confirms that the definition of "shipper" in §289.257(dd)(4) is intended only to cover shipments of LLRW to a Texas disposal site and not for shipments of LLRW to Texas for storage and processing. Per §289.257(b)(1), the requirements of this section apply to any licensee authorized by a specific or general license issued by the agency to receive, possess, use, or transfer radioactive material, if the licensee delivers that material to a carrier for transport, transports the material outside the site of usage as specified in the agency license, or transports that material on public highways. Therefore, the waste transfers from a licensed LLRW storage and processing facility to an adjacent Texas disposal site that would not have to use public roads are not subject to the fees applicable to shippers. No change was made as a result of this comment.

The following revisions were made to be consistent with language used throughout the chapter and to reference the official NRC Uniform LLRW Manifest forms.

Concerning proposed §289.257(d)(32), the definition for "RC Forms 540, 540A, 541, 541A, 542, and 542A" was deleted and replaced it with a definition for "NRC Forms 540, 540A, 541, 541A, 542, and 542A" in §289.257(d)(29) because the applicable NRC forms are the official Uniform LLRW Manifest forms required by the United States Department of Transportation in Title 49, CFR, Part 172. Subsequent definitions were renumbered. In addition, all references to "RC Forms 540, 540A, 541, 541A, 542, and 542A" were replaced with references to "NRC Forms 540, 540A, 541, 541A, 542, and 542A" to reflect the change in definitions.

Concerning §289.257(ff)(3), the uniform resource locator for the official NRC Uniform LLRW Manifest forms to provide LLRW shippers with the internet link was added to access the forms.

LEGAL CERTIFICATION

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

SUBCHAPTER D. GENERAL

25 TAC §289.202, §289.203

STATUTORY AUTHORITY

The amendments are authorized by Health and Safety Code, §401.052, which allows the department to collect fees from shippers for shipments of low-level radioactive waste originating in Texas or out-of-state to a Texas low-level radioactive waste disposal facility; Health and Safety Code, §401.051, which provides the Executive Commissioner of the Health and Human Services Commission with authority to adopt rules and guidelines relating to the control of radiation; and Government Code, §531.0055, and Health and Safety Code, §1001.075, which authorize the Executive Commissioner of the Health and Human Services Commission to adopt rules and policies necessary for the operation and provision of health and human services by the department and for the administration of Health and Safety Code, Chapter 1001. Review of the rules implements Government Code, §2001.039.

§289.202. *Standards for Protection Against Radiation from Radioactive Materials.*

(a) Purpose.

(1) This section establishes standards for protection against ionizing radiation resulting from activities conducted in accordance with licenses issued by the agency.

(2) The requirements in this section are designed to control the receipt, possession, use, and transfer of sources of radiation by any licensee so the total dose to an individual, including doses resulting from all sources of radiation other than background radiation, does not exceed the standards for protection against radiation prescribed in this section. However, nothing in this section shall be construed as limiting actions that may be necessary to protect health and safety in an emergency.

(b) Scope.

(1) Except as specifically provided in other sections of this chapter, this section applies to persons who receive, possess, use, or transfer sources of radiation, unless otherwise exempted. No person may use, manufacture, produce, transport, transfer, receive, acquire, own, possess, process, or dispose of sources of radiation unless that person has a license or exemption from the agency. The dose limits in this section do not apply to doses due to background radiation, to exposure of patients to radiation for the purpose of medical diagnosis or therapy, to exposure from individuals administered radioactive material and released in accordance with this chapter, or to voluntary participation in medical research programs. However, no radiation may be deliberately applied to human beings except by or under the supervision of an individual authorized by and licensed in accordance with Texas' statutes to engage in the healing arts.

(2) Licensees who are also registered by the agency to receive, possess, use, and transfer radiation machines must also comply with the requirements of §289.231 of this title (relating to General Provisions and Standards for Protection Against Machine-Produced Radiation).

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

(1) Air-purifying respirator--A respirator with an air-purifying filter, cartridge, or canister that removes specific air contaminants by passing ambient air through the air-purifying element.

(2) Annual limit on intake (ALI)--The derived limit for the amount of radioactive material taken into the body of an adult worker

by inhalation or ingestion in a year. ALI is the smaller value of intake of a given radionuclide in a year by Reference Man that would result in a committed effective dose equivalent of 5 rems (0.05 sievert (Sv)) or a committed dose equivalent of 50 rems (0.5 Sv) to any individual organ or tissue. ALI values for intake by ingestion and by inhalation of selected radionuclides are given in Columns 1 and 2 of Table I of subsection (ggg)(2) of this section.

(3) Assigned protection factor (APF)--The expected workplace level of respiratory protection that would be provided by a properly functioning respirator or a class of respirators to properly fitted and trained users. Operationally, the inhaled concentration can be estimated by dividing the ambient airborne concentration by the APF.

(4) Atmosphere-supplying respirator--A respirator that supplies the respirator user with breathing air from a source independent of the ambient atmosphere and includes supplied-air respirators (SARs) and self-contained breathing apparatus (SCBA) units.

(5) Class--A classification scheme for inhaled material according to its rate of clearance from the pulmonary region of the lung. Materials are classified as D, W, or Y, which apply to a range of clearance half-times: for Class D, Days, of less than 10 days; for Class W, Weeks, from 10 to 100 days, and for Class Y, Years, of greater than 100 days. For purposes of this section, lung class and inhalation class are equivalent terms.

(6) Debris--The remains of something destroyed, disintegrated, or decayed. Debris does not include soils, sludges, liquids, gases, naturally occurring radioactive material regulated in accordance with §289.259 of this title (relating to Licensing of Naturally Occurring Radioactive Material (NORM)), or low-level radioactive waste received from other persons.

(7) Declared pregnant woman--A woman who has voluntarily informed the licensee, in writing, of her pregnancy and the estimated date of conception. The declaration remains in effect until the declared pregnant woman voluntarily withdraws the declaration in writing or is no longer pregnant.

(8) Demand respirator--An atmosphere-supplying respirator that admits breathing air to the facepiece only when a negative pressure is created inside the facepiece by inhalation.

(9) Derived air concentration (DAC)--The concentration of a given radionuclide in air that, if breathed by Reference Man for a working year of 2,000 hours under conditions of light work, results in an intake of 1 ALI. For purposes of this section, the condition of light work is an inhalation rate of 1.2 cubic meters of air per hour for 2,000 hours in a year. DAC values are given in Column 3 of Table I of subsection (ggg)(2) of this section.

(10) Derived air concentration-hour (DAC-hour)--The product of the concentration of radioactive material in air, expressed as a fraction or multiple of the derived air concentration for each radionuclide, and the time of exposure to that radionuclide, in hours. A licensee may take 2,000 DAC-hours to represent ALI, equivalent to a committed effective dose equivalent of 5 rems (0.05 Sv).

(11) Disposable respirator--A respirator for which maintenance is not intended and that is designed to be discarded after excessive breathing resistance, sorbent exhaustion, physical damage, or end-of-service-life renders it unsuitable for use. Examples of this type of respirator are a disposable half-mask respirator or a disposable escape-only self-contained breathing apparatus.

(12) Dosimetry processor--A person that processes and evaluates personnel monitoring devices in order to determine the radiation dose delivered to the monitoring devices.

(13) Filtering facepiece (dust mask)--A negative pressure particulate respirator with a filter as an integral part of the facepiece or with the entire facepiece composed of the filtering medium, not equipped with elastomeric sealing surfaces and adjustable straps.

(14) Fit factor--A quantitative estimate of the fit of a particular respirator to a specific individual, and typically estimates the ratio of the concentration of a substance in ambient air to its concentration inside the respirator when worn.

(15) Fit test--The use of a protocol to qualitatively or quantitatively evaluate the fit of a respirator on an individual.

(16) Helmet--A rigid respiratory inlet covering that also provides head protection against impact and penetration.

(17) Hood--A respiratory inlet covering that completely covers the head and neck and may also cover portions of the shoulders and torso.

(18) Inhalation class (see definition for Class).

(19) Loose-fitting facepiece--A respiratory inlet covering that is designed to form a partial seal with the face.

(20) Lung class (see definition for Class).

(21) Nationally tracked source--A sealed source containing a quantity equal to or greater than Category 1 or Category 2 levels of any radioactive material listed in subsection (hhh)(2) of this section. In this context a sealed source is defined as radioactive material that is sealed in a capsule or closely bonded, in a solid form and which is not exempt from regulatory control. It does not mean material encapsulated solely for disposal, or nuclear material contained in any fuel assembly, subassembly, fuel rod, or fuel pellet. Category 1 nationally tracked sources are those containing radioactive material at a quantity equal to or greater than the Category 1 threshold. Category 2 nationally tracked sources are those containing radioactive material at a quantity equal to or greater than the Category 2 threshold but less than the Category 1 threshold.

(22) Negative pressure respirator (tight fitting)--A respirator in which the air pressure inside the facepiece is negative during inhalation with respect to the ambient air pressure outside the respirator.

(23) Nonstochastic effect--A health effect, the severity of which varies with the dose and for which a threshold is believed to exist. Radiation-induced cataract formation is an example of a nonstochastic effect. For purposes of this section, deterministic effect is an equivalent term.

(24) Planned special exposure--An infrequent exposure to radiation, separate from and in addition to the annual occupational dose limits.

(25) Positive pressure respirator--A respirator in which the pressure inside the respiratory inlet covering exceeds the ambient air pressure outside the respirator.

(26) Powered air-purifying respirator--An air-purifying respirator that uses a blower to force the ambient air through air-purifying elements to the inlet covering.

(27) Pressure demand respirator--A positive pressure atmosphere-supplying respirator that admits breathing air to the facepiece when the positive pressure is reduced inside the facepiece by inhalation.

(28) Qualitative fit test--A pass/fail fit test to assess the adequacy of respirator fit that relies on the individual's response to the test agent.

(29) Quantitative fit test--An assessment of the adequacy of respirator fit by numerically measuring the amount of leakage into the respirator.

(30) Quarter--A period of time equal to one-fourth of the year observed by the licensee, approximately 13 consecutive weeks, providing that the beginning of the first quarter in a year coincides with the starting date of the year and that no day is omitted or duplicated in consecutive quarters.

(31) Reference man--A hypothetical aggregation of human physical and physiological characteristics determined by international consensus. These characteristics may be used by researchers and public health employees to standardize results of experiments and to relate biological insult to a common base. A description of Reference Man is contained in the International Commission on Radiological Protection Report, ICRP Publication 23, "Report of the Task Group on Reference Man."

(32) Respiratory protective equipment--An apparatus, such as a respirator, used to reduce an individual's intake of airborne radioactive materials.

(33) Sanitary sewerage--A system of public sewers for carrying off waste water and refuse, but excluding sewage treatment facilities, septic tanks, and leach fields owned or operated by the licensee or registrant.

(34) Self-contained breathing apparatus--An atmosphere-supplying respirator for which the breathing air source is designed to be carried by the user.

(35) Stochastic effect--A health effect that occurs randomly and for which the probability of the effect occurring, rather than its severity, is assumed to be a linear function of dose without threshold. Hereditary effects and cancer incidence are examples of stochastic effects. For purposes of this section probabilistic effect is an equivalent term.

(36) Supplied-air respirator or airline respirator--An atmosphere-supplying respirator for which the source of breathing air is not designed to be carried by the user.

(37) Tight-fitting facepiece--A respiratory inlet covering that forms a complete seal with the face.

(38) User seal check (fit check)--An action conducted by the respirator user to determine if the respirator is properly seated to the face. Examples include negative pressure check, positive pressure check, irritant smoke check, or isoamyl acetate check.

(39) Weighting factor w_T for an organ or tissue (T)--The proportion of the risk of stochastic effects resulting from irradiation of that organ or tissue to the total risk of stochastic effects when the whole body is irradiated uniformly. For calculating the effective dose equivalent, the values of w_T are:
Figure: 25 TAC §289.202(c)(39) (No change.)

(d) Implementation.

(1) Any existing license condition that is more restrictive than this section remains in force until there is an amendment or renewal of the license that modifies or removes this condition.

(2) If a license condition exempts a licensee from a provision of this section in effect on or before January 1, 1994, it also exempts the licensee from the corresponding provision of this section.

(3) If a license condition cites provisions of this section in effect prior to January 1, 1994, that do not correspond to any provisions of this section, the license condition remains in force until there

is an amendment or renewal of the license that modifies or removes this condition.

(e) Radiation protection programs.

(1) Each licensee shall develop, document, and implement a radiation protection program sufficient to ensure compliance with the provisions of this section. See subsection (mm) of this section for recordkeeping requirements relating to these programs. Documentation of the radiation protection program may be incorporated in the licensee's operating, safety, and emergency procedures.

(2) The licensee shall use, to the extent practicable, procedures and engineering controls based upon sound radiation protection principles to achieve occupational doses and public doses that are as low as is reasonably achievable (ALARA).

(3) The licensee shall, at intervals not to exceed 12 months, ensure the radiation protection program content and implementation is reviewed. The review shall include a reevaluation of the assessments made to determine monitoring is not required in accordance with subsection (q)(1) and (3) of this section in conjunction with the licensee's current operating conditions.

(4) To implement the ALARA requirement in paragraph (2) of this subsection and notwithstanding the requirements in subsection (n) of this section, a constraint on air emissions of radioactive material to the environment, excluding radon-222 and its daughters, shall be established by licensees such that the individual member of the public likely to receive the highest dose will not be expected to receive a total effective dose equivalent in excess of 10 millirems (mrem) (0.1 mSv) per year from these emissions. If a licensee subject to this requirement exceeds this dose constraint, the licensee shall report the exceedance as required in subsection (yy) of this section and promptly take appropriate corrective action.

(5) If monitoring is not required in accordance with subsection (q)(1) and (3) of this section, the licensee shall document assessments made to determine the requirements of subsection (q)(1) and (3) of this section are not applicable. The licensee shall maintain the documentation in accordance with subsection (rr)(5) of this section.

(f) Occupational dose limits for adults.

(1) The licensee shall control the occupational dose to individuals, except for planned special exposures in accordance with subsection (k) of this section, to the following dose limits.

(A) An annual limit shall be the more limiting of:

(i) the total effective dose equivalent being equal to 5 rems (0.05 Sv); or

(ii) the sum of the deep dose equivalent and the committed dose equivalent to any individual organ or tissue other than the lens of the eye being equal to 50 rems (0.5 Sv).

(B) The annual limits to the lens of the eye, to the skin of the whole body, and to the skin of the extremities shall be:

(i) a lens dose equivalent of 15 rems (0.15 Sv); and

(ii) a shallow dose equivalent of 50 rems (0.5 Sv) to the skin of the whole body or to the skin of any extremity.

(2) Doses received in excess of the annual limits, including doses received during accidents, emergencies, and planned special exposures, shall be subtracted from the limits for planned special exposures that the individual may receive during the current year and during the individual's lifetime. See subsection (k)(6)(A) and (B) of this section.

(3) When the external exposure is determined by measurement with an external personal monitoring device, the deep-dose equivalent shall be used in place of the effective dose equivalent, unless the effective dose equivalent is determined by a dosimetry method approved by the agency. The assigned deep dose equivalent shall be for the portion of the body receiving the highest exposure. The assigned shallow-dose equivalent shall be the dose averaged over the contiguous 10 square centimeters (cm²) of skin receiving the highest exposure.

(4) The deep dose equivalent, lens dose equivalent and shallow dose equivalent may be assessed from surveys, or other radiation measurements for the purpose of demonstrating compliance with the occupational dose limits, if the individual monitoring device was not in the region of highest potential exposure, or the results of individual monitoring are unavailable.

(5) Derived air concentration (DAC) and annual limit on intake (ALI) values are specified in Table I of subsection (ggg)(2) of this section and may be used to determine the individual's dose and to demonstrate compliance with the occupational dose limits. See subsection (rr) of this section.

(6) Notwithstanding the annual dose limits, the licensee shall limit the soluble uranium intake by an individual to 10 milligrams (mg) in a week in consideration of chemical toxicity. See footnote 3 of subsection (ggg)(2) of this section.

(7) The licensee shall reduce the dose that an individual may be allowed to receive in the current year by the amount of occupational dose received while employed by any other person. See subsection (j)(4) of this section.

(g) Compliance with requirements for summation of external and internal doses.

(1) If the licensee is required to monitor in accordance with both subsection (q)(1) and (3) of this section, the licensee shall demonstrate compliance with the dose limits by summing external and internal doses. If the licensee is required to monitor only in accordance with subsection (q)(1) of this section or only in accordance with subsection (q)(3) of this section, then summation is not required to demonstrate compliance with the dose limits. The licensee may demonstrate compliance with the requirements for summation of external and internal doses in accordance with paragraphs (2) - (4) of this subsection. The dose equivalents for the lens of the eye, the skin, and the extremities are not included in the summation, but are subject to separate limits.

(2) If the only intake of radionuclides is by inhalation, the total effective dose equivalent limit is not exceeded if the sum of the deep dose equivalent divided by the total effective dose equivalent limit, and one of the following, does not exceed unity:

(A) the sum of the fractions of the inhalation ALI for each radionuclide; or

(B) the total number of derived air concentration-hours (DAC-hours) for all radionuclides divided by 2,000; or

(C) the sum of the calculated committed effective dose equivalents to all significantly irradiated organs or tissues (T) calculated from bioassay data using appropriate biological models and expressed as a fraction of the annual limit. For purposes of this requirement, an organ or tissue is deemed to be significantly irradiated if, for that organ or tissue, the product of the weighting factors, w_T , and the committed dose equivalent, $H_{T,50}$, per unit intake is greater than 10% of the maximum weighted value of $H_{T,50}$, that is, $w_T H_{T,50}$, per unit intake for any organ or tissue.

(3) If the occupationally exposed individual receives an intake of radionuclides by oral ingestion greater than 10% of the appli-

cable oral ALI, the licensee shall account for this intake and include it in demonstrating compliance with the limits.

(4) The licensee shall evaluate and, to the extent practical, account for intakes through wounds or skin absorption. The intake through intact skin has been included in the calculation of DAC for hydrogen-3 and does not need to be evaluated or accounted for in accordance with this paragraph.

(h) Determination of external dose from airborne radioactive material.

(1) Licensees shall, when determining the dose from airborne radioactive material, include the contribution to the deep dose equivalent, eye dose equivalent, and shallow dose equivalent from external exposure to the radioactive cloud. See footnotes 1 and 2 of subsection (ggg)(2) of this section.

(2) Airborne radioactivity measurements and DAC values shall not be used as the primary means to assess the deep dose equivalent when the airborne radioactive material includes radionuclides other than noble gases or if the cloud of airborne radioactive material is not relatively uniform. The determination of the deep dose equivalent to an individual shall be based upon measurements using instruments or individual monitoring devices.

(i) Determination of internal exposure.

(1) For purposes of assessing dose used to determine compliance with occupational dose equivalent limits, the licensee shall, when required in accordance with subsection (q) of this section, take suitable and timely measurements of:

- (A) concentrations of radioactive materials in air in work areas;
 - (B) quantities of radionuclides in the body;
 - (C) quantities of radionuclides excreted from the body;
- or
- (D) combinations of these measurements.

(2) Unless respiratory protective equipment is used, as provided in subsection (x) of this section, or the assessment of intake is based on bioassays, the licensee shall assume that an individual inhales radioactive material at the airborne concentration in which the individual is present.

(3) When specific information on the physical and biochemical properties of the radionuclides taken into the body or the behavior of the material in an individual is known, the licensee may:

(A) use that information to calculate the committed effective dose equivalent, and, if used, the licensee shall document that information in the individual's record;

(B) upon prior approval of the agency, adjust the DAC or ALI values to reflect the actual physical and chemical characteristics of airborne radioactive material, for example, aerosol size distribution or density; and

(C) separately assess the contribution of fractional intakes of Class D, W, or Y compounds of a given radionuclide to the committed effective dose equivalent. See subsection (ggg)(2) of this section.

(4) If the licensee chooses to assess intakes of Class Y material using the measurements given in paragraph (1)(A) or (B) of this subsection, the licensee may delay the recording and reporting of the assessments for periods up to seven months, unless otherwise required

by subsections (xx) or (yy) of this section. This delay permits the licensee to make additional measurements basic to the assessments.

(5) If the identity and concentration of each radionuclide in a mixture are known, the fraction of the DAC applicable to the mixture for use in calculating DAC-hours shall be either:

(A) the sum of the ratios of the concentration to the appropriate DAC value, that is, D, W, or Y, from subsection (ggg)(2) of this section for each radionuclide in the mixture; or

(B) the ratio of the total concentration for all radionuclides in the mixture to the most restrictive DAC value for any radionuclide in the mixture.

(6) If the identity of each radionuclide in a mixture is known, but the concentration of one or more of the radionuclides in the mixture is not known, the DAC for the mixture shall be the most restrictive DAC of any radionuclide in the mixture.

(7) When a mixture of radionuclides in air exists, a licensee may disregard certain radionuclides in the mixture if:

(A) the licensee uses the total activity of the mixture in demonstrating compliance with the dose limits in subsection (f) of this section and in complying with the monitoring requirements in subsection (q)(3) of this section;

(B) the concentration of any radionuclide disregarded is less than 10% of its DAC; and

(C) the sum of these percentages for all of the radionuclides disregarded in the mixture does not exceed 30%.

(8) When determining the committed effective dose equivalent, the following information may be considered.

(A) In order to calculate the committed effective dose equivalent, the licensee may assume that the inhalation of 1 ALI, or an exposure of 2,000 DAC-hours, results in a committed effective dose equivalent of 5 rems (0.05 Sv) for radionuclides that have their ALIs or DACs based on the committed effective dose equivalent.

(B) For an ALI and the associated DAC determined by the nonstochastic organ dose limit of 50 rems (0.5 Sv), the intake of radionuclides that would result in a committed effective dose equivalent of 5 rems (0.05 Sv), that is, the stochastic ALI, is listed in parentheses in Table I of subsection (ggg)(2) of this section. The licensee may, as a simplifying assumption, use the stochastic ALI to determine committed effective dose equivalent. However, if the licensee uses the stochastic ALI, the licensee shall also demonstrate that the limit in subsection (f)(1)(A)(ii) of this section is met.

(j) Determination of occupational dose for the current year.

(1) For each individual who is likely to receive, in a year, an occupational dose requiring monitoring in accordance with subsection (q) of this section, the licensee shall determine the occupational radiation dose received during the current year.

(2) In complying with the requirements of paragraph (1) of this subsection, a licensee may:

(A) accept, as a record of the occupational dose that the individual received during the current year, BRC Form 202-2 from prior or other current employers, or other clear and legible record, of all information required on that form and indicating any periods of time for which data are not available; or

(B) accept, as a record of the occupational dose that the individual received during the current year, a written signed statement from the individual, or from the individual's prior or other current em-

ployer(s) for work involving radiation exposure, that discloses the nature and the amount of any occupational dose that the individual received during the current year; or

(C) obtain reports of the individual's dose equivalent from prior or other current employer(s) for work involving radiation exposure, or the individual's current employer, if the individual is not employed by the licensee, by telephone, telegram, facsimile, or letter. The licensee shall request a written verification of the dose data if the authenticity of the transmitted report cannot be established.

(3) The licensee shall record the exposure data for the current year, as required by paragraph (1) of this subsection, on BRC Form 202-3, or other clear and legible record, of all the information required on that form.

(4) If the licensee is unable to obtain a complete record of an individual's current occupational dose while employed by any other licensee, the licensee shall assume in establishing administrative controls in accordance with subsection (f)(7) of this section for the current year, that the allowable dose limit for the individual is reduced by 1.25 rems (12.5 millisieverts (mSv)) for each quarter; or 416 mrem (4.16 mSv) for each month for which records were unavailable and the individual was engaged in activities that could have resulted in occupational radiation exposure.

(5) If an individual has incomplete (e.g., a lost or damaged personnel monitoring device) current occupational dose data for the current year and that individual is employed solely by the licensee during the current year, the licensee shall:

(A) assume that the allowable dose limit for the individual is reduced by 1.25 rems (12.5 mSv) for each quarter;

(B) assume that the allowable dose limit for the individual is reduced by 416 mrem (4.16 mSv) for each month; or

(C) assess an occupational dose for the individual during the period of missing data using surveys, radiation measurements, or other comparable data for the purpose of demonstrating compliance with the occupational dose limits.

(6) Administrative controls established in accordance with paragraph (4) of this subsection shall be documented and maintained for inspection by the agency. Occupational dose assessments made in accordance with paragraph (5) of this subsection and records of data used to make the assessment shall be maintained for inspection by the agency. The licensee shall retain the records in accordance with subsection (rr) of this section.

(k) Planned special exposures. A licensee may authorize an adult worker to receive doses in addition to and accounted for separately from the doses received under the limits specified in subsection (f) of this section provided that each of the following conditions is satisfied.

(1) The licensee authorizes a planned special exposure only in an exceptional situation when alternatives that might avoid the doses estimated to result from the planned special exposure are unavailable or impractical.

(2) The licensee and employer, if the employer is not the licensee, specifically authorizes the planned special exposure, in writing, before the exposure occurs.

(3) Before a planned special exposure, the licensee ensures that each individual involved is:

(A) informed of the purpose of the planned operation;

(B) informed of the estimated doses and associated potential risks and specific radiation levels or other conditions that might be involved in performing the task; and

(C) instructed in the measures to be taken to keep the dose ALARA considering other risks that may be present.

(4) Prior to permitting an individual to participate in a planned special exposure, the licensee shall determine:

(A) the internal and external doses from all previous planned special exposures;

(B) all doses in excess of the limits, including doses received during accidents and emergencies, received during the lifetime of the individual; and

(C) all lifetime cumulative occupational radiation doses.

(5) In complying with the requirements of paragraph (4)(C) of this subsection, a licensee may:

(A) accept, as the record of lifetime cumulative radiation dose, an up-to-date BRC Form 202-2 or equivalent, signed by the individual and countersigned by an appropriate official of the most recent employer for work involving radiation exposure, or the individual's current employer, if the individual is not employed by the licensee; and

(B) obtain reports of the individual's dose equivalent from prior employer(s) for work involving radiation exposure, or the individual's current employer, if the individual is not employed by the licensee, by telephone, telegram, facsimile, or letter. The licensee shall request a written verification of the dose data if the authenticity of the transmitted report cannot be established.

(6) Subject to subsection (f)(2) of this section, the licensee shall not authorize a planned special exposure that would cause an individual to receive a dose from all planned special exposures and all doses in excess of the limits to exceed:

(A) the numerical values of any of the dose limits in subsection (f)(1) of this section in any year; and

(B) five times the annual dose limits in subsection (f)(1) of this section during the individual's lifetime.

(7) The licensee maintains records of the conduct of a planned special exposure in accordance with subsection (qq) of this section and submits a written report to the agency in accordance with subsection (zz) of this section.

(8) The licensee records the best estimate of the dose resulting from the planned special exposure in the individual's record and informs the individual, in writing, of the dose within 30 days from the date of the planned special exposure. The dose from planned special exposures shall not be considered in controlling future occupational dose of the individual in accordance with subsection (f)(1) of this section but shall be included in evaluations required by paragraphs (4) and (6) of this subsection.

(9) The licensee shall record the exposure history, as required by paragraph (4) of this subsection, on BRC Form 202-2, or other clear and legible record, of all the information required on that form. The form or record shall show each period in which the individual received occupational exposure to radiation or radioactive material and shall be signed by the individual who received the exposure. For each period for which the licensee obtains reports, the licensee shall use the dose shown in the report in preparing BRC Form 202-2 or equivalent.

(l) Occupational dose limits for minors. The annual occupational dose limits for minors are 10% of the annual occupational dose limits specified for adult workers in subsection (f) of this section.

(m) Dose equivalent to an embryo/fetus.

(1) If a woman declares her pregnancy, the licensee shall ensure that the dose equivalent to an embryo/fetus during the entire pregnancy, due to occupational exposure of a declared pregnant woman, does not exceed 0.5 rem (5 mSv). If a woman chooses not to declare pregnancy, the occupational dose limits specified in subsection (f)(1) of this section are applicable to the woman. See subsection (rr) of this section for recordkeeping requirements.

(2) The licensee shall make efforts to avoid substantial variation above a uniform monthly exposure rate to a declared pregnant woman so as to satisfy the limit in paragraph (1) of this subsection. The National Council on Radiation Protection and Measurements recommended in NCRP Report No. 91 "Recommendations on Limits for Exposure to Ionizing Radiation" (June 1, 1987) that no more than 0.05 rem (0.5 mSv) to the embryo/fetus be received in any one month.

(3) The dose equivalent to an embryo/fetus shall be taken as:

(A) the dose equivalent to the embryo/fetus from radionuclides in the embryo/fetus and radionuclides in the declared pregnant woman; and

(B) the dose equivalent that is most representative of the dose equivalent to the embryo/fetus from external radiation, that is, in the mother's lower torso region.

(i) If multiple measurements have not been made, assignment of the highest deep dose equivalent for the declared pregnant woman shall be the dose equivalent to the embryo/fetus.

(ii) If multiple measurements have been made, assignment of the deep dose equivalent for the declared pregnant woman from the individual monitoring device that is most representative of the dose equivalent to the embryo/fetus shall be the dose equivalent to the embryo/fetus. Assignment of the highest deep dose equivalent for the declared pregnant woman to the embryo/fetus is not required unless that dose equivalent is also the most representative deep dose equivalent for the region of the embryo/fetus.

(4) If by the time the woman declares pregnancy to the licensee, the dose equivalent to the embryo/fetus has exceeded 0.45 rem (4.5 mSv), the licensee shall be deemed to be in compliance with paragraph (1) of this subsection, if the additional dose equivalent to the embryo/fetus does not exceed 0.05 rem (0.5 mSv) during the remainder of the pregnancy.

(n) Dose limits for individual members of the public.

(1) Each licensee shall conduct operations so that:

(A) The total effective dose equivalent to individual members of the public from the licensed and/or registered operation does not exceed 0.1 rem (1 mSv) in a year, exclusive of the dose contribution from background radiation, from any medical administration the individual has received, from exposure to individuals administered radioactive material and released in accordance with §289.256 of this title (relating to Medical and Veterinary Use of Radioactive Material), from voluntary participation in medical research programs, and from the licensee's disposal of radioactive material into sanitary sewerage in accordance with subsection (gg) of this section; and

(B) the dose in any unrestricted area from licensed and/or registered external sources, exclusive of the dose contributions from patients administered radioactive material and released in accordance with §289.256 of this title, does not exceed 0.002 rem (0.02 mSv) in any one hour.

(2) If the licensee permits members of the public to have access to restricted areas, the limits for members of the public continue to apply to those individuals.

(3) A licensee or an applicant for a license may apply for prior agency authorization to operate up to an annual dose limit for an individual member of the public of 0.5 rem (5 mSv). This application shall include the following information:

(A) demonstration of the need for and the expected duration of operations in excess of the limit in paragraph (1) of this subsection;

(B) the licensee's program to assess and control dose within the 0.5 rem (5 mSv) annual limit; and

(C) the procedures to be followed to maintain the dose ALARA.

(4) In addition to the requirements of this section, a licensee subject to the provisions of the United States Environmental Protection Agency's (EPA) generally applicable environmental radiation standards in 40 Code of Federal Regulations (CFR), §190 shall comply with those requirements.

(5) The agency may impose additional restrictions on radiation levels in unrestricted areas and on the total quantity of radionuclides that a licensee may release in effluents in order to restrict the collective dose.

(6) Notwithstanding paragraph (1)(A) of this subsection, a licensee may permit visitors to an individual who cannot be released, in accordance with §289.256 of this title, to receive a radiation dose greater than 0.1 rem (1 mSv) if:

(A) the radiation dose received does not exceed 0.5 rem (5 mSv); and

(B) the authorized user, as defined in §289.256 of this title, has determined before the visit that it is appropriate.

(o) Compliance with dose limits for individual members of the public.

(1) The licensee shall make or cause to be made surveys of radiation levels in unrestricted areas and radioactive materials in effluents released to unrestricted areas to demonstrate compliance with the dose limits for individual members of the public as required in subsection (n) of this section.

(2) A licensee shall show compliance with the annual dose limit in subsection (n) of this section by:

(A) demonstrating by measurement or calculation that the total effective dose equivalent to the individual likely to receive the highest dose from the licensed or registered operation does not exceed the annual dose limit; or

(B) demonstrating that:

(i) the annual average concentrations of radioactive material released in gaseous and liquid effluents at the boundary of the unrestricted area do not exceed the values specified in Table II of subsection (ggg)(2) of this section; and

(ii) if an individual were continuously present in an unrestricted area, the dose from external sources of radiation would not exceed 0.002 rem (0.02 mSv) in an hour and 0.05 rem (0.5 mSv) in a year.

(3) Upon approval from the agency, the licensee may adjust the effluent concentration values in Table II, of subsection (ggg)(2) of this section, for members of the public, to take into account the actual physical and chemical characteristics of the effluents, such as, aerosol size distribution, solubility, density, radioactive decay equilibrium, and chemical form.

(p) General surveys and monitoring.

(1) Each licensee shall make, or cause to be made, surveys that:

(A) are necessary for the licensee to comply with this chapter; and

(B) are necessary under the circumstances to evaluate:

(i) the magnitude and extent of radiation levels;

(ii) concentrations or quantities of radioactive material; and

(iii) the potential radiological hazards.

(2) The licensee shall ensure that instruments and equipment used for quantitative radiation measurements, for example, dose rate and effluent monitoring, are operable and calibrated:

(A) by a person licensed or registered by the agency, another agreement state, a licensing state, or the United States Nuclear Regulatory Commission (NRC) to perform such service;

(B) at intervals not to exceed 12 months unless a different time interval is specified in another section of this chapter;

(C) after each instrument or equipment repair;

(D) for the types of radiation used and at energies appropriate for use; and

(E) at an accuracy within 20% of the true radiation level.

(3) All individual monitoring devices, except for direct and indirect reading pocket dosimeters, electronic personal dosimeters, and those individual monitoring devices used to measure the dose to any extremity, that require processing to determine the radiation dose and that are used by licensees to comply with subsection (f) of this section, with other applicable provisions of this chapter, or with conditions specified in a license, shall be processed and evaluated by a dosimetry processor:

(A) holding current personnel dosimetry accreditation from the National Voluntary Laboratory Accreditation Program (NVLAP) of the National Institute of Standards and Technology;

(B) approved in this accreditation process for the type of radiation or radiations included in the NVLAP program that most closely approximates the type of radiation or radiations for which the individual wearing the dosimeter is monitored.

(4) All individual monitoring devices shall be appropriate for the environment in which they are used.

(q) Conditions requiring individual monitoring of external and internal occupational dose. Each licensee shall monitor exposures from sources of radiation at levels sufficient to demonstrate compliance with the occupational dose limits of this section. As a minimum:

(1) each licensee shall monitor occupational exposure to radiation and shall supply and require the use of individual monitoring devices by:

(A) adults likely to receive, in one year from sources external to the body, a dose in excess of 10% of the limits in subsection (f)(1) of this section;

(B) minors likely to receive, in one year from sources of radiation external to the body, a deep dose equivalent in excess of 0.1 rem (1 mSv), a lens dose equivalent in excess of 0.15 rem (1.5 mSv), or a shallow dose equivalent to the skin or to the extremities in excess of 0.5 rem (5 mSv);

(C) declared pregnant women likely to receive during the entire pregnancy, from sources of radiation external to the body, a deep dose equivalent in excess of 0.1 rem (1 mSv); and

(D) individuals entering a high or very high radiation area;

(2) notwithstanding paragraph (1)(C) of this subsection, a licensee is exempt from supplying individual monitoring devices to healthcare personnel who may enter a high radiation area while providing patient care if:

(A) the personnel are not likely to receive, in one year from sources external to the body, a dose in excess of 10% of the limits in subsection (f)(1) of this section; and

(B) the licensee complies with the requirements of subsection (e)(2) of this section; and

(3) each licensee shall monitor, to determine compliance with subsection (i) of this section, the occupational intake of radioactive material by and assess the committed effective dose equivalent to:

(A) adults likely to receive, in one year, an intake in excess of 10% of the applicable ALI in Columns 1 and 2 of Table I of subsection (ggg)(2) of this section;

(B) minors likely to receive, in one year, a committed effective dose equivalent in excess of 0.1 rem (1 mSv); and

(C) declared pregnant women likely to receive, during the entire pregnancy, a committed effective dose equivalent in excess of 0.1 rem (1 mSv).

(r) Location and use of individual monitoring devices.

(1) Each licensee shall ensure that individuals who are required to monitor occupational doses in accordance with subsection (q)(l) of this section wear and use individual monitoring devices as follows.

(A) An individual monitoring device used for monitoring the dose to the whole body shall be worn at the unshielded location of the whole body likely to receive the highest exposure. When a protective apron is worn, the location of the individual monitoring device is typically at the neck (collar).

(B) If an additional individual monitoring device is used for monitoring the dose to an embryo/fetus of a declared pregnant woman, in accordance with subsection (m)(1) of this section, it shall be located at the waist under any protective apron being worn by the woman.

(C) An individual monitoring device used for monitoring the lens dose equivalent, to demonstrate compliance with subsection (f)(1)(B)(i) of this section, shall be located at the neck (collar) or at a location closer to the eye, outside any protective apron being worn by the monitored individual.

(D) An individual monitoring device used for monitoring the dose to the skin of the extremities, to demonstrate compliance with subsection (f)(1)(B)(ii) of this section, shall be worn on the skin

of the extremity likely to receive the highest exposure. Each individual monitoring device, to the extent practicable, shall be oriented to measure the highest dose to the skin of the extremity being monitored.

(E) An individual monitoring device shall be assigned to and worn by only one individual.

(F) An individual monitoring device shall be worn for the period of time authorized by the dosimetry processor's certificate of registration or for no longer than three months, whichever is more restrictive.

(2) Each licensee shall ensure that individual monitoring devices are returned to the dosimetry processor for proper processing.

(3) Each licensee shall ensure that adequate precautions are taken to prevent a deceptive exposure of an individual monitoring device.

(s) Control of access to high radiation areas.

(1) The licensee shall ensure that each entrance or access point to a high radiation area has one or more of the following features:

(A) a control device that, upon entry into the area, causes the level of radiation to be reduced below that level at which an individual might receive a deep dose equivalent of 0.1 rem (1 mSv) in one hour at 30 centimeters (cm) from the source of radiation from any surface that the radiation penetrates;

(B) a control device that energizes a conspicuous visible or audible alarm signal so that the individual entering the high radiation area and the supervisor of the activity are made aware of the entry; or

(C) entryways that are locked, except during periods when access to the areas is required, with positive control over each individual entry.

(2) In place of the controls required by paragraph (1) of this subsection for a high radiation area, the licensee may substitute continuous direct or electronic surveillance that is capable of preventing unauthorized entry.

(3) The licensee may apply to the agency for approval of alternative methods for controlling access to high radiation areas.

(4) The licensee shall establish the controls required by paragraphs (1) and (3) of this subsection in a way that does not prevent individuals from leaving a high radiation area.

(5) The licensee is not required to control each entrance or access point to a room or other area that is a high radiation area solely because of the presence of radioactive materials prepared for transport and packaged and labeled in accordance with the regulations of the United States Department of Transportation (DOT) provided that:

(A) the packages do not remain in the area longer than three days; and

(B) the dose rate at 1 meter from the external surface of any package does not exceed 0.01 rem (0.1 millisievert) per hour.

(6) The licensee is not required to control entrance or access to rooms or other areas in hospitals solely because of the presence of patients containing radioactive material, provided that there are personnel in attendance who are taking the necessary precautions to prevent the exposure of individuals to sources of radiation in excess of the established limits in this section and to operate within the ALARA provisions of the licensee's radiation protection program.

(t) Control of access to very high radiation areas. In addition to the requirements in subsection (s) of this section, the licensee shall

institute measures to ensure that an individual is not able to gain unauthorized or inadvertent access to areas in which radiation levels could be encountered at 500 rads (5 grays) or more in one hour at 1 m from a source of radiation or any surface through which the radiation penetrates at this level.

(u) Control of access to very high radiation areas for irradiators.

(1) This subsection applies to licensees with sources of radiation in non-self-shielded irradiators. This subsection does not apply to sources of radiation that are used in teletherapy, in industrial radiography, or in completely self-shielded irradiators in which the source of radiation is both stored and operated within the same shielding radiation barrier and, in the designed configuration of the irradiator, is always physically inaccessible to any individual and cannot create high levels of radiation in an area that is accessible to any individual.

(2) Each area in which there may exist radiation levels in excess of 500 rads (5 grays) in one hour at 1 m from a source of radiation that is used to irradiate materials shall meet the following requirements.

(A) Each entrance or access point shall be equipped with entry control devices that:

(i) function automatically to prevent any individual from inadvertently entering a very high radiation area;

(ii) permit deliberate entry into the area only after a control device is actuated that causes the radiation level within the area, from the source of radiation, to be reduced below that at which it would be possible for an individual to receive a deep dose equivalent in excess of 0.1 rem (1 mSv) in one hour; and

(iii) prevent operation of the source of radiation if it would produce radiation levels in the area that could result in a deep dose equivalent to an individual in excess of 0.1 rem (1 mSv) in one hour.

(B) Additional control devices shall be provided so that, upon failure of the entry control devices to function as required by subparagraph (A) of this paragraph:

(i) the radiation level within the area, from the source of radiation, is reduced below that at which it would be possible for an individual to receive a deep dose equivalent in excess of 0.1 rem (1 mSv) in one hour; and

(ii) conspicuous visible and audible alarm signals are generated to make an individual attempting to enter the area aware of the hazard and at least one other authorized individual, who is physically present, familiar with the activity, and prepared to render or summon assistance, aware of the failure of the entry control devices.

(C) The licensee shall provide control devices so that, upon failure or removal of physical radiation barriers other than the sealed source's shielded storage container:

(i) the radiation level from the source of radiation is reduced below that at which it would be possible for an individual to receive a deep dose equivalent in excess of 0.1 rem (1 mSv) in one hour; and

(ii) conspicuous visible and audible alarm signals are generated to make potentially affected individuals aware of the hazard and the licensee or at least one other individual, who is familiar with the activity and prepared to render or summon assistance, aware of the failure or removal of the physical barrier.

(D) When the shield for stored sealed sources is a liquid, the licensee shall provide means to monitor the integrity of the shield and to signal, automatically, loss of adequate shielding.

(E) Physical radiation barriers that comprise permanent structural components, such as walls, that have no credible probability of failure or removal in ordinary circumstances, need not meet the requirements of subparagraphs (C) and (D) of this paragraph.

(F) Each area shall be equipped with devices that will automatically generate conspicuous visible and audible alarm signals to alert personnel in the area before the source of radiation can be put into operation and in time for any individual in the area to operate a clearly identified control device, which must be installed in the area and which can prevent the source of radiation from being put into operation.

(G) Each area shall be controlled by use of such administrative procedures and such devices as are necessary to ensure that the area is cleared of personnel prior to each use of the source of radiation.

(H) Each area shall be checked by a radiation measurement to ensure that, prior to the first individual's entry into the area after any use of the source of radiation, the radiation level from the source of radiation in the area is below that at which it would be possible for an individual to receive a deep dose equivalent in excess of 0.1 rem (1 mSv) in one hour.

(I) The entry control devices required in subparagraph (A) of this paragraph shall be tested for proper functioning. See subsection (uu) of this section for recordkeeping requirements.

(i) Testing shall be conducted prior to initial operation with the source of radiation on any day, unless operations were continued uninterrupted from the previous day.

(ii) Testing shall be conducted prior to resumption of operation of the source of radiation after any unintentional interruption.

(iii) The licensee shall submit and adhere to a schedule for periodic tests of the entry control and warning systems.

(J) The licensee shall not conduct operations, other than those necessary to place the source of radiation in safe condition or to effect repairs on controls, unless control devices are functioning properly.

(K) Entry and exit portals that are used in transporting materials to and from the irradiation area, and that are not intended for use by individuals, shall be controlled by such devices and administrative procedures as are necessary to physically protect and warn against inadvertent entry by any individual through these portals. Exit portals for irradiated materials shall be equipped to detect and signal the presence of any loose radioactive material that is carried toward such an exit and automatically to prevent loose radioactive material from being carried out of the area.

(3) Licensees or applicants for licenses for sources of radiation within the purview of paragraph (2) of this subsection that will be used in a variety of positions or in locations, such as open fields or forests, which make it impracticable to comply with certain requirements of paragraph (2) of this subsection, such as those for the automatic control of radiation levels, may apply to the Agency for approval of alternative safety measures. Alternative safety measures shall provide personnel protection at least equivalent to those specified in paragraph (2) of this subsection. At least one of the alternative measures shall include an entry-preventing interlock control based on a measurement of the radiation that ensures the absence of high radiation levels before an individual can gain access to the area where such sources of radiation are used.

(4) The entry control devices required by paragraphs (2) and (3) of this subsection shall be established in such a way that no individual will be prevented from leaving the area.

(v) Use of process or other engineering controls. The licensee shall use, to the extent practicable, process or other engineering controls, such as containment, decontamination, or ventilation, to control the concentrations of radioactive material in air.

(w) Use of other controls.

(1) When it is not practicable to apply process or other engineering controls to control the concentrations of radioactive material in air to values below those that define an airborne radioactivity area, the licensee shall, consistent with maintaining the total effective dose equivalent ALARA, increase monitoring and limit intakes by one or more of the following means:

(A) control of access;

(B) limitation of exposure times;

(C) use of respiratory protection equipment; or

(D) other controls.

(2) If the licensee performs an ALARA analysis to determine whether respirators should be used, the licensee may consider safety factors other than radiological factors. The licensee shall also consider the impact of respirator use on workers' industrial health and safety.

(x) Use of individual respiratory protection equipment.

(1) If the licensee uses respiratory protection equipment to limit intakes of radioactive material in accordance with subsection (w) of this section, the licensee shall do the following.

(A) Except as provided in subparagraph (B) of this paragraph, the licensee shall use only respiratory protection equipment that is tested and certified by the National Institute for Occupational Safety and Health (NIOSH).

(B) If the licensee wishes to use equipment that has not been tested or certified by the NIOSH, or for which there is no schedule for testing or certification, the licensee shall submit an application to the agency for authorized use of that equipment, including a demonstration by testing, or a demonstration on the basis of test information, that the material and performance characteristics of the equipment are capable of providing the proposed degree of protection under anticipated conditions of use.

(C) The licensee shall implement and maintain a respiratory protection program that includes:

(i) air sampling sufficient to identify the potential hazard, permit proper equipment selection, and estimate doses;

(ii) surveys and bioassays, as appropriate, to evaluate actual intakes;

(iii) testing of respirators for operability (user seal check for face sealing devices and functional check for others) immediately prior to each use;

(iv) written procedures regarding the following:

(I) monitoring, including air sampling and bioassays;

(II) supervision and training of respirator users;

(III) fit testing;

(IV) respirator selection;

- (V) breathing air quality;
- (VI) inventory and control;
- (VII) storage, issuance, maintenance, repair, testing, and quality assurance of respiratory protection equipment;
- (VIII) recordkeeping; and
- (IX) limitations on periods of respirator use and relief from respirator use;

(v) determination by a physician prior to initial fitting of a face sealing respirator and the first field use of non-face sealing respirators, and either every 12 months thereafter or periodically at a frequency determined by a physician, that the individual user is medically fit to use the respiratory protection equipment; and

(vi) fit testing, with fit factor > 10 times the APF for negative pressure devices, and a fit factor > 500 for any positive pressure, continuous flow, and pressure-demand devices, before the first field use of tight fitting, face-sealing respirators and periodically thereafter at a frequency not to exceed 1 year. Fit testing shall be performed with the facepiece operating in the negative pressure mode.

(D) The licensee shall advise each respirator user that the user may leave the area at any time for relief from respirator use in the event of equipment malfunction, physical or psychological distress, procedural or communication failure, significant deterioration of operating conditions, or any other conditions that might require such relief.

(E) The licensee shall use respiratory protection equipment within the equipment manufacturer's expressed limitations for type and mode of use and shall provide for vision correction, adequate communication, low-temperature work environment, and the concurrent use of other safety or radiological protection equipment. The licensee shall use equipment in such a way as not to interfere with the proper operation of the respirator.

(F) Standby rescue persons are required whenever one-piece atmosphere-supplying suits, or any combination of supplied air respiratory protection device and personnel protective equipment are used from which an unaided individual may have difficulty extricating himself or herself. The standby persons shall be equipped with respiratory protection devices or other apparatus appropriate for the potential hazards. The standby rescue persons shall observe or otherwise maintain continuous communication with the workers (visual, voice, signal line, telephone, radio, or other suitable means), and be immediately available to assist them in case of a failure of the air supply or for any other reason that requires relief from distress. A sufficient number of standby rescue persons must be immediately available to assist all users of this type of equipment and to provide effective emergency rescue if needed.

(G) Atmosphere-supplying respirators shall be supplied with respirable air of grade D quality or better as defined by the Compressed Gas Association in publication G-7.1, "Commodity Specification for Air," 1997 and included in the regulations of the Occupational Safety and Health Administration (Title 29, CFR, §1910.134(i)(1)(ii)(A) through (E). Grade D quality air criteria include:

- (i) oxygen content (volume/volume) of 19.5-23.5%;
- (ii) hydrocarbon (condensed) content of 5 milligrams per cubic meter of air or less;
- (iii) carbon monoxide (CO) content of 10 parts per million (ppm) or less;

- (iv) carbon dioxide content of 1,000 ppm or less; and
- (v) lack of noticeable odor.

(H) the licensee shall ensure that no objects, materials or substances, such as facial hair, or any conditions that interfere with the face-facepiece seal or valve function, and that are under the control of the respirator wearer, are present between the skin of the wearer's face and the sealing surface of a tight-fitting respirator facepiece.

(I) In estimating the dose to individuals from intake of airborne radioactive materials, the concentration of radioactive material in the air that is inhaled when respirators are worn is initially assumed to be the ambient concentration in air without respiratory protection, divided by the assigned protection factor. If the dose is later found to be greater than the estimated dose, the corrected value must be used. If the dose is later found to be less than the estimated dose, the corrected value may be used.

(2) The agency may impose restrictions in addition to those in paragraph (1) of this subsection, subsection (w) of this section, and subsection (ggg)(1) of this section, in order to:

(A) ensure that the respiratory protection program of the licensee is adequate to limit doses to individuals from intakes of airborne radioactive materials consistent with maintaining total effective dose equivalent ALARA; and

(B) limit the extent to which a licensee may use respiratory protection equipment instead of process or other engineering controls.

(3) The licensee shall obtain authorization from the agency before assigning respiratory protection factors in excess of those specified in subsection (ggg)(1) of this section. The agency may authorize a licensee to use higher protection factors on receipt of an application that:

(A) describes the situation for which a need exists for higher protection factors; and

(B) demonstrates that the respiratory protection equipment provides these higher protection factors under the proposed conditions of use.

(y) Security and control of licensed sources of radiation.

(1) The licensee shall secure radioactive material from unauthorized removal or access.

(2) The licensee shall maintain constant surveillance, using devices and/or administrative procedures to prevent unauthorized access to use of radioactive material that is in an unrestricted area and that is not in storage.

(3) Each portable gauge licensee shall use a minimum of two independent physical controls that form tangible barriers to secure portable gauges from unauthorized removal, whenever portable gauges are not under the control and constant surveillance of the licensee.

(z) Caution signs.

(1) Unless otherwise authorized by the agency, the standard radiation symbol prescribed shall use the colors magenta, or purple, or black on yellow background. The standard radiation symbol prescribed is the three-bladed design as follows:
Figure: 25 TAC §289.202(z)(1) (No change.)

(A) the cross-hatched area of the symbol is to be magenta, or purple, or black; and

(B) the background of the symbol is to be yellow.

(2) Notwithstanding the requirements of paragraph (1) of this subsection, licensees are authorized to label sources, source holders, or device components containing sources of radiation that are subjected to high temperatures, with conspicuously etched or stamped radiation caution symbols and without a color requirement.

(aa) Posting requirements.

(1) The licensee shall post each radiation area with a conspicuous sign or signs bearing the radiation symbol and the words "CAUTION, RADIATION AREA."

(2) The licensee shall post each high radiation area with a conspicuous sign or signs bearing the radiation symbol and the words "CAUTION, HIGH RADIATION AREA" or "DANGER, HIGH RADIATION AREA."

(3) The licensee shall post each very high radiation area with a conspicuous sign or signs bearing the radiation symbol and words "GRAVE DANGER, VERY HIGH RADIATION AREA." If the very high radiation area involves medical treatment of patients, the licensee may omit the word "GRAVE" from the sign or signs.

(4) The licensee shall post each airborne radioactivity area with a conspicuous sign or signs bearing the radiation symbol and the words "CAUTION, AIRBORNE RADIOACTIVITY AREA" or "DANGER, AIRBORNE RADIOACTIVITY AREA."

(5) The licensee shall post each area or room in which there is used or stored an amount of licensed material exceeding 10 times the quantity of such material specified in subsection (ggg)(3) of this section with a conspicuous sign or signs bearing the radiation symbol and the words "CAUTION, RADIOACTIVE MATERIAL(S)" or "DANGER, RADIOACTIVE MATERIAL(S)."

(bb) Exceptions to posting requirements.

(1) A licensee is not required to post caution signs in areas or rooms containing sources of radiation for periods of less than 8 hours, if each of the following conditions is met:

(A) the sources of radiation are constantly attended during these periods by an individual who takes the precautions necessary to prevent the exposure of individuals to sources of radiation in excess of the limits established in this section; and

(B) the area or room is subject to the licensee's control.

(2) Rooms or other areas in hospitals that are occupied by patients are not required to be posted with caution signs in accordance with subsection (aa) of this section provided that the patient could be released from licensee control in accordance with this chapter.

(3) A room or area is not required to be posted with a caution sign because of the presence of a sealed source(s) provided the radiation level at 30 centimeters from the surface of the sealed source container(s) or housing(s) does not exceed 0.005 rem (0.05 mSv) per hour.

(4) Rooms in medical facilities that are used for teletherapy are exempt from the requirement to post caution signs in accordance with subsection (aa) of this section provided the following conditions are met.

(A) Access to the room is controlled in accordance with this chapter; and

(B) Personnel in attendance take necessary precautions to prevent the inadvertent exposure of workers, other patients, and members of the public to radiation in excess of the limits established in this section.

(cc) Labeling containers.

(1) The licensee shall ensure that each container of licensed material bears a durable, clearly visible label bearing the radiation symbol and the words "CAUTION, RADIOACTIVE MATERIAL" or "DANGER, RADIOACTIVE MATERIAL." The label shall also provide information, such as the radionuclides present, an estimate of the quantity of radioactivity, the date for which the activity is estimated, radiation levels, kinds of materials, and mass enrichment, to permit individuals handling or using the containers, or working in the vicinity of the containers, to take precautions to avoid or minimize exposures.

(2) Each licensee shall, prior to removal or disposal of empty uncontaminated containers to unrestricted areas, remove or deface the radioactive material label or otherwise clearly indicate that the container no longer contains radioactive materials.

(dd) Exemptions to labeling requirements. A licensee is not required to label:

(1) containers holding licensed material in quantities less than the quantities listed in subsection (ggg)(3) of this section;

(2) containers holding licensed material in concentrations less than those specified in Table III of subsection (ggg)(2) of this section;

(3) containers attended by an individual who takes the precautions necessary to prevent the exposure of individuals in excess of the limits established by this section;

(4) containers when they are in transport and packaged and labeled in accordance with the rules of the DOT (labeling of packages containing radioactive materials is required by the DOT if the amount and type of radioactive material exceeds the limits for an excepted quantity or article as defined and limited by DOT regulations 49 CFR §§173.403(m) and (w) and 173.424);

(5) containers that are accessible only to individuals authorized to handle or use them, or to work in the vicinity of the containers, if the contents are identified to these individuals by a readily available written record. Examples of containers of this type are containers in locations such as water-filled canals, storage vaults, or hot cells. The record shall be retained as long as the containers are in use for the purpose indicated on the record; or

(6) installed manufacturing or process equipment, such as piping and tanks.

(ee) Procedures for receiving and opening packages.

(1) Each licensee who expects to receive a package containing quantities of radioactive material in excess of a Type A quantity, as defined in §289.201(b) of this title and specified in §289.257(ee)(6) of this title (relating to Packaging and Transportation of Radioactive Material), shall make arrangements to receive:

(A) the package when the carrier offers it for delivery; or

(B) the notification of the arrival of the package at the carrier's terminal and to take possession of the package expeditiously.

(2) Each licensee shall:

(A) monitor the external surfaces of a labeled package, labeled with a Radioactive White I, Yellow II, or Yellow III label as specified in DOT regulations Title 49, CFR, §§172.403 and 172.436-440, for radioactive contamination unless the package contains only radioactive material in the form of gas or in special form as defined in §289.201(b) of this title;

(B) monitor the external surfaces of a labeled package, labeled with a Radioactive White I, Yellow II, or Yellow III label as specified in DOT regulations 49 CFR §§172.403 and §§172.436-440, for radiation levels unless the package contains quantities of radioactive material that are less than or equal to the Type A quantity, as defined in §289.201(b) of this title and specified in §289.257(ee)(6) of this title; and

(C) monitor all packages known to contain radioactive material for radioactive contamination and radiation levels if there is evidence of degradation of package integrity, such as packages that are crushed, wet, or damaged.

(3) The licensee shall perform the monitoring required by paragraph (2) of this subsection as soon as practicable after receipt of the package, but not later than three hours after the package is received at the licensee's facility if it is received during the licensee's normal working hours. If a package is received after working hours, the package shall be monitored no later than three hours from the beginning of the next working day. If the licensee discovers there is evidence of degradation of package integrity, such as a package that is crushed, wet, or damaged, the package shall be surveyed immediately.

(4) The licensee shall immediately notify the final delivery carrier and, by telephone and telegram, mailgram, or facsimile, the agency when removable radioactive surface contamination or external radiation levels exceed the limits established in subparagraphs (A) and (B) of this paragraph.

(A) Limits for removable radioactive surface contamination levels.

(i) The level of removable radioactive contamination on the external surfaces of each package offered for shipment shall be ALARA. The level of removable radioactive contamination may be determined by wiping an area of 300 square centimeters (cm²) of the surface concerned with an absorbent material, using moderate pressure, and measuring the activity on the wiping material. Sufficient measurements must be taken in the most appropriate locations to yield a representative assessment of the removable contamination levels. Except as provided in clause (iii) of this subparagraph, the amount of radioactivity measured on any single wiping material, when averaged over the surface wiped, must not exceed the limits given in clause (ii) of this subparagraph at any time during transport. If other methods are used, the detection efficiency of the method used must be taken into account and in no case may the removable contamination on the external surfaces of the package exceed 10 times the limits listed in clause (ii) of this subparagraph.

(ii) Removable external radioactive contamination wipe limits are as follows.

Figure: 25 TAC §289.202(ee)(4)(A)(ii)

(iii) In the case of packages transported as exclusive use shipments by rail or highway only, the removable radioactive contamination at any time during transport must not exceed 10 times the levels prescribed in clause (ii) of this subparagraph. The levels at the beginning of transport must not exceed the levels in clause (ii) of this subparagraph.

(B) Limits for external radiation levels.

(i) External radiation levels around the package and around the vehicle, if applicable, will not exceed 200 millirems per hour (mrem/hr) (2 millisieverts per hour (mSv/hr)) at any point on the external surface of the package at any time during transportation. The transport index shall not exceed 10.

(ii) For a package transported in exclusive use by rail, highway or water, radiation levels external to the package may exceed the limits specified in clause (i) of this subparagraph but shall not exceed any of the following:

(I) 200 mrem/hr (2 mSv/hr) on the accessible external surface of the package unless the following conditions are met, in which case the limit is 1,000 mrem/hr (10 mSv/hr):

(-a-) the shipment is made in a closed transport vehicle;

(-b-) provisions are made to secure the package so that its position within the vehicle remains fixed during transportation; and

(-c-) there are no loading or unloading operations between the beginning and end of the transportation;

(II) 200 mrem/hr (2 mSv/hr) at any point on the outer surface of the vehicle, including the upper and lower surfaces, or, in the case of a flat-bed style vehicle, with a personnel barrier, at any point on the vertical planes projected from the outer edges of the vehicle, on the upper surface of the load (or enclosure, if used), and on the lower external surface of the vehicle (a flat-bed style vehicle with a personnel barrier shall have radiation levels determined at vertical planes. If no personnel barrier, the package cannot exceed 200 mrem/hr (2 mSv/hr) at the surface.);

(III) 10 mrem/hr (0.1 mSv/hr) at any point 2 m from the vertical planes represented by the outer lateral surfaces of the vehicle, or, in the case of a flat-bed style vehicle, at any point 2 m from the vertical planes projected from the outer edges of the vehicle; and

(IV) 2 mrem/hr (0.02 mSv/hr) in any normally occupied positions of the vehicle, except that this provision does not apply to private motor carriers when persons occupying these positions are provided with special health supervision, personnel radiation exposure monitoring devices, and training in accordance with §289.203(c) of this title (relating to Notices, Instructions, and Reports to Workers; Inspections).

(5) Each licensee shall:

(A) establish, maintain, and retain written procedures for safely opening packages in which radioactive material is received; and

(B) ensure that the procedures are followed and that due consideration is given to special instructions for the type of package being opened.

(6) Licensees transferring special form sources in vehicles owned or operated by the licensee to and from a work site are exempt from the contamination monitoring requirements of paragraph (2) of this subsection, but are not exempt from the monitoring requirement in paragraph (2) of this subsection for measuring radiation levels that ensures that the source is still properly lodged in its shield.

(ff) General requirements for waste management.

(1) Unless otherwise exempted, a licensee shall discharge, treat, or decay licensed material or transfer waste for disposal only:

(A) by transfer to an authorized recipient as provided in subsection (jj) of this section, §289.252 of this title (relating to Licensing of Radioactive Material), §289.257 of this title, §289.259 of this title, or to the United States Department of Energy (DOE);

(B) by decay in storage with prior approval from the agency, except as authorized in §289.256(ee) of this title (relating to Medical and Veterinary Use of Radioactive Material);

(C) by release in effluents within the limits in subsection (n) of this section; or

(D) as authorized in accordance with paragraph (2) of this subsection, and subsections (gg), (hh), and (fff) of this section.

(2) Upon agency approval, emission control dust and other material from electric arc furnaces or foundries contaminated as a result of inadvertent melting of cesium-137 or americium-241 sources may be transferred for disposal to a hazardous waste disposal facility authorized by the Texas Commission on Environmental Quality (Commission) or its successor, another state's regulatory agency with jurisdiction to regulate hazardous waste as classified under Subtitle C of the Resource Conservation and Recovery Act (RCRA), or the EPA. The material may be transferred for disposal without regard to its radioactivity if the following conditions are met.

(A) Contaminated material described in paragraph (2) of this subsection, whether packaged or unpackaged (i.e., bulk), must be treated through stabilization to comply with all waste treatment requirements of the appropriate state or federal regulatory agency as listed in this paragraph. The treatment operations must be undertaken by either of the following:

(i) the owner/operator of the electric arc furnace or foundry licensed to possess, treat or transfer cesium-137 or americium-241 contaminated incident-related material; or

(ii) a service contractor licensed by the agency, NRC, or an agreement state to possess, treat, or transfer cesium-137 or americium-241 contaminated incident-related material.

(B) The emission control dust and other incident-related materials have been stored (if applicable) and transferred in accordance with operating and emergency procedures approved by the agency.

(C) The total cesium-137 or americium-241 activity contained in emission control dust and other incident-related materials to be transferred to a hazardous waste disposal facility has been specifically approved by NRC or the appropriate agreement state(s) and does not exceed the total activity associated with the inadvertent melting incident.

(D) The hazardous waste disposal facility operator has been notified in writing of the impending transfer of the incident-related materials and has agreed in writing to receive and dispose of the packaged or unpackaged materials. Copies of the notification and agreement shall be submitted to the agency.

(E) The licensee, as listed in subparagraph (A)(i) or (ii) of this paragraph, notifies the NRC or agreement state(s) in which the transferor and transferee are located, in writing, of the impending transfer, at least 30 days before the transfer.

(F) The packaged stabilized material has been packaged for transportation and disposal in non-bulk steel packaging as defined in DOT regulations at 49 CFR §173.213.

(G) The emission control dust and other incident-related materials that have been stabilized and packaged as described in subparagraph (F) of this paragraph shall contain pretreatment average concentrations of cesium-137 that do not exceed 130 pCi/g of material, above background, or pretreatment average concentrations of americium-241 that do not exceed 3 pCi/g of material, above background.

(H) The dose rate at 3.28 feet (1 m) from the surface of any package containing stabilized waste shall not exceed 20 µrem per hour or 0.20 µSv per hour, above background.

(I) The unpackaged stabilized material shall contain pretreatment average concentrations of cesium-137 that do not exceed 100 pCi/g of material, above background, or pretreatment average concentrations of americium-241 that do not exceed 3 pCi/g of material, above background.

(J) The licensee transferring the cesium-137 or americium-241 contaminated incident-related material must consult with the agency, the Commission or its successor, another state's regulatory agency with jurisdiction to regulate hazardous waste as classified under RCRA, or the EPA and other authorized parties, including state and local governments, and obtain all necessary agreement approvals, in addition to those of NRC and/or appropriate agreement states, for the transfers described in paragraph (2) of this subsection.

(K) Nothing in this subsection shall be or is intended to be construed as a waiver of any RCRA permit condition or term, of any state or local statute or regulation, or of any federal RCRA regulation.

(L) The total incident-related cesium-137 activity described in paragraph (2) of this subsection received by a facility over its operating life shall not exceed 1 Ci (37 GBq). The total incident-related americium-241 activity described in paragraph (2) of this subsection received by a facility over its operating life shall not exceed 30 mCi (1.11MBq). The agency will maintain a record of the total incident-related cesium-137 or americium-241 activity shipped by a person licensed by the agency. Upon consultation with the Commission, the agency will determine if the total incident-related activity received by a hazardous waste disposal facility over its operating life has reached 1 Ci (37 GBq) of cesium-137 or 30 mCi (1.11MBq) of americium-241. The agency will not approve shipments of cesium-137 or americium-241 contaminated incident-related material that will cause this limit to be exceeded.

(3) A person shall be specifically licensed to receive waste containing licensed material from other persons for:

(A) treatment prior to disposal;

(B) treatment by incineration;

(C) decay in storage;

(D) disposal at an authorized land disposal facility; or

(E) storage until transferred to a storage or disposal facility authorized to receive the waste.

(4) Byproduct material as defined in §289.201(b)(15)(C) - (E) of this title may be disposed of in accordance with Title 10, CFR, Part 61, even though it is not defined as low level radioactive waste. Therefore, any byproduct material being disposed of at a facility, or transferred for ultimate disposal at a facility licensed under Title 10, CFR, Part 61, shall meet the requirements of this chapter.

(5) A licensee may dispose of byproduct material, as defined in §289.201(b)(15)(C) - (E) of this title, at a disposal facility authorized to dispose of such material in accordance with any Federal or State solid or hazardous waste law.

(6) Any licensee shipping byproduct material as defined in §289.201(b)(15)(C) - (E) of this title intended for ultimate disposal at a land disposal facility licensed under Title 10, CFR, Part 61, shall document the information required on the NRC's Uniform Low-Level Radioactive Waste Manifest and transfer this recorded manifest information to the intended consignee in accordance with §289.257(gg) of this title.

(gg) Discharge by release into sanitary sewerage.

(1) A licensee may discharge licensed material into sanitary sewerage if each of the following conditions is satisfied:

(A) the material is readily soluble, or is readily dispersible biological material, in water;

(B) the quantity of licensed radioactive material that the licensee releases into the sewer in one month divided by the average monthly volume of water released into the sewer by the licensee does not exceed the concentration listed in Table III of subsection (ggg)(2) of this section; and

(C) if more than one radionuclide is released, the following additional conditions must also be satisfied:

(i) the fraction of the limit in Table III of subsection (ggg)(2) of this section represented by discharges into sanitary sewerage determined by dividing the actual monthly average concentration of each radionuclide released by the licensee into the sewer by the concentration of that radionuclide listed in Table III of subsection (ggg)(2) of this section; and

(ii) the sum of the fractions for each radionuclide required by clause (i) of this subparagraph does not exceed unity; and

(D) the total quantity of licensed radioactive material that the licensee releases into the sanitary sewerage in a year does not exceed 5 curies (Ci) (185 gigabecquerels (GBq)) of hydrogen-3, 1 Ci (37 GBq) of carbon-14, and 1 Ci (37 GBq) of all other radioactive materials combined.

(2) Excreta from individuals undergoing medical diagnosis or therapy with radioactive material are not subject to the limitations contained in paragraph (1) of this subsection.

(hh) Treatment by incineration. A licensee may treat licensed material by incineration only in the form and concentration specified in subsection (fff)(1) of this section or as authorized by the agency.

(ii) Discharge by release into septic tanks. No licensee shall discharge radioactive material into a septic tank system except as specifically approved by the agency.

(jj) Transfer for disposal and manifests.

(1) The control of transfers of LLRW intended for disposal at a licensed low-level radioactive waste disposal facility, the establishment of a manifest tracking system, and additional requirements concerning transfers and recordkeeping for those wastes are found in §289.257(s)(5) of this title.

(2) Each person involved in the transfer of waste for disposal including the waste generator, waste collector, and waste processor, shall comply with the requirements specified in §289.257(s)(5) of this title.

(kk) Compliance with environmental and health protection regulations. Nothing in subsections (ff), (gg), (hh), or (jj) of this section relieves the licensee from complying with other applicable federal, state, and local regulations governing any other toxic or hazardous properties of materials that may be disposed of in accordance with subsections (ff), (gg), (hh), or (jj) of this section.

(ll) General provisions for records.

(1) Each licensee shall use the International System of Units (SI) units becquerel, gray, sievert, and coulomb per kilogram, or the special units curie, rad, rem, and roentgen, including multiples and subdivisions, and shall clearly indicate the units of all quantities on records required by this section. Disintegrations per minute may be indicated on records of surveys performed to determine compliance with subsections (ee)(4) and (ggg)(6) of this section. To ensure

compatibility with international transportation standards, all limits in this section are given in terms of dual units: The SI units followed or preceded by United States (U.S.) standard or customary units. The U.S. customary units are not exact equivalents, but are rounded to a convenient value, providing a functionally equivalent unit. For the purpose of this section, either unit may be used.

(2) Notwithstanding the requirements of paragraph (1) of this subsection, when recording information on shipment manifests, as required in §289.257 of this title, information must be recorded in SI units or in SI and units as specified in paragraph (1) of this subsection.

(3) The licensee shall make a clear distinction among the quantities entered on the records required by this section, such as, total effective dose equivalent, total organ dose equivalent, shallow dose equivalent, lens dose equivalent, deep dose equivalent, or committed effective dose equivalent.

(4) Records required in accordance with §289.201(d) of this title, and subsections (mm) - (oo) and (ss) - (uu) of this section shall include the date and the identification of individual(s) making the record, and, as applicable, a unique identification of survey instrument(s) used, and an exact description of the location of the survey. Records of receipt, transfer, and disposal of sources of radiation shall uniquely identify the source of radiation.

(5) Copies of records required in accordance with §289.201(d) of this title, and subsections (mm) - (uu) of this section, and by license condition that are relevant to operations at an additional authorized use/storage site shall be maintained at that site in addition to the main site specified on a license.

(mm) Records of radiation protection programs.

(1) Each licensee shall maintain records of the radiation protection program, including:

(A) the provisions of the program; and

(B) audits and other reviews of program content and implementation.

(2) The licensee shall retain the records required by paragraph (1)(A) of this subsection until the agency terminates each pertinent license requiring the record. The licensee shall retain the records required by paragraph (1)(B) of this subsection for three years after the record is made.

(nn) Records of surveys.

(1) Each licensee shall maintain records showing the results of surveys and calibrations required by subsections (p) and (ee)(2) of this section and include a unique identification of survey instrument(s). The licensee shall retain these records for three years after the record is made.

(2) The licensee shall retain each of the following records until the agency terminates each pertinent license requiring the record:

(A) the results of surveys to determine the dose from external sources of radiation used, in the absence of or in combination with individual monitoring data, in the assessment of individual dose equivalents; and

(B) results of measurements and calculations used to determine individual intakes of radioactive material and used in the assessment of internal dose; and

(C) results of air sampling, surveys, and bioassays required in accordance with subsection (x)(1)(C)(i) and (ii) of this section; and

(D) results of measurements and calculations used to evaluate the release of radioactive effluents to the environment.

(oo) Records of tests for leakage or contamination of sealed sources. Records of tests for leakage or contamination of sealed sources required by §289.201(g) of this title shall be kept in units of becquerel or microcurie and retained for inspection by the agency for five years after the records are made.

(pp) Records of lifetime cumulative occupational radiation dose. The licensee shall retain the records of lifetime cumulative occupational radiation dose as specified in subsection (k) of this section on BRC Form 202-2 or equivalent until the agency terminates each pertinent license requiring this record. The licensee shall retain records used in preparing BRC Form 202-2 or equivalent for three years after the record is made.

(qq) Records of planned special exposures.

(1) For each use of the provisions of subsection (k) of this section for planned special exposures, the licensee shall maintain records that describe:

(A) the exceptional circumstances requiring the use of a planned special exposure;

(B) the name of the management official who authorized the planned special exposure and a copy of the signed authorization;

(C) what actions were necessary;

(D) why the actions were necessary;

(E) what precautions were taken to assure that doses were maintained ALARA;

(F) what individual and collective doses were expected to result; and

(G) the doses actually received in the planned special exposure.

(2) The licensee shall retain the records until the agency terminates each pertinent license requiring these records.

(rr) Records of individual monitoring results.

(1) Each licensee shall maintain records of doses received by all individuals for whom monitoring was required in accordance with subsection (q) of this section, and records of doses received during planned special exposures, accidents, and emergency conditions. Assessments of dose equivalent and records made using units in effect before January 1, 1994, need not be changed. These records shall include, when applicable:

(A) the deep dose equivalent to the whole body, lens dose equivalent, shallow dose equivalent to the skin, and shallow dose equivalent to the extremities;

(B) the estimated intake of radionuclides, see subsection (g) of this section;

(C) the committed effective dose equivalent assigned to the intake of radionuclides;

(D) the specific information used to calculate the committed effective dose equivalent in accordance with subsection (i)(1) and (3) of this section and when required by subsection (q)(1) of this section;

(E) the total effective dose equivalent when required by subsection (g) of this section;

(F) the total of the deep dose equivalent and the committed dose to the organ receiving the highest total dose; and

(G) the data used to make occupational dose assessments in accordance with subsection (j)(5) of this section.

(2) The licensee shall make entries of the records specified in paragraph (1) of this subsection at intervals not to exceed 1 year and by April 30 of the following year.

(3) The licensee shall maintain the records specified in paragraph (1) of this subsection on BRC Form 202-3, in accordance with the instructions for BRC Form 202-3, or in clear and legible records containing all the information required by BRC Form 202-3.

(4) The licensee shall maintain the records of dose to an embryo/fetus with the records of dose to the declared pregnant woman. The declaration of pregnancy, including the estimated date of conception, shall also be kept on file, but may be maintained separately from the dose records.

(5) The licensee shall retain each required form or record until the agency terminates each pertinent license requiring the record. The licensee shall retain records used in preparing BRC Form 202-3 or equivalent for three years after the record is made.

(ss) Records of dose to individual members of the public.

(1) Each licensee shall maintain records sufficient to demonstrate compliance with the dose limit for individual members of the public. See subsection (n) of this section.

(2) The licensee shall retain the records required by paragraph (1) of this subsection until the agency terminates each pertinent license requiring the record.

(tt) Records of discharge, treatment, or transfer for disposal.

(1) Each licensee shall maintain records of the discharge or treatment of licensed materials made in accordance with subsection (gg) and (hh) of this section and of transfers for disposal made in accordance with subsection (jj) of this section and §289.257 of this title.

(2) The licensee shall retain the records required by paragraph (1) of this subsection until the agency terminates each pertinent license requiring the record.

(uu) Records of testing entry control devices for very high radiation areas.

(1) Each licensee shall maintain records of tests made in accordance with subsection (u)(2)(I) of this section on entry control devices for very high radiation areas. These records must include the date, time, and results of each such test of function.

(2) The licensee shall retain the records required by paragraph (1) of this subsection for three years after the record is made.

(vv) Form of records. Each record required by this chapter shall be legible throughout the specified retention period. The record shall be the original or a reproduced copy or a microform, provided that the copy or microform is authenticated by authorized personnel and that the microform is capable of producing a clear copy throughout the required retention period or the record may also be stored in electronic media with the capability for producing legible, accurate, and complete records during the required retention period. Records, such as letters, drawings, and specifications, shall include all pertinent information, such as stamps, initials, and signatures. The licensee shall maintain adequate safeguards against tampering with and loss of records.

(ww) Reports of stolen, lost, or missing licensed sources of radiation.

(1) Each licensee shall report to the agency by telephone as follows:

(A) immediately after its occurrence becomes known to the licensee, stolen, lost, or missing licensed radioactive material in an aggregate quantity equal to or greater than 1,000 times the quantity specified in subsection (ggg)(3) of this section, under such circumstances that it appears to the licensee that an exposure could result to individuals in unrestricted areas; or

(B) within 30 days after its occurrence becomes known to the licensee, lost, stolen, or missing licensed radioactive material in an aggregate quantity greater than 10 times the quantity specified in subsection (ggg)(3) of this section that is still missing.

(2) Each licensee required to make a report in accordance with paragraph (1) of this subsection shall, within 30 days after making the telephone report, make a written report to the agency setting forth the following information:

(A) a description of the licensed source of radiation involved, including, for radioactive material, the kind, quantity, and chemical and physical form;

(B) a description of the circumstances under which the loss or theft occurred;

(C) a statement of disposition, or probable disposition, of the licensed source of radiation involved;

(D) exposures of individuals to radiation, circumstances under which the exposures occurred, and the possible total effective dose equivalent to persons in unrestricted areas;

(E) actions that have been taken, or will be taken, to recover the source of radiation; and

(F) procedures or measures that have been, or will be, adopted to ensure against a recurrence of the loss or theft of licensed sources of radiation.

(3) Subsequent to filing the written report, the licensee shall also report additional substantive information on the loss or theft within 30 days after the licensee learns of such information.

(4) The licensee shall prepare any report filed with the agency in accordance with this subsection so that names of individuals who may have received exposure to radiation are stated in a separate and detachable portion of the report.

(xx) Notification of incidents.

(1) Notwithstanding other requirements for notification, each licensee shall immediately report each event involving a source of radiation possessed by the licensee that may have caused or threatens to cause:

(A) an individual, except a patient administered radiation for purposes of medical diagnosis or therapy, to receive:

(i) a total effective dose equivalent of 25 rems (0.25 Sv) or more;

(ii) a lens dose equivalent of 75 rems (0.75 Sv) or more; or

(iii) a shallow dose equivalent to the skin or extremities or a total organ dose equivalent of 250 rads (2.5 grays) or more; or

(B) the release of radioactive material, inside or outside of a restricted area, so that, had an individual been present for 24 hours, the individual could have received an intake five times the occupational ALI. This provision does not apply to locations where personnel are

not normally stationed during routine operations, such as hot-cells or process enclosures.

(2) Each licensee shall, within 24 hours of discovery of the event, report to the agency each event involving loss of control of a licensed source of radiation possessed by the licensee that may have caused, or threatens to cause:

(A) an individual to receive, in a period of 24 hours:

(i) a total effective dose equivalent exceeding 5 rems (0.05 Sv);

(ii) a lens dose equivalent exceeding 15 rems (0.15 Sv); or

(iii) a shallow dose equivalent to the skin or extremities or a total organ dose equivalent exceeding 50 rems (0.5 Sv); or

(B) the release of radioactive material, inside or outside of a restricted area, so that, had an individual been present for 24 hours, the individual could have received an intake in excess of one occupational ALI. This provision does not apply to locations where personnel are not normally stationed during routine operations, such as hot-cells or process enclosures.

(3) Licensees shall make the initial notification reports required by paragraphs (1) and (2) of this subsection by telephone to the agency and shall confirm the initial notification report within 24 hours by telegram, mailgram, or facsimile to the agency.

(4) The licensee shall prepare each report filed with the agency in accordance with this section so that names of individuals who have received exposure to sources of radiation are stated in a separate and detachable portion of the report.

(5) The provisions of this section do not apply to doses that result from planned special exposures, provided such doses are within the limits for planned special exposures and are reported in accordance with subsection (zz) of this section.

(6) Each licensee shall notify the agency as soon as possible but not later than four hours after the discovery of an event that prevents immediate protective actions necessary to avoid exposures to radioactive materials that could exceed regulatory limits or releases of radioactive materials that could exceed regulatory limits (events may include fires, explosions, toxic gas releases, etc.).

(7) Each licensee shall notify the agency within 24 hours after the discovery of any of the following events involving radioactive material:

(A) an unplanned contamination event that:

(i) requires access to the contaminated area, by workers or the public, to be restricted for more than 24 hours by imposing additional radiological controls or by prohibiting entry into the area;

(ii) involves a quantity of material greater than five times the lowest annual limit on intake specified in subsection (ggg)(2) of this section for the material; and

(iii) has access to the area restricted for a reason other than to allow isotopes with a half-life of less than 24 hours to decay prior to decontamination.

(B) an event in which equipment is disabled or fails to function as designed when:

(i) the equipment is required by rule or license condition to prevent releases exceeding regulatory limits, to prevent expo-

tures to radioactive materials exceeding regulatory limits, or to mitigate the consequences of an accident;

(ii) the equipment is required to be available and operable when it is disabled or fails to function; and

(iii) no redundant equipment is available and operable to perform the required safety function;

(C) an event that requires unplanned medical treatment at a medical facility of an individual with spreadable radioactive contamination on the individual's clothing or body; or

(D) an unplanned fire or explosion damaging any radioactive material or any device, container, or equipment containing radioactive material when:

(i) the quantity of material involved is greater than five times the lowest annual limit on intake specified in subsection (ggg)(2) of this section for the material; and

(ii) the damage affects the integrity of the radioactive material or its container.

(8) Preparation and submission of reports. Reports made by licensees in response to the requirements of paragraphs (6) and (7) of this subsection shall be made as follows.

(A) Licensees shall make reports required by paragraphs (6) and (7) of this subsection by telephone to the agency. To the extent that the information is available at the time of notification, the information provided in these reports shall include:

(i) the caller's name and call back telephone number;

(ii) a description of the event, including date and time;

(iii) the exact location of the event;

(iv) the isotopes, quantities, and chemical and physical form of the radioactive material involved; and

(v) any personnel radiation exposure data available.

(B) Each licensee who makes a report required by paragraphs (6) and (7) of this subsection shall submit to the agency a written follow-up report within 30 days of the initial report. Written reports prepared in accordance with other requirements of this chapter may be submitted to fulfill this requirement if the reports contain all of the necessary information and the appropriate distribution is made. The reports must include the following:

(i) a description of the event, including the probable cause and the manufacturer and model number (if applicable) of any equipment that failed or malfunctioned;

(ii) the exact location of the event;

(iii) the isotopes, quantities, and chemical and physical form of the radioactive material involved;

(iv) date and time of the event;

(v) corrective actions taken or planned and the results of any evaluations or assessments; and

(vi) the extent of exposure of individuals to radioactive materials without identification of individuals by name.

(yy) Reports of exposures, radiation levels, and concentrations of radioactive material exceeding the limits.

(1) In addition to the notification required by subsection (xx) of this section, each licensee shall submit a written report within 30 days after learning of any of the following occurrences:

(A) incidents for which notification is required by subsection (xx) of this section;

(B) doses in excess of any of the following:

(i) the occupational dose limits for adults in subsection (f) of this section;

(ii) the occupational dose limits for a minor in subsection (l) of this section;

(iii) the limits for an embryo/fetus of a declared pregnant woman in subsection (m) of this section;

(iv) the limits for an individual member of the public in subsection (n) of this section;

(v) any applicable limit in the license; or

(vi) the ALARA constraints for air emissions as required by subsection (e)(4) of this section;

(C) levels of radiation or concentrations of radioactive material in:

(i) a restricted area in excess of applicable limits in the license; or

(ii) an unrestricted area in excess of 10 times the applicable limit set forth in this section or in the license, whether or not involving exposure of any individual in excess of the limits in subsection (n) of this section; or

(D) for licensees subject to the provisions of the EPA's generally applicable environmental radiation standards in 40 CFR §190, levels of radiation or releases of radioactive material in excess of those standards, or of license conditions related to those requirements.

(2) Each report required by paragraph (1) of this subsection shall describe the extent of exposure of individuals to radiation and radioactive material, including, as appropriate:

(A) estimates of each individual's dose;

(B) the levels of radiation and concentrations of radioactive material involved;

(C) the cause of the elevated exposures, dose rates, or concentrations; and

(D) corrective steps taken or planned to ensure against a recurrence, including the schedule for achieving conformance with applicable limits, ALARA constraints, generally applicable environmental standards, and associated license conditions.

(3) Each report filed in accordance with paragraph (1) of this subsection shall include for each individual exposed: the name, identification number, and date of birth. With respect to the limit for the embryo/fetus in subsection (m) of this section, the identifiers should be those of the declared pregnant woman. The report shall be prepared so that this information is stated in a separate and detachable portion of the report.

(4) All licensees who make reports in accordance with paragraph (1) of this subsection shall submit the report in writing to the agency.

(zz) Reports of planned special exposures. The licensee shall submit a written report to the agency within 30 days following any planned special exposure conducted in accordance with subsection (k)

of this section, informing the agency that a planned special exposure was conducted and indicating the date the planned special exposure occurred and the information required by subsection (qq) of this section.

(aaa) Notifications and reports to individuals.

(1) Requirements for notification and reports to individuals of exposure to sources of radiation are specified in §289.203 of this title.

(2) When a licensee is required in accordance with subsection (yy) or (zz) of this section to report to the agency any exposure of an identified occupationally exposed individual, or an identified member of the public, to sources of radiation, the licensee shall also notify the individual and provide a copy of the report submitted to the agency, to the individual. Such notice shall be transmitted at a time not later than the transmittal to the agency, and shall comply with the provisions of §289.203(d)(1) of this title.

(bbb) Reports of leaking or contaminated sealed sources. The licensee shall immediately notify the agency if the test for leakage or contamination required in accordance with §289.201(g) of this title indicates a sealed source is leaking or contaminated. A written report of a leaking or contaminated source shall be submitted to the agency within five days. The report shall include the equipment involved, the test results, the date of the test, model and serial number, if assigned, of the leaking source, the radionuclide and its estimated activity, and the corrective action taken.

(ccc) Vacating premises.

(1) Each licensee or person possessing non-exempt sources of radiation shall, no less than 30 days before vacating and relinquishing possession or control of premises, notify the agency, in writing, of the intent to vacate.

(2) The licensee or person possessing non-exempt radioactive material shall decommission the premises to a degree consistent with subsequent use as an unrestricted area and in accordance with the requirements of subsection (ddd) of this section.

(ddd) Radiological requirements for license termination.

(1) General provisions and scope.

(A) The requirements in this section apply to the decommissioning of facilities licensed in accordance with §289.252 of this title, §289.255 of this title, and §289.258 of this title (relating to Licensing and Radiation Safety Requirements for Irradiators).

(B) The requirements in this section do not apply to the following:

(i) sites that have been decommissioned prior to October 1, 2000, in accordance with requirements identified in this section and in §289.252 of this title; or

(ii) sites that have previously submitted and received approval on a decommissioning plan by October 1, 2000.

(C) After a site has been decommissioned and the license terminated in accordance with the requirements in the subsection, the agency will require additional cleanup if it determines that the requirements of the subsection were not met and residual radioactivity remaining at the site could result in significant threat to public health and safety.

(D) When calculating TEDE to the average member of the critical group, the licensee shall determine the peak annual TEDE dose expected within the first 1,000 years after decommissioning.

(2) Radiological requirements for unrestricted use. A site will be considered acceptable for unrestricted use if the residual ra-

dioactivity that is distinguishable from background radiation results in a TEDE to an average member of the critical group that does not exceed 25 mrem (0.25 mSv) per year, including that from groundwater sources of drinking water, and the residual radioactivity has been reduced to levels that are ALARA. Determination of the levels that are ALARA must take into account consideration of any detriments, such as deaths from transportation accidents, expected to potentially result from decontamination and waste disposal.

(3) Alternate requirements for license termination.

(A) The agency may terminate a license using alternate requirements greater than the dose requirements specified in paragraph (2) of this subsection if the licensee does the following:

(i) provides assurance that public health and safety would continue to be protected, and that it is unlikely that the dose from all man-made sources combined, other than medical, would be more than the 1 mSv per year (100 mrem per year) limit specified in subsection (o) of this section, by submitting an analysis of possible sources of exposure;

(ii) reduces doses to ALARA levels, taking into consideration any detriments such as traffic accidents expected to potentially result from decontamination and waste disposal; and

(iii) has submitted a decommissioning plan to the agency indicating the licensee's intent to decommission in accordance with the requirements in §289.252(1)(7) of this title, and specifying that the licensee proposes to decommission by use of alternate requirements. The licensee shall document in the decommissioning plan how the advice of individuals and institutions in the community who may be affected by the decommissioning has been sought and addressed, as appropriate, following analysis of that advice. In seeking such advice, the licensee shall provide for the following:

(I) participation by representatives of a broad cross section of community interests who may be affected by the decommissioning;

(II) an opportunity for a comprehensive, collective discussion on the issues by the participants represented; and

(III) a publicly available summary of the results of all such discussions, including a description of the individual viewpoints of the participants on the issues and the extent of agreement and disagreement among the participants on the issues.

(B) The use of alternate requirements to terminate a license requires the approval of the agency after consideration of the agency's recommendations that will address any comments provided by the EPA and any public comments submitted in accordance with paragraph (4) of this subsection.

(4) Public notification and public participation. Upon receipt of a decommissioning plan from the licensee, or a proposal from the licensee for release of a site in accordance with paragraph (3) of this subsection, or whenever the agency deems such notice to be in the public interest, the agency will do the following:

(A) notify and solicit comments from the following:

(i) local and state governments in the vicinity of the site and any Indian Nation or other indigenous people that have treaty or statutory rights that could be affected by the decommissioning; and

(ii) the EPA for cases where the licensee proposes to release a site in accordance with paragraph (3) of this subsection; and

(B) publish a notice in the *Texas Register* and a forum, such as local newspapers, letters to state of local organizations, or other

appropriate forum, that is readily accessible to individuals in the vicinity of the site, and solicit comments from affected parties.

(5) Minimization of contamination. Applicants for licenses, other than renewals, after October 1, 2000, shall describe in the application how facility design and procedures for operation will minimize, to the extent practical, contamination of the facility and the environment, facilitate eventual decommissioning, and minimize, to the extent practical, the generation of LLRW.

(eee) Limits for contamination of soil, surfaces of facilities and equipment, and vegetation.

(1) No licensee shall possess, receive, use, or transfer radioactive material in such a manner as to cause contamination of surfaces of facilities or equipment in unrestricted areas to the extent that the contamination exceeds the limits specified in subsection (ggg)(6) of this section.

(2) No licensee shall possess, receive, use, or transfer radioactive material in such a manner as to cause contamination of soil in unrestricted areas, to the extent that the contamination exceeds, on a dry weight basis, the concentration limits specified in:

(A) subsection (ddd) of this section; or

(B) the effluent concentrations in Table II, Column 2 of subsection (ggg)(2)(F) of this section, with the units changed from microcuries per milliliter to microcuries per gram, for radionuclides not specified in paragraph (4) of this subsection.

(3) Where combinations of radionuclides are involved, the sum of the ratios between the concentrations present and the limits specified in paragraph (2) of this subsection shall not exceed one.

(4) Notwithstanding the limits specified in paragraph (2) of this subsection, no licensee shall cause the concentration of radium-226 or radium-228 in soil in unrestricted areas, averaged over any 100 square meters (m²), to exceed the background level by more than:

(A) 5 picocuries per gram (pCi/g) (0.185 becquerel per gram (Bq/g)), averaged over the first 15 cm of soil below the surface; and

(B) 15 pCi/g (0.555 Bq/g), averaged over 15 cm thick layers of soil more than 15 cm below the surface.

(5) No licensee shall possess, receive, use, or transfer radioactive material in such a manner as to cause contamination of vegetation in unrestricted areas to exceed 5 pCi/g (0.185 Bq/g), based on dry weight, for radium-226 or radium-228.

(6) Notwithstanding the limits specified in paragraph (2) of this subsection, no licensee shall cause the concentration of natural uranium with no daughters present, based on dry weight and averaged over any 100 m² of area, to exceed the following limits:

(A) 30 pCi/g (1.11 Bq/g), averaged over the top 15 cm of soil below the surface; and

(B) 150 pCi/g (5.55 Bq/g), average concentration at depths greater than 15 centimeters below the surface so that no individual member of the public will receive an effective dose equivalent in excess of 100 mrem (1 mSv) per year.

(fff) Exemption of specific wastes.

(1) A licensee may discard the following licensed material without regard to its radioactivity:

(A) 0.05 microcurie (μ Ci) (1.85 kilobecquerels (kBq)), or less, of hydrogen-3, carbon-14, or iodine-125 per gram of medium

used for liquid scintillation counting or in vitro clinical or in vitro laboratory testing; and

(B) 0.05 μ Ci (1.85 kBq), or less, of hydrogen-3, carbon-14, or iodine-125, per gram of animal tissue, averaged over the weight of the entire animal.

(2) A licensee shall not discard tissue in accordance with paragraph (1)(B) of this subsection in a manner that would permit its use either as food for humans or as animal feed.

(3) The licensee shall maintain records in accordance with subsection (tt) of this section.

(4) Any licensee may, upon agency approval of procedures required in paragraph (6) of this subsection, discard licensed material included in subsection (ggg)(7) of this section, provided that it does not exceed the concentration and total curie limits contained therein, in a Type I municipal solid waste site as defined in the Municipal Solid Waste Regulations of the authorized regulatory agency (30 Texas Administrative Code Chapter 330), unless such licensed material also contains hazardous waste, as defined in §3(15) of the Solid Waste Disposal Act, Health and Safety Code, Chapter 361. Any licensed material included in subsection (ggg)(7) of this section and which is a hazardous waste as defined in the Solid Waste Disposal Act may be discarded at a facility authorized to manage hazardous waste by the authorized regulatory agency.

(5) Each licensee who discards material described in paragraphs (1) or (4) of this subsection shall:

(A) make surveys adequate to assure that the limits of paragraphs (1) or (4) of this subsection are not exceeded; and

(B) remove or otherwise obliterate or obscure all labels, tags, or other markings that would indicate that the material or its contents is radioactive.

(6) Prior to authorizations in accordance with paragraph (4) of this subsection, a licensee shall submit procedures to the agency for:

(A) the physical delivery of the material to the disposal site;

(B) surveys to be performed for compliance with paragraph (5)(A) of this subsection;

(C) maintaining secure packaging during transportation to the site; and

(D) maintaining records of any discards made under paragraph (4) of this subsection.

(7) Nothing in this section relieves the licensee of maintaining records showing the receipt, transfer, and discard of such radioactive material as specified in §289.201(d) of this title.

(8) Nothing in this section relieves the licensee from complying with other applicable federal, state, and local regulations governing any other toxic or hazardous property of these materials.

(9) Licensed material discarded under this section is exempt from the requirements of §289.252(ff) of this title.

(ggg) Appendices.

(1) Assigned protection factors for respirators. The following table contains assigned protection factors for respirators⁵:
Figure: 25 TAC §289.202(ggg)(1) (No change.)

(2) Annual limits on intake (ALI) and derived air concentrations (DAC) of radionuclides for occupational exposure; effluent concentrations; concentrations for release to sanitary sewerage.

(A) Introduction.

(i) For each radionuclide, Table I of subparagraph (F) of this paragraph indicates the chemical form that is to be used for selecting the appropriate ALI or DAC value. The ALIs and DACs for inhalation are given for an aerosol with an activity median aerodynamic diameter (AMAD) of 1 micron, and for three classes (D, W, Y) of radioactive material, which refer to their retention (approximately days, weeks, or years) in the pulmonary region of the lung. This classification applies to a range of clearance half-times for D if less than 10 days, for W from 10 to 100 days, and for Y greater than 100 days. Table II of subparagraph (F) of this paragraph provides concentration limits for airborne and liquid effluents released to the general environment. Table III of subparagraph (F) of this paragraph provides concentration limits for discharges to sanitary sewerage.

(ii) The values in Tables I, II, and III of subparagraph (F) of this paragraph are presented in the computer "E" notation. In this notation a value of 6E-02 represents a value of 6×10^{-2} or 0.06, 6E+2 represents 6×10^2 or 600, and 6E+0 represents 6×10^0 or 6.

(B) Occupational values.

(i) Note that the columns in Table I of subparagraph (F) of this paragraph captioned "Oral Ingestion ALI," "Inhalation ALI," and "DAC," are applicable to occupational exposure to radioactive material.

(ii) The ALIs in subparagraph (F) of this paragraph are the annual intakes of given radionuclide by "Reference Man" that would result in either a committed effective dose equivalent of 5 rems (0.05 Sv), stochastic ALI, or a committed dose equivalent of 50 rems (0.5 Sv) to an organ or tissue, non-stochastic ALI. The stochastic ALIs were derived to result in a risk, due to irradiation of organs and tissues, comparable to the risk associated with deep dose equivalent to the whole body of 5 rems (0.05 Sv). The derivation includes multiplying the committed dose equivalent to an organ or tissue by a weighting factor, w_T . This weighting factor is the proportion of the risk of stochastic effects resulting from irradiation of the organ or tissue, T, to the total risk of stochastic effects when the whole body is irradiated uniformly. The values of w_T are listed under the definition of "weighting factor" in subsection (c) of this section. The non-stochastic ALIs were derived to avoid non-stochastic effects, such as prompt damage to tissue or reduction in organ function.

(iii) A value of $w_T = 0.06$ is applicable to each of the five organs or tissues in the "remainder" category receiving the highest dose equivalents, and the dose equivalents of all other remaining tissues may be disregarded. The following portions of the GI tract; stomach, small intestine, upper large intestine, and lower large intestine, are to be treated as four separate organs.

(iv) The dose equivalents for an extremity, skin, and lens of the eye are not considered in computing the committed effective dose equivalent, but are subject to limits that must be met separately.

(v) When an ALI is defined by the stochastic dose limit, this value alone is given. When an ALI is determined by the non-stochastic dose limit to an organ, the organ or tissue to which the limit applies is shown, and the ALI for the stochastic limit is shown in parentheses. Abbreviated organ or tissue designations are used as follows:

- (I) LLI wall = lower large intestine wall;
- (II) St. wall = stomach wall;
- (III) Blad wall = bladder wall; and
- (IV) Bone surf = bone surface.

(vi) Figure: 25 TAC §289.202(ggg)(2)(B)(vi) (No change.)

(vii) The dose equivalents for an extremity, skin, and lens of the eye are not considered in computing the committed effective dose equivalent, but are subject to limits that must be met separately.

(viii) The DAC values are derived limits intended to control chronic occupational exposures. The relationship between the DAC and the ALI is given by:

Figure: 25 TAC §289.202(ggg)(2)(B)(viii) (No change.)

(ix) The DAC values relate to one of two modes of exposure: either external submersion or the internal committed dose equivalents resulting from inhalation of radioactive materials. DACs based upon submersion are for immersion in a semi-infinite cloud of uniform concentration and apply to each radionuclide separately.

(x) The ALI and DAC values include contributions to exposure by the single radionuclide named and any in-growth of daughter radionuclides produced in the body by decay of the parent. However, intakes that include both the parent and daughter radionuclides should be treated by the general method appropriate for mixtures.

(xi) The values of ALI and DAC do not apply directly when the individual both ingests and inhales a radionuclide, when the individual is exposed to a mixture of radionuclides by either inhalation or ingestion or both, or when the individual is exposed to both internal and external irradiation. See subsection (g) of this section. When an individual is exposed to radioactive materials which fall under several of the translocation classifications of the same radionuclide, such as, Class D, Class W, or Class Y, the exposure may be evaluated as if it were a mixture of different radionuclides.

(xii) It should be noted that the classification of a compound as Class D, W, or Y is based on the chemical form of the compound and does not take into account the radiological half-life of different radionuclides. For this reason, values are given for Class D, W, and Y compounds, even for very short-lived radionuclides.

(C) Effluent concentrations.

(i) The columns in Table II of subparagraph (F) of this paragraph captioned "Effluents," "Air," and "Water" are applicable to the assessment and control of dose to the public, particularly in the implementation of the provisions of subsection (o) of this section. The concentration values given in Columns 1 and 2 of Table II of subparagraph (F) of this paragraph are equivalent to the radionuclide concentrations which, if inhaled or ingested continuously over the course of a year, would produce a total effective dose equivalent of 0.05 rem (0.5 mSv).

(ii) Consideration of non-stochastic limits has not been included in deriving the air and water effluent concentration limits because non-stochastic effects are presumed not to occur at or below the dose levels established for individual members of the public. For radionuclides, where the non-stochastic limit was governing in deriving the occupational DAC, the stochastic ALI was used in deriving the corresponding airborne effluent limit in Table II of subparagraph (F) of this paragraph. For this reason, the DAC and airborne effluent limits are not always proportional as they were in the previous radiation protection standards.

(iii) The air concentration values listed in Column I of Table II of subparagraph (F) of this paragraph were derived by one of two methods. For those radionuclides for which the stochastic limit is governing, the occupational stochastic inhalation ALI was divided by 2.4×10^9 , relating the inhalation ALI to the DAC, as explained in

subparagraph (B)(viii) of this paragraph, and then divided by a factor of 300. The factor of 300 includes the following components:

(I) a factor of 50 to relate the 5 rems (0.05 Sv) annual occupational dose limit to the 0.1 rem limit for members of the public;

(II) a factor of 3 to adjust for the difference in exposure time and the inhalation rate for a worker and that for members of the public; and

(III) a factor of 2 to adjust the occupational values, derived for adults, so that they are applicable to other age groups.

(iv) For those radionuclides for which submersion, that is external dose, is limiting, the occupational DAC in Column 3 of Table I of subparagraph (F) of this paragraph was divided by 219. The factor of 219 is composed of a factor of 50, as described in clause (iii) of this subparagraph, and a factor of 4.38 relating occupational exposure for 2,000 hours per year to full-time exposure (8,760 hours per year). Note that an additional factor of 2 for age considerations is not warranted in the submersion case.

(v) The water concentrations were derived by taking the most restrictive occupational stochastic oral ingestion ALI and dividing by 7.3×10^7 . The factor of 7.3×10^7 milliliters (ml) includes the following components:

(I) the factors of 50 and 2 described in clause (iii) of this subparagraph; and

(II) a factor of 7.3×10^5 (ml) which is the annual water intake of "Reference Man."

(vi) Note 2 of subparagraph (F) of this paragraph provides groupings of radionuclides that are applicable to unknown mixtures of radionuclides. These groupings, including occupational inhalation ALIs and DACs, air and water effluent concentrations, and releases to sewer, require demonstrating that the most limiting radionuclides in successive classes are absent. The limit for the unknown mixture is defined when the presence of one of the listed radionuclides cannot be definitely excluded as being present either from knowledge of the radionuclide composition of the source or from actual measurements.

(D) Releases to sewers. The monthly average concentrations for release to sanitary sewerage are applicable to the provisions in subsection (gg) of this section. The concentration values were derived by taking the most restrictive occupational stochastic oral ingestion ALI and dividing by 7.3×10^6 (ml). The factor of 7.3×10^6 (ml) is composed of a factor of 7.3×10^5 (ml), the annual water intake by "Reference Man," and a factor of 10, such that the concentrations, if the sewage released by the licensee were the only source of water ingested by a "Reference Man" during a year, would result in a committed effective dose equivalent of 0.5 rem.

(E) List of elements.

Figure: 25 TAC §289.202(ggg)(2)(E) (No change.)

(F) Tables--Values for annual limits. The following tables contain values for annual limits on intake (ALI) and derived air concentrations (DAC) of radionuclides for occupational exposure; effluent concentrations; concentrations for release to sanitary sewerage: Figure: 25 TAC §289.202(ggg)(2)(F) (No change.)

(3) Quantities of licensed material requiring labeling. The following tables contain quantities of licensed material requiring labeling:

Figure: 25 TAC §289.202(ggg)(3) (No change.)

(4) Classification and characteristics of low-level radioactive waste (LLRW).

(A) Classification of radioactive waste for land disposal.

(i) Considerations. Determination of the classification of LLRW involves two considerations. First, consideration must be given to the concentration of long-lived radionuclides (and their shorter-lived precursors) whose potential hazard will persist long after such precautions as institutional controls, improved waste form, and deeper disposal have ceased to be effective. These precautions delay the time when long-lived radionuclides could cause exposures. In addition, the magnitude of the potential dose is limited by the concentration and availability of the radionuclide at the time of exposure. Second, consideration must be given to the concentration of shorter-lived radionuclides for which requirements on institutional controls, waste form, and disposal methods are effective.

(ii) Classes of waste.

(I) Class A waste is waste that is usually segregated from other waste classes at the disposal site. The physical form and characteristics of Class A waste must meet the minimum requirements set forth in subparagraph (B)(i) of this paragraph. If Class A waste also meets the stability requirements set forth in subparagraph (B)(ii) of this paragraph, it is not necessary to segregate the waste for disposal.

(II) Class B waste is waste that must meet more rigorous requirements on waste form to ensure stability after disposal. The physical form and characteristics of Class B waste must meet both the minimum and stability requirements set forth in subparagraph (B) of this paragraph.

(III) Class C waste is waste that not only must meet more rigorous requirements on waste form to ensure stability but also requires additional measures at the disposal facility to protect against inadvertent intrusion. The physical form and characteristics of Class C waste must meet both the minimum and stability requirements set forth in subparagraph (B) of this paragraph.

(iii) Classification determined by long-lived radionuclides. If the radioactive waste contains only radionuclides listed in subclause (V) of this clause, classification shall be determined as follows.

(I) If the concentration does not exceed 0.1 times the value in subclause (V) of this clause, the waste is Class A.

(II) If the concentration exceeds 0.1 times the value in Table I, but does not exceed the value in subclause (V) of this clause, the waste is Class C.

(III) If the concentration exceeds the value in subclause (V) of this clause, the waste is not generally acceptable for land disposal.

(IV) For wastes containing mixtures of radionuclides listed in subclause (V) of this clause, the total concentration shall be determined by the sum of fractions rule described in clause (vii) of this subparagraph.

(V) Classification table for long-lived radionuclides.

Figure: 25 TAC §289.202(ggg)(4)(A)(iii)(V) (No change.)

(iv) Classification determined by short-lived radionuclides. If the waste does not contain any of the radionuclides listed in clause (iii)(V) of this subparagraph, classification shall be determined based on the concentrations shown in subclause (VI) of

this clause. However, as specified in clause (vi) of this subparagraph, if radioactive waste does not contain any nuclides listed in either clause (iii)(V) of this subparagraph or subclause (VI) of this clause, it is Class A.

(I) If the concentration does not exceed the value in Column 1 of subclause (VI) of this clause, the waste is Class A.

(II) If the concentration exceeds the value in Column 1 of subclause (VI) of this clause but does not exceed the value in Column 2 of subclause (VI) of this clause, the waste is Class B.

(III) If the concentration exceeds the value in Column 2 of subclause (VI) of this clause but does not exceed the value in Column 3 of subclause (VI) of this clause, the waste is Class C.

(IV) If the concentration exceeds the value in Column 3 of subclause (VI) of this clause, the waste is not generally acceptable for near-surface disposal.

(V) For wastes containing mixtures of the radionuclides listed in subclause (VI) of this clause, the total concentration shall be determined by the sum of fractions rule described in clause (vii) of this subparagraph.

(VI) Classification table for short-lived radionuclides.

Figure: 25 TAC §289.202(ggg)(4)(A)(iv)(VI) (No change.)

(v) Classification determined by both long- and short-lived radionuclides. If the radioactive waste contains a mixture of radionuclides, some of which are listed in clause (iii)(V) of this subparagraph and some of which are listed in clause (iv)(VI) of this subparagraph, classification shall be determined as follows:

(I) If the concentration of a radionuclide listed in clause (iii)(V) of this subparagraph is less than 0.1 times the value listed in clause (iii)(V) of this subparagraph, the class shall be that determined by the concentration of radionuclides listed in clause (iv)(VI) of this subparagraph.

(II) If the concentration of a radionuclide listed in clause (iii)(V) of this subparagraph exceeds 0.1 times the value listed in clause (iii)(V) of this subparagraph, but does not exceed the value listed in clause (iii)(V) of this subparagraph, the waste shall be Class C, provided the concentration of radionuclides listed in clause (iv)(VI) of this subparagraph does not exceed the value shown in Column 3 of clause (iv)(VI) of this subparagraph.

(vi) Classification of wastes with radionuclides other than those listed in clauses (iii)(V) and (iv)(VI) of this subparagraph. If the waste does not contain any radionuclides listed in either clauses (iii)(V) and (iv)(VI) of this subparagraph, it is Class A.

(vii) The sum of the fractions rule for mixtures of radionuclides. For determining classification for waste that contains a mixture of radionuclides, it is necessary to determine the sum of fractions by dividing each radionuclide's concentration by the appropriate limit and adding the resulting values. The appropriate limits must all be taken from the same column of the same table. The sum of the fractions for the column must be less than 1.0 if the waste class is to be determined by that column. Example: A waste contains Sr-90 in a concentration of 50 curies per cubic meter (Ci/m³ (1.85 terabecquerels per cubic meter (TBq/m³)) and Cs-137 in a concentration of 22 Ci/m³ (814 gigabecquerels per cubic meter (GBq/m³)). Since the concentrations both exceed the values in Column 1 of clause (iv)(VI) of this subparagraph, they must be compared to Column 2 values. For Sr-90 fraction, 50/150 = 0.33, for Cs-137 fraction, 22/44 = 0.5; the sum of

the fractions = 0.83. Since the sum is less than 1.0, the waste is Class B.

(viii) Determination of concentrations in wastes. The concentration of a radionuclide may be determined by indirect methods such as use of scaling factors, which relate the inferred concentration of one radionuclide to another that is measured, or radionuclide material accountability, if there is reasonable assurance that the indirect methods can be correlated with actual measurements. The concentration of a radionuclide may be averaged over the volume of the waste, or weight of the waste if the units are expressed as nanocurie (becquerel) per gram.

(B) Radioactive waste characteristics.

(i) The following are minimum requirements for all classes of waste and are intended to facilitate handling and provide protection of health and safety of personnel at the disposal site.

(I) Wastes shall be packaged in conformance with the conditions of the license issued to the site operator to which the waste will be shipped. Where the conditions of the site license are more restrictive than the provisions of this section, the site license conditions shall govern.

(II) Wastes shall not be packaged for disposal in cardboard or fiberboard boxes.

(III) Liquid waste shall be packaged in sufficient absorbent material to absorb twice the volume of the liquid.

(IV) Solid waste containing liquid shall contain as little free-standing and non-corrosive liquid as is reasonably achievable, but in no case shall the liquid exceed 1.0% of the volume.

(V) Waste shall not be readily capable of detonation or of explosive decomposition or reaction at normal pressures and temperatures, or of explosive reaction with water.

(VI) Waste shall not contain, or be capable of generating, quantities of toxic gases, vapors, or fumes harmful to persons transporting, handling, or disposing of the waste. This does not apply to radioactive gaseous waste packaged in accordance with subclause (VIII) of this clause.

(VII) Waste must not be pyrophoric. Pyrophoric materials contained in wastes shall be treated, prepared, and packaged to be nonflammable.

(VIII) Wastes in a gaseous form shall be packaged at an absolute pressure that does not exceed 1.5 atmospheres at 20 degrees Celsius. Total activity shall not exceed 100 Ci (3.7 terabecquerels (TBq)) per container.

(IX) Wastes containing hazardous, biological, pathogenic, or infectious material shall be treated to reduce to the maximum extent practicable the potential hazard from the non-radiological materials.

(ii) The following requirements are intended to provide stability of the waste. Stability is intended to ensure that the waste does not degrade and affect overall stability of the site through slumping, collapse, or other failure of the disposal unit and thereby lead to water infiltration. Stability is also a factor in limiting exposure to an inadvertent intruder, since it provides a recognizable and nondispersible waste.

(I) Waste shall have structural stability. A structurally stable waste form will generally maintain its physical dimensions and its form, under the expected disposal conditions such as weight of overburden and compaction equipment, the presence of

moisture, and microbial activity, and internal factors such as radiation effects and chemical changes. Structural stability can be provided by the waste form itself, processing the waste to a stable form, or placing the waste in a disposal container or structure that provides stability after disposal.

(II) Notwithstanding the provisions in clause (i)(III) and (IV) of this subparagraph, liquid wastes, or wastes containing liquid, shall be converted into a form that contains as little free-standing and non-corrosive liquid as is reasonably achievable, but in no case shall the liquid exceed 1.0% of the volume of the waste when the waste is in a disposal container designed to ensure stability, or 0.5% of the volume of the waste for waste processed to a stable form.

(III) Void spaces within the waste and between the waste and its package shall be reduced to the extent practicable.

(C) Labeling. Each package of waste shall be clearly labeled to identify whether it is Class A, Class B, or Class C waste, in accordance with subparagraph (A) of this paragraph.

(5) Time requirements for record keeping.
Figure: 25 TAC §289.202(ggg)(5) (No change.)

(6) Acceptable surface contamination limits.
Figure: 25 TAC §289.202(ggg)(6)

(7) Concentration and activity limits of nuclides for disposal in a Type I municipal solid waste site or a hazardous waste facility (for use in subsection (fff) of this section). The following table contains concentration and activity limits of nuclides for disposal in a Type I municipal solid waste site or a hazardous waste facility.
Figure: 25 TAC §289.202(ggg)(7) (No change.)

(8) Cumulative occupational exposure form. The following, RC Form 202-2, or other equivalent clear and legible record, of all the information required on that form, is to be used to document cumulative occupational exposure history: (Please find RC Form 202-2 at the end of this section.)
Figure: 25 TAC §289.202(ggg)(8)

(9) Occupational exposure form. The following, RC Form 202-3, or other equivalent clear and legible record, of all the information required on that form, is to be used to document occupational exposure record for a monitoring period: (Please find RC Form 202-3 at the end of this section.)
Figure: 25 TAC §289.202(ggg)(9)

(hhh) Requirements for nationally tracked sources.

(1) Reports of transactions involving nationally tracked sources. Each licensee who manufactures, transfers, receives, disassembles, or disposes of a nationally tracked source shall complete and submit to NRC a National Source Tracking Transaction Report as specified in the following subparagraphs for each type of transaction.

(A) Each licensee who manufactures a nationally tracked source shall complete and submit to NRC a National Source Tracking Transaction Report. The report shall include the following information:

- (i) the name, address, and license number of the reporting licensee;
- (ii) the name of the individual preparing the report;
- (iii) the manufacturer, model, and serial number of the source;
- (iv) the radioactive material in the source;

(v) the initial source strength in becquerels (curies) at the time of manufacture; and

(vi) the manufacture date of the source.

(B) Each licensee that transfers a nationally tracked source to another person shall complete and submit to NRC a National Source Tracking Transaction Report. A source transfer transaction does not include transfers to a temporary domestic job site. Domestic transactions in which the nationally tracked source remains in the possession of the licensee do not require a report to the National Source Tracking System. The report shall include the following information:

(i) the name, address, and license number of the reporting licensee;

(ii) the name of the individual preparing the report;

(iii) the name and license number of the recipient facility and the shipping address;

(iv) the manufacturer, model, and serial number of the source or, if not available, other information to uniquely identify the source;

(v) the radioactive material in the source;

(vi) the initial or current source strength in becquerels (curies);

(vii) the date for which the source strength is reported;

(viii) the shipping date;

(ix) the estimated arrival date; and

(x) for nationally tracked sources transferred as waste under a Uniform Low-Level Radioactive Waste Manifest, the waste manifest number and the container identification of the container with the nationally tracked source.

(C) Each licensee that receives a nationally tracked source shall complete and submit to NRC a National Source Tracking Transaction Report. The report shall include the following information:

(i) the name, address, and license number of the reporting licensee;

(ii) the name of the individual preparing the report;

(iii) the name, address, and license number of the person that provided the source;

(iv) the manufacturer, model, and serial number of the source or, if not available, other information to uniquely identify the source;

(v) the radioactive material in the source;

(vi) the initial or current source strength in becquerels (curies);

(vii) the date for which the source strength is reported;

(viii) the date of receipt; and

(ix) for material received under a Uniform Low-Level Radioactive Waste Manifest, the waste manifest number and the container identification with the nationally tracked source.

(D) Each licensee that disassembles a nationally tracked source shall complete and submit to NRC a National Source

Tracking Transaction Report. The report shall include the following information:

- (i) the name, address, and license number of the reporting licensee;
- (ii) the name of the individual preparing the report;
- (iii) the manufacturer, model, and serial number of the source or, if not available, other information to uniquely identify the source;
- (iv) the radioactive material in the source;
- (v) the initial or current source strength in becquerels (curies);
- (vi) the date for which the source strength is reported; and
- (vii) the disassemble date of the source.

(E) Each licensee who disposes of a nationally tracked source shall complete and submit to NRC a National Source Tracking Transaction Report. The report shall include the following information:

- (i) the name, address, and license number of the reporting licensee;
- (ii) the name of the individual preparing the report;
- (iii) the waste manifest number;
- (iv) the container identification with the nationally tracked source;
- (v) the date of disposal; and
- (vi) the method of disposal.

(F) The reports discussed in subparagraphs (A) - (E) of this paragraph shall be submitted to NRC by the close of the next business day after the transaction. A single report may be submitted for multiple sources and transactions. The reports shall be submitted to the National Source Tracking System by using the following:

- (i) the on-line National Source Tracking System;
- (ii) electronically using a computer-readable format;
- (iii) by facsimile;
- (iv) by mail to the address on the National Source Tracking Transaction Report Form (NRC Form 748); or
- (v) by telephone with follow-up by facsimile or mail.

(G) Each licensee shall correct any error in previously filed reports or file a new report for any missed transaction within 5 business days of the discovery of the error or missed transaction. Such errors may be detected by a variety of methods such as administrative reviews or by physical inventories required by regulation. In addition, each licensee shall reconcile the inventory of nationally tracked sources possessed by the licensee against that licensee's data in the National Source Tracking System. The reconciliation shall be conducted during the month of January in each year. The reconciliation process shall include resolving any discrepancies between the National Source Tracking System and the actual inventory by filing the reports identified by subparagraphs (A) - (E) of this paragraph. By January 31 of each year, each licensee shall submit to the National Source Tracking System confirmation that the data in the National Source Tracking System is correct.

(H) Each licensee that possesses Category 1 or Category 2 nationally tracked sources listed in paragraph (2) of this subsection shall report its initial inventory of Category 1 or Category 2 nationally tracked sources to the National Source Tracking System by January 31, 2009. The information may be submitted to NRC by using any of the methods identified by subparagraph (F)(i) - (iv) of this paragraph. The initial inventory report shall include the following information:

- (i) the name, address, and license number of the reporting licensee;
- (ii) the name of the individual preparing the report;
- (iii) the manufacturer, model, and serial number of each nationally tracked source or, if not available, other information to uniquely identify the source;
- (iv) the radioactive material in the sealed source;
- (v) the initial or current source strength in becquerels (curies); and
- (vi) the date for which the source strength is reported.

(2) Nationally tracked source thresholds. The Terabecquerel (TBq) values are the regulatory standards. The curie (Ci) values specified are obtained by converting from the TBq value. The curie values are provided for practical usefulness only and are rounded after conversion.

Figure: 25 TAC §289.202(hhh)(2) (No change.)

(3) Serialization of nationally tracked sources. Each licensee who manufactures a nationally tracked source after February 6, 2007, shall assign a unique serial number to each nationally tracked source. Serial numbers shall be composed only of alpha-numeric characters.

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

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SUBCHAPTER F. LICENSE REGULATIONS

25 TAC §§289.252, 289.253, 289.255 - 289.257

STATUTORY AUTHORITY

The amendments are authorized by Health and Safety Code, §401.052, which allows the department to collect fees from shippers for shipments of low-level radioactive waste originating in Texas or out-of-state to a Texas low-level radioactive waste disposal facility; Health and Safety Code, §401.051, which provides the Executive Commissioner of the Health and Human Services Commission with authority to adopt rules and guidelines relating to the control of radiation; and Government Code, §531.0055, and Health and Safety Code, §1001.075, which authorize the Executive Commissioner of the Health and Human Services Com-

mission to adopt rules and policies necessary for the operation and provision of health and human services by the department and for the administration of Health and Safety Code, Chapter 1001. Review of the rules implements Government Code, §2001.039.

§289.256. *Medical and Veterinary Use of Radioactive Material.*

(a) Purpose.

(1) This section establishes requirements for the medical and veterinary use of radioactive material and for the issuance of specific licenses authorizing the medical and veterinary use of radioactive material. Unless otherwise exempted, no person shall receive, possess, use, transfer, own, or acquire radioactive material for medical or veterinary use except as authorized in a license issued in accordance with this section.

(2) A person who receives, possesses, uses, transfers, owns, or acquires radioactive material prior to receiving a license is subject to the requirements of this chapter.

(3) A specific license is not needed for a person who:

(A) receives, possesses, uses, or transfers radioactive material in accordance with the regulations in this chapter under the supervision of an authorized user as provided in subsection (s) of this section, unless prohibited by license condition; or

(B) prepares unsealed radioactive material for medical use in accordance with the regulations in this chapter under the supervision of an authorized nuclear pharmacist or authorized user as provided in subsection (s) of this section, unless prohibited by license condition.

(b) Scope.

(1) In addition to the requirements of this section, all licensees, unless otherwise specified, are subject to the requirements of §289.201 of this title (relating to General Provisions for Radioactive Material), §289.202 of this title (relating to Standards for Protection Against Radiation from Radioactive Materials), §289.203 of this title (relating to Notices, Instructions, and Reports to Workers; Inspections), §289.204 of this title (relating to Fees for Certificates of Registration, Radioactive Material Licenses, Emergency Planning and Implementation, and Other Regulatory Services), §289.205 of this title (relating to Hearing and Enforcement Procedures), §289.252 of this title (relating to Licensing of Radioactive Material), and §289.257 of this title (relating to Packaging and Transportation of Radioactive Material).

(2) Veterinarians who receive, possess, use, transfer, own, or acquire radioactive material in the practice of veterinary medicine shall comply with the requirements of this section except for subsections (d), (dd) and (uuu) of this section.

(3) An entity that is a "covered entity" as that term is defined in HIPAA (the Health Insurance Portability and Accountability Act of 1996, 45 Code of Federal Regulations, Parts 160 and 164) may be subject to privacy standards governing how information that identifies a patient can be used and disclosed. Failure to follow HIPAA requirements may result in the department making a referral of a potential violation to the United States Department of Health and Human Services.

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

(1) Address of use--The building or buildings that are identified on the license and where radioactive material may be prepared, received, used, or stored.

(2) Area of use--A portion of an address of use that has been set aside for the purpose of preparing, receiving, using, or storing radioactive material.

(3) Authorized medical physicist--An individual who meets the following:

(A) the requirements in subsections (j) and (m) of this section; or

(B) is identified as an authorized medical physicist or teletherapy physicist on one of the following:

(i) a specific medical use license issued by the agency, the United States Nuclear Regulatory Commission (NRC), an agreement state, or licensing state;

(ii) a medical use permit issued by an NRC master material licensee;

(iii) a permit issued by an NRC, agreement state, or licensing state broad scope medical use licensee; or

(iv) a permit issued by an NRC master material license broad scope medical use permittee; and

(C) holds a current Texas license under the Medical Physics Practice Act, Texas Occupations Code, Chapter 602, in therapeutic radiological physics for uses in subsections (rr) and (ddd) of this section.

(4) Authorized nuclear pharmacist--A pharmacist who meets the following:

(A) the requirements in subsections (k) and (m) of this section; or

(B) is identified as an authorized nuclear pharmacist on one of the following:

(i) a specific license issued by the agency, the NRC, an agreement state, or licensing state that authorizes medical use or the practice of nuclear pharmacy;

(ii) a permit issued by an NRC master material licensee that authorizes medical use or the practice of nuclear pharmacy;

(iii) a permit issued by the agency, the NRC, an agreement state, or licensing state licensee with broad scope authorization that authorizes medical use or the practice of nuclear pharmacy; or

(iv) a permit issued by an NRC master material license broad scope medical use permittee that authorizes medical use or the practice of nuclear pharmacy;

(C) is identified as an authorized nuclear pharmacist by a commercial nuclear pharmacy that has been authorized to identify authorized nuclear pharmacists; or

(D) is designated as an authorized nuclear pharmacist in accordance with §289.252(r) of this title; and

(E) holds a current Texas license under the Texas Pharmacy Act, Occupations Code, Chapters 551 - 566, 568, and 569, as amended, and who is certified as an authorized nuclear pharmacist by the Texas State Board of Pharmacy.

(5) Authorized user--An authorized user is defined as follows:

(A) for human use, a physician licensed by the Texas Medical Board; or a dentist licensed by the Texas State Board of Dental Examiners; or a podiatrist licensed by the Texas State Board of Podiatric Medicine who:

(i) meets the requirements in subsections (m), (gg)(1), (jj)(1), (nn)(1), (oo)(1), (pp)(1), (zz)(1), (ccc)(1) or (ttt)(1) of this section; or

(ii) is identified as an authorized user on any of the following:

(I) an agency, NRC, agreement state, or licensing state license that authorizes the medical use of radioactive material;

(II) a permit issued by an NRC master material licensee that is authorized to permit the medical use of radioactive material;

(III) a permit issued by a specific licensee with broad scope authorization issued by the agency, the NRC, an agreement state, or licensing state authorizing the medical use of radioactive material; or

(IV) a permit issued by an NRC master material licensee with broad scope authorization that is authorized to permit the medical use of radioactive material.

(B) for veterinary use, an individual who is, a veterinarian licensed by the Texas State Board of Veterinary Medical Examiners; and

(i) is certified by the American College of Veterinary Radiology for the use of radioactive materials in veterinary medicine; or

(ii) has received training in accordance with subsections (gg), (jj), (oo), (pp) and (ttt) of this section as applicable; or

(iii) is identified as an authorized user on any of the following:

(I) an agency, NRC, agreement state, or licensing state license that authorizes the veterinary use of radioactive material;

(II) a permit issued by an NRC master material licensee that is authorized to permit the medical use of radioactive material;

(III) a permit issued by a specific licensee with broad scope authorization issued by the agency, the NRC, an agreement state, or licensing state authorizing the medical or veterinary use of radioactive material; or

(IV) a permit issued by an NRC master material licensee with broad scope authorization that authorizes the medical use of radioactive material.

(6) Brachytherapy--A method of radiation therapy in which plated, embedded, activated, or sealed sources are utilized to deliver a radiation dose at a distance of up to a few centimeters, by surface, intracavitary, intraluminal, or interstitial application.

(7) Brachytherapy sealed source--A sealed source or a manufacturer-assembled source train, or a combination of these sources that is designed to deliver a therapeutic dose within a distance of a few centimeters.

(8) High dose-rate remote afterloader--A device that remotely delivers a dose rate in excess of 1200 rads (12 gray (Gy)) per hour at the point or surface where the dose is prescribed.

(9) Institutional Review Board (IRB)--Any board, committee, or other group formally designated by an institution and approved by the United States Food and Drug Administration (FDA) to review, approve the initiation of, and conduct periodic review of biomedical research involving human subjects.

(10) Low dose-rate remote afterloader--A device that remotely delivers a dose rate of less than or equal to 200 rads (2 Gy) per hour at the point or surface where the dose is prescribed.

(11) Management--The chief executive officer or other individual delegated the authority to manage, direct, or administer the licensee's activities.

(12) Manual brachytherapy--A type of brachytherapy in which the sealed sources, for example, seeds and ribbons, are manually inserted either into the body cavities that are in close proximity to a treatment site or directly in the tissue volume.

(13) Medical event--An event that meets the criteria in subsection (uuu)(1) of this section.

(14) Medical institution--An organization in which several medical disciplines are practiced.

(15) Medical use--The intentional internal or external administration of radioactive material, or the radiation from radioactive material, to patients or human research subjects under the supervision of an authorized user.

(16) Medium dose-rate afterloader--A device that remotely delivers a dose rate greater than 200 rads (2 Gy) and less than or equal to 1200 rads (12 Gy) per hour at the point or surface where the dose is prescribed.

(17) Mobile nuclear medicine service--A licensed service authorized to transport radioactive material to, and medical use of the material at, the client's address. Services transporting calibration sources only are not considered mobile nuclear medicine licensees.

(18) Output--The exposure rate, dose rate, or a quantity related in a known manner to these rates from a teletherapy unit, a brachytherapy source, a remote afterloader unit, or a gamma stereotactic radiosurgery unit, for a specified set of exposure conditions.

(19) Patient--A human or animal under medical care and treatment.

(20) Permanent facility--A building or buildings that are identified on the license within the State of Texas and where radioactive material may be prepared, received, used, or stored. This may also include an area or areas where administrative activities related to the license are performed.

(21) Preceptor--An individual who provides, directs, or verifies the training and experience required for an individual to become an authorized user, an authorized medical physicist, an authorized nuclear pharmacist, or a radiation safety officer.

(22) Prescribed dosage--The specified activity or range of activity of unsealed radioactive material as documented in a written directive or in accordance with the directions of the authorized user for procedures in subsections (ff) and (hh) of this section.

(23) Prescribed dose--Prescribed dose means one of the following:

(A) for gamma stereotactic radiosurgery, the total dose as documented in the written directive;

(B) for teletherapy, the total dose and dose per fraction as documented in the written directive;

(C) for brachytherapy, either the total sealed source strength and exposure time, or the total dose, as documented in the written directive; or

(D) for remote afterloaders, the total dose and dose per fraction as documented in the written directive.

(24) Pulsed dose-rate remote afterloader--A special type of remote afterloading device that uses a single sealed source capable of delivering dose rates greater than 1200 rads (12 Gy) per hour, but is approximately one-tenth of the activity of typical high dose-rate remote afterloader sealed sources and is used to simulate the radiobiology of a low dose rate remote afterloader treatment by inserting the sealed source for a given fraction of each hour.

(25) Radiation safety officer (RSO)--For purposes of this section, an individual who:

(A) meets the requirements in subsections (h) and (m) of this section; or

(B) is identified as an RSO on one of the following:

(i) a specific license issued by the agency, NRC, agreement state, or licensing state license that authorizes the medical or veterinary use of radioactive material; or

(ii) a permit issued by an NRC master material licensee that authorizes the medical or veterinary use of radioactive material.

(26) Sealed source and device registry--The national registry that contains all the registration certificates, generated by both the NRC and the agreement states, that summarize the radiation safety information for sealed sources and devices and describe the licensing and use conditions approved for the product.

(27) Stereotactic radiosurgery--The use of external radiation in conjunction with a guidance device to very precisely deliver a dose to a tissue volume by the use of three-dimensional coordinates.

(28) Technologist--Technologist is defined as either of the following:

(A) in nuclear medicine, a person (nuclear medicine technologist) skilled in the performance of nuclear medicine procedures under the supervision of a physician; or

(B) in therapy, as described in subsections (rr) and (ddd) of this section, a person (radiation therapy technologist or radiation therapist) who delivers treatments of radiation therapy under the supervision of and as prescribed by an authorized user who meets the requirements of subsections (zz) or (ttt) of this section.

(29) Teletherapy--Therapeutic irradiation in which the sealed source is at a distance from the patient or human or animal research subject.

(30) Therapeutic dosage--The specified activity or range of activity of radioactive material that is intended to deliver a radiation dose to a patient or human or animal research subject for palliative or curative treatment.

(31) Therapeutic dose--A radiation dose delivered from a sealed source containing radioactive material to a patient or human or animal research subject for palliative or curative treatment.

(32) Treatment site--The anatomical description of the tissue intended to receive a radiation dose, as described in a written directive.

(33) Type of use--Use of radioactive material as specified under the following subsections:

(A) uptake, and dilution and excretion studies in subsection (ff) of this section;

(B) imaging and localization studies in subsection (hh) of this section;

(C) therapy with unsealed radioactive material in subsection (kk) of this section;

(D) manual brachytherapy with sealed sources in subsection (rr) of this section;

(E) sealed sources for diagnosis in subsection (bbb) of this section; and

(F) sealed source in a remote afterloader unit, teletherapy unit, or gamma stereotactic radiosurgery unit in subsection (ddd) of this section.

(34) Unit dosage--A dosage prepared for medical use for administration as a single dosage to a patient or human or animal research subject without any further modification of the dosage after it is initially prepared.

(35) Veterinary use--The intentional internal or external administration of radioactive material, or the radiation from radioactive material, to patients under the supervision of an authorized user.

(36) Written directive--An authorized user's written order for the administration of radioactive material or radiation from radioactive material to a specific patient or human research subject, as specified in subsection (t) of this section.

(d) Provisions for research involving human subjects.

(1) A licensee may conduct research involving human subjects only if it uses the radioactive materials specified on its license for the uses authorized on the license.

(2) The licensee may conduct research specified in paragraph (1) of this subsection provided that:

(A) the research is conducted, funded, supported, or regulated by a federal agency that has implemented the Federal Policy for the Protection of Human Subjects as required by Title 10, Code of Federal Regulations (CFR), §35.6 (Federal Policy); or

(B) the licensee has applied for and received approval of a specific amendment to its license before conducting the research.

(3) Prior to conducting research as specified in paragraph (1) of this subsection, the licensee shall obtain the following:

(A) "informed consent," as defined and described in the Federal Policy, from the human research subjects; and

(B) review and approval of the research from an IRB as required by Title 45, CFR, Part 46, and Title 21, CFR, Part 56, and in accordance with the Federal Policy.

(4) Nothing in this subsection relieves licensees from complying with the other requirements of this chapter.

(e) Implementation.

(1) If a license condition exempted a licensee from a provision of this section or §289.252 of this title on the effective date of this rule, then the license condition continues to exempt the licensee from the requirements in the corresponding provision until there is a license amendment or license renewal that modifies or removes the license condition.

(2) When a requirement in this section differs from the requirement in an existing license condition, the requirement in this section shall govern.

(3) Licensees shall continue to comply with any license condition that requires implementation of procedures required by subsections (ggg) and (mmm) - (ooo) of this section until there is a license amendment or renewal that modifies the license condition.

(f) Specific requirements for the issuance of licenses. In addition to the requirements in §289.252(e) of this title and subsections (n) - (q) of this section, as applicable, a license will be issued if the agency determines that:

(1) the applicant satisfies any applicable special requirement in this section;

(2) qualifications of the designated radiation safety officer (RSO) as specified in subsection (h) of this section are adequate for the purpose requested in the application; and

(3) the following information submitted by the applicant is approved:

(A) an operating, safety, and emergency procedures manual to include specific information on the following:

(i) radiation safety precautions and instructions;

(ii) methodology for measurement of dosages or doses to be administered to patients or human or animal research subjects;

(iii) calibration, maintenance, and repair of instruments and equipment necessary for radiation safety; and

(iv) waste disposal procedures; and

(B) any additional information required by this chapter that is requested by the agency to assist in its review of the application; and

(C) qualifications of the following:

(i) RSO in accordance with subsection (h) of this section;

(ii) authorized user(s) in accordance with subsection (c)(5) of this section as applicable to the use(s) being requested;

(iii) authorized medical physicist in accordance with subsection (c)(3) of this section;

(iv) authorized nuclear pharmacist in accordance with subsection (c)(4) of this section, if applicable; and

(v) radiation safety committee (RSC), in accordance with subsection (i) of this section, if applicable; and

(4) the applicant's permanent facility is located in Texas; and

(5) the owner of the property is aware that radioactive material is stored and/or used on the property, if the proposed facility is not owned by the applicant. The applicant shall provide a written statement from the owner or the owner's agent indicating such.

(g) Radiation safety officer.

(1) Every licensee shall establish in writing the authority, duties, and responsibilities of the RSO and ensure that the RSO is provided sufficient authority, organizational freedom, time, resources, and management prerogative to perform the following duties:

(A) establish and oversee operating, safety, emergency, and as low as reasonably achievable (ALARA) procedures, and to review them at least annually to ensure that the procedures are current and conform with this chapter;

(B) ensure that required radiation surveys and leak tests are performed and documented in accordance with this chapter, including any corrective measures when levels of radiation exceed established limits;

(C) ensure that individual monitoring devices are used properly by occupationally-exposed personnel, that records are kept of the monitoring results, and that timely notifications are made in accordance with §289.203 of this title;

(D) investigate and cause a report to be submitted to the agency for each known or suspected case of radiation exposure to an individual or radiation level detected in excess of limits established by this chapter and each theft or loss of source(s) of radiation, to determine the cause(s), and to take steps to prevent a recurrence;

(E) investigate and cause a report to be submitted to the agency for each known or suspected case of release of radioactive material to the environment in excess of limits established by this chapter;

(F) have a thorough knowledge of management policies and administrative procedures of the licensee;

(G) identify radiation safety problems;

(H) assume control and initiate, recommend, or provide corrective actions, including shutdown of operations when necessary, in emergency situations or unsafe conditions;

(I) verify implementation of corrective actions;

(J) ensure that records are maintained as required by this chapter;

(K) ensure the proper storing, labeling, transport, use, and disposal of sources of radiation, storage, and/or transport containers;

(L) ensure that inventories are performed in accordance with the activities for which the license application is submitted;

(M) ensure that personnel are complying with this chapter, the conditions of the license, and the operating, safety, and emergency procedures of the licensee; and

(N) serve as the primary contact with the agency.

(2) The RSO shall ensure that the duties listed in paragraph (1)(A) - (N) of this subsection are performed.

(3) The RSO shall be on site periodically commensurate with the scope of licensed activities to satisfy the requirements of paragraphs (1) and (2) of this subsection.

(4) The RSO, or staff designated by the RSO, shall be capable of physically arriving at the licensee's authorized use site(s) within a reasonable time of being notified of an emergency situation or unsafe condition.

(5) For up to 60 days each calendar year, a licensee may permit an authorized user or an individual qualified to be an RSO to function as a temporary RSO and to perform the duties of an RSO in accordance with paragraph (1) of this subsection, provided the licensee takes the actions required in paragraph (1) of this subsection, and the RSO meets the qualifications in subsection (h) of this section. Records of qualifications and dates of service shall be maintained in accordance with subsection (www) of this section for inspection by the agency.

(h) Training for radiation safety officer. Except as provided in subsection (l) of this section, the licensee shall require the individual fulfilling the responsibilities of an RSO in accordance with subsection (g) of this section for licenses for medical or veterinary use of radioactive material to be an individual who:

(1) is certified by a specialty board whose certification process has been recognized by the agency, the NRC, or an agreement state and who meets the requirements in paragraphs (5) and (6) of this subsection. (The names of board certifications that have been recognized by the agency, the NRC, an agreement state, or licensing state will be posted on the agency's web page, www.dshs.state.tx.us/radiation).

(A) To have its certification process recognized, a specialty board shall require all candidates for certification to:

(i) hold a bachelor's or graduate degree from an accredited college or university in physical science or engineering or biological science with a minimum of 20 college credits in physical science;

(ii) have five or more years of professional experience in health physics (graduate training may be substituted for no more than two years of the required experience) including at least three years in applied health physics; and

(iii) pass an examination, administered by diplomates of the specialty board, which evaluates knowledge and competence in radiation physics and instrumentation, radiation protection, mathematics pertaining to the use and measurement of radioactivity, radiation biology and radiation dosimetry; or

(B) To have its certification process recognized, a specialty board shall require all candidates for certification to:

(i) hold a master's or doctor's degree in physics, medical physics, other physical science, engineering, or applied mathematics from an accredited college or university;

(ii) have two years of full-time practical training and/or supervised experience in medical physics as follows:

(I) under the supervision of a medical physicist who is certified in medical physics by a specialty board recognized by the agency, the NRC, an agreement state; or a licensing state; or

(II) in clinical nuclear medicine facilities providing diagnostic and/or therapeutic services under the direction of physicians who meet the requirements for authorized users in subsections (l), (jj), or (nn) of this section; and

(iii) pass an examination, administered by diplomates of the specialty board, that assesses knowledge and competence in clinical diagnostic radiological or nuclear medicine physics and in radiation safety; or

(2) meets the requirements of paragraphs (5) and (6) of this subsection and has completed a structured educational program consisting of the following:

(A) 200 hours of classroom and laboratory training in the following areas:

(i) radiation physics and instrumentation;

(ii) radiation protection;

(iii) mathematics pertaining to the use and measurement of radioactivity;

(iv) radiation biology; and

(v) radiation dosimetry; and

(B) one year of full-time radiation safety experience under the supervision of the individual identified as the RSO on an agency, NRC, agreement state, or licensing state license or on a permit issued by an NRC master material licensee that authorizes similar type(s) of use(s) of radioactive material involving the following:

(i) shipping, receiving, and performing related radiation surveys;

(ii) using and performing checks for proper operation of dose calibrators, survey meters, and instruments used to measure radionuclides;

(iii) securing and controlling radioactive material;

(iv) using administrative controls to avoid mistakes in the administration of radioactive material;

(v) using procedures to prevent or minimize radioactive contamination and using proper decontamination procedures;

(vi) using emergency procedures to control radioactive material; and

(vii) disposing of radioactive material; or

(3) is a medical physicist who has been certified by a specialty board whose certification process has been recognized by the agency, the NRC, an agreement state, or licensing state in accordance with subsection (j)(1) of this section and has experience in radiation safety for similar types of use of radioactive material for which the licensee is seeking the approval of the individual as RSO and who meets the requirements in paragraphs (5) and (6) of this subsection; or

(4) is an authorized user, authorized medical physicist, or authorized nuclear pharmacist identified on the licensee's license and has experience with the radiation safety aspects of similar types of use of radioactive material for which the individual has RSO responsibilities; and

(5) has obtained written attestation, signed by a preceptor RSO, that the individual has satisfactorily completed the requirements in paragraph (6) of this subsection and in paragraphs (1)(A)(i) and (ii) or (1)(B)(i) and (ii), or (2), (3), or (4) of this subsection, and has achieved a level of radiation safety knowledge sufficient to function independently as an RSO for a medical use licensee; and

(6) has training in the radiation safety, regulatory issues, and emergency procedures for the types of use for which a licensee seeks approval. This training requirement may be satisfied by completing training that is supervised by a RSO, authorized medical physicist, authorized nuclear pharmacist, or authorized user, as appropriate, who is authorized for the type(s) of use for which the licensee is seeking approval.

(i) Radiation safety committee (RSC). Licensees with broad scope authorization and licensees who are authorized for two or more different types of uses of radioactive material in accordance with subsections (kk), (rr), and (ddd) of this section, or two or more types of units under subsection (ddd) of this section shall establish an RSC to oversee all uses of radioactive material permitted by the license.

(1) The RSC for licenses for medical use with broad scope authorization shall be composed of the following individuals as approved by the agency:

(A) authorized users from each type of use of radioactive material authorized on the license;

(B) the RSO;

(C) a representative of nursing service;

(D) a representative of management who is neither an authorized user nor the RSO; and

(E) may include other members as the licensee deems appropriate.

(2) The RSC for licenses for medical and veterinary use authorized for two or more different types of uses of radioactive material in accordance with subsections (kk), (rr), and (ddd) of this section, or two or more types of units in accordance with subsection (ddd) of this section shall be composed of the following individuals as approved by the agency:

(A) an authorized user of each type of use permitted by the license;

(B) the RSO;

(C) a representative of nursing service, if applicable;

(D) a representative of management who is neither an authorized user nor the RSO; and

(E) may include other members as the licensee deems appropriate.

(3) Duties and responsibilities of the RSC.

(A) For licensees without broad scope authorization, the duties and responsibilities of the RSC include, but are not limited to, the following:

(i) meeting as often as necessary to conduct business but no less than three times a year;

(ii) reviewing summaries of the following information presented by the RSO:

(I) over-exposures;

(II) significant incidents, including spills, contamination, or medical events; and

(III) items of non-compliance following an inspection;

(iii) reviewing the program for maintaining doses ALARA, and providing any necessary recommendations to ensure doses are ALARA; and

(iv) reviewing the audit of the radiation safety program and acting upon the findings.

(B) For licensees with broad scope authorization, the duties and responsibilities of the RSC include, but are not limited to, the items in subparagraph (A) of this paragraph and the following:

(i) reviewing the overall compliance status for authorized users;

(ii) sharing responsibility with the RSO to conduct periodic audits of the radiation safety program;

(iii) developing criteria to evaluate training and experience of new authorized user applicants;

(iv) evaluating and approving authorized user applicants who request authorization to use radioactive material at the facility; and

(v) reviewing and approving permitted program and procedural changes prior to implementation.

(4) Records documenting the RSC meetings shall be made and maintained for inspection by the agency in accordance with subsection (www) of this section. The record shall include the date, names of individuals in attendance, minutes of the meeting, and any actions taken.

(j) Training for an authorized medical physicist. Except as provided in subsection (l) of this section, the licensee shall require the authorized medical physicist to be an individual who:

(1) is certified by a specialty board whose certification process has been recognized by the agency, the NRC, an agreement state, or a licensing state and who meets the requirements in paragraphs (2)(C) and (3) of this subsection. (The names of board certifications that have been recognized by the agency, the NRC, an agreement state, or licensing state will be posted on the agency's web page, www.dshs.state.tx.us/radiation). To have its certification process recognized, a specialty board shall require all candidates for certification to meet the following:

(A) hold a master's or doctor's degree in physics, medical physics, other physical science, engineering, or applied mathematics from an accredited college or university;

(B) complete two years of full-time practical training and/or supervised experience in medical physics as follows:

(i) under the supervision of a medical physicist who is certified in medical physics by a specialty board recognized by the agency, NRC, agreement state, or licensing state; or

(ii) in clinical radiation facilities providing high-energy, external beam therapy (photons and electrons with energies greater than or equal to 1 million electron volts) and brachytherapy services under the direction of physicians who meet the requirements for authorized users in subsections (l), (zz) or (tt) of this section; and

(C) pass an examination administered by diplomates of the specialty board that assesses knowledge and competence in clinical radiation therapy, radiation safety, calibration, quality assurance, and treatment planning for external beam therapy, brachytherapy, and stereotactic radiosurgery; or

(2) holds a post graduate degree and experience to include:

(A) a master's or doctor's degree in physics, medical physics, other physical science, engineering, or applied mathematics from an accredited college or university; and

(B) completion of one year of full-time training in medical physics and an additional year of full-time work experience under the supervision of an individual who meets the requirements for an authorized medical physicist for the type(s) of use for which the individual is seeking authorization. This training and work experience shall be conducted in clinical radiation facilities that provide high-energy, external beam therapy (photons and electrons with energies greater than or equal to 1 million electron volts) and brachytherapy services and shall include:

(i) performing sealed source leak tests and inventories;

(ii) performing decay corrections;

(iii) performing full calibration and periodic spot checks of external beam treatment units, stereotactic radiosurgery units, and remote afterloading units as applicable; and

(iv) conducting radiation surveys around external beam treatment units, stereotactic radiosurgery units, and remote afterloading units as applicable; and

(C) has obtained written attestation that the individual has satisfactorily completed the requirements in paragraph (3) of this subsection and paragraphs (1)(A) and (1)(B) or (2)(A) and (2)(B) of this subsection, and has achieved a level of competency sufficient to function independently as an authorized medical physicist for each type of therapeutic medical unit for which the individual is requesting authorized medical physicist status. The written attestation shall be signed by a preceptor authorized medical physicist who meets the requirements in subsection (1) of this section, this subsection, or equivalent NRC or agreement state requirements for an authorized medical physicist for each type of therapeutic medical unit for which the individual is requesting authorized medical physicist status; and

(3) has training for the type(s) of use for which authorization is sought that includes hands-on device operation, safety procedures, clinical use, and the operation of a treatment planning system. This training requirement may be satisfied by satisfactorily completing either a training program provided by the vendor or by training supervised by an authorized medical physicist authorized for the type(s) of use for which the individual is seeking authorization.

(k) Training for an authorized nuclear pharmacist. Except as provided in subsection (l) of this section, the licensee shall require the authorized nuclear pharmacist to be a pharmacist who:

(1) is certified by a specialty board whose certification process has been recognized by the agency, the NRC or an agreement state and who meets the requirements of paragraph (2)(C) of this subsection. (The names of board certifications that have been recognized by the agency, the NRC, an agreement state, or licensing state will be posted on the agency's web page, www.dshs.state.tx.us/radiation). To have its certification process recognized, a specialty board shall require all candidates for certification to:

(A) have graduated from a pharmacy program accredited by the American Council on Pharmaceutical Education (ACPE) or have passed the Foreign Pharmacy Graduate Examination Committee (FPGEC) examination;

(B) hold a current, active license to practice pharmacy in the state of Texas;

(C) provide evidence of having acquired at least 4000 hours of training/experience in nuclear pharmacy practice. Academic training may be substituted for no more than 2000 hours of the required training and experience; and

(D) pass an examination in nuclear pharmacy administered by diplomates of the specialty board, that assesses knowledge and competency in procurement, compounding, quality assurance, dispensing, distribution, health and safety, radiation safety, provision of information and consultation, monitoring patient outcomes, research and development; or

(2) has completed a 700 hour structured educational program including both:

(A) 200 hours of classroom and laboratory training in the following areas:

(i) radiation physics and instrumentation;

(ii) radiation protection;

(iii) mathematics pertaining to the use and measurement of radioactivity;

(iv) chemistry of radioactive material for medical use; and

(v) radiation biology; and

(B) supervised practical experience in a nuclear pharmacy involving the following:

(i) shipping, receiving, and performing related radiation surveys;

(ii) using and performing checks for proper operation of instruments used to determine the activity of dosages, survey meters, and, if appropriate, instruments used to measure alpha- or beta-emitting radionuclides;

(iii) calculating, assaying, and safely preparing dosages for patients or human research subjects;

(iv) using administrative controls to avoid medical events in the administration of radioactive material; and

(v) using procedures to prevent or minimize radioactive contamination and using proper decontamination procedures; and

(C) has obtained written attestation, signed by a preceptor authorized nuclear pharmacist, that the individual has satisfactorily completed the requirements in paragraph (1)(A), (B) and (C) of this subsection or this paragraph and has achieved a level of competency sufficient to function independently as an authorized nuclear pharmacist.

(l) Training for experienced RSO, teletherapy or medical physicist, authorized medical physicist, authorized user, nuclear pharmacist, and authorized nuclear pharmacist.

(1) An individual identified as an RSO, a teletherapy or medical physicist, or a nuclear pharmacist on one of the following before the effective date of this rule need not comply with the training requirements of subsections (h), (j), or (k) of this section, respectively:

(A) an agency, NRC, agreement state, or licensing state license;

(B) a permit issued by an agency, NRC, agreement state, or licensing state licensee with broad scope authorization;

(C) an NRC master material license permit; or

(D) an NRC master material license permit with broad scope authorization.

(2) An individual identified as a physician, dentist, podiatrist or veterinarian authorized for the medical or veterinary use of radioactive material and who performs only those medical or veterinary uses for which they were authorized on one of the following before the effective date of this rule need not comply with the training requirements of subsections (ff) - (tt) of this section:

(A) an agency, NRC, agreement state, or licensing state license;

(B) a permit issued by an agency, NRC, agreement state, or licensing state licensee with broad scope authorization;

(C) an NRC master material license permit; or

(D) an NRC master material license permit with broad scope authorization.

(3) Individuals who need not comply with training requirements in this subsection may serve as preceptors for, and supervisors of, applicants seeking authorization on an agency license for the same uses for which these individuals are authorized.

(m) Recentness of training. The training and experience specified in subsections (h), (j), (k), (l), (ff) - (kk), (rr), (tt), (zz), (aaa), (bbb), and (ddd) of this section for medical and veterinary use shall have been obtained within the seven years preceding the date of application or the

individual shall have had related continuing education and experience since the required training and experience was completed.

(n) Licenses for medical and veterinarian uses of radioactive material without broad scope authorization. In addition to the requirements of subsection (f) of this section, a license for medical and veterinarian use of radioactive material as described in the applicable subsections (ff), (hh), (kk), (rr), (bbb) and (ddd) of this section will be issued if the agency approves the following documentation submitted by the applicant:

(1) that the physician(s) or veterinarian(s) designated on the application as the authorized user(s) is qualified in accordance with subsections (gg), (jj), (nn) - (qq), (zz), (aaa), (ccc) and (ttt) of this section, as applicable;

(2) that the radiation detection and measuring instrumentation is appropriate for performing surveys and procedures for the uses involved;

(3) that the radiation safety operating procedures are adequate for the handling and disposal of the radioactive material involved in the uses; and

(4) that an RSC has been established in accordance with subsection (i)(2) of this section, if applicable.

(o) License for medical and veterinary uses of radioactive material with broad scope authorization. In addition to the requirements of subsection (f) of this section, a license for medical use of radioactive material with broad scope authorization will be issued if the agency approves the following documentation submitted by the applicant:

(1) that the review of authorized user qualifications by the RSC is in accordance with subsections (gg), (jj), (nn) - (qq), (zz), (aaa), (ccc) and (ttt) of this section, as applicable;

(2) that the application is for a license authorizing unspecified forms and/or multiple types of radioactive material for medical research, diagnosis, and therapy;

(3) that the radiation detection and measuring instrumentation is appropriate for performing surveys and procedures for the uses involved;

(4) that the radiation safety operating procedures are adequate for the handling and disposal of the radioactive material involved in the uses;

(5) that staff has substantial experience in the use of a variety of radioactive material for a variety of human and animal uses;

(6) that the full-time RSO meets the requirements of subsection (h)(2) of this section; and

(7) that an RSC has been established in accordance with subsection (i)(1) of this section.

(p) License for the use of remote control brachytherapy units, teletherapy units, or gamma stereotactic radiosurgery units. In addition to the requirements of subsection (f) of this section, a license for the use of remote control brachytherapy (RCB) units, teletherapy units, or gamma stereotactic radiosurgery units will be issued if the agency approves the following documentation submitted by the applicant:

(1) that the physician(s) designated on the application as the authorized user(s) is qualified in accordance with subsection (tt) of this section;

(2) that the radiation detection and measuring instrumentation is appropriate for performing surveys and procedures for the uses involved;

(3) that the radiation safety operating procedures are adequate for the handling and disposal of the radioactive material involved in the uses;

(4) of the radioactive isotopes to be possessed;

(5) of the sealed source manufacturer(s) name(s) and the model number(s) of the sealed source(s) to be installed;

(6) of the maximum number of sealed sources of each isotope to be possessed, including the activity of each sealed source;

(7) of the manufacturer and model name and/or number of the following units, as applicable:

(A) RCB unit;

(B) teletherapy unit; or

(C) gamma stereotactic radiosurgery unit;

(8) that the authorized medical physicist designated on the application is qualified in accordance with subsection (j) of this section;

(9) of the successful completion of unit-specific, manufacturer-provided training that includes standard clinical and emergency procedures for remote control brachytherapy and gamma stereotactic radiosurgery units for the following personnel:

(A) authorized medical physicist of this section;

(B) technologists; and

(C) authorized user;

(10) of the safety procedures and instructions as required by subsection (ggg) of this section;

(11) of the spot check procedures as required by subsections (lll) - (nnn) of this section, as applicable; and

(12) that an RSC has been established in accordance with subsection (i)(1) or (2) of this section if applicable.

(q) License for other medical or veterinary uses of radioactive material or a radiation source approved for medical or veterinary use that is not specifically addressed in this section. A licensee may use radioactive material or a radiation source approved for medical use which is not specifically addressed in this section if the requirements of subsection (f) of this section have been met, the applicant or licensee has received written approval from the agency in a license or license amendment and the licensee uses the material in accordance with the regulations and specific conditions the agency considers necessary for the medical use of the material.

(r) Amendment of licenses at request of licensee.

(1) Requests for amendment of a license or deletion of an authorized use site shall be filed in accordance with §289.252(aa) of this title.

(2) A licensee without broad-scope authorization shall apply for and shall receive a license amendment prior to the following:

(A) receiving or using radioactive material for a type of use that is authorized in accordance with under this section, but is not authorized on their current license issued in accordance with this section;

(B) permitting anyone to work as an authorized user, authorized nuclear pharmacist or authorized medical physicist under the license;

(C) changing RSOs, except as provided in subsection (g)(5) of this section;

(D) receiving radioactive material in excess of the amount or in a different form, or receiving a different radionuclide than is authorized on the license;

(E) adding or changing the areas in which radioactive material is used or stored and are identified in the application or on the license;

(F) changing the address(es) of use identified in the application or on the license; and

(G) changing operating, safety, and emergency procedures.

(3) A licensee with broad-scope authorization shall apply for and shall receive a license amendment prior to taking actions specified in paragraph (2)(A), (C), (D), (F) and (G) of this subsection.

(s) Supervision. A licensee may permit the receipt, possession, use, or transfer of radioactive material by an individual under the supervision of an authorized user, unless prohibited by license condition.

(1) A licensee who permits the receipt, possession, use, or transfer of radioactive material by an individual under the supervision of an authorized user shall do the following:

(A) instruct the supervised individual in the licensee's written operating, safety, and emergency procedures, written directive procedures, requirements of this chapter, and license conditions with respect to the use of radioactive material; and

(B) require the supervised individual to follow the instructions of the supervising authorized user for medical uses of radioactive material, written operating, safety, and emergency procedures established by the licensee, written directive procedures, requirements of this chapter, and license conditions with respect to the medical use of radioactive material.

(2) A licensee who permits the preparation of radioactive material for medical use by an individual under the supervision of an authorized nuclear pharmacist or authorized user, shall do the following:

(A) instruct the supervised individual in the preparation of radioactive material for medical use, as appropriate to that individual's involvement with radioactive material; and

(B) require the supervised individual to follow the instructions of the supervising authorized user or authorized nuclear pharmacist regarding the preparation of radioactive material for medical use, the written operating, safety, and emergency procedures established by the licensee, the requirements of this chapter, and license conditions.

(3) A licensee who permits supervised activities in accordance with paragraphs (1) and (2) of this subsection is responsible for the acts and omissions of the supervised individual.

(4) Only an authorized user may authorize the medical use of radioactive material.

(t) Written directives.

(1) A written directive shall be dated and signed by an authorized user prior to any administration of sodium iodide I-131 greater than 30 microcuries (μCi) (1.11 megabecquerels (MBq)), administration of any therapeutic dosage of unsealed radioactive material, or administration of any therapeutic dose of radiation from radioactive material.

(A) A written revision to an existing written directive may be made provided that the revision is dated and signed by an au-

thorized user prior to the administration of the dosage of unsealed radioactive material, the brachytherapy dose, the gamma stereotactic radiosurgery dose, the teletherapy dose, or the next fractional dose.

(B) If, because of the emergent nature of the patient's condition, a delay in order to provide a written directive or to revise a written directive would jeopardize the patient's health, an oral directive or an oral revision to an existing written directive is acceptable. The information contained in the oral directive or oral revision shall be documented in writing as soon as possible in the patient's record. A written directive or revised written directive shall be prepared and signed by the authorized user within 48 hours of the oral directive or oral revision.

(2) The written directive shall contain the patient or human research subject's name and the following information for each application.

(A) For any administration of quantities greater than 30 μCi (1.11 MBq) of sodium iodide I-131, the dosage.

(B) For an administration of a therapeutic dosage of a radiopharmaceutical other than sodium iodide I-131:

- (i) the radiopharmaceutical;
- (ii) the dosage; and
- (iii) route of administration.

(C) For gamma stereotactic radiosurgery:

- (i) the total dose;
- (ii) the treatment site; and
- (iii) the values for the target coordinate settings per treatment for each anatomically distinct treatment site.

(D) For teletherapy:

- (i) the total dose;
- (ii) dose per fraction;
- (iii) number of fractions; and
- (iv) treatment site.

(E) For high-dose rate remote afterloading brachytherapy:

- (i) the radionuclide;
- (ii) treatment site;
- (iii) dose per fraction;
- (iv) number of fractions; and
- (v) total dose.

(F) For all other brachytherapy, including low, medium, and pulsed rate afterloaders:

(i) prior to implantation:

- (I) treatment site;
- (II) the radionuclide; and
- (III) dose;

(ii) after implantation but prior to completion of the

procedure:

- (I) the radionuclide;
- (II) treatment site;

- (III) number of sealed sources;
- (IV) total sealed source strength; and
- (V) exposure time or, the total dose.

(3) The licensee shall retain the written directive in accordance with subsection (www) of this section for inspection by the agency.

(4) Procedures for administrations requiring a written directive.

(A) For any administration requiring a written directive, the licensee shall develop, implement, and maintain written procedures to ensure that:

(i) the patient's or human research subject's identity is verified before each administration; and

(ii) each administration is in accordance with the written directive.

(B) The procedures required by subparagraph (A) of this paragraph shall, at a minimum, address the following items that are applicable for the licensee's use of radioactive material:

(i) verifying the identity of the patient or human research subject;

(ii) verifying that the administration is in accordance with the treatment plan, if applicable, and the written directive;

(iii) checking both manual and computer-generated dose calculations; and

(iv) verifying that any computer-generated dose calculations are correctly transferred into the consoles of therapeutic medical units authorized by subsection (dd) of this section.

(C) A licensee shall maintain a copy of the procedures required by subparagraph (A) of this paragraph in accordance with subsection (www) of this section.

(u) Suppliers for sealed sources or devices for medical use. A licensee may only use the following for medical use:

(1) sealed sources or devices manufactured, labeled, packaged, and distributed in accordance with a license issued by the agency, NRC, an agreement state, or licensing state;

(2) sealed sources or devices non-commercially transferred from an NRC or agreement state medical use licensee; or

(3) teletherapy sources manufactured and distributed in accordance with a license issued by the agency, NRC, an agreement state, or licensing state.

(v) Possession, use, and calibration of dose calibrators to measure the activity of unsealed radioactive material.

(1) For direct measurements performed in accordance with subsection (x) of this section, the licensee shall possess and use instrumentation to measure the activity of unsealed radioactive material before it is administered to each patient or human research subject.

(2) The licensee shall calibrate the instrumentation specified in paragraph (1) of this subsection in accordance with nationally recognized standards or the manufacturer's instructions.

(3) The calibration required by paragraph (2) of this subsection shall include tests for constancy, accuracy, linearity, and geometry dependence, as appropriate to demonstrate proper operation of the instrument. The tests for constancy, accuracy, linearity, and geometry dependence shall be conducted at the following intervals:

(A) constancy at least once each day prior to assay of patient dosages;

(B) linearity at installation, repair, relocation, and at least quarterly thereafter;

(C) geometry dependence at installation; and

(D) accuracy at installation and at least annually thereafter.

(4) The licensee shall maintain a record of each instrument calibration in accordance with subsection (www) of this section. The record shall include the following:

(A) model and serial number of the instrument and calibration sources;

(B) date of the calibration;

(C) results of the calibration; and

(D) name of the individual who performed the calibration.

(w) Calibration of survey instruments. A licensee shall calibrate the survey instruments used to show compliance with this subsection and with §289.202 of this title before first use, annually, and following a repair that affects the calibration. A licensee shall:

(1) calibrate all scales with readings up to 10 millisieverts (mSv) (1000 millirem (mrem)) per hour with a radiation source;

(2) calibrate two separated readings on each scale or decade that will be used to show compliance;

(3) conspicuously note on the instrument the date of calibration;

(4) not use survey instruments if the difference between the indicated exposure rate and the calculated exposure rate is more than 20%; and

(5) maintain a record of each survey instrument calibration in accordance with subsection (www) of this section.

(x) Determination of dosages of unsealed radioactive material for medical use.

(1) Before medical use, the licensee shall determine and record the activity of each dosage.

(2) For a unit dosage, this determination shall be made by:

(A) direct measurement of radioactivity; or

(B) a decay correction, based on the activity or activity concentration determined by the following:

(i) a manufacturer or preparer licensed in accordance with §289.252(r) of this title, or under an equivalent NRC, agreement state, or licensing state license;

(ii) an NRC or agreement state licensee for use in research in accordance with a Radioactive Drug Research Committee-approved protocol or an Investigational New Drug (IND) protocol accepted by the U.S. Food and Drug Administration (FDA); or

(iii) a PET radioactive drug producer licensed in accordance with §289.252(kk) of this title or equivalent NRC or agreement state requirements.

(3) For other than unit dosages, this determination shall be made by:

(A) direct measurement of radioactivity;

(B) combination of measurement of radioactivity and mathematical calculations; or

(C) combination of volumetric measurements and mathematical calculations, based on the measurement made by:

(i) a manufacturer or preparer licensed in accordance with §289.252(r) of this title, or under an equivalent NRC, agreement state, or licensing state license; or

(ii) a PET radioactive drug producer licensed in accordance with §289.252(kk) of this title or equivalent NRC or agreement state requirements.

(4) Unless otherwise directed by the authorized user, a licensee shall not use a dosage if the dosage does not fall within the prescribed dosage range or if the dosage differs from the prescribed dosage by more than 20%.

(5) A licensee shall maintain a record of the dosage determination required by this subsection in accordance with subsection (www) of this section for inspection by the agency. The record shall contain the following:

(A) the radiopharmaceutical;

(B) patient's or human research subject's name or identification number if one has been assigned;

(C) prescribed dosage;

(D) determined dosage or a notation that the total activity is less than 30 μCi (1.1 MBq);

(E) the date and time of the dosage determination; and

(F) the name of the individual who determined the dosage.

(y) Authorization for calibration and reference sources. Any licensee authorized by subsections (n), (o), (p) or (q) of this section for medical use of radioactive material may receive, possess, and use the following radioactive material for check, calibration, and reference use:

(1) sealed sources manufactured and distributed in accordance with a license issued by the agency, NRC, or another agreement state and that do not exceed 30 millicuries (mCi) (1.11 gigabecquerel (GBq)) each;

(2) sealed sources redistributed by a licensee authorized to redistribute the sealed sources manufactured and distributed in accordance with a license issued by the agency, NRC, or another agreement state and that do not exceed 30 mCi (1.11GBq) each, provided the redistributed sealed sources are in the original packaging and shielding and are accompanied by the manufacturer's approved instructions;

(3) any radioactive material with a half-life not longer than 120 days in individual amounts not to exceed 15 mCi (0.56 GBq);

(4) any radioactive material with a half-life longer than 120 days in individual amounts not to exceed the smaller of 200 μCi (7.4 MBq) or 1000 times the quantities in §289.202(qq)(3) of this title; and

(5) technetium-99m in amounts as needed.

(z) Requirements for possession of sealed sources and brachytherapy sealed sources. A licensee in possession of any sealed source or brachytherapy source shall:

(1) follow the radiation safety and handling instructions supplied by the manufacturer and the leakage test requirements in accordance with §289.201(g) of this title and reporting requirements in §289.202(bbb) of this title; and

(2) conduct a physical inventory at intervals not to exceed six months to account for all sealed sources in its possession. Records of the inventory shall be made and maintained for inspection by the agency in accordance with subsection (www) of this section and shall include the following:

(A) model number of each source and serial number if one has been assigned;

(B) identity of each source and its nominal activity;

(C) location of each source;

(D) date of the inventory; and

(E) identification of the individual who performed the inventory.

(aa) Labeling of vials and syringes. Each syringe and vial that contains a radiopharmaceutical shall be labeled to identify the radioactive drug. Each syringe shield and vial shield shall also be labeled unless the label on the syringe or vial is visible when shielded.

(bb) Surveys for ambient radiation exposure rate.

(1) In addition to the requirements of §289.202(p) of this title and except as provided in paragraph (2) of this subsection, a licensee shall survey with a radiation detection survey instrument at the end of each day of use all areas where radioactive material requiring a written directive was prepared for use or administered.

(2) A licensee does not need to perform the surveys required by paragraph (1) of this subsection in an area(s) where patients or human research subjects are confined when they cannot be released in accordance with subsection (cc) of this section or an animal that is confined. Once the patient or human or animal research subject is released from confinement, the licensee shall survey with a radiation survey instrument, the area in which the patient or human or animal research subject was confined.

(3) A record of each survey shall be retained in accordance with subsection (www) of this section for inspection by the agency. The record shall include the following:

(A) date of the survey;

(B) results of the survey;

(C) manufacturer's name, model, and serial number of the instrument used to make the survey; and

(D) name of the individual who performed the survey.

(cc) Release of individuals containing radioactive drugs or implants containing radioactive material.

(1) The licensee may authorize the release from its control any individual who has been administered radioactive drugs or implants containing radioactive material if the total effective dose equivalent (TEDE) to any other individual from exposure to the released individual is not likely to exceed 0.5 rem (5 mSv). Patients treated with temporary eye plaques may be released from the hospital provided that the procedures ensure that the exposure rate from the patient is less than 5 mr per hour at a distance of 1 meter from the eye plaque location.

(2) The licensee shall provide the released individual, or the individual's parent or guardian, with written instructions on actions recommended to maintain doses to other individuals ALARA if the TEDE to any other individual is likely to exceed 0.1 rem (1 mSv). If the TEDE to a nursing infant or child could exceed 0.1 rem (1 mSv), assuming there was no interruption of breast-feeding, the instructions shall also include the following:

(A) guidance on the interruption or discontinuation of breast-feeding; and

(B) information on the potential consequences, if any, of failure to follow the guidance.

(3) The licensee shall maintain for inspection by the agency, a record in accordance with subsection (www) of this section of each patient released in accordance with paragraph (1) of this subsection. The record shall include the following:

(A) the basis for authorizing the release of an individual; and

(B) the instructions provided to a breast-feeding woman, if the radiation dose to the infant or child from continued breast-feeding could result in a TEDE exceeding 0.5 rem (5 mSv).

(dd) Mobile nuclear medicine service. A license for a mobile nuclear medicine service for medical or veterinary use of radioactive material will be issued if the agency approves the documentation submitted by the applicant in accordance with the requirements of subsections (f) and (n) of this section. The clients of the mobile nuclear medicine service shall be licensed if the client receives or possesses radioactive material to be used by the mobile nuclear medicine service.

(1) A licensee providing mobile nuclear medicine service shall:

(A) obtain a letter signed by the management of each client for which services are rendered that permits the use of radioactive material at the client's address and clearly delineates the authority and responsibility of the licensee and the client;

(B) check instruments used to measure the activity of unsealed radioactive material for proper function before medical or veterinary use at each client's address or on each day of use, whichever is more frequent. At a minimum, the check for proper function required by this subparagraph shall include a constancy check;

(C) have at least one fixed facility where records may be maintained and radioactive material may be delivered by manufacturers or distributors each day prior to the mobile nuclear medicine licensee dispatching its vans to client sites;

(D) agree to have an authorized physician user directly supervise each technologist at a reasonable frequency;

(E) check survey instruments for proper operation with a dedicated check source before use at each client's address; and

(F) before leaving a client's address, survey all areas of use to ensure compliance with the requirements of §289.202 of this title.

(2) A mobile nuclear medicine service shall not have radioactive material delivered from the manufacturer or the distributor to the client unless the client has a license allowing possession of the radioactive material. Radioactive material delivered to the client shall be received and handled in conformance with the client's license.

(3) A licensee providing mobile nuclear medicine services shall maintain records, for inspection by the agency, in accordance with subsection (www) of this section including the letter required in paragraph (1)(A) of this subsection and the record of each survey required in paragraph (1)(F) of this subsection.

(ee) Decay-in-storage.

(1) The licensee may hold radioactive material with a physical half-life of less than or equal to 120 days for decay-in-storage and

dispose of it without regard to its radioactivity if the licensee does the following:

(A) monitors radioactive material at the surface before disposal and determines that its radioactivity cannot be distinguished from the background radiation level with an appropriate radiation detection survey meter set on its most sensitive scale and with no interposed shielding; and

(B) removes or obliterates all radiation labels, except for radiation labels on materials that are within containers and that will be handled as biomedical waste after it has been released from the licensee.

(2) The licensee shall retain a record of each disposal as required by paragraph (1) of this subsection in accordance with subsection (www) of this section for inspection by the agency. The record shall include the following:

(A) date of the disposal;

(B) manufacturer's name, model number and serial number of the survey instrument used;

(C) background radiation level;

(D) radiation level measured at the surface of each waste container; and

(E) name of the individual who performed the survey.

(ff) Use of unsealed radioactive material for uptake, dilution, and excretion studies that do not require a written directive. Except for quantities that require a written directive in accordance with subsection (t) of this section, a licensee may use any unsealed radioactive material prepared for medical or veterinary use for uptake, dilution, or excretion studies that meets the following:

(1) is obtained from:

(A) a manufacturer or preparer licensed in accordance with §289.252 of this title or equivalent NRC, agreement state, or licensing state requirements; or

(B) a PET radioactive drug producer licensed in accordance with §289.252(kk) of this title or equivalent NRC, agreement state, or licensing state requirements; or

(2) excluding production of PET radionuclides, prepared by:

(A) an authorized nuclear pharmacist; or

(B) a physician who is an authorized user and who meets the requirements specified in subsections (jj) or (nn) and (jj)(1)(C)(ii)(VII) of this section; or

(C) an individual under the supervision, as specified in subsection (s) of this section, of the authorized nuclear pharmacist or the physician who is an authorized user in subparagraphs (A) and (B) of this paragraph; or

(3) is obtained from and prepared by an NRC, agreement state, or licensing state licensee for use in research in accordance with a Radioactive Drug Research Committee-approved protocol or an IND protocol accepted by the FDA; or

(4) is prepared by the licensee for use in research in accordance with a Radioactive Drug Research Committee-approved application or an IND protocol accepted by the FDA.

(gg) Training for uptake, dilution, and excretion studies. Except as provided in subsection (l) of this section, the licensee shall re-

quire an authorized user of unsealed radioactive material for the uses authorized in subsection (ff) of this section to be a physician who:

(1) is certified by a medical specialty board whose certification process has been recognized by the agency, the NRC or an agreement state and who meets the requirements in paragraph (3)(C) of this subsection. (The names of board certifications that have been recognized by the agency, the NRC, an agreement state, or licensing state will be posted on the agency's web page, www.dshs.state.tx.us/radiation). To have its certification recognized, a specialty board shall require all candidates for certification to:

(A) complete 60 hours of training and experience in basic radionuclide handling techniques and radiation safety applicable to the medical use of unsealed radioactive material for uptake, dilution, and excretion studies that includes the topics listed in paragraph (3)(A) and (B) of this subsection; and

(B) pass an examination, administered by diplomates of the specialty board, that assesses knowledge and competence in radiation safety, radionuclide handling, and quality control; or

(2) is an authorized user in accordance with subsections (jj) or (nn) of this section or equivalent NRC or agreement state requirements; or

(3) has completed 60 hours of training and experience, including a minimum of eight hours of classroom and laboratory training, in basic radionuclide handling techniques applicable to the medical use of unsealed radioactive material for uptake, dilution, and excretion studies. The training and experience shall include the following:

(A) Classroom and laboratory training in the following areas:

(i) radiation physics and instrumentation;

(ii) radiation protection;

(iii) mathematics pertaining to the use and measurement of radioactivity;

(iv) chemistry of radioactive material for medical use; and

(v) radiation biology.

(B) Work experience, under the supervision of an authorized user who meets the requirements of this subsection, subsections (l), (jj), or (nn) of this section, or equivalent NRC or agreement state requirements involving the following:

(i) ordering, receiving, and unpacking radioactive materials safely and performing the related radiation surveys;

(ii) performing quality control procedures on instruments used to determine the activity of dosages and performing checks for proper operation of survey meters;

(iii) calculating, measuring, and safely preparing patient or human research subject dosages;

(iv) using administrative controls to prevent a medical event involving the use of unsealed radioactive material;

(v) using procedures to contain spilled radioactive material safely and using proper decontamination procedures; and

(vi) administering dosages of radioactive drugs to patients or human research subjects; and

(C) Written attestation, signed by a preceptor authorized user who meets the requirements of this subsection, subsections (l), (jj), or (nn) of this section, or equivalent NRC or agreement state

requirements, that the individual has satisfactorily completed the requirements of paragraph (1)(A) or (3) of this subsection and has achieved a level of competency sufficient to function independently as an authorized user for the medical uses authorized in accordance with subsection (ff) of this section.

(hh) Use of unsealed radioactive material for imaging and localization studies that do not require a written directive. Except for quantities that require a written directive in accordance with subsection (t) of this section, a licensee may use any unsealed radioactive material prepared for medical or veterinary use for imaging and localization studies that meets the following:

(1) is obtained from:

(A) a manufacturer or preparer licensed in accordance with §289.252 of this title or equivalent NRC, agreement state, or licensing state requirements; or

(B) A PET radioactive drug producer licensed in accordance with §289.252(kk) of this title or equivalent NRC, agreement state, or licensing state requirements; or

(2) excluding production of PET radionuclides, prepared by:

(A) an authorized nuclear pharmacist; or

(B) a physician who is an authorized user and who meets the requirements specified in subsections (jj) or (nn) and (jj)(1)(C)(ii)(VII) of this section; or

(C) an individual under the supervision, as specified in subsection (s) of this section, of an authorized nuclear pharmacist or an authorized user in subparagraphs (A) and (B) of this paragraph; or

(3) is obtained from and prepared by an NRC, agreement state, or licensing state licensee for use in research in accordance with a Radioactive Drug Research Committee-approved protocol or an IND protocol accepted by the FDA; or

(4) is prepared by the licensee for use in research in accordance with a Radioactive Drug Research Committee-approved application or an IND protocol accepted by the FDA.

(ii) Permissible molybdenum-99, strontium-82, and strontium-85 concentrations.

(1) The licensee may not administer to humans a radiopharmaceutical that contains:

(A) more than 0.15 μCi of molybdenum-99 per millicurie of technetium-99m (0.15 kilobecquerel of molybdenum-99 per megabecquerel of technetium-99m); or

(B) more than 0.02 μCi of strontium-82 per mCi of rubidium-82 chloride (0.02 kilobecquerel of strontium-82 per megabecquerel of rubidium-82 chloride) injection; or

(C) more than 0.2 μCi of strontium-85 per mCi of rubidium-82 (0.2 kilobecquerel of strontium-85 per megabecquerel of rubidium-82 chloride) injection.

(2) The licensee who uses molybdenum-99/technetium-99m generators for preparing a technetium-99m radiopharmaceutical shall measure the molybdenum-99 concentration of the first eluate after receipt of a generator to demonstrate compliance with paragraph (1) of this subsection.

(3) The licensee who uses a strontium-82/rubidium-82 generator for preparing a rubidium-82 radiopharmaceutical shall, before the first patient use of the day, measure the concentration of ra-

dionuclides strontium-82 and strontium-85 to demonstrate compliance with paragraph (1) of this subsection.

(4) If the licensee is required to measure the molybdenum-99 or strontium-82 and strontium-85 concentrations, the licensee shall retain a record of each measurement in accordance with subsection (www) of this section for inspection by the agency. The record shall include the following:

(A) for each measured elution of technetium-99m:

(i) the ratio of the measures expressed as microcuries of molybdenum-99 per millicurie of technetium-99m (kilobecquerel of molybdenum-99 per megabecquerel of technetium-99m);

(ii) time and date of the measurement; and

(iii) name of the individual who made the measurement.

(B) for each measured elution of rubidium-82:

(i) the ratio of the measures expressed as μCi of strontium-82 per mCi of rubidium (kilobecquerel of strontium-82 per megabecquerel of rubidium-82);

(ii) the ratio of the measures expressed as μCi of strontium-85 per mCi of rubidium (kilobecquerel of strontium-85 per megabecquerel of rubidium-82);

(iii) time and date of the measurement; and

(iv) name of the individual who made the measurement.

(jj) Training for imaging and localization studies.

(1) Except as provided in subsection (1) of this section, the licensee shall require an authorized user of unsealed radioactive material for the uses authorized in subsection (hh) of this section to be a physician who:

(A) is certified by a medical specialty board whose certification process has been recognized by the agency, the NRC or an agreement state and who meets the requirements of subparagraph (C)(iii) of this paragraph. (The names of board certifications that have been recognized by the agency, the NRC, an agreement state, or licensing state will be posted on the agency's web page, www.dshs.state.tx.us/radiation). To have its certification process recognized, a specialty board shall require all candidates for certification to:

(i) complete 700 hours of training and experience in basic radionuclide handling techniques and radiation safety applicable to the medical use of unsealed radioactive material for imaging and localization studies that includes the topics listed in subparagraph (C) of this paragraph; and

(ii) pass an examination, administered by diplomates of the specialty board, that assesses knowledge and competence in radiation safety, radionuclide handling, and quality control; or

(B) is an authorized user in accordance with subsection (nn) of this section and meets the requirements of subparagraph (C)(ii)(VII) of this paragraph or equivalent NRC or agreement state requirements; or

(C) has completed 700 hours of training and experience, including a minimum of 80 hours of classroom and laboratory training, in basic radionuclide handling techniques applicable to the medical use of unsealed radioactive material for imaging and localization studies. The training and experience shall include the following.

(i) Classroom and laboratory training in the following areas:

(I) radiation physics and instrumentation;

(II) radiation protection;

(III) mathematics pertaining to the use and measurement of radioactivity;

(IV) chemistry of radioactive material for medical use; and

(V) radiation biology.

(ii) Work experience under the supervision of an authorized user who meets the requirements in subsection (1) of this section, this subsection, or subclause (VII) of this clause, and subsection (nn) of this section, or equivalent NRC or agreement state requirements involving the following:

(I) ordering, receiving, and unpacking radioactive materials safely and performing the related radiation surveys;

(II) performing quality control procedures on instruments used to determine the activity of dosages and performing checks for proper operation of survey meters;

(III) calculating, measuring, and safely preparing patient or human research subject dosages;

(IV) using administrative controls to prevent a medical event involving the use of unsealed radioactive material;

(V) using procedures to contain spilled radioactive material safely and using proper decontamination procedures;

(VI) administering dosages of radioactive drugs to patients or human research subjects; and

(VII) eluting generator systems appropriate for preparation of radioactive drugs for imaging and localization studies, measuring and testing the eluate for radionuclide purity, and processing the eluate with reagent kits to prepare labeled radioactive drugs; and

(iii) Written attestation, signed by a preceptor authorized user who meets the requirements of subsection (1) of this section, this subsection or subparagraph (C)(ii)(VII) of this paragraph and subsection (nn) of this section or equivalent NRC or agreement state requirements, that the individual has satisfactorily completed the requirements of subparagraph (A)(i) or (C)(i) and (ii) of this paragraph and has achieved a level of competency sufficient to function independently as an authorized user for the medical uses authorized in accordance with subsections (ff) and (hh) of this section.

(2) In addition to the training and experience requirements of paragraph (1) of this subsection, for the use of positron emission tomography (PET) radionuclides, the licensee shall require that the authorized user has:

(A) completed 24 hours of work experience specific to the use of PET radionuclides consistent with paragraph (1)(C)(ii)(I) - (VI) of this subsection; and

(B) a written attestation statement specific to the use of PET radionuclides for diagnostic imaging.

(kk) Use of unsealed radioactive material that requires a written directive. A licensee may use any unsealed radioactive material prepared for medical use that requires a written directive that meets the following:

(1) is obtained from:

(A) a manufacturer or preparer licensed in accordance with §289.252 of this title or equivalent NRC, agreement state, or licensing state requirements;

(B) A PET radioactive drug producer licensed in accordance with §289.252(kk) of this title or equivalent NRC or agreement state requirements; or

(2) excluding production of PET radionuclides, prepared by:

(A) an authorized nuclear pharmacist; or

(B) a physician who is an authorized user and who meets the requirements specified in subsections (jj) or (nn) of this section; or

(C) an individual under the supervision, as specified in subsection (s) of this section, of the authorized nuclear pharmacist or the physician who is an authorized user in subparagraphs (A) and (B) of this paragraph; or

(3) is obtained from and prepared by an NRC, agreement state, or licensing state licensee for use in research in accordance with an IND protocol accepted by the FDA; or

(4) is prepared by the licensee for use in research in accordance with an IND protocol accepted by the FDA.

(II) Safety instruction to personnel.

(1) The licensee shall provide radiation safety instruction, initially and at least annually, to personnel caring for patients or human or animal research subjects who cannot be released in accordance with subsection (cc) of this section. The instruction shall be appropriate to the personnel's assigned duties and include the following:

(A) patient or human or animal research subject control; and

(B) visitor control to include the following:

(i) routine visitation to hospitalized individuals or animals in accordance with §289.202(n) of this title;

(ii) contamination control;

(iii) waste control; and

(iv) notification of the RSO, or his or her designee, and an authorized user if the patient or the human or animal research subject has a medical emergency or dies.

(2) The licensee shall maintain a record for inspection by the agency, in accordance with subsection (www) of this section, of individuals receiving instruction. The record shall include the following:

(A) list of the topics covered;

(B) date of the instruction or training;

(C) name(s) of the attendee(s); and

(D) name(s) of the individual(s) who provided the instruction.

(mm) Safety precautions. For each human patient or human research subject who cannot be released in accordance with subsection (cc) of this section, the licensee shall do the following:

(1) provide a private room with a private sanitary facility; or

(2) provide a room with a private sanitary facility with another individual who also has received therapy with an unsealed ra-

dioactive material and who also cannot be released in accordance with subsection (cc) of this section;

(3) post the patient's or the research subject's room with a "Radioactive Materials" sign and note on the door and in the patient's or research subject's chart where and how long visitors may stay in the patient's or the research subject's room; and

(4) either monitor material and items removed from the patient's or the research subject's room to determine that their radioactivity cannot be distinguished from the natural background radiation level with a radiation detection survey instrument set on its most sensitive scale and with no interposed shielding, or handle such material and items as radioactive waste; and

(5) notify the RSO, or his or her designee, and the authorized user immediately if the patient or research subject has a medical emergency or dies.

(nn) Training for use of unsealed radioactive material that requires a written directive. Except as provided in subsection (l) of this section, the licensee shall require an authorized user of unsealed radioactive material for the uses authorized in subsection (kk) of this section to be a physician who:

(1) is certified by a medical specialty board whose certification process has been recognized by the agency, the NRC, an agreement state, or licensing state and who meets the requirements in paragraph (2)(B)(vi) and (C) this subsection. (Specialty boards whose certification processes have been recognized by the agency, the NRC, an agreement state, or licensing state will be posted on the agency's webpage, www.dshs.state.tx.us/radiation). To be recognized, a specialty board shall require all candidates for certification to:

(A) successfully complete residency training in a radiation therapy or nuclear medicine training program or a program in a related medical specialty. These residency training programs shall include 700 hours of training and experience as described in paragraph (2)(A) - (B)(v) of this subsection. Eligible training programs shall be approved by the Residency Review Committee of the Accreditation Council for Graduate Medical Education, the Royal College of Physicians and Surgeons of Canada, or the Committee on Post-Graduate Training of the American Osteopathic Association; and

(B) pass an examination, administered by diplomates of the specialty board, which tests knowledge and competence in radiation safety, radionuclide handling, quality assurance, and clinical use of unsealed radioactive material for which a written directive is required; or

(2) has completed 700 hours of training and experience, including a minimum of 200 hours of classroom and laboratory training, in basic radionuclide handling techniques applicable to the medical use of unsealed radioactive material requiring a written directive. The training and experience shall include the following.

(A) Classroom and laboratory training in the following areas:

(i) radiation physics and instrumentation;

(ii) radiation protection;

(iii) mathematics pertaining to the use and measurement of radioactivity;

(iv) chemistry of radioactive material for medical use; and

(v) radiation biology.

(B) Work experience, under the supervision of an authorized user who meets the requirements of subsection (l) of this section, this subsection or equivalent NRC or agreement state requirements. A supervising authorized user, who meets the requirements of this paragraph shall also have experience in administering dosages in the same dosage category or categories (for example, in accordance with clause (vi) of this subparagraph) as the individual requesting authorized user status. The work experience shall involve the following:

(i) ordering, receiving, and unpacking radioactive materials safely and performing the related radiation surveys;

(ii) performing quality control procedures on instruments used to determine the activity of dosages and performing checks for proper operation of survey meters;

(iii) calculating, measuring, and safely preparing patient or human research subject dosages;

(iv) using administrative controls to prevent a medical event involving the use of unsealed radioactive material;

(v) using procedures to contain spilled radioactive material safely and using proper decontamination procedures; and

(vi) administering dosages of radioactive drugs to patients or human research subjects involving a minimum of three cases in each of the following categories for which the individual is requesting authorized user status:

(I) oral administration of less than or equal to 33 mCi (1.22 GBq) of sodium iodide I-131, for which a written directive is required;

(II) oral administration of greater than 33 mCi (1.22 GBq) of sodium iodide I-131 (experience with at least three cases in this subclause also satisfies the requirement of subclause (I) of this clause);

(III) parenteral administration of any beta emitter or a photon-emitting radionuclide with a photon energy less than 150 kiloelectron volts (keV) for which a written directive is required; and/or

(IV) parenteral administration of any other radionuclide for which a written directive is required; and

(C) Written attestation that the individual has satisfactorily completed the requirements of paragraphs (1)(A) and (2)(B)(vi) or (2) of this subsection, and has achieved a level of competency sufficient to function independently as an authorized user for the medical uses authorized in accordance with subsection (kk) of this section. The written attestation shall be signed by a preceptor authorized user who meets the requirements of subsection (l) of this section, this subsection or equivalent NRC or agreement state requirements. The preceptor authorized user who meets the requirements in paragraph (2) of this subsection shall have experience in administering dosages in the same dosage category or categories (for example, in accordance with paragraph (2)(B)(vi) of this subsection) as the individual requesting authorized user status.

(oo) Training for the oral administration of sodium iodide I-131 requiring a written directive in quantities less than or equal to 33 mCi (1.22 GBq). Except as provided in subsection (l) of this section, the licensee shall require an authorized user for the oral administration of sodium iodide I-131 requiring a written directive in quantities less than or equal to 33 mCi (1.22 GBq) to be a physician who:

(1) is certified by a medical specialty board whose certification process includes all of the requirements of paragraph (3)(A) and (B) of this subsection and whose certification has been recognized

by the agency, the NRC, an agreement state, or licensing state and who meets the requirements in paragraph (3)(C) of this subsection. (The names of board certifications which have been recognized by the agency, the NRC, agreement state or licensing state will be posted on the agency's web page, www.dshs.state.tx.us/radiation); or

(2) is an authorized user in accordance with subsection (nn) of this section for uses listed in subsection (nn)(2)(B)(vi)(I) or (II) of this section, or subsection (pp) of this section, or equivalent NRC or agreement state requirements; or

(3) has successfully completed 80 hours of classroom and laboratory training and work experience applicable to the medical use of sodium iodide I-131 for procedures requiring a written directive. The training and experience shall include the following.

(A) Classroom and laboratory training shall include the following:

(i) radiation physics and instrumentation;

(ii) radiation protection;

(iii) mathematics pertaining to the use and measurement of radioactivity;

(iv) chemistry of radioactive material for medical use; and

(v) radiation biology.

(B) Work experience, under the supervision of an authorized user who meets the requirements of subsection (l) of this section, this subsection, subsection (nn) or subsection (pp) of this section, or equivalent NRC or agreement state requirements. A supervising authorized user who meets the requirements in subsection (nn)(2) of this section, shall also have experience in administering dosages as specified in subsection (nn)(2)(B)(vi)(I) or (II) of this section. The work experience shall involve the following:

(i) ordering, receiving, and unpacking radioactive materials safely and performing the related radiation surveys;

(ii) performing quality control procedures on instruments used to determine the activity of dosages and performing checks for proper operation of survey meters;

(iii) calculating, measuring, and safely preparing patient or human research subject dosages;

(iv) using administrative controls to prevent a medical event involving the use of unsealed radioactive material;

(v) using procedures to contain spilled radioactive material safely and using proper decontamination procedures; and

(vi) administering dosages of radioactive drugs to patients or human research subjects that includes at least three cases involving the oral administration of less than or equal to 33mCi (1.22 GBq) of sodium iodide I-131; and

(C) Written attestation that the individual has satisfactorily completed the requirements of subparagraphs (A) and (B) of this paragraph, and has achieved a level of competency sufficient to function independently as an authorized user for the medical uses authorized in accordance with subsection (kk) of this section. The written attestation shall be signed by a preceptor authorized user who meets the requirements of subsection (l) of this section, this subsection, subsection (nn) or subsection (pp) of this section or equivalent NRC or agreement state requirements. A preceptor authorized user, who meets the requirements in subsection (nn)(2) of this section shall also

have experience in administering dosages as specified in subsection (nn)(2)(B)(vi)(I) or (II) of this section.

(pp) Training for the oral administration of sodium iodide I-131 requiring a written directive in quantities greater than 33 mCi (1.22 GBq). Except as provided in subsection (l) of this section, the licensee shall require an authorized user for the oral administration of sodium iodide I-131 requiring a written directive in quantities greater than 33 mCi (1.22 GBq) to be a physician who:

(1) is certified by a medical specialty board whose certification process includes all of the requirements in paragraph (3)(A) and (B) of this subsection and whose certification has been recognized by the agency, the NRC, an agreement state, or licensing state and who meets the requirements of paragraph (3) of this subsection. (The names of board certifications which have been recognized by the agency, the NRC, agreement state or licensing state will be posted on the agency's web page, www.dshs.state.tx.us/radiation);

(2) is an authorized user in accordance with subsection (nn) of this section or equivalent NRC or agreement state requirements for uses listed in subsection (nn)(2)(B)(vi)(II) of this section; or

(3) has training and experience including, successful completion of 80 hours of classroom and laboratory training applicable to the medical use of sodium iodide I-131 for procedures requiring a written directive. The training and experience shall include the following.

(A) Classroom and laboratory training shall include the following:

- (i) radiation physics and instrumentation;
- (ii) radiation protection;
- (iii) mathematics pertaining to the use and measurement of radioactivity;
- (iv) chemistry of radioactive material for medical use;
- (v) radiation biology.

(B) Work experience, under the supervision of an authorized user who meets the requirements of subsection (l) of this section, subsections (nn) or (pp) of this section or equivalent NRC or agreement state requirements. A supervising authorized user who meets the requirements of subsection (nn)(2) of this section, shall also have experience in administering dosages as specified in subsection (nn)(2)(B)(vi)(II) of this section. The work experience shall involve the following:

- (i) ordering, receiving, and unpacking radioactive materials safely and performing the related radiation surveys;
- (ii) performing quality control procedures on instruments used to determine the activity of dosages and performing checks for proper operation of survey meters;
- (iii) calculating, measuring, and safely preparing patient or human research subject dosages;
- (iv) using administrative controls to prevent a medical event involving the use of unsealed radioactive material;
- (v) using procedures to contain spilled radioactive material safely and using proper decontamination procedures; and
- (vi) administering dosages of radioactive drugs to patients or human research subjects that includes at least three cases involving the oral administration of greater than 33mCi (1.22 GBq) of sodium iodide I-131; and

(C) Written attestation that the individual has satisfactorily completed the requirements of subparagraphs (A) and (B) of this paragraph, and has achieved a level of competency sufficient to function independently as an authorized user for the medical uses authorized in accordance with subsection (kk) of this section. The written attestation shall be signed by a preceptor authorized user who meets the requirements in subsection (l) of this section, this subsection or subsection (nn) of this section or equivalent NRC or agreement state requirements. The preceptor authorized user, who meets the requirements in subsection (nn)(2) of this section, shall also have experience in administering dosages as specified in subsection (nn)(2)(B)(vi)(II) of this section.

(qq) Training for the parenteral administration of unsealed radioactive material requiring a written directive. Except as provided in subsection (l) of this section, the licensee shall require an authorized user for the parenteral administration requiring a written directive to be a physician who:

(1) is an authorized user in accordance with subsection (nn) of this section for uses listed in subsection (nn)(2)(B)(vi)(III) or (IV) of this section or equivalent NRC or agreement state requirements; or

(2) is an authorized user under subsections (zz) or (tt) of this section or equivalent NRC or agreement state requirements and who meets the requirements of paragraph (4) of this subsection; or

(3) is certified by a medical specialty board whose certification process has been recognized by the agency, the NRC, an agreement state, or licensing state in accordance with subsections (zz) or (tt) of this section, and who meets the requirements of paragraph (4) of this subsection. (The names of board certifications which have been recognized by the agency, the NRC, agreement state or licensing state will be posted on the agency's web page, www.dshs.state.tx.us/radiation); and

(4) has successfully completed training and experience including 80 hours of classroom and laboratory training applicable to parenteral administrations requiring a written directive, of any beta emitting radionuclide or any photon-emitting radionuclide with a photon energy less than 150 keV, and/or parenteral administration of any other radionuclide for which a written directive is required. The training and experience shall include the following.

(A) Classroom and laboratory training shall include the following:

- (i) radiation physics and instrumentation;
- (ii) radiation protection;
- (iii) mathematics pertaining to the use and measurement of radioactivity;
- (iv) chemistry of radioactive material for medical use; and
- (v) radiation biology.

(B) Work experience, under the supervision of an authorized user who meets the requirements of subsection (l) of this section, this subsection or subsection (nn) of this section or equivalent NRC or agreement state requirements in the parenteral administration, for which a written directive is required, of any beta emitter or any photon-emitting radionuclide with a photon energy less than 150 keV, and/or parenteral administration of any other radionuclide for which a written directive is required. A supervising authorized user who meets the requirements of subsection (nn) of this section, shall have experience in administering dosages as specified in subsection

(nn)(2)(B)(vi)(III) and/or (IV) of this section. The work experience shall involve the following:

(i) ordering, receiving, and unpacking radioactive materials safely and performing the related radiation surveys

(ii) performing quality control procedures on instruments used to determine the activity of dosages and performing checks for proper operation of survey meters;

(iii) calculating, measuring, and safely preparing patient or human research subject dosages;

(iv) using administrative controls to prevent a medical event involving the use of unsealed radioactive material;

(v) using procedures to contain spilled radioactive material safely and using proper decontamination procedures; and

(vi) administering dosages to patients or human research subjects that include at least three cases involving the parenteral administration, for which a written directive is required, of any beta emitter or any photon-emitting radionuclide with a photon energy less than 150 keV and/or at least three cases involving the parenteral administration of any other radionuclide, for which a written directive is required; and

(C) Written attestation that the individual has satisfactorily completed the requirements of paragraphs (2) or (3) of this subsection, and has achieved a level of competency sufficient to function independently as an authorized user for the parenteral administration of unsealed radioactive materials requiring a written directive. The written attestation shall be signed by a preceptor authorized user who meets the requirements of subsection (l) of this section, this subsection or subsection (nn) of this section or equivalent NRC or agreement state requirements. A preceptor authorized user, who meets the requirements of subsection (nn) of this section shall have experience in administering dosages as specified in subsection (nn)(2)(B)(vi)(III) and/or (IV) of this section.

(rr) Use of sealed sources for manual brachytherapy. The licensee shall use only brachytherapy sealed sources for therapeutic medical uses as follows:

(1) as approved in the Sealed Source and Device Registry; or

(2) in research in accordance with an active Investigational Device Exemption application accepted by the FDA and as approved by the agency.

(ss) Surveys after sealed source implants and removal.

(1) Immediately after implanting sealed sources in a patient or a human or animal research subject, the licensee shall perform a survey to locate and account for all sealed sources that have not been implanted.

(2) Immediately after removing the last temporary implant sealed source from a patient or a human or animal research subject, the licensee shall perform a survey of the patient or the human or animal research subject with a radiation detection survey instrument to confirm that all sealed sources have been removed.

(3) A record of each survey shall be retained, for inspection by the agency, in accordance with subsection (www) of this section. The record shall include the following:

- (A) date of the survey;
- (B) results of the survey;

(C) manufacturer's name and model and serial number of the instrument used to make the survey; and

(D) name of the individual who performed the survey.

(tt) Brachytherapy sealed sources accountability.

(1) The licensee shall maintain accountability at all times for all brachytherapy sealed sources in storage or use.

(2) Promptly after removing sealed sources from a patient or a human or animal research subject, the licensee shall return brachytherapy sealed sources to a secure storage area.

(3) The licensee shall maintain a record of the brachytherapy sealed source accountability in accordance with subsection (www) of this section for inspection by the agency.

(A) When removing temporary implants from storage, the licensee shall record the number and activity of sources, time and date the sources were removed, the name of the individual who removed the sources, and the location of use. When temporary implants are returned to storage, record the number and activity of sources, the time and date, and the name of the individual who returned them.

(B) When removing permanent implants from storage, the licensee shall record the number and activity of sources, date, the name of the individual who removed the sources, and the number and activity of sources permanently implanted in the patient or human research subject. Record the number and activity of sources not implanted and returned to storage, the date, and the name of the individual who returned them to storage.

(uu) Safety instruction to personnel. The licensee shall provide radiation safety instruction, initially and at least annually, to personnel caring for patients or human or animal research subjects who are receiving brachytherapy and who cannot be released in accordance with subsection (cc) of this section or animals that are confined.

(1) The instruction shall be appropriate to the personnel's assigned duties and include the following:

(A) size and appearance of brachytherapy sources;

(B) safe handling and shielding instructions;

(C) patient or human research subject control;

(D) visitor control to include visitation to hospitalized individuals in accordance with §289.202(n) of this title; and

(E) notification of the RSO, or his or her designee, and an authorized user if the patient or the human or animal research subject has a medical emergency or dies.

(2) A licensee shall maintain a record, for inspection by the agency, in accordance with subsection (www) of this section, of individuals receiving instruction. The record shall include the following:

(A) list of the topics covered;

(B) date of the instruction or training;

(C) name(s) of the attendee(s); and

(D) name(s) of the individual(s) who provided the instruction.

(vv) Safety precautions for the use of brachytherapy.

(1) For each patient or human research subject who is receiving brachytherapy and cannot be released in accordance with subsection (cc) of this section the licensee shall:

(A) provide a private room with a private sanitary facility;

(B) post the patient's or the research subject's room with a "Radioactive Materials" sign and note on the door or in the patient's or research subject's chart where and how long visitors may stay in the patient's or the research subject's room; and

(C) have available near each treatment room applicable emergency response equipment to respond to a sealed source that is inadvertently dislodged from the patient or inadvertently lodged within the patient following removal of the sealed source applicators.

(2) The RSO, or his or her designee, and the authorized user shall be notified if the patient or research subject has a medical emergency and, immediately, if the patient dies.

(ww) Calibration measurements of brachytherapy sealed sources.

(1) Prior to the first medical use of a brachytherapy sealed source on or after October 1, 2000, the licensee shall do the following:

(A) determine the sealed source output or activity using a dosimetry system that meets the requirements of subsection (iii)(1) of this section;

(B) determine sealed source positioning accuracy within applicators; and

(C) use published protocols accepted by nationally recognized bodies to meet the requirements of subparagraphs (A) and (B) of this paragraph.

(2) Instead of the licensee making its own measurements as required in paragraph (1) of this subsection, the licensee may use measurements provided by the source manufacturer or by a calibration laboratory accredited by the American Association of Physicists in Medicine that are made in accordance with paragraph (1) of this subsection.

(3) The licensee shall mathematically correct the outputs or activities determined in paragraph (1) of this subsection for physical decay at intervals consistent with 1.0% physical decay.

(4) The licensee shall retain a record of each calibration in accordance with subsection (www) of this section for inspection by the agency. The record shall include the following:

(A) date of the calibration;

(B) manufacturer's name and model and serial number for the sealed source and instruments used to calibrate the sealed source;

(C) sealed source output or activity;

(D) sealed source positioning accuracy within applicators; and

(E) name of the individual, the source manufacturer, or the calibration laboratory that performed the calibration.

(xx) Decay of strontium-90 sources for ophthalmic treatments.

(1) Only an authorized medical physicist shall calculate the activity of each strontium-90 source that is used to determine the treatment times for ophthalmic treatments. The decay shall be based on the activity determined in accordance with subsection (ww) of this section.

(2) A licensee shall maintain a record of the strontium-90 source in accordance with subsection (www) of this section for inspection by the agency. The record shall include the following:

(A) date and initial activity of the source as determined in subsection (ww) of this section; and

(B) for each decay calculation, the date and the source activity as determined in subsection (ww) of this section.

(yy) Therapy-related computer systems for manual brachytherapy. The licensee shall perform acceptance testing on the treatment planning system of therapy-related computer systems in accordance with published protocols accepted by nationally recognized bodies. At a minimum, the acceptance testing shall include, as applicable, verification of the following:

(1) the sealed source-specific input parameters required by the dose calculation algorithm;

(2) the accuracy of dose, dwell time, and treatment time calculations at representative points;

(3) the accuracy of isodose plots and graphic displays; and

(4) the accuracy of the software used to determine radioactive sealed source positions from radiographic images.

(zz) Training for use of manual brachytherapy sealed sources. Except as provided in subsection (l) of this section, the licensee shall require an authorized user of a manual brachytherapy source for the uses authorized in subsection (rr) of this section to be a physician who:

(1) is certified by a medical specialty board whose certification process has been recognized by the agency, the NRC or an agreement state and who meets the requirements of paragraph (2)(D) of this section. (The names of board certifications that have been recognized by the agency, the NRC, an agreement state, or licensing state will be posted on the agency's web page, www.dshs.state.tx.us/radiation). To have its certification recognized, a specialty board shall require all candidates for certification to:

(A) successfully complete a minimum of three years of residency training in a radiation oncology program approved by the Residency Review Committee of the Accreditation Council for Graduate Medical Education, the Royal College of Physicians and Surgeons of Canada, or the Committee on Post-Graduate Training of the American Osteopathic Association; and

(B) pass an examination, administered by diplomates of the specialty board, that assesses knowledge and competence in radiation safety, radionuclide handling, treatment planning, quality assurance, and clinical use of manual brachytherapy; or

(2) has completed a structured educational program in basic radionuclide handling techniques applicable to the use of manual brachytherapy sources including the following:

(A) 200 hours of classroom and laboratory training in the following areas:

(i) radiation physics and instrumentation;

(ii) radiation protection;

(iii) mathematics pertaining to the use and measurement of radioactivity; and

(iv) radiation biology.

(B) 500 hours of work experience, under the supervision of an authorized user who meets the requirements of subsection (l) of this section, this subsection, or equivalent NRC or agreement state requirements at a medical institution, involving the following:

(i) ordering, receiving, and unpacking radioactive materials safely and performing the related radiation surveys;

- (ii) checking survey meters for proper operation;
- (iii) preparing, implanting, and removing brachytherapy sources;
- (iv) maintaining running inventories of material on hand;
- (v) using administrative controls to prevent a medical event involving the use of radioactive material; and
- (vi) using emergency procedures to control radioactive material; and

(C) Completion of three years of supervised clinical experience in radiation oncology, under an authorized user who meets the requirements of subsection (1) of this section, this subsection, or equivalent NRC or agreement state requirements, as part of a formal training program approved by the Residency Review Committee for Radiation Oncology of the Accreditation Council for Graduate Medical Education, the Royal College of Physicians and Surgeons of Canada, or the Committee on Postdoctoral Training of the American Osteopathic Association. This experience may be obtained concurrently with the supervised work experience required by subparagraph (B) of this paragraph; and

(D) Written attestation, signed by a preceptor authorized user who meets the requirements of subsection (1) of this section, this subsection, or equivalent NRC or agreement state requirements, that the individual has satisfactorily completed the requirements of paragraph (1)(A) of this subsection or subparagraphs (A) - (C) of this paragraph and has achieved a level of competency sufficient to function independently as an authorized user of manual brachytherapy for the medical uses authorized in accordance with subsection (rr) of this section.

(aaa) Training for ophthalmic use of strontium-90. Except as provided in subsection (1) of this section, the licensee shall require an authorized user of strontium-90 for ophthalmic radiotherapy to be a physician who:

- (1) is an authorized user under subsection (zz) of this section or equivalent NRC or agreement state requirements; or
- (2) has completed 24 hours of classroom and laboratory training applicable to the medical use of strontium-90 for ophthalmic radiotherapy. The training shall include the following.

(A) Classroom training shall include the following:

- (i) radiation physics and instrumentation;
- (ii) radiation protection;
- (iii) mathematics pertaining to the use and measurement of radioactivity; and
- (iv) radiation biology.

(B) Supervised clinical training in ophthalmic radiotherapy under the supervision of an authorized user at a medical institution, clinic, or private practice that includes the use of strontium-90 for the ophthalmic treatment of five individuals. This supervised clinical training shall involve:

- (i) examination of each individual to be treated;
- (ii) calculation of the dose to be administered;
- (iii) administration of the dose; and
- (iv) follow-up and review of each individual's case history; and

(C) Written attestation, signed by a preceptor authorized user who meets the requirements of subsection (1) of this section, this subsection or subsection (zz) of this section, or equivalent NRC or agreement state requirements, that the individual has satisfactorily completed the requirements of this paragraph of this subsection and has achieved a level of competency sufficient to function independently as an authorized user of strontium-90 for ophthalmic use.

(bbb) Use of sealed sources for diagnosis.

(1) The licensee shall use only sealed sources for diagnostic medical uses as approved in the Sealed Source and Device Registry.

(2) The licensee shall document that the service provider, who is performing installation and source exchange of devices containing sealed source(s) of radioactive material in medical imaging equipment, has a specific license issued by the agency in accordance with §289.252(11) of this title. The documentation shall be maintained for inspection by the agency in accordance with subsection (www) of this section.

(ccc) Training for use of sealed sources for diagnosis. Except as provided in subsection (1) of this section, the licensee shall require the authorized user of a diagnostic sealed source for use in a device authorized in accordance with subsection (bbb) of this section to be a physician, dentist, or podiatrist who:

(1) is certified by a specialty board whose certification process includes the requirements of paragraphs (2) and (3) of this subsection and whose certification has been recognized by the agency, the NRC, an agreement state, or licensing state. (The names of board certifications that have been recognized by the agency, the NRC, an agreement state, or licensing state will be posted on the agency's web page, www.dshs.state.tx.us/radiation); or

(2) has completed eight hours of classroom and laboratory training in basic radioisotope handling techniques specifically applicable to the use of the device. The training shall include:

- (A) radiation physics and instrumentation;
- (B) radiation protection;
- (C) mathematics pertaining to the use and measurement of radioactivity; and
- (D) radiation biology; and

(3) has completed training in the use of the device for the uses requested.

(ddd) Use of a sealed source in a remote afterloader unit, teletherapy unit, or gamma stereotactic radiosurgery unit. The licensee shall use sealed sources in photon-emitting remote afterloader units, teletherapy units, or gamma stereotactic units for therapeutic medical uses as follows:

- (1) as approved in the Sealed Source and Device Registry; or
- (2) in research in accordance with an active Investigational Device Exemption (IDE) application accepted by the FDA provided the requirements of subsection (u) of this section are met.

(eee) Surveys of patients and human research subjects treated with a remote afterloader unit.

(1) Before releasing a patient or a human research subject from licensee control, the licensee shall perform a survey of the patient or the human research subject and the remote afterloader unit with a portable radiation detection survey instrument to confirm that

the sealed source(s) has been removed from the patient or human research subject and returned to the safe shielded position.

(2) The licensee shall maintain a record of the surveys in accordance with subsection (www) of this section for inspection by the agency. The record shall include the following:

- (A) date of the survey;
- (B) results of the survey;
- (C) manufacturer's name, model, and serial number of the survey instrument used; and
- (D) name of the individual who made the survey.

(fff) Installation, maintenance, adjustment, and repair.

(1) Only a person specifically licensed by the agency, the NRC, an agreement state, or licensing state shall install, maintain, adjust, or repair a remote afterloader unit, teletherapy unit, or gamma stereotactic radiosurgery unit that involves work on the sealed source(s) shielding, the sealed source(s) driving unit, or other electronic or mechanical component that could expose the sealed source(s), reduce the shielding around the sealed source(s), or compromise the radiation safety of the unit or the sealed source(s).

(2) Except for low dose-rate remote afterloader units, only a person specifically licensed by the agency, the NRC, an agreement state, or licensing state shall install, replace, relocate, or remove a sealed source or sealed source contained in other remote afterloader units, teletherapy units, or gamma stereotactic units.

(3) For a low dose-rate remote afterloader unit, only a person specifically licensed by the agency, the NRC, an agreement state, a licensing state, or an authorized medical physicist shall install, replace, relocate, or remove a sealed source(s) contained in the unit.

(4) The licensee shall maintain a record of the installation, maintenance, adjustment and repair done on remote afterloader units, teletherapy units, and gamma stereotactic radiosurgery units in accordance with subsection (www) of this section for inspection by the agency. For each installation, maintenance, adjustment and repair, the record shall include the date, description of the service, and name(s) of the individual(s) who performed the work.

(ggg) Safety procedures and instructions for remote afterloader units, teletherapy units, and gamma stereotactic radiosurgery units. A licensee shall do the following:

(1) secure the unit, the console, the console keys, and the treatment room when not in use or unattended;

(2) permit only individuals approved by the authorized user, RSO, or authorized medical physicist to be present in the treatment room during treatment with the sealed source(s);

(3) prevent dual operation of more than one radiation producing device in a treatment room if applicable;

(4) develop, implement, and maintain written procedures for responding to an abnormal situation when the operator is unable to place the sealed source(s) in the shielded position, or remove the patient or human research subject from the radiation field with controls from outside the treatment room. The procedures shall include the following and shall be physically located at the unit console:

(A) instructions for responding to equipment failures and the names of the individuals responsible for implementing corrective actions;

(B) the process for restricting access to and posting of the treatment area to minimize the risk of inadvertent exposure; and

(C) the names and telephone numbers of the authorized users, the authorized medical physicist, and the RSO to be contacted if the unit or console operates abnormally;

(5) post instructions at the unit console to inform the operator of the following:

(A) the location of the procedures required by paragraph (4) of this subsection; and

(B) the names and telephone numbers of the authorized users, the authorized medical physicist, and the RSO to be contacted if the unit or console operates abnormally;

(6) provide instruction initially and at least annually, to all individuals who operate the unit, as appropriate to the individual's assigned duties, to include:

(A) procedures identified in paragraph (4) of this subsection; and

(B) operating procedures for the unit;

(7) ensure that operators, authorized medical physicists, and authorized users participate in drills of the emergency procedures, initially and at least annually; and

(8) maintain records of individuals receiving instruction and participating in drills required by paragraphs (6) and (7) of this subsection in accordance with subsection (www) of this section for inspection by the agency. The record shall include the following:

(A) a list of the topics covered;

(B) date of the instruction or drill;

(C) name(s) of the attendee(s); and

(D) name(s) of the individual(s) who provided the instruction.

(hhh) Safety precautions for remote afterloader units, teletherapy units, and gamma stereotactic radiosurgery units. The licensee shall do the following:

(1) control access to the treatment room by a door at each entrance;

(2) equip each entrance to the treatment room with an electrical interlock system that will do the following:

(A) prevent the operator from initiating the treatment cycle unless each treatment room entrance door is closed;

(B) cause the sealed source(s) to be shielded promptly when an entrance door is opened; and

(C) prevent the sealed source(s) from being exposed following an interlock interruption until all treatment room entrance doors are closed and the sealed source(s) "on-off" control is reset at the console;

(3) require any individual entering the treatment room to assure, through the use of appropriate radiation monitors, that radiation levels have returned to ambient levels;

(4) except for low-dose remote afterloader units, construct or equip each treatment room with viewing and intercom systems to permit continuous observation of the patient or the human research subject from the treatment console during irradiation;

(5) for licensed activities where sealed sources are placed within the patient's or human research subject's body, only conduct treatments that allow for expeditious removal of a decoupled or jammed sealed source;

(6) in addition to the requirements specified in paragraphs (1) - (5) of this subsection, require the following:

(A) for low dose-rate, medium dose-rate, and pulsed dose-rate remote afterloader units:

(i) an authorized medical physicist, and either an authorized user or a physician, under the supervision of an authorized user, who has been trained in the operation and emergency response for the unit, be physically present during the initiation of all patient treatments involving the unit; and

(ii) an authorized medical physicist, and either an authorized user or an individual, under the supervision of an authorized user, who has been trained to remove the sealed source applicator(s) in the event of an emergency involving the unit, be immediately available during continuation of all patient treatments involving the unit;

(B) for high dose-rate remote afterloader units:

(i) an authorized user and an authorized medical physicist be physically present during the initiation of all patient treatments involving the unit; and

(ii) an authorized medical physicist, and either an authorized user or a physician, under the supervision of an authorized user, who has been trained in the operation and emergency response for the unit, be physically present during continuation of all patient treatments involving the unit;

(C) for gamma stereotactic radiosurgery units and teletherapy units, require that an authorized user and an authorized medical physicist be physically present throughout all patient treatments involving gamma stereotactic radiosurgery units and teletherapy units; and

(D) notify the RSO, or his or her designee, and an authorized user as soon as possible, if the patient or human research subject has a medical emergency or dies; and

(7) have applicable emergency response equipment available near each treatment room to respond to a sealed source that remains in the unshielded position or lodges within the patient following completion of the treatment.

(iii) Dosimetry equipment.

(1) Except for low dose-rate remote afterloader sealed sources where the sealed source output or activity is determined by the manufacturer, the licensee shall have a calibrated dosimetry system available for use. To satisfy this requirement, one of the following two conditions shall be met.

(A) The system shall have been calibrated using a system or sealed source traceable to the National Institute of Standards and Technology (NIST) and published protocols accepted by nationally recognized bodies; or by a calibration laboratory accredited by the American Association of Physicists in Medicine (AAPM). The calibration shall have been performed within the previous two years and after any servicing that may have affected system calibration.

(B) The system shall have been calibrated within the previous four years. Eighteen to 30 months after that calibration, the system shall have been intercompared with another dosimetry system that was calibrated within the past 24 months by NIST or by a calibration laboratory accredited by the AAPM. The results of the intercomparison shall have indicated that the calibration factor of the licensee's system had not changed by more than 2.0%. The licensee may not use the intercomparison result to change the calibration factor. When intercomparing dosimetry systems to be used for calibrating sealed sources for therapeutic unit, the licensee shall use a comparable unit with beam

attenuators or collimators, as applicable, and sealed sources of the same radionuclide as the sealed source used at the licensee's facility.

(2) The licensee shall have available for use a dosimetry system for spot check output measurements, if such measurements are required by this section. To satisfy this requirement, the system may be compared with a system that has been calibrated in accordance with paragraph (1) of this subsection. This comparison shall have been performed within the previous year and after each servicing that may have affected system calibration. The spot check system may be the same system used to meet the requirements of paragraph (1) of this subsection.

(3) The licensee shall retain a record of each calibration, intercomparison, and comparison of dosimetry equipment in accordance with subsection (www) of this section for inspection by the agency. The record shall include the following:

(A) date of the calibration;

(B) manufacturer's model and serial numbers of the instruments that were calibrated, intercompared, or compared;

(C) the correction factor that was determined from the calibration or comparison or the apparent correction factor that was determined from an intercomparison; and

(D) the names of the individuals who performed the calibration, intercomparison, or comparison.

(jjj) Full calibration measurements on teletherapy units.

(1) A licensee authorized to use a teletherapy unit for medical use shall perform full calibration measurements on each teletherapy unit as follows:

(A) before the first medical use of the unit;

(B) before medical use under any of the following conditions:

(i) whenever spot check measurements indicate that the output differs by more than 5.0% from the output obtained at the last full calibration corrected mathematically for radioactive decay;

(ii) following replacement of the sealed source or following reinstallation of the teletherapy unit in a new location;

(iii) following any repair of the teletherapy unit that includes removal of the sealed source or major repair of the components associated with the sealed source exposure assembly; and

(C) at intervals not to exceed one year.

(2) Full calibration measurements shall include determination of the following:

(A) the output within plus or minus 3.0% for the range of field sizes and for the distance or range of distances used for medical use;

(B) the coincidence of the radiation field and the field indicated by the light beam localizing device;

(C) uniformity of the radiation field and its dependence on the orientation of the useful beam;

(D) timer accuracy and linearity over the range of use;

(E) "on-off" error; and

(F) the accuracy of all distance measuring and localization devices in medical use.

(3) The licensee shall use the dosimetry system described in subsection (iii)(1) of this section to measure the output for one set of exposure conditions. The remaining radiation measurements required in paragraph (2)(A) of this subsection may be made using a dosimetry system that indicates relative dose rates.

(4) The licensee shall make full calibration measurements required by paragraph (1) of this subsection in accordance with published protocols accepted by nationally recognized bodies.

(5) The licensee shall mathematically correct the outputs determined in paragraph (2)(A) of this subsection for physical decay at intervals not to exceed one month for cobalt-60, six months for cesium-137, or at intervals consistent with 1.0% decay for all other nuclides.

(6) Full calibration measurements required by paragraph (1) of this subsection and physical decay corrections required by paragraph (5) of this subsection shall be performed by an authorized medical physicist.

(7) The licensee shall retain a record of each calibration in accordance with subsection (www) of this section for inspection by the agency. The record shall include the following:

(A) date of the calibration;

(B) manufacturer's name, model number and serial number of the teletherapy unit's sealed source and the instruments used to calibrate the unit;

(C) results and an assessment of the full calibrations; and

(D) signature of the authorized medical physicist who performed the full calibration.

(kkk) Full calibration measurements on remote afterloader units.

(1) A licensee authorized to use a remote afterloader for medical use shall perform full calibration measurements on each unit as follows:

(A) before the first medical use of the unit;

(B) before medical use under any of the following conditions:

(i) following replacement of the sealed source;

(ii) following reinstallation of the unit in a new location outside the facility;

(iii) following any repair of the unit that includes removal of the sealed source or major repair of the components associated with the sealed source exposure assembly;

(C) at intervals not to exceed three months for high dose-rate, medium dose-rate, and pulsed dose-rate remote afterloader units with sealed sources whose half-life exceeds 75 days; and

(D) at intervals not to exceed one year for low dose-rate afterloader units.

(2) Full calibration measurements shall include, as applicable, determination of the following:

(A) the output within plus or minus 5.0%;

(B) sealed source positioning accuracy to within plus or minus 1 millimeter (mm);

(C) sealed source retraction with backup battery upon power failure;

(D) length of the sealed source transfer tubes;

(E) timer accuracy and linearity over the typical range of use;

(F) length of the applicators; and

(G) function of the sealed source transfer tubes, applicators, and transfer tube-applicator interfaces.

(3) A licensee shall use the dosimetry system described in subsection (iii)(1) of this section to measure the output.

(4) A licensee shall make full calibration measurements required by paragraph (1) of this subsection in accordance with published protocols accepted by nationally recognized bodies.

(5) In addition to the requirements for full calibrations for low dose-rate remote afterloader units in paragraph (2) of this subsection, a licensee shall perform an autoradiograph of the sealed source(s) to verify inventory and sealed source(s) arrangement at intervals not to exceed three months.

(6) For low dose-rate remote afterloader units, a licensee may use measurements provided by the sealed source manufacturer that are made in accordance with paragraphs (1) - (5) of this subsection.

(7) The licensee shall mathematically correct the outputs determined in paragraph (2)(A) of this subsection for physical decay at intervals consistent with 1.0% physical decay.

(8) Full calibration measurements required by paragraph (1) of this subsection and physical decay corrections required by paragraph (7) of this subsection shall be performed by an authorized medical physicist.

(9) The licensee shall retain a record of each calibration in accordance with subsection (www) of this section for inspection by the agency. The record shall include the following:

(A) date of the calibration;

(B) manufacturer's name, model number and serial number of the remote afterloader unit's sealed source, and the instruments used to calibrate the unit;

(C) results and an assessment of the full calibrations;

(D) signature of the authorized medical physicist of this section; and

(E) results of the autoradiograph required for low dose-rate remote afterloader unit.

(III) Full calibration measurements on gamma stereotactic radiosurgery units.

(1) A licensee authorized to use a gamma stereotactic radiosurgery unit for medical use shall perform full calibration measurements on each gamma stereotactic radiosurgery unit as follows:

(A) before the first medical use of the unit;

(B) before medical use under the following conditions:

(i) whenever spot check measurements indicate that the output differs by more than 5.0% from the output obtained at the last full calibration corrected mathematically for radioactive decay;

(ii) following replacement of the sealed sources or following reinstallation of the gamma stereotactic radiosurgery unit in a new location; and

(iii) following any repair of the gamma stereotactic radiosurgery unit that includes removal of the sealed sources or major

repair of the components associated with the sealed source exposure assembly; and

(C) at intervals not to exceed one year, with the exception that relative helmet factors need only be determined before the first medical use of a helmet and following any damage to a helmet.

(2) Full calibration measurements shall include determination of the following:

- (A) the output within plus or minus 3.0%;
- (B) relative helmet factors;
- (C) isocenter coincidence;
- (D) timer accuracy and linearity over the range of use;
- (E) "on-off" error;
- (F) trunnion centricity;
- (G) treatment table retraction mechanism, using backup battery power or hydraulic backups with the unit "off";
- (H) helmet microswitches;
- (I) emergency timing circuits; and
- (J) stereotactic frames and localizing devices (trunnions).

(3) The licensee shall use the dosimetry system described in subsection (iii)(1) of this section to measure the output for one set of exposure conditions. The remaining radiation measurements required in paragraph (2)(A) of this subsection may be made using a dosimetry system that indicates relative dose rates.

(4) The licensee shall make full calibration measurements required by paragraph (1) of this subsection in accordance with published protocols accepted by nationally recognized bodies.

(5) The licensee shall mathematically correct the outputs determined in paragraph (2)(A) of this subsection at intervals not to exceed one month for cobalt-60 and at intervals consistent with 1.0% physical decay for all other radionuclides.

(6) Full calibration measurements required by paragraph (1) of this subsection and physical decay corrections required by paragraph (5) of this subsection shall be performed by an authorized medical physicist.

(7) The licensee shall retain a record of each calibration in accordance with subsection (www) of this section for inspection by the agency. The record shall include the following:

- (A) date of the calibration;
- (B) manufacturer's name, model number, and serial number for the unit and the unit's sealed source and the instruments used to calibrate the unit;
- (C) results and an assessment of the full calibration; and
- (D) signature of the authorized medical physicist who performed the full calibration.

(mmm) Periodic spot checks for teletherapy units.

(1) A licensee authorized to use teletherapy units for medical use shall perform output spot checks on each teletherapy unit once in each calendar month that include determination of the following:

- (A) timer constancy and linearity over the range of use;
- (B) "on-off" error;

(C) the coincidence of the radiation field and the field indicated by the light beam localizing device;

(D) the accuracy of all distance measuring and localization devices used for medical use;

(E) the output for one typical set of operating conditions measured with the dosimetry system described in subsection (iii)(2) of this section; and

(F) the difference between the measurement made in subparagraph (E) of this paragraph and the anticipated output, expressed as a percentage of the anticipated output, the value obtained at last full calibration corrected mathematically for physical decay.

(2) The licensee shall perform measurements required by paragraph (1) of this subsection in accordance with written procedures established by an authorized medical physicist. That authorized medical physicist need not actually perform the spot check measurements. The licensee shall maintain a copy of the written procedures in accordance with subsection (www) of this section for inspection by the agency.

(3) The licensee authorized to use a teletherapy unit for medical use shall perform safety spot checks of each teletherapy facility once in each calendar month and after each sealed source installation to assure proper operation of the following:

- (A) electrical interlocks at each teletherapy room entrance;
- (B) electrical or mechanical stops installed for the purpose of limiting use of the primary beam of radiation (restriction of sealed source housing angulation or elevation, carriage or stand travel and operation of the beam "on-off" mechanism);
- (C) sealed source exposure indicator lights on the teletherapy unit, on the control console, and in the facility;
- (D) viewing and intercom systems;
- (E) treatment room doors from inside and outside the treatment room; and
- (F) electrically assisted treatment room doors with the teletherapy unit electrical power turned "off".

(4) The licensee shall have an authorized medical physicist review the results of each spot check and submit a written report to the licensee within 15 days of the spot check.

(5) If the results of the checks required in paragraph (3) of this subsection indicate the malfunction of any system, the licensee shall lock the control console in the "off" position and not use the unit except as may be necessary to repair, replace, or check the malfunctioning system.

(6) The licensee shall retain a record of each spot check required by paragraphs (1) and (3) of this subsection, in accordance with subsection (www) of this section for inspection by the agency. The record shall include the following:

- (A) date of the spot-check;
- (B) manufacturer's name and model and serial number for the teletherapy unit, and sealed source and instrument used to measure the output of the teletherapy unit;
- (C) assessment of timer linearity and constancy;
- (D) calculated "on-off" error;
- (E) determination of the coincidence of the radiation field and the field indicated by the light beam localizing device;

(F) the determined accuracy of each distance measuring and localization device;

(G) the difference between the anticipated output and the measured output;

(H) notations indicating the operability of each entrance door electrical interlock, each electrical or mechanical stop, each sealed source exposure indicator light, and the viewing and intercom system and doors;

(I) name of the individual who performed the periodic spot-check; and

(J) the signature of the authorized medical physicist who reviewed the record of the spot check.

(nnn) Periodic spot checks for remote afterloader units.

(1) A licensee authorized to use a remote afterloader unit for medical use shall perform spot checks of each remote afterloader facility and on each unit as follows:

(A) before the first use each day of use of a high dose-rate, medium dose-rate, or pulsed dose-rate remote afterloader unit;

(B) before each patient treatment with a low dose-rate remote afterloader unit; and

(C) after each sealed source installation.

(2) The licensee shall perform the measurements required by paragraph (1) of this subsection in accordance with written procedures established by an authorized medical physicist. That individual need not actually perform the spot check measurements. The licensee shall maintain a copy of the written procedures in accordance with subsection (www) of this section for inspection by the agency.

(3) The licensee shall have an authorized medical physicist review the results of each spot check and submit a written report to the licensee within 15 days of the spot check.

(4) To satisfy the requirements of paragraph (1) of this subsection, spot checks shall, at a minimum, assure proper operation of the following:

(A) electrical interlocks at each remote afterloader unit room entrance;

(B) sealed source exposure indicator lights on the remote afterloader unit, on the control console, and in the facility;

(C) viewing and intercom systems in each high dose-rate, medium dose-rate, and pulsed dose-rate remote afterloader facility;

(D) emergency response equipment;

(E) radiation monitors used to indicate the sealed source position;

(F) timer accuracy;

(G) clock (date and time) in the unit's computer; and

(H) decayed sealed source(s) activity in the unit's computer.

(5) If the results of the checks required in paragraph (4) of this subsection indicate the malfunction of any system, the licensee shall lock the control console in the "off" position and not use the unit except as may be necessary to repair, replace, or check the malfunctioning system.

(6) The licensee shall maintain a record, in accordance with subsection (www) of this section for inspection by the agency, of each check required by paragraph (4) of this subsection. The record shall include the following, as applicable:

(A) date of the spot-check;

(B) manufacturer's name and model and serial number for the remote afterloader unit and sealed source;

(C) an assessment of timer accuracy;

(D) notations indicating the operability of each entrance door electrical interlock, radiation monitors, sealed source exposure indicator lights, viewing and intercom systems, clock, and decayed sealed source activity in the unit's computer;

(E) name of the individual who performed the periodic spot-check; and

(F) the signature of an authorized medical physicist who reviewed the record of the spot-check.

(ooo) Periodic spot checks for gamma stereotactic radiosurgery units.

(1) A licensee authorized to use a gamma stereotactic radiosurgery unit for medical use shall perform spot checks of each gamma stereotactic radiosurgery facility and on each unit as follows:

(A) monthly;

(B) before the first use of the unit on each day of use; and

(C) after each source installation.

(2) The licensee shall perform the measurements required by paragraph (1) of this subsection in accordance with written procedures established by an authorized medical physicist with a specialty in therapeutic radiological physics. That individual need not actually perform the spot check measurements. The licensee shall maintain a copy of the written procedures in accordance with subsection (www) of this section for inspection by the agency.

(3) The licensee shall have an authorized medical physicist review the results of each spot check and submit a written report to the licensee within 15 days of the spot check.

(4) To satisfy the requirements of paragraph (1)(A) of this subsection, spot checks shall, at a minimum, achieve the following by:

(A) assurance of proper operation of these items:

(i) treatment table retraction mechanism, using backup battery power or hydraulic backups with the unit "off;"

(ii) helmet microswitches;

(iii) emergency timing circuits; and

(iv) stereotactic frames and localizing devices (trunnions); and

(B) determination of the following:

(i) the output for one typical set of operating conditions measured with the dosimetry system described in subsection (iii)(2) of this section;

(ii) the difference between the measurement made in clause (i) of this subparagraph and the anticipated output, expressed as a percentage of the anticipated output, (i.e., the value obtained at last full calibration corrected mathematically for physical decay);

- (iii) sealed source output against computer calculation;
- (iv) timer accuracy and linearity over the range of use;
- (v) "on-off" error; and
- (vi) trunnion centricity.

(5) To satisfy the requirements of paragraph (1)(B) and (C) of this subsection, spot checks shall assure proper operation of the following:

- (A) electrical interlocks at each gamma stereotactic radiosurgery room entrance;
 - (B) sealed source exposure indicator lights on the gamma stereotactic radiosurgery unit, on the control console, and in the facility;
 - (C) viewing and intercom systems;
 - (D) timer termination;
 - (E) radiation monitors used to indicate room exposures;
- and
- (F) emergency "off" buttons.

(6) The licensee shall arrange for prompt repair of any system identified in paragraph (4) of this subsection that is not operating properly.

(7) If the results of the checks required in paragraph (5) of this subsection indicate the malfunction of any system, the licensee shall lock the control console in the "off" position and not use the unit except as may be necessary to repair, replace, or check the malfunctioning system.

(8) The licensee shall retain a record of each check required by paragraphs (4) and (5) of this subsection in accordance with subsection (www) of this section for inspection by the agency. The record shall include the following:

- (A) date of the spot check;
- (B) manufacturer's name, and model and serial number for the gamma stereotactic radiosurgery unit and the instrument used to measure the output of the unit;
- (C) an assessment of timer linearity and accuracy;
- (D) the calculated "on-off" error;
- (E) a determination of trunnion centricity;
- (F) the difference between the anticipated output and the measured output;
- (G) an assessment of sealed source output against computer calculations;
- (H) notations indicating the operability of radiation monitors, helmet microswitches, emergency timing circuits, emergency "off" buttons, electrical interlocks, sealed source exposure indicator lights, viewing and intercom systems, timer termination, treatment table retraction mechanism, and stereotactic frames and localizing devices (trunnions);
- (I) the name of the individual who performed the periodic spot check; and
- (J) the signature of an authorized medical physicist who reviewed the record of the spot check.

(ppp) Additional technical requirements for mobile remote afterloader units.

(1) A licensee providing mobile remote afterloader service shall do the following:

- (A) check survey instruments before medical use at each address of use or on each day of use, whichever is more frequent; and
- (B) account for all sealed sources before departure from a client's address of use.

(2) In addition to the periodic spot checks required by subsection (nnn) of this section, a licensee authorized to use remote afterloaders for medical use shall perform checks on each remote afterloader unit before use at each address of use. At a minimum, checks shall be made to verify the operation of the following:

- (A) electrical interlocks on treatment area access points;
- (B) sealed source exposure indicator lights on the remote afterloader unit, on the control console, and in the facility;
- (C) viewing and intercom systems;
- (D) applicators, sealed source transfer tubes, and transfer tube-applicator interfaces;
- (E) radiation monitors used to indicate room exposures;
- (F) sealed source positioning (accuracy); and
- (G) radiation monitors used to indicate whether the sealed source has returned to a safe shielded position.

(3) In addition to the requirements for checks in paragraph (2) of this subsection, the licensee shall ensure overall proper operation of the remote afterloader unit by conducting a simulated cycle of treatment before use at each address of use.

(4) If the results of the checks required in paragraph (2) of this subsection indicate the malfunction of any system, the licensee shall lock the control console in the "off" position and not use the unit except as may be necessary to repair, replace, or check the malfunctioning system.

(5) The licensee shall maintain a record for inspection by the agency, in accordance with subsection (www) of this section, of each check required by subparagraph (B) of this paragraph. The record shall include the following:

- (A) date of the check;
- (B) manufacturer's name, model number and serial number of the remote afterloader unit;
- (C) notations accounting for all sealed sources before the licensee departs from a facility;
- (D) notations indicating the operability of each entrance door electrical interlock, radiation monitors, sealed source exposure indicator lights, viewing and intercom system, applicators and sealed source transfer tubes, and sealed source positioning accuracy; and
- (E) the signature of the individual who performed the check.

(qqq) Radiation surveys.

(1) In addition to the survey requirements of §289.202(p) of this title, a person licensed to use sealed sources in this section shall make surveys to ensure that the maximum radiation levels and average radiation levels, from the surface of the main sealed source safe with

the sealed source(s) in the shielded position, do not exceed the levels stated in the Sealed Source and Device Registry.

(2) The licensee shall make the survey required by paragraph (1) of this subsection at installation of a new sealed source and following repairs to the sealed source(s) shielding, the sealed source(s) driving unit, or other electronic or mechanical component that could expose the sealed source, reduce the shielding around the sealed source(s), or compromise the radiation safety of the unit or the sealed source(s).

(3) The licensee shall maintain a record for inspection by the agency, in accordance with subsection (www) of this section, of the radiation surveys required by paragraph (1) of this subsection. The record shall include:

(A) date of the measurements;

(B) manufacturer's name, model number and serial number of the treatment unit, sealed source, and instrument used to measure radiation levels;

(C) each dose rate measured around the sealed source while the unit is in the "off" position and the average of all measurements; and

(D) the signature of the individual who performed the test.

(rrr) Five-year inspection for teletherapy and gamma stereotactic radiosurgery units.

(1) The licensee shall have each teletherapy unit and gamma stereotactic radiosurgery unit fully inspected and serviced during sealed source replacement or at intervals not to exceed five years, whichever comes first, to assure proper functioning of the sealed source exposure mechanism.

(2) This inspection and servicing may only be performed by persons specifically licensed to do so by the agency, the NRC, an agreement state, or licensing state.

(3) The licensee shall maintain a record of the inspection and servicing in accordance with subsection (www) of this section for inspection by the agency. The record shall include the following:

(A) date of inspection;

(B) manufacturer's name and model and serial number of both the treatment unit and the sealed source;

(C) a list of components inspected and serviced, and the type of service; and

(D) the radioactive material license number and the signature of the individual performing the inspection.

(sss) Therapy-related computer systems for photon-emitting remote afterloader units, teletherapy units, and gamma stereotactic radiosurgery units. The licensee shall perform acceptance testing on the treatment planning system of therapy-related computer systems in accordance with published protocols accepted by nationally recognized bodies. At a minimum, the acceptance testing shall include, as applicable, verification of the following:

(1) the sealed source-specific input parameters required by the dose calculation algorithm;

(2) the accuracy of dose, dwell time, and treatment time calculations at representative points;

(3) the accuracy of isodose plots and graphic displays;

(4) the accuracy of the software used to determine sealed source positions from radiographic images; and

(5) the accuracy of electronic transfer of the treatment delivery parameters to the treatment delivery unit from the treatment planning system.

(ttt) Training for use of remote afterloader units, teletherapy units, and gamma stereotactic radiosurgery units. Except as provided in subsection (l) of this section, the licensee shall require an authorized user of a sealed source for a use authorized in subsection (ddd) of this section to be a physician who:

(1) is certified by a medical specialty board whose certification process has been recognized by the agency, the NRC, an agreement state, or licensing state and who meets the requirements of paragraphs (2)(D) and (3) of this subsection. (The names of board certifications that have been recognized by the agency, the NRC, an agreement state, or licensing state will be posted on the agency's web page, www.dshs.state.tx.us/radiation). To have its certification recognized, a specialty board shall require all candidates for certification to:

(A) successfully complete a minimum of three years of residency training in a radiation therapy program approved by the Residency Review Committee of the Accreditation Council for Graduate Medical Education, the Royal College of Physicians and Surgeons of Canada, or the Committee on Post-Graduate Training of the American Osteopathic Association; and

(B) pass an examination, administered by diplomates of the specialty board, that assesses knowledge and competence in radiation safety, radionuclide handling, treatment planning, quality assurance, and clinical use of stereotactic radiosurgery, remote afterloaders and external beam therapy; or

(2) has completed a structured educational program in basic radionuclide handling techniques applicable to the use of a sealed source in a therapeutic medical unit including the following:

(A) 200 hours of classroom and laboratory training in the following areas:

(i) radiation physics and instrumentation;

(ii) radiation protection;

(iii) mathematics pertaining to the use and measurement of radioactivity; and

(iv) radiation biology.

(B) 500 hours of work experience, under the supervision of an authorized user who meets the requirements of subsection (l) of this section and this subsection or equivalent NRC or agreement state requirements at a medical institution involving the following:

(i) reviewing full calibration measurements and periodic spot checks;

(ii) preparing treatment plans and calculating treatment times;

(iii) using administrative controls to prevent a medical event involving the use of radioactive material;

(iv) implementing emergency procedures to be followed in the event of the abnormal operation of a medical unit or console;

(v) checking and using survey meters; and

(vi) selecting the proper dose and how it is to be administered; and

(C) Completion of three years of supervised clinical experience in radiation therapy, under an authorized user who meets the requirements of subsection (1) of this section, this subsection, or equivalent NRC or agreement state requirements, as part of a formal training program approved by the Residency Review Committee for Radiation Oncology of the Accreditation Council for Graduate Medical Education, the Royal College of Physicians and Surgeons of Canada, or the Committee on Postdoctoral Training of the American Osteopathic Association. This experience may be obtained concurrently with the supervised work experience required by subparagraph (B) of this paragraph; and

(D) Written attestation that the individual has satisfactorily completed the requirements of paragraphs (1)(A) or (2), and (3) of this subsection, and has achieved a level of competency sufficient to function independently as an authorized user of each type of therapeutic medical unit for which the individual is requesting authorized user status. The written attestation shall be signed by a preceptor authorized user who meets the requirements in subsection (1) of this section, this subsection, or equivalent NRC or agreement state requirements for an authorized user for each type of therapeutic medical unit for which the individual is requesting authorized user status; and

(3) has received training in device operation, safety procedures, and clinical use for the type(s) of use for which authorization is sought. This training requirement may be satisfied by satisfactory completion of a training program provided by the vendor for new users or by receiving training supervised by an authorized user or authorized medical physicist, as appropriate, who is authorized for the type(s) of use for which the individual is seeking authorization.

(uuu) Report and notification of a medical event.

(1) The licensee shall report any event, except for events that result from intervention by a patient or human research subject, in which the administration of radioactive material, or radiation from radioactive material, results in the following:

(A) a dose that differs from the prescribed dose or dose that would have resulted from the prescribed dosage by more than 5 rem (0.05 Sievert (Sv)) effective dose equivalent, 50 rem (0.5 Sv) to an organ or tissue, or 50 rem (0.5 Sv) shallow dose equivalent to the skin and either:

(i) the total dose delivered differs from the prescribed dose by 20% or more;

(ii) the total dosage delivered differs from the prescribed dosage by 20% or more or falls outside the prescribed dosage range; or

(iii) the fractionated dose delivered differs from the prescribed dose, for a single fraction, by 50% or more;

(B) a dose that exceeds 5 rem (0.05 Sv) effective dose equivalent, 50 rem (0.5 Sv) to an organ or tissue, or 50 rem (0.5 Sv) shallow dose equivalent to the skin from any of the following:

(i) an administration of a wrong radioactive drug containing radioactive material;

(ii) an administration of a radioactive drug containing radioactive material by the wrong route of administration;

(iii) an administration of a dose or dosage to the wrong individual or human research subject;

(iv) an administration of a dose or dosage delivered by the wrong mode of treatment; or

(v) a leaking sealed source; or

(C) a dose to the skin or an organ or tissue other than the treatment site that exceeds by 50 rem (0.5 Sv) to an organ or tissue and 50% or more of the dose expected from the administration defined in the written directive (excluding, for permanent implants, seeds that were implanted in the correct site but migrated outside the treatment site).

(2) The licensee shall report any event resulting from intervention of a patient or human research subject in which the administration of radioactive material, or radiation from radioactive material, results or will result in an unintended permanent functional damage to an organ or a physiological system, as determined by a physician.

(3) The licensee shall notify the agency by telephone no later than the next calendar day after discovery of the medical event.

(4) The licensee shall submit a written report to the agency within 15 calendar days after discovery of the medical event. The written report shall include the following, excluding the individual's name or any other information that could lead to identification of the individual:

(A) the licensee's name and radioactive material license number;

(B) the name of the prescribing physician;

(C) a brief description of the medical event;

(D) why the event occurred;

(E) the effect, if any, on the individual(s) who received the administration;

(F) actions, if any, that have been taken, or are planned, to prevent recurrence; and

(G) certification that the licensee notified the individual (or the individual's responsible relative or guardian), and if not, why not.

(5) The licensee shall notify the referring physician and also notify the individual who is the subject of the medical event no later than 24 hours after its discovery, unless the referring physician personally informs the licensee either that he or she will inform the individual or that, based on medical judgment, telling the individual would be harmful. The licensee is not required to notify the individual without first consulting the referring physician. If the referring physician or the affected individual cannot be reached within 24 hours, the licensee shall notify the individual as soon as possible thereafter. The licensee shall not delay any appropriate medical care for the individual, including any necessary remedial care as a result of the medical event, because of any delay in notification. To meet the requirements of this subsection, the notification of the individual who is the subject of the medical event may be made instead to that individual's responsible relative or guardian. If a verbal notification is made, the licensee shall inform the individual or appropriate responsible relative or guardian, that a written description of the event can be obtained from the licensee upon request. The licensee shall provide the written description if requested.

(6) Aside from the notification requirement, nothing in this section affects any rights or duties of licensees and physicians in relation to each other, to individuals affected by the medical event, or to that individual's responsible relatives or guardians.

(7) The licensee shall annotate a copy of the report provided to the agency with the following information:

(A) the name of the individual who is the subject of the event; and

(B) a unique identification number of the individual who is the subject of the event.

(8) The licensee shall provide a copy of the annotated report to the referring physician, if other than the licensee, no later than 15 calendar days after the discovery of the event.

(9) The licensee shall retain a copy of the annotated report of the medical event in accordance with subsection (www) of this section for inspection by the agency.

(vvv) Report and notification of a dose to an embryo/fetus or nursing child.

(1) The licensee shall report any dose to an embryo/fetus that is greater than 5 rem (50 mSv) dose equivalent that is a result of an administration of radioactive material or radiation from radioactive material to a pregnant individual, unless the dose to the embryo/fetus was specifically approved, in advance, by the authorized user.

(2) The licensee shall report any dose to a nursing child that is a result of an administration of radioactive material to a breast feeding individual that:

(A) is greater than 5 rem (50 mSv) TEDE; or

(B) has resulted in unintended permanent functional damage to an organ or a physiological system, as determined by a physician.

(3) The licensee shall notify the agency by telephone no later than the next calendar day after discovery of a dose to the embryo/fetus or nursing child that requires a report in accordance with paragraphs (1) or (2) of this subsection.

(4) The licensee shall submit a written report to the agency no later than 15 calendar days after discovery of a dose to the embryo/fetus or nursing child that requires a report in accordance with paragraphs (1) or (2) of this subsection. The written report shall include the following, excluding the individual's or child's name or any other information that could lead to identification of the individual or child:

(A) the licensee's name and radioactive material license number;

(B) the name of the prescribing physician;

(C) a brief description of the event;

(D) why the event occurred;

(E) the effect, if any, on the embryo/fetus or the nursing child;

(F) actions, if any, that have been taken, or are planned, to prevent recurrence; and

(G) certification that the licensee notified the pregnant individual or mother (or the mother's or child's responsible relative or guardian), and if not, why not.

(5) The licensee shall notify the referring physician and also notify the pregnant individual or mother, both hereafter referred to as the mother, no later than 24 hours after discovery of an event that would require reporting in accordance with paragraphs (1) or (2) of this subsection, unless the referring physician personally informs the licensee either that he or she will inform the mother or that, based on medical judgment, telling the mother would be harmful. The licensee is not required to notify the mother without first consulting with the referring physician. If the referring physician or mother cannot be reached within 24 hours, the licensee shall make the appropriate notifications as

soon as possible thereafter. The licensee may not delay any appropriate medical care for the embryo/fetus or for the nursing child, including any necessary remedial care as a result of the event, because of any delay in notification. To meet the requirements of this subsection, the notification may be made to the mother's or child's responsible relative or guardian instead of the mother, when appropriate. If a verbal notification is made, the licensee shall inform the mother, or the mother's or child's responsible relative or guardian, that a written description of the event can be obtained from the licensee upon request. The licensee shall provide such a written description if requested.

(6) The licensee shall annotate a copy of the report provided to the agency with the following information:

(A) the name of the individual or the nursing child who is the subject of the event; and

(B) a unique identification number of the pregnant individual or the nursing child who is the subject of the event.

(7) The licensee shall provide a copy of the annotated report as described in paragraph (6) of this subsection to the referring physician, if other than the licensee, no later than 15 days after the discovery of the event.

(8) The licensee shall retain a copy of the annotated report as described in paragraph (6) of this subsection of a dose to an embryo/fetus or a nursing child in accordance with subsection (www) of this section for inspection by the agency.

(www) Records/documents for agency inspection. Each licensee shall maintain copies of the following records/documents at each authorized use site and make them available to the agency for inspection, upon reasonable notice.

Figure: 25 TAC §289.256(www)

§289.257. *Packaging and Transportation of Radioactive Material.*

(a) Purpose.

(1) This section establishes requirements for packaging, preparation for shipment, and transportation of radioactive material including radioactive waste.

(2) The packaging and transport of radioactive material are also subject to the requirements of §289.201 of this title (relating to General Provisions for Radioactive Material), §289.202 of this title (relating to Standards for Protection Against Radiation from Radioactive Materials), §289.203 of this title (relating to Notices, Instructions, and Reports to Workers; Inspections), §289.204 of this title (relating to Fees for Certificates of Registration, Radioactive Material Licenses, Emergency Planning and Implementation, and Other Regulatory Services), §289.205 of this title (relating to Hearing and Enforcement Procedures), §289.251 of this title (relating to Exemptions, General Licenses, and General License Acknowledgements), §289.252 of this title (relating to Licensing of Radioactive Material), and §289.256 of this title (relating to Medical and Veterinary Use of Radioactive Material and to the regulations of other agencies (e.g., the United States Department of Transportation (DOT) and the United States Postal Service) having jurisdiction over means of transport. The requirements of this section are in addition to, and not in substitution for, other requirements.

(b) Scope.

(1) The requirements of this section apply to any licensee authorized by a specific or general license issued by the agency to receive, possess, use, or transfer radioactive material, if the licensee delivers that material to a carrier for transport, transports the material outside the site of usage as specified in the agency license, or transports

that material on public highways. No provision of this section authorizes possession of radioactive material.

(2) Exemptions from the requirements for a license in subsection (c) of this section are specified in subsection (f) of this section. The general license in subsection (i) of this section requires that a United States Nuclear Regulatory Commission (NRC) certificate of compliance or other package approval be issued for the package to be used in accordance with the general license. The transport of radioactive material or delivery of radioactive material to a carrier for transport is subject to the operating controls and procedural requirements of subsections (l) - (q) of this section and to the general provisions of subsections (a) - (e) of this section, including DOT regulations referenced in subsection (e) of this section.

(c) Requirement for license. Except as authorized in a general or specific license issued by the agency, or as exempted in accordance with this section, no licensee may transport radioactive material or deliver radioactive material to a carrier for transport.

(d) Definitions. The following words and terms when used in this section shall have the following meaning, unless the context clearly indicates otherwise. To ensure compatibility with international transportation standards, all limits in this section are given in terms of dual units: The International System of Units (SI) followed or preceded by United States (U.S.) standard or customary units. The U.S. customary units are not exact equivalents, but are rounded to a convenient value, providing a functionally equivalent unit. For the purpose of this section, SI units shall be used.

(1) A_1 --The maximum activity of special form radioactive material permitted in a Type A package. This value is either listed in Table 257-3 of subsection (ee)(6) of this section, or may be derived in accordance with the procedure prescribed in subsection (ee) of this section.

(2) A_2 --The maximum activity of radioactive material, other than special form, low specific activity (LSA) and surface contaminated object (SCO) material, permitted in a Type A package. This value is either listed in Table 257-3 of subsection (ee)(6) of this section, or may be derived in accordance with the procedure prescribed in subsection (ee) of this section.

(3) Carrier--A person engaged in the transportation of passengers or property by land or water as a common, contract, or private carrier, or by civil aircraft.

(4) Certificate holder--A person who has been issued a certificate of compliance or other package approval by the agency.

(5) Certificate of compliance--The certificate issued by the NRC that approves the design of a package for the transportation of radioactive materials.

(6) Chelating agent--Amine polycarboxylic acids (e.g., EDTA, DTPA), hydroxy-carboxylic acids, and polycarboxylic acids (e.g., citric acid, carbolic acid, and glucinic acid).

(7) Chemical description--A description of the principal chemical characteristics of a LLRW.

(8) Consignee--The designated receiver of the shipment of low-level radioactive waste.

(9) Consignment--Each shipment of a package or groups of packages or load of radioactive material offered by a shipper for transport.

(10) Containment system--The assembly of components of the packaging intended to retain the radioactive material during transport.

(11) Conveyance--For transport on:

(A) public highway or rail by transport vehicle or large freight container;

(B) water by vessel, or any hold, compartment, or defined deck area of a vessel including any transport vehicle on board the vessel; and

(C) aircraft.

(12) Criticality Safety Index (CSI)--The dimensionless number (rounded up to the next tenth) assigned to and placed on the label of a fissile material package, to designate the degree of control of accumulation of packages containing fissile material during transportation. Determination of the criticality safety index is described in subsection (i) of this section and Title 10, Code of Federal Regulations (CFR), §71.59.

(13) Decontamination facility--A facility operating in accordance with an NRC, agreement state, or agency license whose principal purpose is decontamination of equipment or materials to accomplish recycle, reuse, or other waste management objectives, and, for purposes of this section, is not considered to be a consignee for LLRW shipments.

(14) Deuterium--For the purposes of this section, this means deuterium and any deuterium compound, including heavy water, in which the ratio of deuterium atoms to hydrogen atoms exceeds 1:5000.

(15) Disposal container--A transport container principally used to confine LLRW during disposal operations at a land disposal facility (also see definition for high integrity container). Note that for some shipments, the disposal container may be the transport package.

(16) Environmental Protection Agency (EPA) identification number--The number received by a transporter following application to the administrator of EPA as required by Title 40, CFR, Part 263.

(17) Exclusive use--The sole use by a single consignor of a conveyance for which all initial, intermediate, and final loading and unloading are carried out in accordance with the direction of the consignor or consignee. The consignor and the carrier shall ensure that any loading or unloading is performed by personnel having radiological training and resources appropriate for safe handling of the consignment. The consignor shall issue specific instructions, in writing, for maintenance of exclusive use shipment controls, and include them with the shipping paper information provided to the carrier by the consignor.

(18) Fissile material--The radionuclides plutonium-239, plutonium-241, uranium-233, uranium-235, or any combination of these radionuclides. Fissile material means the fissile nuclides themselves, not material containing fissile nuclides. Unirradiated natural uranium and depleted uranium, and natural uranium or depleted uranium that has been irradiated in thermal reactors only are not included in this definition. Agency jurisdiction extends only to special nuclear material in quantities not sufficient to form a "critical mass" as defined in §289.201(b) of this title. Certain exclusions from fissile material controls are provided in subsection (h) of this section.

(19) Generator--A licensee operating in accordance with an NRC, agreement state, or agency license who:

(A) is a waste generator as defined in this section; or

(B) is the licensee to whom waste can be attributed within the context of the Low-Level Radioactive Waste Policy Amendments Act of 1985 (e.g., waste generated as a result of decontamination or recycle activities).

(20) Graphite--For the purposes of this section, this means graphite with a boron equivalent content of less than five parts per million and density greater than 1.5 grams per cubic centimeter.

(21) High integrity container (HIC)--A container commonly designed to meet the structural stability requirements of Title 10, CFR, §61.56, and to meet DOT requirements for a Type A package.

(22) Industrial package (IP)--A packaging that, together with its low specific activity (LSA) material or surface contaminated object (SCO) contents, meets the requirements of Title 49, CFR, §173.410 and §173.411. Industrial packages are categorized in Title 49, CFR, §173.411 as either:

- (A) Industrial package Type 1 (IP-1);
- (B) Industrial package Type 2 (IP-2); or
- (C) Industrial package Type 3 (IP-3).

(23) Low-level radioactive waste (LLRW)--Radioactive material that meets the following criteria:

(A) LLRW is radioactive material that is:

(i) discarded or unwanted and is not exempt by rule adopted in accordance with the Texas Radiation Control Act (Act), Health and Safety Code, §401.106;

(ii) waste, as that term is defined in Title 10, CFR, §61.2; and

(iii) subject to:

(I) concentration limits established in Title 10, CFR, §61.55, or compatible rules adopted by the agency or the Texas Commission on Environmental Quality (TCEQ), as applicable; and

(II) disposal criteria established in Title 10, CFR, or established by the agency or TCEQ, as applicable.

(B) LLRW does not include:

(i) high-level radioactive waste as defined in Title 10, CFR, §60.2;

(ii) spent nuclear fuel as defined in Title 10, CFR, §72.3;

(iii) byproduct material defined in the Act, Health and Safety Code, §401.003(3)(B);

(iv) naturally occurring radioactive material (NORM) waste that is not oil and gas NORM waste;

(v) oil and gas NORM waste; or

(vi) transuranics greater than 100 nanocuries per gram.

(24) Low specific activity (LSA) material--Radioactive material with limited specific activity which is nonfissile or is excepted in accordance with subsection (h) of this section, and which satisfies the following descriptions and limits set forth. Shielding materials surrounding the LSA material may not be considered in determining the estimated average specific activity of the package contents. LSA material shall be in one of the following three groups:

(A) LSA-I.

(i) Ores containing only naturally occurring radionuclides (e.g., uranium, thorium) and uranium or thorium concentrates of such ores which are not intended to be processed for the use of these radionuclides; or

(ii) Solid unirradiated natural uranium or depleted uranium or natural thorium or their solid or liquid compounds or mixtures; or

(iii) Radioactive material for which the A_2 value is unlimited; or

(iv) Other radioactive material (e.g.: mill tailings, contaminated earth, concrete, rubble, other debris, and activated material) in which the radioactivity is distributed throughout, and the estimated average specific activity does not exceed 30 times the value for exempt material activity concentration determined in accordance with subsection (ee) of this section.

(B) LSA-II.

(i) Water with tritium concentration up to 0.8 terabecquerel per liter (TBq/l) (20.0 curies per liter (Ci/l)); or

(ii) Other material in which the radioactivity is distributed throughout, and the average specific activity does not exceed 10^{-4} A_2/g for solids and gases, and 10^{-5} A_2/g for liquids.

(C) LSA-III. Solids (e.g., consolidated wastes, activated materials), excluding powders, that satisfy the requirements of Title 10, CFR, §71.77 in which:

(i) the radioactive material is distributed throughout a solid or a collection of solid objects, or is essentially uniformly distributed in a solid compact binding agent (such as concrete, bitumen, ceramic, etc.); and

(ii) the radioactive material is relatively insoluble, or it is intrinsically contained in a relatively insoluble material, so that, even with a loss of packaging, the loss of radioactive material per package by leaching, when placed in water for seven days, would not exceed $0.1 A_2$; and

(iii) the average specific activity of the solid does not exceed $2 \times 10^{-3} A_2/g$.

(25) Low toxicity alpha emitters--Natural uranium, depleted uranium, natural thorium; uranium-235, uranium-238, thorium-232, thorium-228 or thorium-230 when contained in ores or physical or chemical concentrates or tailings; or alpha emitters with a half-life of less than ten days.

(26) Maximum normal operating pressure--The maximum gauge pressure that would develop in the containment system in a period of one year under the heat condition specified in Title 10, CFR, §71.71(c)(1), in the absence of venting, external cooling by an ancillary system, or operational controls during transport.

(27) Natural thorium--Thorium with the naturally occurring distribution of thorium isotopes (essentially 100 weight percent thorium-232).

(28) Normal form radioactive material--Radioactive material that has not been demonstrated to qualify as special form radioactive material.

(29) NRC Forms 540, 540A, 541, 541A, 542, and 542A--Official NRC forms referenced in subsection (ff) of this section which includes the information required by DOT in Title 49, Code of Federal Regulations, Part 172. Licensees need not use originals of these forms as long as any substitute forms are equivalent to the original documentation in respect to content, clarity, size, and location of information. Upon agreement between the shipper and consignee, NRC Forms 541 (and 541A) and NRC Forms 542 (and 542A) may be completed, transmitted, and stored in electronic media. The electronic media shall have

the capability for producing legible, accurate, and complete records in the format of the uniform manifest.

(30) Package--The packaging together with its radioactive contents as presented for transport.

(A) Fissile material package, Type AF package, Type BF package, Type B(U)F package, or Type B(M)F package--A fissile material packaging together with its fissile material contents.

(B) Type A package--A Type A packaging together with its radioactive contents. A Type A package is defined and shall comply with the DOT regulations in Title 49, CFR, Part 173.

(C) Type B package--A Type B packaging together with its radioactive contents. On approval by the NRC, a Type B package design is designated by NRC as B(U) unless the package has a maximum normal operating pressure of more than 700 kilopascals (kPa) (100 pounds per square inch (lb/in²)) gauge or a pressure relief device that would allow the release of radioactive material to the environment under the tests specified in Title 10, CFR, §71.73 (hypothetical accident conditions), in which case it will receive a designation B(M). B(U) refers to the need for unilateral approval of international shipments; B(M) refers to the need for multilateral approval of international shipments. There is no distinction made in how packages with these designations may be used in domestic transportation. To determine their distinction for international transportation, see DOT regulations in Title 49, CFR, Part 173. A Type B package approved before September 6, 1983, was designated only as Type B. Limitations on its use are specified in Title 10, CFR, §71.19.

(31) Packaging--The assembly of components necessary to ensure compliance with the packaging requirements of this section. It may consist of one or more receptacles, absorbent materials, spacing structures, thermal insulation, radiation shielding, and devices for cooling or absorbing mechanical shocks. The vehicle, tie-down system, and auxiliary equipment may be designated as part of the packaging.

(32) Physical description--The items called for on RC Form 541 to describe a LLRW.

(33) Residual waste--LLRW resulting from processing or decontamination activities that cannot be easily separated into distinct batches attributable to specific waste generators. This waste is attributable to the processor or decontamination facility, as applicable.

(34) Shipper--The licensed entity (i.e., the waste generator, waste collector, or waste processor) who offers LLRW for transportation, typically consigning this type of waste to a licensed waste collector, waste processor, or land disposal facility operator. This definition applies only to shipments of LLRW shipped to a Texas LLRW disposal facility.

(35) Site of usage--The licensee's facility, including all buildings and structures between which radioactive material is transported and all roadways that are not within the public domain on which radioactive material can be transported.

(36) Specific activity of a radionuclide--The radioactivity of the radionuclide per unit mass of that nuclide. The specific activity of a material in which the radionuclide is essentially uniformly distributed is the radioactivity per unit mass of the material.

(37) Spent nuclear fuel or spent fuel--Fuel that has been withdrawn from a nuclear reactor following irradiation, has undergone at least one year's decay since being used as a source of energy in a power reactor, and has not been chemically separated into its constituent elements by reprocessing. Spent fuel includes the special nuclear material, byproduct material, source material, and other radioactive materials associated with fuel assemblies.

(38) Surface contaminated object (SCO)--A solid object that is not itself classed as radioactive material, but which has radioactive material distributed on any of its surfaces. A SCO shall be in one of the following two groups with surface activity not exceeding the following limits:

(A) SCO-I--A solid object on which:

(i) the non-fixed contamination on the accessible surface averaged over 300 square centimeters (cm²) (or the area of the surface if less than 300 cm²) does not exceed 4 becquerels per square centimeter (Bq/cm²) (10⁻⁴ microcurie per square centimeter (μCi/cm²)) for beta and gamma and low toxicity alpha emitters, or 4 x 10⁻¹ Bq/cm² (10⁻⁵ μCi/cm²) for all other alpha emitters;

(ii) the fixed contamination on the accessible surface averaged over 300 cm² (or the area of the surface if less than 300 cm²) does not exceed 4 x 10⁴ Bq/cm² (1 μCi/cm²) for beta and gamma and low toxicity alpha emitters, or 4 x 10³ Bq/cm² (10⁻² μCi/cm²) for all other alpha emitters; and

(iii) the non-fixed contamination plus the fixed contamination on the inaccessible surface averaged over 300 cm² (or the area of the surface if less than 300 cm²) does not exceed 4 x 10⁴ Bq/cm² (1 μCi/cm²) for beta and gamma and low toxicity alpha emitters, or 4 x 10³ Bq/cm² (10⁻² μCi/cm²) for all other alpha emitters.

(B) SCO-II--A solid object on which the limits for SCO-I are exceeded and on which the following limits are not exceeded:

(i) the non-fixed contamination on the accessible surface averaged over 300 cm² (or the area of the surface if less than 300 cm²) does not exceed 400 Bq/cm² (10⁻² μCi/cm²) for beta and gamma and low toxicity alpha emitters or 40 Bq/cm² (10⁻³ μCi/cm²) for all other alpha emitters;

(ii) the fixed contamination on the accessible surface averaged over 300 cm² (or the area of the surface if less than 300 cm²) does not exceed 8 x 10⁵ Bq/cm² (20 μCi/cm²) for beta and gamma and low toxicity alpha emitters, or 8 x 10⁴ Bq/cm² (2 μCi/cm²) for all other alpha emitters; and

(iii) the non-fixed contamination plus the fixed contamination on the inaccessible surface averaged over 300 cm² (or the area of the surface if less than 300 cm²) does not exceed 8 x 10⁵ Bq/cm² (20 μCi/cm²) for beta and gamma and low toxicity alpha emitters, or 8 x 10⁴ Bq/cm² (2 μCi/cm²) for all other alpha emitters.

(39) Uniform Low-Level Radioactive Waste Manifest or uniform manifest--The combination of NRC Forms 540, 541, and, if necessary, 542, and their respective continuation sheets as needed, or equivalent.

(40) Unirradiated uranium--Uranium containing not more than 2 x 10³ Bq of plutonium per gram of uranium-235, not more than 9 x 10⁶ Bq of fission products per gram of uranium-235, and not more than 5 x 10⁻³ g of uranium-236 per gram of uranium-235.

(41) Uranium--Natural, depleted, enriched:

(A) Natural uranium--Uranium with the naturally occurring distribution of uranium isotopes (approximately 0.711 weight percent uranium-235, and the remainder by weight essentially uranium-238).

(B) Depleted uranium--Uranium containing less uranium-235 than the naturally occurring distribution of uranium isotopes.

(C) Enriched uranium--Uranium containing more uranium-235 than the naturally occurring distribution of uranium isotopes.

(42) Waste collector--An entity, operating in accordance with an NRC, agreement state, or agency license, whose principal purpose is to collect and consolidate waste generated by others, and to transfer this waste, without processing or repackaging the collected waste, to another licensed waste collector, licensed waste processor, or licensed land disposal facility.

(43) Waste description--The physical, chemical and radiological description of a LLRW as called for on NRC Form 541.

(44) Waste generator--An entity, operating in accordance with an NRC, agreement state, or agency license, who:

(A) possesses any material or component that contains radioactivity or is radioactively contaminated for which the licensee foresees no further use; and

(B) transfers this material or component to a licensed land disposal facility or to a licensed waste collector or processor for handling or treatment prior to disposal. A licensee performing processing or decontamination services may be a waste generator if the transfer of LLRW from its facility is defined as residual waste.

(45) Waste processor--An entity, operating in accordance with an NRC or agreement state license, whose principal purpose is to process, repack, or otherwise treat LLRW or waste generated by others prior to eventual transfer of waste to a licensed LLRW land disposal facility.

(46) Waste type--A waste within a disposal container having a unique physical description (i.e., a specific waste descriptor code or description; or a waste sorbed on or solidified in a specifically-defined media).

(e) Transportation of radioactive material.

(1) Each licensee who transports radioactive material outside the site of usage as specified in the agency license, transports on public highways, or delivers radioactive material to a carrier for transport, shall comply with the applicable requirements of the DOT regulations in Title 49, CFR, Part 107, Parts 171 - 180 and 390 - 397 appropriate to the mode of transport. The licensee shall particularly note DOT regulations in the following areas:

(A) Packaging - Title 49, CFR, Part 173: Subparts A, B, and I.

(B) Marking and labeling - Title 49, CFR, Part 172: Subpart D, and §§172.400 - 172.407 and §§172.436 - 172.441 of Subpart E.

(C) Placarding - Title 49, CFR, Part 172: Subpart F, especially §§172.500 - 172.519 and §172.556, and Appendices B and C.

(D) Accident reporting - Title 49, CFR, Part 171: §171.15 and §171.16.

(E) Shipping papers and emergency information - Title 49, CFR, Part 172: Subparts C and G.

(F) Hazardous material employee training - Title 49, CFR, Part 172: Subpart H.

(G) Hazardous material shipper/carrier registration - Title 49, CFR, Part 107: Subpart G.

(H) Security Plans - Title 49, CFR, Part 172: Subpart I.

(2) The licensee shall also note DOT regulations pertaining to the following modes of transportation:

(A) Rail: Title 49, CFR Part 174: Subparts A through D and K.

(B) Air: Title 49, CFR Part 175.

(C) Vessel: Title 49, CFR Part 176: Subparts A through F and M.

(D) Public Highway: Title 49, CFR Part 177 and Parts 390 through 397.

(3) If DOT regulations are not applicable to a shipment of radioactive material (i.e. DOT does not have jurisdiction), the licensee shall conform to DOT standards and requirements specified in paragraph (1) of this subsection to the same extent as if the shipment or transportation were subject to DOT regulations. A request for modification, waiver, or exemption from those requirements shall be filed and approved by the agency. Any notification referred to in those requirements, shall be submitted to the agency.

(4) Transporters of low-level radioactive waste to a Texas low-level radioactive waste disposal site shall submit proof of financial responsibility required by Title 49, CFR, §387.7 and §387.9, to the agency's Radiation Safety Licensing Branch and receive approval of this documentation from the agency prior to initial shipment. Proof of financial responsibility shall be submitted after each policy renewal, if the amount of liability coverage is reduced, or upon purchase of a new policy.

(5) The agency shall review and determine alternate routes for the transportation and routing of radioactive material in accordance with 49 CFR, §397.103.

(f) Exemption for low-level radioactive materials.

(1) A licensee is exempt from all requirements of this section with respect to shipment or carriage of the following low-level materials:

(A) Natural material and ores containing naturally occurring radionuclides that are not intended to be processed for use of these radionuclides, provided the activity concentration of the material does not exceed 10 times the values specified in Table 257-4 of subsection (ee)(7) of this section.

(B) Materials for which the activity concentration is not greater than the activity concentration values specified in Table 257-4 of subsection (ee)(7) of this section, or for which the consignment activity is not greater than the limit for an exempt consignment found in Table 257-4 of subsection (ee)(7) of this section.

(2) Common and contract carriers, freight forwarders, and warehousemen, who are subject to the rules and regulations of the DOT or the United States Postal Service (Title 39, CFR, Parts 14 and 15), are exempt from these regulations to the extent that they transport or store sources of radiation in the regular course of their carriage for another or storage incident thereto. Private carriers who are subject to the rules and regulations of the DOT are exempted from these regulations to the extent that they transport sources of radiation. Common, contract, and private carriers who are not subject to the rules and regulations of the DOT or the United States Postal Service are subject to applicable sections of these regulations.

(3) Persons who discard licensed material in accordance with §289.202(ff) of this title are exempt from all requirements of this section.

(g) Exemption of physicians. Any physician licensed by a State to dispense drugs in the practice of medicine is exempt from Title 10, CFR, §71.5 with respect to transport by the physician of licensed material for use in the practice of medicine. However, any physician

operating under this exemption shall be licensed under Title 10, CFR, Part 35 or the equivalent agreement state regulations.

(h) Exemption from classification as fissile material. Fissile materials meeting the requirements of at least one of the paragraphs (1) through (6) of this subsection are exempt from classification as fissile material and from the fissile material package standards of Title 10, CFR §71.55 and §71.59, but are subject to all other requirements of this section, except as noted.

(1) An individual package containing 2 grams or less fissile material.

(2) Individual or bulk packaging containing 15 grams or less of fissile material provided the package has at least 200 grams of solid nonfissile material for every gram of fissile material. Lead, beryllium, graphite, and hydrogenous material enriched in deuterium may be present in the package but shall not be included in determining the required mass for solid nonfissile material.

(3) Solid fissile material commingled with solid non-fissile material.

(A) Low concentrations of solid fissile material commingled with solid nonfissile material provided:

(i) that there is at least 2000 grams of solid nonfissile material for every gram of fissile material; and

(ii) there is no more than 180 grams of fissile material distributed within 360 kg of contiguous non-fissile material.

(B) Lead, beryllium, graphite, and hydrogenous material enriched in deuterium may be present in the package but shall not be included in determining the required mass of solid nonfissile material.

(4) Uranium enriched in uranium-235 to a maximum of 1% by weight, and with total plutonium and uranium-233 content of up to 1% of the mass of uranium-235, provided that the mass of any beryllium, graphite, and hydrogenous material enriched in deuterium constitutes less than 5 percent of the uranium mass.

(5) Liquid solutions of uranyl nitrate enriched in uranium-235 to a maximum of 2 percent by mass, with a total plutonium and uranium-233 content not exceeding 0.002 percent of the mass of uranium, and with a minimum nitrogen to uranium atomic ratio (N/U) of 2. The material shall be contained in at least a DOT Type A package.

(6) Packages containing, individually, a total plutonium mass of not more than 1000 grams, of which not more than 20 percent by mass may consist of plutonium-239, plutonium-241, or any combination of these radionuclides.

(i) General license.

(1) NRC-approved package.

(A) A general license is issued to any licensee of the agency to transport, or to deliver to a carrier for transport, radioactive material in a package for which a license, certificate of compliance (CoC), or other approval has been issued by the NRC.

(B) This general license applies only to a licensee who has a quality assurance program approved by the NRC as satisfying the provisions of Title 10, CFR, Part 71, Subpart H.

(C) This general license applies only to a licensee who meets the following requirements:

(i) has a copy of the CoC or other approval by the NRC of the package, and has the drawings and other documents refer-

enced in the approval relating to the use and maintenance of the packaging and to the actions to be taken before shipment; and

(ii) complies with the terms and conditions of the specific license, certificate, or other approval by the NRC, as applicable, and the applicable requirements of Title 10, CFR, Part 71, Subparts A, G, and H; and

(iii) Before the licensee's first use of the package, submits in writing to: ATTN: Document Control Desk, Director, Spent Fuel Project Office, Office of Nuclear Material Safety and Safeguards, using an appropriate method listed in Title 10, CFR, Part 71, the licensee's name and license number and the package identification number specified in the package approval.

(D) This general license applies only when the package approval authorizes use of the package in accordance with this general license.

(E) For a Type B or fissile material package, the design of which was approved by NRC before April 1, 1996, the general license is subject to the additional restrictions of paragraph (2) of this subsection.

(F) For radiography containers, a program for transport container inspection and maintenance limited to radiographic exposure devices, source changers, or packages transporting these devices and meeting the requirements of §289.255(m)(2)(B) of this title (relating to Radiation Safety Requirements and Licensing and Registration Procedures for Industrial Radiography), is deemed to satisfy the requirements of subparagraph (B) of this paragraph.

(2) Previously approved package.

(A) A Type B package previously approved by the NRC, but not designated as B(U), B(M), B(U)F or B(M)F in the identification number of the NRC certificate of compliance, or Type AF packages approved by the NRC prior to September 6, 1983, may be used in accordance with the general license of paragraph (1) of this subsection with the following additional conditions:

(i) fabrication of the packaging was satisfactorily completed before August 31, 1986, as demonstrated by application of its model number in accordance with subsection (k)(3) of this section;

(ii) a serial number that uniquely identifies each packaging which conforms to the approved design is assigned to, and legibly and durably marked on, the outside of each packaging; and

(iii) subparagraph (A) of this paragraph expires October 1, 2008.

(B) A Type B(U) package, a Type B(M) package, or a fissile material package, previously approved by the NRC but without the designation "-85" in the identification number of the NRC CoC, may be used in accordance with the general license of paragraph (1) of this subsection with the following additional conditions:

(i) fabrication of the package is satisfactorily completed by April 1, 1999, as demonstrated by application of its model number in accordance with subsection (k)(3) of this section;

(ii) a package used for a shipment to a location outside the United States is subject to multilateral approval as defined in DOT regulations Title 49, CFR §173.403; and

(iii) a serial number which uniquely identifies each packaging which conforms to the approved design is assigned to and legibly and durably marked on the outside of each packaging.

(C) A Type B(U) package, a Type B(M) package, or a fissile material package, previously approved by the NRC with the

designation "-85" in the identification number of the NRC CoC, may be used in accordance with the general license of paragraph (1) of this subsection with the following additional conditions:

(i) Fabrication of the package shall be satisfactorily completed by December 31, 2006, as demonstrated by application of its model number in accordance with subsection (k)(3) of this section.

(ii) After December 31, 2003, a package used for a shipment to a location outside the United States is subject to multilateral approval as defined in DOT regulations Title 49, CFR, §173.403.

(3) DOT specification container.

(A) A general license is issued to any licensee to transport, or to deliver to a carrier for transport, licensed material in a specification container for fissile material or for a Type B quantity of radioactive material as specified in Title 49, CFR, Parts 173 and 178.

(B) This general license applies only to a licensee who:

(i) has a quality assurance program required by subsections (s), (t), and (u) of this section and Title 10, CFR, Part 71, Subpart H;

(ii) has a copy of the specification; and

(iii) complies with the terms and conditions of the specification and the applicable requirements of this section.

(C) The general license in subparagraph (A) of this paragraph is subject to the limitation that the specification container may not be used for a shipment to a location outside the United States except by multilateral approval as defined in Title 49, CFR, §173.403.

(4) Use of foreign approved package.

(A) A general license is issued to any licensee to transport, or to deliver to a carrier for transport, licensed material in a package the design of which has been approved in a foreign national competent authority certificate that has been revalidated by the DOT as meeting the applicable requirements of Title 49, CFR, §171.12.

(B) Except as otherwise provided by this section, the general license applies only to a licensee who has a quality assurance program approved by the NRC as satisfying the applicable provisions of Title 10, CFR, Part 71.

(C) This general license applies only to international shipments.

(D) This general license applies only to a licensee who:

(i) has a copy of the applicable certificate, the revalidation, and the drawings and other documents referenced in the certificate relating to the use and maintenance of the packaging and to the actions to be taken prior to shipment; and

(ii) complies with the terms and conditions of the certificate and revalidation, and with the applicable requirements of this section. With respect to the quality assurance provisions of Title 10, CFR, Part 71, the licensee is exempt from design, construction, and fabrication considerations.

(5) Fissile material.

(A) A general license is issued to any licensee to transport fissile material, or to deliver fissile material to a carrier for transport, if the material is shipped in accordance with this section. The fissile material need not be contained in a package that meets the standards of this section; however, the material shall be contained in a Type A package. The Type A package shall also meet the DOT requirements of Title 49, CFR, §173.417(a).

(B) The general license applies only to a licensee who has a quality assurance program approved by the NRC as satisfying the provisions of Title 10, CFR, Part 71.

(C) The general license applies only when a package's contents:

(i) contain no more than a Type A quantity of radioactive material; and

(ii) contain less than 500 total grams of beryllium, graphite, or hydrogenous material enriched in deuterium.

(D) The general license applies only to packages containing fissile material that are labeled with a CSI that:

(i) has been determined in accordance with paragraph (E) of this subsection;

(ii) has a value less than or equal to 10.0; and

(iii) for a shipment of multiple packages containing fissile material, the sum of the CSIs shall be less than or equal to 50.0 (for shipment on a nonexclusive use conveyance) and less than or equal to 100.0 (for shipment on an exclusive use conveyance).

(E) The CSI shall be as follows:

(i) the value for the CSI shall be greater than or equal to the number calculated by the following equation: Figure: 25 TAC §289.257(i)(5)(E)(i) (No change.)

(ii) the calculated CSI shall be rounded up to the first decimal place;

(iii) the values of X, Y, and Z used in the CSI equation shall be taken from Tables 257-1 or 257-2 of this clause, as appropriate;

Figure: 25 TAC §289.257(i)(5)(E)(iii) (No change.)

(iv) if Table 257-2 of clause (iii) of this subparagraph is used to obtain the value of X, then the values for the terms in the equation for uranium-233 and plutonium shall be assumed to be zero; and

(v) Table 257-1 values of clause (iii) of this subparagraph for X, Y, and Z shall be used to determine the CSI if:

(I) uranium-233 is present in the package;

(II) the mass of plutonium exceeds 1% of the mass of uranium-235;

(III) the uranium is of unknown uranium-235 enrichment, or greater than 24 weight percent enrichment; or

(IV) substances having a moderating effectiveness (i.e. an average hydrogen density greater than H₂O) (e.g. certain hydrocarbon oils or plastics) are present in any form, except as polyethylene used for packing or wrapping.

(6) Plutonium-beryllium special form material.

(A) A general license is issued to any licensee to transport fissile material in the form of plutonium-beryllium (Pu-Be) special form sealed sources, or to deliver Pu-Be sealed sources to a carrier for transport, if the material is shipped in accordance with this section. This material need not be contained in a package that meets the standards of Title 10, CFR, Part 71, however, the material shall be contained in a Type A package. The Type A package shall also meet the DOT requirements of Title 49, CFR, §173.417(a).

(B) The general license applies only to a licensee who has a quality assurance program approved by the NRC as satisfying the provisions of Title 10, CFR, Part 71.

(C) The general license applies only when a package's contents:

(i) contain no more than a Type A quantity of material; and

(ii) contain less than 1000g of plutonium, provided that plutonium-239, plutonium-241, or any combination of these radionuclides, constitutes less than 240 g of the total quantity of plutonium in the package.

(D) The general license applies only to packages labeled with a CSI that:

(i) has been determined in accordance with subparagraph (E) of this paragraph;

(ii) has a value less than or equal to 100.0; and

(iii) for a shipment of multiple packages containing Pu-Be sealed sources, the sum of the CSIs shall be less than or equal to 50.0 (for shipment on a nonexclusive use conveyance) and less than or equal to 100.0 (for shipment on or exclusive use conveyance).

(E) The value for the CSI shall be as follows:

(i) the CSI shall be greater than or equal to the number calculated by the following equation:

Figure: 25 TAC §289.257(i)(6)(E)(i) (No change.)

(ii) the calculated CSI shall be rounded up to the first decimal place.

(j) Assumptions as to unknown properties. When the isotopic abundance, mass, concentration, degree of irradiation, degree of moderation, or other pertinent property of fissile material in any package is not known, the licensee shall package the fissile material as if the unknown properties have credible values that will cause the maximum neutron multiplication.

(k) Preliminary determinations. Before the first use of any packaging for the shipment of licensed material the licensee shall:

(1) ascertain that there are no cracks, pinholes, uncontrolled voids, or other defects that could significantly reduce the effectiveness of the packaging;

(2) where the maximum normal operating pressure will exceed 35 kPa (5 lbf/in²) gauge, test the containment system at an internal pressure at least 50 percent higher than the maximum normal operating pressure, to verify the capability of that system to maintain its structural integrity at that pressure; and

(3) conspicuously and durably mark the packaging with its model number, serial number, gross weight, and a package identification number assigned by NRC. Before applying the model number, the licensee shall determine that the packaging has been fabricated in accordance with the design approved by the NRC.

(l) Routine determinations. Before each shipment of radioactive material, the licensee shall ensure that the package with its contents satisfies the applicable requirements of this section and of the license. The licensee shall determine that:

(1) the package is proper for the contents to be shipped;

(2) the package is in unimpaired physical condition except for superficial defects such as marks or dents;

(3) each closure device of the packaging, including any required gasket, is properly installed, secured, and free of defects;

(4) any system for containing liquid is adequately sealed and has adequate space or other specified provision for expansion of the liquid;

(5) any pressure relief device is operable and set in accordance with written procedures;

(6) the package has been loaded and closed in accordance with written procedures;

(7) for fissile material, any moderator or neutron absorber, if required, is present and in proper condition;

(8) any structural part of the package that could be used to lift or tie down the package during transport is rendered inoperable for that purpose, unless it satisfies the design requirements of Title 10, CFR, §71.45;

(9) the level of non-fixed (removable) radioactive contamination on the external surfaces of each package offered for shipment is as low as reasonably achievable (ALARA), and within the limits specified in DOT regulations in Title 49, CFR, §173.443;

(10) external radiation levels around the package and around the vehicle, if applicable, will not exceed the following limits at any time during transportation:

(A) Except as provided in subparagraph (B) of this paragraph, each package of radioactive materials offered for transportation shall be designed and prepared for shipment so that under conditions normally incident to transportation the radiation level does not exceed 2 mSv/hr (200 mrem/hr) at any point on the external surface of the package, and the transport index does not exceed 10.

(B) A package that exceeds the radiation level limits specified in subparagraph (A) of this paragraph shall be transported by exclusive use shipment only, and the radiation levels for such shipment shall not exceed the following during transportation:

(i) 2 mSv/hr (200 mrem/hr) on the external surface of the package, unless the following conditions are met, in which case the limit is 10 mSv/hr (1,000 mrem/hr):

(I) the shipment is made in a closed transport vehicle;

(II) the package is secured within the vehicle so that its position remains fixed during transportation; and

(III) there are no loading or unloading operations between the beginning and end of the transportation;

(ii) 2 mSv/hr (200 mrem/hr) at any point on the outer surface of the vehicle, including the top and underside of the vehicle; or in the case of a flat-bed style vehicle, at any point on the vertical planes projected from the outer edges of the vehicle, on the upper surface of the load or enclosure, if used, and on the lower external surface of the vehicle; and

(iii) 0.1 mSv/hr (10 mrem/hr) at any point 2 meters (m) (6.6 feet (ft)) from the outer lateral surfaces of the vehicle (excluding the top and underside of the vehicle); or in the case of a flat-bed style vehicle, at any point 2 m (6.6 ft) from the vertical planes projected by the outer edges of the vehicle (excluding the top and underside of the vehicle); and

(iv) 0.02 mSv/hr (2 mrem/hr) in any normally occupied space, except that this provision does not apply to private carriers,

if exposed personnel under their control wear radiation dosimetry devices in conformance with §289.202(q) of this title;

(C) For shipments made in accordance with the provisions of subparagraph (B) of this paragraph, the shipper shall provide specific written instructions to the carrier for maintenance of the exclusive use shipment controls. The instructions shall be included with the shipping paper information.

(D) The written instructions required for exclusive use shipments shall be sufficient so that, when followed, they will cause the carrier to avoid actions that will unnecessarily delay delivery or unnecessarily result in increased radiation levels or radiation exposures to transport workers or members of the general public.

(11) a package shall be designed, constructed, and prepared for transport so that in still air at 38 degrees Celsius (100 degrees Fahrenheit) and in the shade, no accessible surface of a package would have a temperature exceeding 50 degrees Celsius (122 degrees Fahrenheit) in a nonexclusive use shipment, or 85 degrees Celsius (185 degrees Fahrenheit) in an exclusive use shipment. Accessible package surface temperatures shall not exceed these limits at any time during transportation.

(m) Air transport of plutonium.

(1) Notwithstanding the provisions of any general licenses and notwithstanding any exemptions stated directly in this section or included indirectly by citation of Title 49, CFR, Chapter I, as may be applicable, the licensee shall assure that plutonium in any form, whether for import, export, or domestic shipment, is not transported by air or delivered to a carrier for air transport unless:

(A) the plutonium is contained in a medical device designed for individual human application; or

(B) the plutonium is contained in a material in which the specific activity is less than or equal to the activity concentration values for plutonium specified in Table 257-4 of subsection (ee)(7) of this section, and in which the radioactivity is essentially uniformly distributed; or

(C) the plutonium is shipped in a single package containing no more than an A_3 quantity of plutonium in any isotope or form, and is shipped in accordance with subsection (e) of this section; or

(D) the plutonium is shipped in a package specifically authorized for the shipment of plutonium by air in the Certificate of Compliance for that package issued by the NRC.

(2) Nothing in paragraph (1) of this subsection is to be interpreted as removing or diminishing the requirements of Title 10, CFR, §73.24.

(3) For a shipment of plutonium by air which is subject to paragraph (1) of this subsection, the licensee shall, through special arrangement with the carrier, require compliance with Title 49, CFR, §175.704, DOT regulations applicable to the air transport of plutonium.

(n) Opening instructions. Before delivery of a package to a carrier for transport, the licensee shall ensure that any special instructions needed to safely open the package have been sent to, or otherwise made available to, the consignee for the consignee's use in accordance with §289.202(ee)(5) of this title.

(o) Records. For a period of three years after shipment, each licensee shall maintain, for inspection by the agency, a record of each shipment of radioactive material showing the following where applicable:

(1) identification of the packaging by model number and serial number;

(2) verification that there are no significant defects in the packaging, as shipped;

(3) type and quantity of radioactive material in each package, and the total quantity of each shipment;

(4) date of the shipment;

(5) for fissile packages and for Type B packages, any special controls exercised;

(6) name and address of the transferee;

(7) address to which the shipment was made; and

(8) surveys performed to determine compliance with subsection (l)(9) and (10) of this section.

(p) Reports. The shipper shall immediately report by telephone, telegram, mailgram, or facsimile, all radioactive waste transportation accidents to the agency and the local emergency planning committees in the county where the radioactive waste accident occurs. All other accidents involving radioactive material shall be reported in accordance with §289.202(xx) and (yy) of this title.

(q) Advance notification of transport of irradiated reactor fuel and certain radioactive waste.

(1) As specified in paragraphs (2) - (4) of this subsection, each licensee shall provide advance notification to the governor of a state, or the governor's designee, of the shipment of radioactive waste, through, or across the boundary of the state, before the transport, or delivery to a carrier, for transport, of radioactive waste outside the confines of the licensee's facility or other place of use or storage.

(2) Advance notification is required in accordance with this section for shipment of irradiated reactor fuel in quantities less than that subject to advance notification requirements of Title 10, CFR, §73.37. Advanced notification is also required under this subsection for shipments of radioactive material, other than irradiated fuel, meeting the following three conditions:

(A) the radioactive waste is required by this section to be in Type B packaging for transportation;

(B) the radioactive waste is being transported to or across a state boundary en route to a disposal facility or to a collection point for transport to a disposal facility; and

(C) the quantity of radioactive waste in a single package exceeds the least of the following:

(i) 3000 times the A_1 value of the radionuclides as specified in subsection (ee) of this section for special form radioactive material; or

(ii) 3000 times the A_2 value of the radionuclides as specified in subsection (ee) of this section for normal form radioactive material; or

(iii) 1000 terabecquerels (TBq) (27,000 curies (Ci)).

(3) The following are procedures for submitting advance notification:

(A) The notification shall be made in writing to the office of each appropriate governor or governor's designee and to the agency.

(B) A notification delivered by mail shall be post-marked at least seven days before the beginning of the seven-day period during which departure of the shipment is estimated to occur.

(C) A notification delivered by any other means than mail shall reach the office of the governor or of the governor's designee at least four days before the beginning of the seven-day period during which departure of the shipment is estimated to occur.

(i) A list of the names and mailing addresses of the governors' designees receiving advance notification of transportation of radioactive waste was published in the Federal Register on June 30, 1995 (60 FR 34306).

(ii) The list will be published annually in the Federal Register on or about June 30 to reflect any changes in information.

(iii) A list of the names and mailing addresses of the governors' designees is available on request from the Director, Office of State Programs, United States Nuclear Regulatory Commission, Washington, DC 20555-0001.

(D) The licensee shall retain a copy of the notification as a record for three years.

(4) Each advance notification of shipment of irradiated reactor fuel or radioactive waste shall contain the following information:

(A) the name, address, and telephone number of the shipper, carrier, and receiver of the irradiated reactor fuel or radioactive waste shipment;

(B) a description of the irradiated reactor fuel or radioactive waste contained in the shipment, as specified in the regulations of DOT in Title 49, CFR, §172.202 and §172.203(d);

(C) the point of origin of the shipment and the seven-day period during which departure of the shipment is estimated to occur;

(D) the seven-day period during which arrival of the shipment at state boundaries is estimated to occur;

(E) the destination of the shipment, and the seven-day period during which arrival of the shipment is estimated to occur; and

(F) a point of contact, with a telephone number, for current shipment information.

(5) A licensee who finds that schedule information previously furnished to a governor or governor's designee, in accordance with this section, will not be met, shall telephone a responsible individual in the office of the governor of the state or of the governor's designee and inform that individual of the extent of the delay beyond the schedule originally reported. The licensee shall maintain a record of the name of the individual contacted for three years.

(6) The following are procedures for a cancellation notice.

(A) Each licensee who cancels an irradiated reactor fuel or radioactive waste shipment for which advance notification has been sent shall send a cancellation notice to the governor of each state or to the governor's designee previously notified, and to the agency.

(B) The licensee shall state in the notice that it is a cancellation and identify the advance notification that is being canceled. The licensee shall retain a copy of the notice as a record for three years.

(r) Emergency plan. Each shipper and transporter of radioactive waste shall adopt an emergency plan approved by the agency for responding to transportation accidents.

(s) Quality assurance requirements.

(1) Purpose. This subsection describes quality assurance requirements applying to design, purchase, fabrication, handling, shipping, storing, cleaning, assembly, inspection, testing, operation, maintenance, repair, and modification of components of packaging that are important to safety.

(A) Quality Assurance comprises all those planned and systematic actions necessary to provide adequate confidence that a system or component will perform satisfactorily in service.

(B) Quality assurance includes quality control, which comprises those quality assurance actions related to control of the physical characteristics and quality of the material or component to predetermined requirements.

(C) The licensee, certificate holder, and applicant for a CoC are responsible for the following:

(i) the quality assurance requirements as they apply to design, fabrication, testing, and modification of packaging; and

(ii) the quality assurance provision which applies to its use of a packaging for the shipment of licensed material subject to this subpart.

(2) Establishment of program. Each licensee, certificate holder, and applicant for a CoC shall:

(A) Establish, maintain, and execute a quality assurance program satisfying each of the applicable criteria of this subsection, subsections (s) and (t) of this section and Title 10, CFR, §§71.101 through 71.137 and satisfying any specific provisions that are applicable to the licensee's activities including procurement of packaging; and

(B) Execute the applicable criteria in a graded approach to an extent that is commensurate with the quality assurance requirement's importance to safety.

(3) Approval of program. Before the use of any package for the shipment of licensed material subject to this subsection, each licensee shall:

(A) obtain agency approval of its quality assurance program; and

(B) file a description of its quality assurance program, including a discussion of which requirements of this subsection and subsections (t) and (u) are applicable and how they will be satisfied.

(4) Radiography containers. A program for transport container inspection and maintenance limited to radiographic exposure devices, source changers, or packages transporting these devices and meeting the requirements of §289.255(m) of this title, is deemed to satisfy the requirements of subsection (i)(1)(B) of this section and paragraph (2) of this subsection.

(t) Quality assurance organization. The licensee, certificate holder, and applicant for a CoC shall (while the term "licensee" is used in these criteria, the requirements are applicable to whatever design, fabricating, assembly, and testing of the package is accomplished with respect to a package before the time a package approval is issued):

(1) be responsible for the establishment and execution of the quality assurance program. The licensee, certificate holder, and applicant for a CoC may delegate to others, such as contractors, agents, or consultants, the work of establishing and executing the quality assurance program, or any part of the quality assurance program, but shall retain responsibility for the program; and

(2) clearly establish and delineate, in writing, the authority and duties of persons and organizations performing activities affecting the functions of structures, systems, and components that are important

to safety. These activities include performing the functions associated with attaining quality objectives and the quality assurance functions.

(3) establish quality assurance functions as follows:

(A) assuring that an appropriate quality assurance program is established and effectively executed; and

(B) verifying, by procedures such as checking, auditing, and inspection, that activities affecting the functions that are important to safety have been correctly performed.

(4) assure that persons and organizations performing quality assurance functions have sufficient authority and organizational freedom to:

(A) identify quality problems;

(B) initiate, recommend, or provide solutions; and

(C) verify implementation of solutions.

(u) Quality assurance program. A quality assurance program shall be maintained as follows:

(1) The licensee, certificate holder, and applicant for a CoC shall:

(A) establish, at the earliest practicable time consistent with the schedule for accomplishing the activities, a quality assurance program that complies with the requirements of this section and Title 10, CFR, §§71.101 through 71.137;

(B) document the quality assurance program by written procedures or instructions and shall carry out the program in accordance with those procedures throughout the period during which the packaging is used; and

(C) identify the material and components to be covered by the quality assurance program, the major organizations participating in the program, and the designated functions of these organizations.

(2) The licensee, certificate holder, and applicant for a CoC, through its quality assurance program, shall:

(A) provide control over activities affecting the quality of the identified materials and components to an extent consistent with their importance to safety, and as necessary to assure conformance to the approved design of each individual package used for the shipment of radioactive material;

(B) assure that activities affecting quality are accomplished under suitable controlled conditions which include:

(i) the use of appropriate equipment;

(ii) suitable environmental conditions for accomplishing the activity, such as adequate cleanliness; and

(iii) all prerequisites for the given activity have been satisfied; and

(C) take into account the need for special controls, processes, test equipment, tools, and skills to attain the required quality, and the need for verification of quality by inspection and test.

(3) The licensee, certificate holder, and applicant for a CoC shall base the requirements and procedures of its quality assurance program on the following considerations concerning the complexity and proposed use of the package and its components.

(A) The impact of malfunction or failure of the item to safety;

(B) The design and fabrication complexity or uniqueness of the item;

(C) The need for special controls and surveillance over processes and equipment;

(D) The degree to which functional compliance can be demonstrated by inspection or test; and

(E) The quality history and degree of standardization of the item.

(4) The licensee, certificate holder, and applicant for a CoC shall provide for indoctrination and training of personnel performing activities affecting quality, as necessary to assure that suitable proficiency is achieved and maintained.

(5) The licensee, certificate holder, and applicant for a CoC shall review the status and adequacy of the quality assurance program at established intervals. Management of other organizations participating in the quality assurance program shall review regularly the status and adequacy of that part of the quality assurance program they are executing.

(v) Quality control program. Each shipper shall adopt a quality control program to include verification of the following to ensure that shipping containers are suitable for shipments to a licensed disposal facility:

(1) identification of appropriate container(s);

(2) container testing documentation is adequate;

(3) appropriate container used;

(4) container packaged appropriately;

(5) container labeled appropriately;

(6) manifest filled out appropriately; and

(7) documentation maintained of each step.

(w) Handling, storage, and shipping control. The licensee, certificate holder, and applicant for a CoC shall establish measures to control, in accordance with instructions, the handling, storage, shipping, cleaning, and preservation of materials and equipment to be used in packaging to prevent damage or deterioration. When necessary for particular products, special protective environments, such as inert gas atmosphere, and specific moisture content and temperature levels must be specified and provided.

(x) Inspection, test, and operating status. Measures to track inspection, test and operating status shall be established as follows.

(1) The licensee, certificate holder, and applicant for a CoC shall establish measures to indicate, by the use of markings such as stamps, tags, labels, routing cards, or other suitable means, the status of inspections and tests performed upon individual items of the packaging. These measures must provide for the identification of items that have satisfactorily passed required inspections and tests, where necessary to preclude inadvertent bypassing of the inspections and tests; and

(2) The licensee, shall establish measures to identify the operating status of components of the packaging, such as tagging valves and switches, to prevent inadvertent operation.

(y) Nonconforming materials, parts, or components. The licensee, certificate holder, and applicant for a CoC shall establish measures to control materials, parts, or components that do not conform to the licensee's requirements to prevent their inadvertent use or installation. These measures must include the following, as appropriate;

(1) procedures for identification, documentation, segregation, disposition, and notification to affected organizations; and

(2) nonconforming items must be reviewed and accepted, rejected, repaired, or reworked in accordance with documented procedures.

(z) Corrective action. The licensee, certificate holder, and applicant for a CoC shall establish measures to assure that conditions adverse to quality, such as deficiencies, deviations, defective material and equipment, and nonconformances, are promptly identified and corrected.

(1) In the case of a significant condition adverse to quality, the measures must assure that the cause of the condition is determined and corrective action taken to preclude repetition.

(2) The identification of the significant condition adverse to quality, the cause of the condition, and the corrective action taken must be documented and reported to appropriate levels of management.

(aa) Quality assurance records. The licensee, certificate holder, and applicant for a CoC shall maintain written records sufficient to describe the activities affecting quality for inspection by the agency for 3 years beyond the date when the licensee, certificate holder, and applicant for a CoC last engage in the activity for which the quality assurance program was developed. If any portion of the written procedures or instructions is superseded, the licensee, certificate holder, and applicant for a CoC shall retain the superseded material for 3 years after it is superseded. The records must include the following:

(1) instructions, procedures, and drawings to prescribe quality assurance activities closely related specifications such as required qualifications of personnel, procedures, and equipment.

(2) instructions or procedures which establish a records retention program that is consistent with applicable regulations and designates factors such as duration, location, and assigned responsibility.

(bb) Audits. The licensee, certificate holder, and applicant for a CoC shall carry out a comprehensive system of planned and periodic audits, to verify compliance with all aspects of the quality assurance program, and to determine the effectiveness of the program. The audit program shall include:

(1) performance in accordance with written procedures or checklists by appropriately trained personnel not having direct responsibilities in the area being audited;

(2) documented results that are reviewed by management having responsibility in the area audited; and

(3) follow-up action, including reaudit of deficient areas, shall be taken where indicated.

(cc) Transfer for disposal and manifests.

(1) The requirements of this section and subsection (ff) of this section are designed to:

(A) control transfers of LLRW by any waste generator, waste collector, or waste processor licensee, as defined in this section, who ships LLRW either directly, or indirectly through a waste collector or waste processor, to a licensed LLRW land disposal facility, as defined in §289.201(b) of this title;

(B) establish a manifest tracking system; and

(C) supplement existing requirements concerning transfers and recordkeeping for those wastes.

(2) Beginning March 1, 1998, all affected licensees shall use subsection (ff) of this section.

(3) Each shipment of LLRW intended for disposal at a licensed land disposal facility shall be accompanied by a shipment manifest in accordance with subsection (ff)(1) of this section.

(4) Any licensee shipping LLRW intended for ultimate disposal at a licensed land disposal facility shall document the information required on the uniform manifest and transfer this recorded manifest information to the intended consignee in accordance with subsection (ff) of this section.

(5) Each shipment manifest shall include a certification by the waste generator as specified in subsection (ff)(10) of this section, as appropriate.

(6) Each person involved in the transfer for disposal and disposal of LLRW, including the waste generator, waste collector, waste processor, and disposal facility operator, shall comply with the requirements specified in subsection (ff) of this section, as appropriate.

(7) Any licensee shipping LLRW to a licensed Texas LLRW disposal facility shall comply with the waste acceptance criteria in 30 Texas Administrative Code (TAC) Part 1, Chapter 336.

(dd) Fees.

(1) Each shipper shall be assessed a fee for shipments of LLRW originating in Texas or originating out-of-state being shipped to a licensed Texas LLRW disposal facility and these fees shall be:

(A) \$10 per cubic foot of shipped LLRW;

(B) collected by the department and deposited to the credit of the radiation and perpetual care account; and

(C) used exclusively by the agency for emergency planning for and response to transportation accidents involving LLRW.

(2) Fee assessments in accordance with this section shall be suspended when the amount of fees collected reaches \$500,000, except that if the balance of fees collected is reduced to \$350,000 or less, the assessments shall be reinstated to bring the balance of fees collected to \$500,000.

(3) Money expended from the radiation and perpetual care account to respond to accidents involving LLRW shall be reimbursed to the radiation and perpetual care account by the responsible shipper or transporter according to rules adopted by the board.

(4) For purposes of this subsection, "shipper" means a person who generates low-level radioactive waste and ships or arranges with others to ship the waste to a disposal site.

(ee) Appendices for determination of A_1 and A_2 .

(1) Values of A_1 and A_2 . Values of A_1 and A_2 for individual radionuclides, which are the bases for many activity limits elsewhere in these rules are given in Table 257-3 of paragraph (6) of this subsection. The curie (Ci) values specified are obtained by converting from the terabecquerel (TBq) figure. The Terabecquerel values are the regulatory standard. The curie values are for information only and are not intended to be the regulatory standard. Where values of A_1 or A_2 are unlimited, it is for radiation control purposes only. For nuclear criticality safety, some materials are subject to controls placed on fissile material.

(2) Values of radionuclides not listed.

(A) For individual radionuclides whose identities are known, but are not listed in Table 257-3 of paragraph (6) of this subsection, the A_1 and A_2 values contained in Table 257-5 of paragraph (8) of this subsection may be used. Otherwise, the licensee shall obtain

prior NRC approval of the A_1 and A_2 values for radionuclides not listed in Table 257-3 of paragraph (6) of this subsection, before shipping the material.

(B) For individual radionuclides whose identities are known, but that are not listed in Table 257-4 of paragraph (7) of this subsection, the exempt material activity concentration and exempt consignment activity values contained in Table 257-5 of paragraph (8) of this subsection may be used. Otherwise, the licensee shall obtain prior approval of the exempt material activity concentration and exempt consignment activity values, for radionuclides not listed in Table 257-3 of paragraph (6) of this subsection, before shipping the material.

(C) The licensee shall submit requests for prior approval, described in subparagraphs (A) and (B) of this paragraph to the agency.

(3) Calculations of A_1 and A_2 for a radionuclide not in Table 257-3 of paragraph (6) of this subsection. In the calculations of A_1 and A_2 for a radionuclide not in Table 257-3 of paragraph (6) of this subsection, a single radioactive decay chain, in which radionuclides are present in their naturally occurring proportions, and in which no daughter radionuclide has a half-life either longer than ten days, or longer than that of the parent radionuclide, shall be considered as a single radionuclide, and the activity to be taken into account and the A_1 or A_2 value to be applied shall be those corresponding to the parent radionuclide of that chain. In the case of radioactive decay chains in which any daughter radionuclide has a half-life either longer than ten days, or greater than that of the parent radionuclide, the parent and those daughter radionuclides shall be considered as mixtures of different radionuclides.

(4) Determination for mixtures of radionuclides whose identities and respective activities are known. For mixtures of radionuclides whose identities and respective activities are known, the following conditions apply.

(A) For special form radioactive material, the maximum quantity transported in a Type A package is as follows:
Figure: 25 TAC §289.257(ee)(4)(A)

(B) For normal form radioactive material, the maximum quantity transported in a Type A package is as follows:
Figure: 25 TAC §289.257(ee)(4)(B)

(C) Alternatively, an A_1 value for mixtures of special form material may be determined as follows:
Figure: 25 TAC §289.257(ee)(4)(C)

(D) An A_2 value for mixtures of normal form material may be determined as follows:
Figure: 25 TAC §289.257(ee)(4)(D)

(E) The exempt activity concentration for mixtures of nuclides may be determined as follows:
Figure: 25 TAC §289.257(ee)(4)(E)

(F) The activity limit for an exempt consignment for mixtures of radionuclides may be determined as follows:
Figure: 25 TAC §289.257(ee)(4)(F)

(5) Determination when activities of some of the radionuclides are not known. When the identity of each radionuclide is known, but the individual activities of some of the radionuclides are not known, the radionuclides may be grouped and the lowest A_1 or A_2 value, as appropriate, for the radionuclides in each group may be used in applying the formulas in paragraph (4) of this subsection. Groups may be based on the total alpha activity and the total beta/gamma activity when these are known, using the lowest A_1 or A_2 values for the alpha emitters and beta/gamma emitters.

(6) A_1 and A_2 values for radionuclides. The following Table 257-3 contains A_1 and A_2 values for radionuclides:
Figure: 25 TAC §289.257(ee)(6)

(7) Exempt material activity concentrations and exempt consignment activity limits for radionuclides. The following Table 257-4 contains exempt material activity concentrations and exempt consignment activity limits for radionuclides:
Figure: 25 TAC §289.257(ee)(7)

(8) General values for A_1 and A_2 . The following Table 257-5 contains general values for A_1 and A_2 :
Figure: 25 TAC §289.257(ee)(8)

(9) Activity-mass relationships for uranium. The following Table 257-6 contains activity-mass relationships for uranium:
Figure: 25 TAC §289.257(ee)(9)

(ff) Appendices for the requirements for transfers of LLRW intended for disposal at licensed land disposal facilities and manifests.

(1) Manifest. A waste generator, collector, or processor who transports, or offers for transportation, LLRW intended for ultimate disposal at a licensed LLRW land disposal facility shall prepare a manifest reflecting information requested on applicable NRC Forms 540 (Uniform Low-Level Radioactive Waste Manifest (Shipping Paper)) and 541 (Uniform Low-Level Radioactive Waste Manifest (Container and Waste Description)) and, if necessary, on an applicable NRC Form 542 (Uniform Low-Level Radioactive Waste Manifest (Manifest Index and Regional Compact Tabulation)) or their equivalent. NRC Forms 540 and 540A shall be completed and shall physically accompany the pertinent LLRW shipment. Upon agreement between shipper and consignee, NRC Forms 541, 541A, and 542 and 542A may be completed, transmitted, and stored in electronic media with the capability for producing legible, accurate, and complete records on the respective forms. Licensees are not required by the agency to comply with the manifesting requirements of this section when they ship:

(A) LLRW for processing and expect its return (i.e., for storage in accordance with their license) prior to disposal at a licensed land disposal facility;

(B) LLRW that is being returned to the licensee who is the waste generator or generator, as defined in this section; or

(C) radioactively contaminated material to a waste processor that becomes the processor's residual waste.

(2) Form instructions. For guidance in completing these forms, refer to the instructions that accompany the forms. Copies of manifests required by this subsection may be legible carbon copies, photocopies, or computer printouts that reproduce the data in the format of the uniform manifest.

(3) Forms. NRC Forms 540, 540A, 541, 541A, 542 and 542A, and the accompanying instructions, may be obtained from the NRC at www.nrc.gov/reading-rm/doc-collections/forms/#NRC.

(4) Information requirements of the DOT. This subsection includes information requirements of the DOT, as codified in Title 49, CFR, Part 172. Information on hazardous, medical, or other waste, required to meet EPA regulations, as codified in Title 40, CFR, Parts 259 and 261 or elsewhere, is not addressed in this section, and shall be provided on the required EPA forms. However, the required EPA forms shall accompany the uniform manifest required by this section.

(5) General information. The shipper of the LLRW, shall provide the following information on the uniform manifest:

(A) the name, facility address, and telephone number of the licensee shipping the waste;

(B) an explicit declaration indicating whether the shipper is acting as a waste generator, collector, processor, or a combination of these identifiers for purposes of the manifested shipment; and

(C) the name, address, and telephone number, or the name and EPA identification number for the carrier transporting the waste.

(6) Shipment information. The shipper of the LLRW shall provide the following information regarding the waste shipment on the uniform manifest:

(A) the date of the waste shipment;

(B) the total number of packages/disposal containers;

(C) the total disposal volume and disposal weight in the shipment;

(D) the total radionuclide activity in the shipment;

(E) the activity of each of the radionuclides hydrogen-3, carbon-14, technetium-99, and iodine-129 contained in the shipment; and

(F) the total masses of uranium-233, uranium-235, and plutonium in special nuclear material, and the total mass of uranium and thorium in source material.

(7) Disposal container and waste information. The shipper of the LLRW shall provide the following information on the uniform manifest regarding the waste and each disposal container of waste in the shipment:

(A) an alphabetic or numeric identification that uniquely identifies each disposal container in the shipment;

(B) a physical description of the disposal container, including the manufacturer and model of any high integrity container;

(C) the volume displaced by the disposal container;

(D) the gross weight of the disposal container, including the waste;

(E) for waste consigned to a disposal facility, the maximum radiation level at the surface of each disposal container;

(F) a physical and chemical description of the waste;

(G) the total weight percentage of chelating agent for any waste containing more than 0.1% chelating agent by weight, plus the identity of the principal chelating agent;

(H) the approximate volume of waste within a container;

(I) the sorbing or solidification media, if any, and the identity of the solidification media vendor and brand name;

(J) the identities and activities of individual radionuclides contained in each container, the masses of uranium-233, uranium-235, and plutonium in special nuclear material, and the masses of uranium and thorium in source material. For discrete waste types (i.e., activated materials, contaminated equipment, mechanical filters, sealed source/devices, and wastes in solidification/stabilization media), the identities and activities of individual radionuclides associated with or contained on these waste types within a disposal container shall be reported;

(K) the total radioactivity within each container; and

(L) for wastes consigned to a disposal facility, the classification of the waste in accordance with §289.202(ggg)(4)(A) of

this title. Waste not meeting the structural stability requirements of §289.202(ggg)(4)(B)(ii) of this title shall be identified.

(8) Uncontainerized waste information. The shipper of the LLRW shall provide the following information on the uniform manifest regarding a waste shipment delivered without a disposal container:

(A) the approximate volume and weight of the waste;

(B) a physical and chemical description of the waste;

(C) the total weight percentage of chelating agent if the chelating agent exceeds 0.1% by weight, plus the identity of the principal chelating agent;

(D) for waste consigned to a disposal facility, the classification of the waste in accordance with §289.202(ggg)(4)(A) of this title. Waste not meeting the structural stability requirements of §289.202(ggg)(4)(B)(ii) of this title shall be identified;

(E) the identities and activities of individual radionuclides contained in the waste, the masses of uranium-233, uranium-235, and plutonium in special nuclear material, and the masses of uranium and thorium in source material; and

(F) for wastes consigned to a disposal facility, the maximum radiation levels at the surface of the waste.

(9) Multi-generator disposal container information. This paragraph applies to disposal containers enclosing mixtures of waste originating from different generators. (Note: The origin of the LLRW resulting from a processor's activities may be attributable to one or more generators (including waste generators) as defined in this section). It also applies to mixtures of wastes shipped in an uncontainerized form, for which portions of the mixture within the shipment originate from different generators.

(A) For homogeneous mixtures of waste, such as incinerator ash, provide the waste description applicable to the mixture and the volume of the waste attributed to each generator.

(B) For heterogeneous mixtures of waste, such as the combined products from a large compactor, identify each generator contributing waste to the disposal container, and, for discrete waste types (i.e., activated materials, contaminated equipment, mechanical filters, sealed source/devices, and wastes in solidification/stabilization media), the identities and activities of individual radionuclides contained on these waste types within the disposal container. For each generator, provide the following:

(i) the volume of waste within the disposal container;

(ii) a physical and chemical description of the waste, including the solidification agent, if any;

(iii) the total weight percentage of chelating agents for any disposal container containing more than 0.1% chelating agent by weight, plus the identity of the principal chelating agent;

(iv) the sorbing or solidification media, if any, and the identity of the solidification media vendor and brand name if the media is claimed to meet stability requirements in §289.202(ggg)(4)(B)(ii) of this title; and

(v) radionuclide identities and activities contained in the waste, the masses of uranium-233, uranium-235, and plutonium in special nuclear material, and the masses of uranium and thorium in source material if contained in the waste.

(10) Certification. An authorized representative of the waste generator, processor, or collector shall certify by signing and

dating the shipment manifest that the transported materials are properly classified, described, packaged, marked, and labeled and are in proper condition for transportation according to the applicable regulations of the DOT and the agency. A collector in signing the certification is certifying that nothing has been done to the collected waste that would invalidate the waste generator's certification.

(11) Control and tracking.

(A) Any licensee who transfers LLRW to a land disposal facility or a licensed waste collector shall comply with the requirements in clauses (i) - (ix) of this subparagraph. Any licensee who transfers waste to a licensed waste processor for waste treatment or repackaging shall comply with the requirements of clauses (iv) - (ix) of this subparagraph. A licensee shall:

(i) prepare all wastes so that the waste is classified according to §289.202(ggg)(4)(A) of this title and meets the waste characteristic requirements in §289.202(ggg)(4)(B) of this title;

(ii) label each disposal container (or transport package if potential radiation hazards preclude labeling of the individual disposal container) of waste to identify whether it is Class A waste, Class B waste, Class C waste, or greater than Class C waste, in accordance with §289.202(ggg)(4)(A) of this title;

(iii) conduct a quality assurance program to assure compliance with §289.202(ggg)(4)(A) and (B) of this title;

(iv) prepare the uniform manifest as required by this subsection;

(v) forward a copy or electronically transfer the uniform manifest to the intended consignee so that either:

(I) receipt of the manifest precedes the LLRW shipment; and

(II) the manifest is delivered to the consignee with the waste at the time the waste is transferred to the consignee. Using both subclauses (I) and (II) of this clause are also acceptable;

(vi) include the uniform manifest with the shipment regardless of the option chosen in clause (v) of this subparagraph;

(vii) receive acknowledgement of the receipt of the shipment in the form of a signed copy of the uniform manifest;

(viii) retain a copy of or electronically store the uniform manifest and documentation of acknowledgement of receipt as the record of transfer of radioactive material as required by §289.251 of this title and §289.252 of this title; and

(ix) for any shipments or any part of a shipment for which acknowledgement of receipt has not been received within the times set forth in this subsection, conduct an investigation in accordance with subparagraph (D) of this paragraph.

(B) Any waste collector licensee who handles only prepackaged waste shall:

(i) acknowledge receipt of the waste from the shipper within one week of receipt by returning a signed copy of the uniform manifest;

(ii) prepare a new uniform manifest to reflect consolidated shipments that meet the requirements of this subsection. The waste collector shall ensure that, for each container of waste in the shipment, the uniform manifest identifies the generator of that container of waste;

(iii) forward a copy or electronically transfer the uniform manifest to the intended consignee so that either:

(I) receipt of the uniform manifest precedes the LLRW shipment; or

(II) the uniform manifest is delivered to the consignee with the waste at the time the waste is transferred to the consignee. Using both subclauses (I) and (II) of this clause are also acceptable;

(iv) include the uniform manifest with the shipment regardless of the option chosen in clause (iii) of this subparagraph;

(v) receive acknowledgement of the receipt of the shipment in the form of a signed copy of the uniform manifest;

(vi) retain a copy of or electronically store the uniform manifest and documentation of acknowledgement of receipt as the record of transfer of radioactive material as required by §289.251 of this title and §289.252 of this title;

(vii) for any shipments or any part of a shipment for which acknowledgement of receipt has not been received within the times set forth in accordance with this clause, conduct an investigation in accordance with subparagraph (D) of this paragraph; and

(viii) notify the shipper and the agency when any shipment, or part of a shipment, has not arrived within 60 days after receipt of an advance uniform manifest, unless notified by the shipper that the shipment has been cancelled.

(C) Any licensed waste processor who treats or repackages waste shall:

(i) acknowledge receipt of the waste from the shipper within one week of receipt by returning a signed copy of the uniform manifest;

(ii) prepare a new uniform manifest that meets the requirements of this subsection. Preparation of the new uniform manifest reflects that the processor is responsible for meeting these requirements. For each container of waste in the shipment, the manifest shall identify the waste generators, the preprocessed waste volume, and the other information as required in clause (i) of this subparagraph;

(iii) prepare all wastes so that the waste is classified according to §289.202(ggg)(4)(A) of this title and meets the waste characteristic requirements in §289.202(ggg)(4)(B) of this title;

(iv) label each package of waste to identify whether it is Class A waste, Class B waste, or Class C waste, in accordance with §289.202(ggg)(4)(A) and (C) of this title;

(v) conduct a quality assurance program to assure compliance with §289.202(ggg)(4)(A) and (B) of this title;

(vi) forward a copy or electronically transfer the uniform manifest to the intended consignee so that either:

(I) receipt of the uniform manifest precedes the LLRW shipment; or

(II) the uniform manifest is delivered to the consignee with the waste at the time the waste is transferred to the consignee. Using both subclause (I) of this clause and this subclause is also acceptable;

(vii) include the uniform manifest with the shipment regardless of the option chosen in clause (vi) of this subparagraph;

(viii) receive acknowledgement of the receipt of the shipment in the form of a signed copy of the uniform manifest;

(ix) retain a copy of or electronically store the uniform manifest and documentation of acknowledgement of receipt as

the record of transfer of radioactive material as required by §289.251 of this title and §289.252 of this title;

(x) for any shipment or any part of a shipment for which acknowledgement of receipt has not been received within the times set forth in accordance with this clause, conduct an investigation in accordance with clause (v) of this subparagraph; and

(xi) notify the shipper and the agency when any shipment, or part of a shipment, has not arrived within 60 days after receipt of an advance uniform manifest, unless notified by the shipper that the shipment has been cancelled.

(D) Any shipment or part of a shipment for which acknowledgement is not received within the times set forth in accordance with this section shall undergo the following:

(i) be investigated by the shipper if the shipper has not received notification or receipt within 20 days after transfer; and

(ii) be traced and reported. The investigation shall include tracing the shipment and filing a report with the agency. Each licensee who conducts a trace investigation shall file a written report with the agency within two weeks of completion of the investigation.

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

Filed with the Office of the Secretary of State on August 26, 2011.

TRD-201103465

Lisa Hernandez

General Counsel

Department of State Health Services

Effective date: October 1, 2011

Proposal publication date: April 15, 2011

For further information, please call: (512) 776-6972



TITLE 28. INSURANCE

PART 6. OFFICE OF INJURED EMPLOYEE COUNSEL

CHAPTER 276. GENERAL ADMINISTRATION SUBCHAPTER A. GENERAL PROVISIONS

28 TAC §276.7, §276.8

The Public Counsel of the Office of Injured Employee Counsel (OIEC) adopts new §276.7, regarding the agency's ethics statement and employee requirements, and new §276.8, regarding the agency's Ethics Committee. New §276.7 and §276.8 are adopted with changes to the proposed text as published in the February 25, 2011, issue of the *Texas Register* (36 TexReg 1229).

These new sections are necessary to provide guidance to OIEC staff concerning ethical dilemmas faced in the course of employment, and to set the agency's ethics standards. Common areas of concern are gifts from outside sources, confidentiality, use of state property, outside employment, political activities, conflicts of interest, and fraudulent activity. These new sections provide clarity to staff of OIEC's mission statement, standards of conduct, and OIEC's Ethics Committee. Ethics standards are fundamental to the successful operation of an agency and for the

workers' compensation system as a whole. The Texas Ethics Commission and the Office of the Attorney General are available resources for clarification on a particular issue, if clarification is needed.

New §276.7 and §276.8 are adopted with changes to the proposed text as published in the February 25, 2011, issue of the *Texas Register* (36 TexReg 1229). The changes, however, do not introduce new subject matter or affect persons in addition to those subject to the proposal as published. Revisions were made to proposed §276.7(b), (b)(1), (b)(2), (b)(5) and (b)(7) to better convey the agency's Ethics Statement and employee requirements regarding access to information related to workers' compensation claims pursuant to Texas Labor Code §404.111. Changes were made to the proposed version of §276.8(a) to clarify the makeup of the Ethics Committee and to authorize the Public Counsel to appoint an external member in appropriate circumstances. Changes were also made to §276.8(b) to strengthen the Ethics Committee's confidentiality requirements to assist in educating agency personnel.

New §276.7(a) declares the agency's Ethics Statement. Paragraphs (1) - (7) of new §276.7(b) identify prohibited conduct. The referenced paragraphs list actions that the agency considers to be unethical and affirms OIEC's commitment to follow Texas Government Code §572.051.

New §276.8(a) explains the makeup, duration of term, and the functions of the agency's Ethics Committee. New §276.8(b) includes the mission statement of OIEC's Ethics Committee.

The Ethics Committee serves as a resource and may be accessed by any OIEC employee. For example, Texas Labor Code §404.1015 authorizes the Public Counsel to terminate services to injured employees who are violent to or who threaten any OIEC employee, request assistance in claiming benefits not provided by law, or commit or threaten to commit a criminal act in pursuit of a workers' compensation claim. The Public Counsel may request an opinion of the Ethics Committee in the event an Ombudsman is assisting an injured employee, and the injured employee's claim appears to be a groundless or fraudulent claim. OIEC takes the authority to refuse services to a customer seriously, and an Ethics Committee opinion addressing the specific matter serves as a helpful resource for the Public Counsel in making a decision to terminate services.

General

Comment: Several commenters expressed support for the proposed rule and felt that sufficient time was provided for public comment.

Response: OIEC appreciates the support. The duration of the public comment period was over 15 weeks to allow for thoughtful feedback on this important issue. The agency is aware of the additional workload that may occur while the Texas Legislature is in session, and OIEC provided this extended timeframe for public comment to ensure that proper feedback was received.

§276.7(b)(1), (b)(2), and (b)(5)

Comment: A commenter provided the following suggestions to §276.7(b), (b)(1), (b)(2), and (b)(5). In §276.7(b), replace "should" with "shall" to strengthen the requirement on prohibited activities. In §276.7(b)(1), add the word "the" after "or" and before "employee"; add the word "reasonably" after "should" and before "know", add "action or" after "official" and before "conduct". In §276(b)(2), remove "induce" and replace with

"cause". In §276.7(b)(5), remove "favor of another" and replace with "a particular manner".

Response: OIEC agrees with the recommended changes. Rule text has been changed to reflect the commenter's suggestions, and OIEC thanks the commenter for suggesting language that strengthens the requirement on prohibited behavior.

§276.7(b)(6) and (b)(7)

Comment: The commenter suggests adding language to §276.7(b) to reinforce Texas Labor Code §404.111 regarding access of information by OIEC. Legislative changes in Texas Labor Code §404.111(a) by HB 1774 (82nd Texas Legislature, Regular Session, 2011), clarifies that OIEC is entitled to the same access to claim information as other workers' compensation system participants. OIEC staff should only access information that they are entitled to under the law and should not disclose any confidential information.

Response: OIEC agrees with the commenter and has added language to the rule text to reflect the commenter's helpful suggestion. OIEC understands the importance of maintaining confidential claimant information. Since its inception, OIEC has put processes in place to ensure claimant and other sensitive information is safeguarded. Adding this requirement to the agency's ethics rules affirms OIEC's commitment to access information only provided by law and to safeguard confidential information.

New §276.7(c)

Comment: The commenter suggests adding §276.7(c) requiring employees to report their own ethics violations and the violations of other OIEC employees in writing to their supervisor.

Response: OIEC agrees in part with this comment and has added language to the rule text to require agency employees to report their own or other employee's ethics violations in writing to the agency's Ethics Officer/Chair of the Ethics Committee. OIEC has determined that ethics violations should be reported to a single individual, namely the agency's Ethics Officer, instead of the employee's supervisor. Requiring agency employees to report ethics violations to someone other than their immediate supervisor is believed to encourage reporting of such violations. Additionally, violations of OIEC policy are currently and will continue to be documented in writing as part of the agency's overall management and employee disciplinary process. OIEC appreciates the commenter's helpful recommendation.

§276.8(a)

Comment: A commenter suggests having a non-OIEC employee or an external stakeholder as a member of the Ethics Committee. Examples of potential members may include: a member of the claimant's sub-section of the Workers' Compensation Section of the State Bar of Texas or a staff member of the Division of Workers' Compensation.

Response: OIEC agrees that in appropriate circumstances the addition of an external stakeholder to the Ethics Committee would provide a unique contribution and insight. However, certain ethical dilemmas that agency staff may encounter or the possibility of a breach of confidentiality of a person's claim file or personnel information may outweigh an external member's contribution. As such, §276.8 has been amended to authorize the Public Counsel to adopt an external member on the Ethics Committee in appropriate circumstances.

§276.8(a)

Comment: A commenter provided suggestions of simple "word-smithing" in §276.8 to improve reader clarity. In §276.8(a), the commenter suggests the removal of "cross section" and replace with "group" and removal of "various agency programs" and replace with "other programs within OIEC". At the end of the second to last sentence, add "for the agency."

Response: OIEC agrees with the commenter's suggestions and has made changes to the rule text to increase reader clarity.

§276.8(b)

Comment: The commenter suggested removing the word "come" before "the committee" in §278.8(b) and replace with "are stated or testified". The commenter felt this would provide clarification that statements made to the Ethics Committee were confidential while the violation itself was not.

Response: OIEC agrees with the commenter's recommendation and has made changes to the rule text based on the recommendation.

For: Texas Department of Insurance, Division of Workers' Compensation; John D. Pringle, P.C.; Downs Stanford, P.C.; and Burns Anderson Jury & Brenner, LLP.

Against: None.

The new sections are adopted pursuant to Texas Labor Code §§404.106, 404.1015, 404.110, and 404.111 and Texas Government Code §572.051. Labor Code §404.106 provides the Public Counsel rulemaking authority to adopt rules. Section 404.1015 provides the agency authority to refuse to provide or terminate OIEC services in limited circumstances. Section 404.110 requires the Public Counsel to safeguard confidential information. Section 404.111 provides for the type of information OIEC may access from the Texas Department of Insurance. Texas Government Code §572.051 provides for standards of conduct for State employees and requires State agencies to adopt an ethics policy.

§276.7. *Agency's Ethics Statement and Employee Requirements.*

(a) All OIEC employees have an obligation to maintain high ethical standards in the performance of their work responsibilities and in their personal life, realizing that lapses in ethical judgment will reflect negatively on OIEC. OIEC employees must seek to enhance and implement ethical values based on established principals of sound reasoning and the highest standards of business conduct.

(b) An OIEC employee shall not:

(1) accept or solicit any gift, favor, or service that might reasonably tend to influence the employee or the employee knows or should reasonably know is being offered with the intent to influence the employee's official action or conduct;

(2) accept other employment or engage in a business or professional activity that the employee might reasonably expect would require or cause the employee to disclose confidential information acquired by reason of his or her position with OIEC;

(3) accept other employment or compensation that could reasonably be expected to impair the employee's independent judgment in the performance of the employee's official duties;

(4) make personal investments that could reasonably be expected to create a substantial conflict between the employee's private interest and the public interest;

(5) intentionally or knowingly solicit, accept, or agree to accept any benefit for having exercised the employee's official powers or employee's official duties in a particular manner;

(6) access information related to an employee's injury and workers' compensation claim that OIEC is not otherwise entitled to access under the Texas Workers' Compensation Act or any other laws of this State; or

(7) disclose any information made confidential by the Texas Workers' Compensation Act or any laws of this State.

(c) Any employee's failure to comply with the agency's ethics policies shall be immediately reported in writing to agency's Ethics Officer for appropriate action to be taken.

§276.8. Ethics Committee.

(a) OIEC's Ethics Committee shall be made up of OIEC staff who serve two-year staggered terms. The Ethics Committee is made up of the agency's Ethics Officer, who is an attorney and shall serve as the Chair of the Committee, and a group of employees from other programs within OIEC. The Ethics Officer also provides training, specific consultation to the Public Counsel and agency management, and serves as the legal counsel for all matters regarding ethics for the agency. The Public Counsel may appoint an external stakeholder to the Ethics Committee in appropriate circumstances to provide a broader perspective of the issue before the Committee. The Ethics Committee meets to address ethical issues that are submitted to the Committee and to recommend resolution.

(b) The mission statement for OIEC's Ethics Committee is to practice and promote the highest standards of ethical behavior within OIEC. In order to set the highest standards of conduct, including avoiding the appearance of impropriety in the operation of our goals to assist, educate, and advocate on behalf of injured employees in Texas, the members of the Ethics Committee are committed to: assuring honesty and confidentiality in all matters that are stated or testified before the Committee, faithfully adhering to the agency's code of ethics, educating agency personnel on ethics and standards of conduct, making recommendations, and providing solutions.

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

Filed with the Office of the Secretary of State on August 22, 2011.

TRD-201103406

Brian White

Deputy Public Counsel/Chief of Staff

Office of Injured Employee Counsel

Effective date: September 11, 2011

Proposal publication date: February 25, 2011

For further information, please call: (512) 804-4182



SUBCHAPTER B. OMBUDSMAN PROGRAM

28 TAC §276.13

The Public Counsel of the Office of Injured Employee Counsel (OIEC) adopts new §276.13, regarding the OIEC Ombudsman Program's mandatory ethics requirements. New §276.13 is adopted with changes to the proposed text published in the February 25, 2011, issue of the *Texas Register* (36 TexReg 1230).

OIEC takes seriously its responsibility to assist, educate, and advocate on behalf of the injured employees of Texas. OIEC

adopts new §276.13 regarding OIEC's Ombudsman Program's mandatory ethics requirements. Ethics are moral values that affect personal and professional actions, which are fundamental to the success of OIEC.

New §276.13 clarifies that an injured employee must have a legitimate workers' compensation claim when requesting assistance from OIEC. Legitimate claim for the purpose of this rule is defined as a valid or lawful claim. Texas Labor Code §404.1015 provides that the Public Counsel may refuse to provide or may terminate services of the office to any claimant who is abusive or violent to or who threatens any employee of the office; requests assistance in claiming benefits not provided by law; or commits or threatens to commit a criminal act in pursuit of a workers' compensation claim. OIEC's Ethics Committee serves as a resource that the Public Counsel may request an opinion in the event that an Ombudsman is assisting an injured employee, and the injured employee's claim for benefits appears to be groundless or fraudulent. The Ethics Committee's opinion, however, is not binding on the Public Counsel. If the Public Counsel determines that the services to an injured employee should be refused or terminated, OIEC shall inform the affected injured employee in writing and notify the Texas Department of Insurance, Division of Workers' Compensation. OIEC shall also notify and cooperate with the appropriate law enforcement authority and the Texas Department of Insurance, Fraud Unit, if the office becomes aware that an injured employee or person acting on the injured employee's behalf commits or threatens to commit a criminal act.

New §276.13 protects the integrity of the Ombudsman Program and requires ethical behavior between the Ombudsman and the injured employee. Changes were made to §276.13(b) to state the duties of the Ombudsman by referencing Texas Labor Code §404.101.

New §276.13(a) defines "groundless" (groundless is a term that is used in this new section). New §276.13(b) clarifies that OIEC Ombudsmen will adhere to the highest ethical standards and that an injured employee must have a legitimate workers' compensation claim when requesting assistance from OIEC.

The OIEC Public Counsel may request an opinion of the Ethics Committee in the event an Ombudsman is assisting an injured employee in the pursuit of a groundless or fraudulent claim. The Public Counsel also has the authority to refuse or terminate services to an injured employee in accordance with Texas Labor Code §404.1015. It is critical that OIEC's resources are utilized in an efficient and ethical manner.

§276.13

Comment: The commenter indicated that over the past year there had been an influx of clients after Ombudsman losses. Recently, an injured employee had the Ombudsman form advising the claimant of his right to a lawyer.

Response: OIEC appreciates the comment; however, OIEC is unable to comment on the influx of clients (to an attorney) over the past year after ombudsman losses due to the lack of data and/or applicable information.

When injured employee requests assistance from OIEC and an Ombudsman is assigned to their case, there is an internal OIEC form (Form OMB-02) that is signed by the injured employee. The form is maintained in the injured employee's working file. It identifies the statutory duties of an Ombudsman, including the legal limitations in the assistance they can provide. It also states that

an injured employee may terminate Ombudsman assistance at any time by notifying OIEC or by hiring an attorney.

In addition, when an injured employee files the Employee's Claim for Compensation for a Work-Related Injury or Occupational Disease form (DWC-041) with the Texas Department of Insurance, Division of Workers' Compensation (the Division), a mailing is generated by the Division and a packet is sent to the injured employee. The packet contains the "Notice of Injured Employee Rights and Responsibilities in the Workers' Compensation System" (Notice). The Notice states, "You have the right to hire an attorney at any time to help you with your claim."

Listed under "Helpful Links" on the OIEC website there is a link to the State Bar of Texas' website. The State Bar of Texas is an administrative agency of the judicial branch in Texas. Every licensed attorney is a member of the State Bar of Texas. The State Bar also provides a wide array of services to its members and to the public, including an attorney referral service.

Comment: A commenter expresses concern about the solicitation of OIEC's services to injured employees by OIEC attorneys. The injured employee's name, address, telephone number, and other personal information is considered confidential. Since OIEC is entitled to this confidential information, attorneys should be entitled to the same information.

Response: As a result of House Bill 7 passed by the 79th Texas Legislature, OIEC staff attorney positions were created to assist Ombudsmen with complex legal issues. OIEC staff attorneys do not have contact with injured employees and do not participate in the dispute resolution process.

Confidential claim information is available to OIEC as a result of Texas Labor Code §404.111. Access to claim information makes it possible for OIEC to effectively assist claimants and fulfill the mission of the agency. Further, House Bill 1774, 82nd Texas Legislature, Regular Session, 2011 implements the Sunset Advisory Commission's recommendations that provides that the agency has the same access to information as other system participants. The new law becomes effective September 1, 2011.

§276.13 Introduction of the Preamble

Comment: Several commenters expressed concern over the language "must have a legitimate workers' compensation claim." The language has been interpreted to mean that OIEC might pick and choose the injured employees to assist based on a prejudiced evaluation of the legitimacy of a claim. Commenters feel that OIEC should be representing "hard to handle" claimants and claims.

Response: OIEC disagrees with this comment. The intended definition of "legitimate workers' compensation claim" for purposes of this rule is having a lawful or valid workers' compensation claim. The comment that was submitted was based on a different definition of legitimate than was intended. OIEC assists injured employees with all types of workers' compensation claims and does not discriminate in the cases it accepts. The agency looks forward to assisting any unrepresented injured employee, regardless of complexity.

Hyperlink from the preamble to the Texas Register

Comment: A commenter states that the hyperlink to the proposed rules did not work.

Response: OIEC apologizes for the inconvenience. OIEC corrected the issue after identifying the error and will ensure that hyperlinks are working properly for future rulemaking initiatives.

§276.13(b)

Comment: Several commenters have concern over the use of the term "advocate" in §276.13(b). One commenter indicated that advocate has typically been a term in the statutory, regulatory, and common law realm that has traditionally been associated with the practice of law. OIEC Ombudsmen are not attorneys and are not authorized to practice law in Texas or elsewhere.

Response: OIEC agrees with the comment that Ombudsmen are not authorized to practice law because they are not attorneys. After careful consideration and stakeholder input, OIEC agrees to remove the word "advocate" in §276.13(b) and simply state the duties of the Ombudsmen by referencing Texas Labor Code §404.101.

Comment: A commenter suggests adding "by the Ombudsman" at the end of the first sentence of §276.13(b). Then the commenter suggests adding the next sentence: "groundless factual or legal assertions that might be made by an injured employee or other person without the foreknowledge of the Ombudsman are not included in this prohibition."

Response: OIEC agrees. The added language clearly expresses that it is the Ombudsman who is prevented from making a "groundless factual or legal assertion" and not making the Ombudsman responsible for a groundless factual or legal assertion made by an injured employee or other person on their behalf.

Comment: A commenter states that Ombudsmen have been "advocating" for claimants since they became part of the Ombudsman Program. The commenter noted that Ombudsmen may not sign pleadings, but they are advocating at contested case hearings and assisting in appeals to the appeals panel.

Response: The Ombudsman Program is properly acting within its statutory scope in the administrative dispute resolution process under Texas Labor Code §404.101(c) in order to enable Ombudsmen to protect injured employees' rights in the workers' compensation system.

Comment: A commenter recommends that injured employees should sign a document providing an acknowledgement of the Ombudsmen's statutory role and their legal limitations as well as the injured employee's right to hire an attorney. In addition, the commenter suggests for the agency to develop a posting on the OIEC website for injured employees to obtain information regarding workers' compensation attorneys.

Response: OIEC agrees with your comment. When injured employees request assistance from OIEC and an Ombudsman is assigned to their case, there is an internal OIEC form (Form OMB-02) that is signed by the injured employee. The form is maintained in the injured employee's working file, and it states the statutory duties of an Ombudsman including the legal limitations in providing assistance. The form also includes that the injured employee has the right to hire an attorney, and the injured employee may terminate Ombudsman assistance at any time by notifying OIEC or by hiring an attorney.

When an injured employee files the Employee's Claim for Compensation for a Work-Related Injury or Occupational Disease form (DWC-041) with the Texas Department of Insurance, Di-

vision of Workers' Compensation, a mailing is generated by the Division and a packet is sent to the injured employee. The packet contains the "Notice of Injured Employee Rights and Responsibilities" document. The document states "You have the right to hire an attorney at any time to help you with your claim." OIEC appreciates the commenter's thoughtful suggestion.

For: Texas Department of Insurance, Division of Workers' Compensation; Burns Anderson Jury & Brenner, LLP; John D. Pringle, P.C.; and Downs Stanford, P.C.

Against: Law offices of C.D. Cowan, P.C.; Law Offices of Kay E. Goggin; JA Davis & Associates, LLP; Michael L. Sprain; Timaeus & Rose LLP; and McLeaish & Associates, P.C.

This section is adopted pursuant to Texas Labor Code §§404.006, 404.1015 and 404.110. Section 404.006 provides the Public Counsel rulemaking authority to adopt rules. Section 404.1015 provides for refusal to provide or termination of services. Section 404.110 provides for the applicability to Public Counsel of confidentiality requirements.

§276.13. Ombudsman Program Ethics Code of Conduct.

(a) Definition. Groundless--no basis in law or fact and not warranted by a good faith argument for the extension, modification, or reversal of existing law.

(b) The Office of Injured Employee Counsel Ombudsmen shall adhere to the ethical standards as reflected in Rule 13 of the Texas Rules of Civil Procedure in that groundless factual or legal assertions will not be made by the Ombudsman. Groundless factual or legal assertions that might be made by an injured employee or other person without the foreknowledge of the Ombudsman are not included in this prohibition. This shall not be construed as a limitation to Texas Labor Code §404.101 in the pursuit of valid claims or issues.

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

Filed with the Office of the Secretary of State on August 22, 2011.

TRD-201103407

Brian White

Deputy Public Counsel/Chief of Staff

Office of Injured Employee Counsel

Effective date: September 11, 2011

Proposal publication date: February 25, 2011

For further information, please call: (512) 804-4182



TITLE 34. PUBLIC FINANCE

PART 1. COMPTROLLER OF PUBLIC ACCOUNTS

CHAPTER 20. TEXAS PROCUREMENT AND SUPPORT SERVICES

SUBCHAPTER B. HISTORICALLY UNDERUTILIZED BUSINESS PROGRAM

34 TAC §§20.10 - 20.12, 20.23

The Comptroller of Public Accounts adopts new §20.10, concerning policy and purpose; §20.11, concerning definitions; §20.12, concerning evaluation of active participation in the

control, operation, and management of entities; and §20.23, concerning graduation procedures to 34 TAC Chapter 20, Subchapter B, Historically Underutilized Business Program, without changes to the proposed text as published in the February 25, 2011, issue of the *Texas Register* (36 TexReg 1246). These new sections are adopted primarily to implement the findings and recommendations of the Disparity Study of State Contracting, released March 30, 2010 ("the Disparity Study"), available at: <http://www.window.state.tx.us/procurement/prog/hub/disparity/>.

Pursuant to the U.S. Supreme Court ruling in *City of Richmond v. J.A. Croson*, 488 U.S. 469, and cases that flow from that decision, governmental entities must demonstrate that disparity exists in contractor utilization in order to justify implementing or continuing a race-conscious contracting program. See Chapter 2 of the Disparity Study for more discussion and detail of the legal requirements underlying the HUB program. Adoption of these proposed rules will ensure the continued legal compliance of the HUB program through the adoption of HUB utilization targets that are based upon the most recent defensible evidence of contractor utilization disparity.

Section 20.10 contains the language of the repealed §20.11. It is proposed as §20.10 with changes to the original wording to clarify the language, to delete or update obsolete references, or to reflect current practices and program structures.

Section 20.11 contains the definitions formerly set forth in the repealed §20.12, which is repealed in its current form and readopted as new §20.11. New §20.11 contains new definitions for the terms "HUB Business Plan", "HUB Subcontracting Plan", "Owner or Qualifying Owner", "Resident of the State of Texas", "SBA", "Work", and "Working Day". Further, the section contains substantively revised definitions of "Contractor", "Historically Underutilized Business", "Historically Underutilized Business (HUB) Coordinator", "Non-treasury Funds", "Principle Place of Business", "Term Contract", and "Treasury Funds". These changes are focused on clarifying and updating these definitions and ensuring they meet the program objectives.

Section 20.12 adopts new language which gives a list of factors that may be considered by the comptroller's office when evaluating the extent of participation by HUB-qualified individuals in business enterprises applying for HUB status or renewal.

Section 20.23 is technically "new" for rule publication purposes. It revives a concept that existed in the program from its inception through 2001. This section reinstates a procedure whereby HUBs are "graduated" from the HUB program when they reach a size that is no longer considered a "small business" pursuant to the published U.S. Small Business Administration (SBA) size standards. The rule requires the comptroller to review the size standards annually to determine they are still an appropriate measure for graduation from the program. The rule would allow a HUB to reapply for HUB certification after they are graduated pursuant to the rule once they can prove they meet all of the rule criteria for certification.

In implementing this new section, CPA intends to allow agencies to receive continuing HUB credit for utilization of any business that was a HUB at the inception of the contract, through the end of the fiscal year in which the HUB is graduated or otherwise loses their HUB certification. This is consistent with current practices when a HUB loses certification for some reason.

Hearings were held to receive public comment in McAllen (March 3), Houston (March 9), Austin (March 17), Dallas (March 24) and Houston (April 7).

The following comments and responses are broken down by subject matter.

COMMENTS RECEIVED.

Comments on the proposed rules were received from the following individuals, groups or entities: The Hispanic Contractors Association of Texas San Antonio (HCATSA); P.D. Morrison; The Texas Association of African American Chambers of Commerce (TAAACC); Reliant Business Products; The San Antonio Hispanic Chamber of Commerce (SAHCC); Kathleen Acock; Labor on Demand, Inc.; The Fort Worth Hispanic Chamber of Commerce (FWHCC); Multatech; The Dallas/Fort Worth Minority Supplier Development Council (DFWMSDC); The MBE Institute for Public Policy (MIPP); The Dallas Black Chamber of Commerce (DBCC); The Regional Hispanic Contractor's Association (RHCA); Lina T. Ramey & Associates, Inc.; Carol Holley; Interior Design Group, Inc.; Karen M. Kroh; ATCI Contracting; Laura Bley; Bley Investment Group; The Texas Association of HUBs (TAH); The Asian American Chamber of Commerce (AACC); Eve Clark, HUI Associates, Inc.; Compuquick, Inc.; Colinda Torrez; AIA Engineers, Ltd.; The Houston Minority Supplier Development Council (HSMSDC); Teresa Kelly; Cavallo Energy Texas, L.L.C.; Mike Castillo; Aztec Facility Services; Style Magazine; Summus Industries; Senator Royce West, The Association of Black Consulting Engineers and Architects (ABCEA); Jones and Carter, Inc.; Jefferson Associates, Inc.; HVJ Associates; Structural Engineering Associates, Inc.; Jeff Vick; The University of Texas at Austin; Elisa Berger; Antonio Beltran; Rafel Coyle; The TEAMS Group, L.L.C.; Tommy Harper; Mandy Vassigh, P.E.; Burnett Staffing Specialists; Hill Electric Company; Shauna Bowman, P.E.; Eileen Karlsruher; Kristen Cox; Donald Carroll; Stanford Knowles; Construction Zone of Texas; Stellargy Services, L.L.C.; Applied Network Security, L.L.C.; Tre' Black; Meg Ayers; Barbara Neal; Managed Care Concepts; Keith Bell; The Dallas Examiner; The Texas Publishers Association; Irene Maldonado; and Brenda Vickrey Johnson.

PUBLIC COMMENTS AND RESPONSES.

General comments

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Laura Bley, Bley Investment Group, and the Texas Association of HUBs commented that the comptroller should do more "in-

reach" programs to educate existing HUBs rather than outreach programs to reach new ones. The comptroller has made no changes to the rules in response to the comment. The comptroller believes that both options are appropriate, and strives to provide education and information both to prospective and existing HUBs.

Donald Carroll commented that the comptroller should move toward meaningful strategies for inclusiveness for HUB firms. The comptroller has made no changes to the rules in response to the comment. The comptroller believes that the adopted rules will help provide agencies with the tools they need to encourage more HUB participation in state contracting.

Style Magazine commented that minority newspapers should be awarded more state business from the state agencies and departments. The comptroller has made no changes to the rules in response to this comment. The goal of the HUB program is to encourage and facilitate increased participation by HUBs in state purchasing opportunities. State agencies must follow these rules and seek opportunities to utilize HUB publications as they do in other areas of purchasing.

Section 20.11 - Definitions.

(11) Historically Underutilized Business (HUB). Antonio Beltran commented that the term "HUB" is outdated, having been crafted in the 1950's and 1960's. The comptroller disagrees with the comment, and has made no change to the rules in response to the comment. The term is the statutory basis for the program, and is set forth in Texas Government Code, §2161.001(2). The comptroller may not change statutory terminology by rule.

(12) HUB Coordinator. Senator Royce West, HCATSA, TAAACC, and SAHCC commented that the position of HUB coordinator should report directly to the executive head of an agency, that the coordinator should be equal in pay and stature to the agency's procurement director, and/or should be separate from the procurement director. The comptroller disagrees with the comments, and has made no change to the rules in response to the comments. The stature of an agency HUB coordinator is set forth in the HUB statute at Texas Government Code, §2161.062(e). That section states that "In agencies that employ a historically underutilized business coordinator, the position of coordinator, within the agency's structure, must be at least equal to the position of procurement director." The comptroller's application of this requirement in rule is a reasonable application of this requirement, as some agencies may not have the resources to maintain separate personnel for both a procurement director and a HUB coordinator. The adopted rule at §20.26(b) requires that "the HUB coordinator should be in a position that reports, communicates, and provides information directly to the agency's executive director." To require the HUB coordinator to report directly to the agency's executive director may place the HUB coordinator in a position where he or she reports on a higher administrative level than the agency's procurement director - in some cases several layers higher. The comptroller believes that agency HUB coordinators should have the unfettered ability to report issues with HUB compliance within their organizations, but to elevate the position beyond what is required by statute is not supportable.

(15) HUB Subcontracting Plan. Senator Royce West and Mike Castillo commented that agency HUB coordinators should be required to do more than just make sure an HSP is completed, and that HUB coordinators should be empowered to give greater scrutiny to vendor claims of "self-performance" in HUB subcon-

tracting plans. The comptroller has made no changes to the rule in response to this comment. The adopted rules give clear guidance to agency HUB coordinators to closely and critically review HUB subcontracting plans submitted by prime contractors. The rules also give the HUB coordinators broad authority to ensure that the goals of the HUB program are appropriately implemented in their agencies.

Section 20.12 - Active Participation in the Control, Operation and Management of Entities.

P.D. Morrison and Reliant Business Products commented that the rule should contain additional language in subsection (a) to consider how HUBs "use" their status. The comptroller disagrees with the comments, and has made no change to the rules in response to the comments. To evaluate how businesses are utilizing their status is beyond the resources of the comptroller's office. The commenter would have the rules question when and how HUBs do business with other HUBs and non-HUBs in an attempt to determine if HUB status is being abused by acting as a "pass through." Companies may have many reasons to structure transactions in various fashions to satisfy the business needs of one or both participants in the transaction.

DFWMSDC commented that subsection (a)(8) should be removed from the rule. The comptroller disagrees with the comment, and has made no change to the rules in response to the comment. The list of factors in subsection (a) is not designed to elevate one consideration over another. It is not the intent of the comptroller to exclude a company from HUB participation based solely on one factor from the list. The list is merely instructive of the indicators which are viewed by comptroller staff in evaluating HUB status. Many of these factors have been considered for some time as "risk factors" in evaluating HUB applications, and the comptroller is merely setting forth the factors in rule form to ensure consistency and clarity.

DBCC commented that §20.12 will result in more regulatory burdens for HUBs and will ultimately result in less participation by and utilization of HUBs. The comptroller disagrees with the comment, and has made no change to the rules in response to the comment. The purpose of the section is to ensure that HUBs are legitimately controlled, on a day-to-day basis, by a qualified individual who meets the definition of an "economically disadvantaged person." The application of these factors will ensure that only qualified businesses are certified as HUBs, which furthers the goals of the HUB program.

Kristen Cox commented that she is in favor of the new definitions in the section. We thank the commenter for her comment and have made no changes to the rules in response to the comment.

Brenda Vickrey Johnson commented that treating HUBs differently than non-HUBs is discrimination that violates federal law. The comptroller disagrees with the comment, and has made no change to the rules in response to the comment. HUB status is not a right, but a state created registration which is voluntary. Placing limits on that voluntary system is in no way discriminatory nor does it violate any federal laws. The application of these factors will ensure that only qualified businesses are certified as HUBs, which furthers the goals of the HUB program.

Section 20.23 - Graduation Procedures.

HCATSA, Kathleen Acock, FWHCC, DFWMSDC, MIPP, DBCC, RHCA, Eve Clark, HUI Associates, Inc., AIA Engineers, HMSDC, Teresa Kelly, Cavallo Energy Texas, LLC, Aztec Facility Services, ABCEA, Jones and Carter, Inc., Lina T. Ramey

& Associates, Inc., HVJ Associates, Structural Engineering Associates, Burnett Staffing Specialists, Construction Zone of Texas, and Keith Bell commented that they are opposed to imposition of the graduation requirement as part of the HUB program. The comptroller disagrees with the comments, and has made no change to the rules in response to the comments. The HUB statute gives the comptroller express authority to adopt size standards for graduation in Texas Government Code, §2161.0015. The concept of graduation is also supported by the recommendations of the HUB Disparity Study that is the basis for maintaining the HUB program. In Recommendation 9-14 of the Disparity Study the authors advised that the state should reinstitute size standards for HUB certification. Having size standards is one factor that has been cited in caselaw as supporting a "narrowly tailored" race-conscious government contracting program. See, e.g., *Builder's Ass'n of Greater Chicago v. City of Chicago*, 298 F. Supp. 725 (N.D. Ill., 2003). The comptroller is attempting to foster the most robust utilization of HUBs as possible, and allowing large firms to become entrenched and acquire significant percentages of the HUB utilization in state contracts does not accomplish the goal of allowing smaller businesses an entry into the state contracting system.

Carol Holley, Interior Design Group, Inc., Karen M. Kroh, Compuquick, Inc., Mike Castillo, AACC, Kristen Cox, The Dallas Examiner, and the Texas Publisher's Association commented that they are in favor of graduation. The commenter thanks the commenters, and has maintained the graduation section in the rule.

Alfred Saenz, Multatech, SAHCC, DBCC, Lina T. Ramey & Associates, Inc., Teresa Kelly, Cavallo Energy Texas, LLC, Aztec Facility Services, Summus Industries, Mandy Vassigh, P.E., and Shauna Bowman, P.E. commented that the rules should not utilize US Small Business Administration (SBA) size standards, or that the SBA size standards are not indicative of a truly "small" business for purposes of HUB graduation. Many of the commenters pointed to examples in the professional services (engineering, architecture) or banking industries to demonstrate their point. Several of these commenters also suggested that the comptroller should wait to implement graduation until SBA revises its size standards. The comptroller disagrees with the comments, and has made no change to the rules in response to the comments. The comptroller has reviewed the methodology utilized by the SBA in setting its size standards for business, and has found that the methods are sound and logically presented in the SBA's materials on the subject. The comptroller also sees no reason to wait to implement graduation until new SBA standards are promulgated. SBA methodology will remain substantially the same, and the comptroller will review the size standards annually to determine the appropriateness of the standards, as required by subsection (d) of the adopted rule.

Managed Care Concepts commented that the size standards for graduation should be smaller than those in the SBA size standards. The comptroller disagrees with the comment, and has made no change to the rules in response to the comment. The comptroller has reviewed the methodology utilized by the SBA in setting its size standards for business, and has found that the methods are sound and logically presented in the SBA's materials on the subject.

P.D. Morrison, Kathleen Acock, AIA Engineers, ABCEA, and Structural Engineering Associates commented that the comptroller should wait to apply graduation to existing certified HUBs until certification for their businesses expires, or to begin count-

ing "four consecutive years" for purposes of applicability only from the date the rule becomes effective. The comptroller has made no changes to the rule in response to these comments. The comptroller plans to implement the graduation rule primarily through review of new and renewal applications for HUB certification. If a complaint is received regarding an existing HUB, the comptroller will appropriately investigate the complaint using the rules that are in place as of the time of the investigation. The comptroller does not plan to review the status of all certified HUBs immediately after the effective date of the rule.

Jeff Vick, Stellargy Services, Tre' Black, Meg Ayers, Brenda Vickrey Johnson and Irene Maldonado questioned how the comptroller will apply the SBA size standards to HUB businesses - which NAICS codes would be applied, when the standards will go into effect, and how the comptroller will implement the new rule. The comptroller has made no changes to the rule in response to these comments. When implementing these rules, the comptroller will rely on the business activity code claimed by a HUB on its documentation filed with the US Internal Revenue Service. This code will identify the NAICS code which is the primary business line of the HUB, and that the NAICS will serve as the basis for comparison to the SBA small business standard for that industry.

Hill Electric Company questioned whether there will be a graduation limitation on HUB owners with \$750,000 in personal assets. The comptroller has made no changes to the rule in response to this comment. The rules impose only the business size limits of the SBA standards as set forth in 13 CFR, §121.201. There is no personal asset limit on the HUB owner in these rules.

The new sections are adopted under the authority of Government Code, Chapter 2161, which provides in §2161.0012 authority for the comptroller to adopt rules as necessary to efficiently and effectively administer the state's HUB program. Additionally, §2161.002(c) requires that the comptroller adopt rules as necessary to respond to the findings of the updated Disparity Study performed on behalf of the state.

The new sections implement Government Code, §§2161.0011, 2161.0012, 2161.002, 2161.0015, 2161.004, 2161.061, 2161.062, 2161.065, 2161.181, and 2161.252.

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

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

TRD-201103453
Ashley Harden
General Counsel
Comptroller of Public Accounts
Effective date: September 14, 2011
Proposal publication date: February 25, 2011
For further information, please call: (512) 475-0387



34 TAC §20.11, §20.12

The Comptroller of Public Accounts adopts the repeal of the current versions of §20.11, concerning policy and purpose, and §20.12, concerning definitions, without changes to the proposed text as published in the February 25, 2011, issue of the *Texas Register* (36 TexReg 1249). The repeals are necessary in order

to readopt as new sections of 34 TAC Chapter 20, Subchapter B.

Hearings were held to receive public comment in McAllen (March 3), Houston (March 9), Austin (March 17), Dallas (March 24) and Houston (April 7).

No comments were received on the proposed repeals.

The repeals are adopted under the authority of Government Code, Chapter 2161, which provides in §2161.0012 authority for the comptroller to adopt rules as necessary to efficiently and effectively administer the state's HUB program. Additionally, §2161.002(c) requires that the comptroller adopt rules as necessary to respond to the findings of the updated Disparity Study performed on behalf of the state.

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34 TAC §§20.13 - 20.22, 20.24 - 20.28

The Comptroller of Public Accounts adopts the amendments §§20.13 - 20.22 and 20.24 - 20.28 of 34 TAC Chapter 20, Subchapter B, concerning Historically Underutilized Business Program. Sections 20.15 - 20.22 and 20.24 - 20.27 are adopted without changes to the proposed text as published in the February 25, 2011, issue of the *Texas Register* (36 TexReg 1250). Sections 20.13, 20.14 and 20.28 are adopted with changes to the proposed text as published in the February 25, 2011, issue of the *Texas Register* (36 TexReg 1250). These changes are adopted primarily to implement the findings and recommendations of the Disparity Study of State Contracting, released March 30, 2010 ("the Disparity Study"), available at: <http://www.window.state.tx.us/procurement/prog/hub/disparity/>.

Pursuant to the U.S. Supreme Court ruling in *City of Richmond v. J.A. Croson*, 488 U.S. 469, and cases that flow from that decision, governmental entities must demonstrate that disparity exists in contractor utilization in order to justify implementing or continuing a race-conscious contracting program. See Chapter 2 of the Disparity Study for more discussion and detail of the legal requirements underlying the HUB program. Adoption of these proposed rules will ensure the continued legal compliance of the HUB program through the adoption of HUB utilization targets that are based upon the most recent defensible evidence of contractor utilization disparity.

Section 20.13 adopts the new HUB utilization standards developed through the Disparity Study. The section also contains revised language requiring state agencies to develop plans to increase HUB utilization, including adopting their own agency-spe-

cific HUB utilization goals. Additional changes are made to clarify the rule, to delete or update obsolete references, or to reflect current practices and program structures.

The language of §20.14 streamlines factors for agencies' consideration of HUB subcontracts and vendor-submissions of HUB subcontracting plans (HSPs). Rather than specifying different criteria for HSPs for different types of contracts, the language now puts all contracts under the same requirements. The changes also allow agencies to determine that only a portion of a contract has probable subcontracting opportunities, and allows agencies to receive clarifications or corrections to minor deficiencies in submitted HUB subcontracting plans. Additional changes are made to clarify the rule, to delete or update obsolete references, or to reflect current practices and program structures.

Sections 20.15 and 20.16 are amended to clarify the rules, to delete or update obsolete references, and to reflect current practices and program structures.

Language in §20.17(a) that was redundant of statute has been removed and replaced with wording explaining the obligation of HUB applicants to prove their Texas residency. Additional changes are made to clarify the rule, to delete or update obsolete references, or to reflect current practices and program structures.

Sections 20.18 - 20.20 are amended to clarify the rules, to delete or update obsolete references, and to reflect current practices and program structures.

Section 20.21 is amended to add a cross-reference to new §20.12, discussed previously, to note the applicability of that new section to determinations of the level of participation and control shown by an eligible owner in the critical areas of business operation. This section is also amended to clarify the rules, to delete or update obsolete references, and to reflect current practices and program structures.

Section 20.22 is amended to clarify the rules, to delete or update obsolete references, and to reflect current practices and program structures.

Sections 20.24 - 20.27 are amended to clarify the rules, to delete or update obsolete references, and to reflect current practices and program structures.

Section 20.28 is amended to add additional factors that should be considered by agencies in development and implementation of Mentor-Protégé programs and the relationships under those programs. Additional changes are made to clarify the rule, to delete or update obsolete references, or to reflect current practices and program structures.

Hearings were held to receive public comment in McAllen (March 3), Houston (March 9), Austin (March 17), Dallas (March 24) and Houston (April 7).

The following comments and responses are broken down by subject matter.

COMMENTS RECEIVED.

Comments on the proposed rules were received from the following individuals, groups or entities: The Hispanic Contractors Association of Texas San Antonio (HCATSA); D&G Energy Corp.; Lone Star Supplies; SE3, L.L.C.; The Texas Association of African American Chambers of Commerce (TAAACC); Justin Jones; Reliant Business Products; The San Antonio Hispanic

Chamber of Commerce (SAHCC); Labor on Demand, Inc.; The Fort Worth Hispanic Chamber of Commerce (FWHCC); The Dallas/Fort Worth Minority Supplier Development Council (DFWMSDC); The Dallas Black Chamber of Commerce (DBCC); The Regional Hispanic Contractor's Association (RHCA); Carol Holley; Interior Design Group, Inc.; Karen M. Kroh; ATCI Contracting; Laura Bley; Bley Investment Group; The Texas Association of HUBs (TAH); The Asian American Chamber of Commerce (AACC); Michael King; Colinda Torrez; The Houston Minority Supplier Development Council (HMSMDC); Teresa Kelly; Cavallo Energy Texas, L.L.C.; Mike Castillo; Aztec Facility Services; Samuel Yamthe; Applied Network Security; Style Magazine; Roy Myers; Esther Francis; 4 City Steel Fabrication; Senator Royce West, Jones and Carter, Inc.; Jefferson Associates, Inc.; The Office of the Attorney General of Texas; The University of Texas System; Sam Houston State University; The University of Texas at Austin; Felix Batchassi; Bob Whistler; Elisa Berger; Antonio Beltran; Medical Auditing Solutions, L.L.C.; Rafel Coyle; The TEAMS Group, L.L.C.; Tommy Harper; Eileen Karlsruher; Kristen Cox; Linda LaBeau, R.N.; Donald Carroll; Stanford Knowles; Susan Schmidt; Christi Redfearn; Steve Cardwell; David Graham; Construction Zone of Texas; Applied Network Security, L.L.C.; Barbara Neal; Managed Care Concepts; Keith Bell; The Dallas Examiner; The Texas Publishers Association; Brenda Vickrey Johnson; and Sherice Williams-Patty.

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SAHCC commented that the comptroller should reexamine its outreach, reporting and categorization of HUB vendors to make sure HUB goals are met. The comptroller has made no changes to the rules in response to the comment. The comptroller gathers and categorizes HUB information pursuant to the categories set forth by statute. As periodic reports are performed and future HUB disparity studies are prepared, the comptroller will rely on the most accurate and timely information at its disposal to ensure the best possible reporting and categorization of HUB expenditures.

Labor on Demand, Inc. commented that the comptroller should consider using the system utilized by the City of San Antonio, where HUBs report their payments from prime vendors, rather than relying on using utilization or spend data which can be misreported. The comptroller has made no changes to the rules in response to the comment. At this time there is not a method for the comptroller to receive such data from subcontractors. We will continue to evaluate our data needs and may seek such data in the future.

Laura Bley, Bley Investment Group, and the Texas Association of HUBs commented that the comptroller should do more "in-reach" programs to educate existing HUBs rather than outreach programs to reach new ones. The comptroller has made no changes to the rules in response to the comment. The comptroller believes that both options are appropriate, and strives to provide education and information both to prospective and existing HUBs.

Donald Carroll commented that the comptroller should move toward meaningful strategies for inclusiveness for HUB firms. The comptroller has made no changes to the rules in response to the comment. The comptroller believes that the adopted rules

will help provide agencies with the tools they need to encourage more HUB participation in state contracting.

Style Magazine commented that minority newspapers should be awarded more state business from the state agencies and departments. The comptroller has made no changes to the rules in response to this comment. The goal of the HUB program is to encourage and facilitate increased participation by HUBs in state purchasing opportunities. State agencies must follow these rules and seek opportunities to utilize HUB publications as they do in other areas of purchasing.

Section 20.13 - Statewide Annual HUB Utilization Goals.

HCATSA and Kristen Cox were concerned about state agencies being allowed to set their own goals for HUB utilization. The comptroller disagrees with the comment, and has made no change to the rules in response to the comment. Texas Government Code, §2161.123(d)(5) requires the State Auditor's Office to evaluate whether state agencies have made a good faith effort to comply with the state's HUB rules, including whether the agency "established goals for contracting with (HUBs) in each procurement category. . . ." The comptroller is attempting to give guidance to the agencies through the rule, and anticipates giving them additional guidance as they go forward with their evaluations of agency-specific goals.

Jones and Carter commented that if agencies are to set their own goals, the language of the rule should reflect that they are limited to setting goals that are at or below the statewide goals. The comptroller disagrees with the comment, and has made no change to the rules in response to the comment. The factors that agencies may consider should not be so limited by the rule when the statute, Texas Government Code, §2161.123(d)(5), gives agencies factors to consider in setting their own goals. Agencies may consider their scheduled fiscal year expenditures and the availability of HUBs in each category in arriving at their goals.

TAAACC, the TEAMS Group, LLC, Kristen Cox, Esther Francis and 4 City Steel Fabrication commented that the new goals stated in §20.13(c) are too low or questioned the justification for lowering the goals. TAAACC additionally commented that the comptroller should adopt "subgoals" for each of the categories of "economically disadvantaged persons" within the definition of HUB. The comptroller disagrees with the comments, and has made no change to the rules in response to the comments. The statewide Disparity Study performed on behalf of the comptroller presents a sound and thorough scientific basis for the adopted goals in §20.13(b). The adoption of these goals is mandatory for the program pursuant to Texas Government Code, §2161.002(c) upon completion of a new disparity study. No data or empirical evidence was presented by any of the commenters as the basis for alternative goals, or to question the adoption of the goals set forth by the Disparity Study.

Teresa Kelly and Cavallo Energy Texas, LLC commented that language in subsection (b) and (c) relating to agencies meeting HUB goals should be returned to the language previously in the rule. The comptroller agrees with these comments and has changed the rule to incorporate much of the original language.

DFWMSDC commented that language should be added to subsection (c) encouraging state agencies to consider both utilization and "underutilization" of HUBs in setting their agency-specific goals. The comptroller agrees with the comment and has added the suggested language to the adopted rule.

Michael King commented that the goals appear to give 75% of state spending to anglo-owned businesses and that minorities must compete for the remaining 25%, and that this is discriminatory. The comptroller disagrees with the comment, and has made no change to the rules in response to the comment. Mr. King misunderstands the purpose of the goals. The HUB program created by the statutes and rules is designed to foster utilization of HUBS to the greatest extent possible. The goals are in no way targets or limits on the amount spent with HUBs overall or on any particular contract or project. Agencies are expected to seek opportunities to award contracts to HUBs and/or seek subcontracting opportunities for HUBs in all state contracting to which the program applies.

Senator Royce West commented that section (c)(8) should be changed to add "change orders and amendments" to the wording regarding the value of contracts over the life of the contract. The comptroller has made no change to the rules in response to the comment. The suggested change is already covered by language in the adopted rules at §20.14(g)(3), wherein agencies are given responsibility to review change orders and amendments to ensure that probable subcontracting opportunities arising from such changes are appropriately included in the HUB subcontracting plan.

Jones and Carter, Inc. commented that agencies should be limited to using statewide goals as a maximum threshold in setting agency-specific goals. The comptroller disagrees with the comment, and has made no change to the rules in response to the comment. Agencies may set goals based upon the factors set forth in the statute and rule, including past years' expenditures, future available budget dollars, and other factors affecting the agency's ability to further encourage utilization of HUBs.

The Office of the Attorney General of Texas commented that subsection (c)(7) should include "with assistance from the comptroller" when discussing developing written methodologies for setting agency-specific goals. The comptroller disagrees with the comment, and has made no change to the rules in response to the comment. The suggested language is not appropriate for a rule, however it is the comptroller's intent to offer assistance to agencies as they perform their goal setting exercises.

Kristen Cox commented that the Texas HUB program should have "set-asides" similar to the federal 8(a) program. These comments are beyond the scope of this rulemaking, and the comptroller has made no changes to the rules in response to the comments. These rules are based on the structures presented by the enabling statute for the HUB program - Texas Government Code, Chapter 2161. To require that specific portions of contract dollars be dedicated to HUBs would require a statutory change. Any changes to the statute, and thus the fundamental structure of the HUB program are solely within the purview of the Legislature and cannot be changed by rule.

Colinda Torrez commented that state agencies should be given incentives to meet or exceed their HUB goals. The comptroller has made no change to the rules in response to this comment. The statute that gives rise to the HUB program, in concert with the rules as modified in this adoption contain directives and incentives for agencies to meet or exceed HUB goals. Agencies are required to make good faith efforts to increase contract awards to HUBs, and must report their progress against these goals to state leadership.

Managed Care Concepts commented that the "Other Services" category in the HUB goals should be better defined, re-catego-

rized, or removed altogether and that it should not have the second highest goal percentage assigned to it. The comptroller disagrees with the comment, and has made no change to the rules in response to the comment. The "Other Services" category of HUB goals was extensively studied by the Texas Disparity Study, and the Study presents a sound a thorough basis for the adopted goals in §20.13(b).

The Dallas Examiner and the FWHCC commented that they support the new HUB goals. We thank the commenters for their comments.

D&G Energy Corporation commented that agencies' bonding requirements are too high and inhibit HUB participation. The comptroller has made no changes to the rule in response to the comment. The commenter's concern is covered in the adopted rule in §20.13(d)(2)(iii), where agencies are instructed to "where feasible, assess bond and insurance requirements and design requirements that reasonably permit more than one business to perform the work." Such bonding should be reasonably related to an agency's requirements to protect the state's interest in the contract.

TAAACC and Rafel Coyle commented that the rules should require unbundling of contracts so HUBs will have greater subcontracting opportunities. The comptroller has made no changes to the rules in response to the comment. The commenter's concern is addressed by §20.13(d)(2)(ii), wherein agencies are to consider "divid(ing)proposed requisitions into reasonable lots in keeping with industry standards and competitive bid requirements." The HUB Disparity Study recommends unbundling of contracts as a "best practice" in Section 10.1.9. The comptroller believes that recommendation is best implemented on an agency level as agencies are in the best position to evaluate the feasibility of separating contracts into smaller lots for bid and award in light of resource limitations placed on their procurement staff.

Section 20.14 - Subcontracts.

Senator Royce West, HCATSA, Justin Jones, Labor on Demand, Inc., DFWMSDC, Bob Whistler, Susan Schmidt, Christi Redfearn, and Steve Cardwell commented that when prime contractors are contacting HUB vendors under the "good faith effort" requirements of §20.14(d)(1), they should be required to give more than five working days notice to HUBs. Some of these commenters suggested ten days, others seven, with others simply suggesting a longer timeframe. The comptroller agrees with these comments, and has changed the rule to reflect that prime contractors should give seven days notice to HUBs to respond to the HUB subcontracting plan.

Senator Royce West, HMSDC, Mike Castillo, Bob Whistler, Susan Schmidt, Christi Redfearn, and Steve Cardwell commented that the notice of subcontracting opportunities provided by prime contractors to minority and women trade organizations should allow for a longer response time. Some of these commenters suggested ten days, others seven, with others simply suggesting a longer timeframe. The comptroller agrees with these comments, and has changed the rule to reflect that prime contractors should give seven days notice to these trade organizations to respond to the HUB subcontracting plan.

HCATSA, SAHCC, the University of Texas System, and Sam Houston State University commented that language allowing prime contractors to demonstrate "good faith effort" by meeting the applicable statewide goal for professional services. Justin Jones and Jones and Carter, Inc. commented that this concept

should be applied across all contracting types. The comptroller agrees with these comments, and has changed the rule to reflect that vendors have several options to available to comply with the "good faith effort" requirement in a HUB subcontracting plan. In addition to existing language allowing good faith effort to be met by contacting three HUBs (now in subsection (d)(1)(D)(i)), prime vendors may satisfy the rule by certifying that 100% of all available subcontracting opportunities will be fulfilled by one or more HUBs (new (d)(1)(D)(ii)), or that through utilization of one or more HUBs the prime contractor will meet or exceed the statewide goal for the appropriate contract category found in §20.13(b) or the agency-specific goal, whichever is higher (new (d)(1)(D)(iii)). In order to demonstrate "good faith effort" by meeting the applicable goal under new (d)(1)(D)(iii), a vendor may only claim existing contractors that have been under contract with the prime vendor for five years or fewer. This is to expand periodic outreach on subcontracting opportunities by encouraging participation by newer and smaller HUBs.

D&G Energy Corp. commented that prime contractors should be required to explain how they chose the contractor they did, whether that chosen subcontractor is a HUB or not. The concern was based in situations where prime contractors use "exclusive" or preferred HUB contractors. The comptroller has made no change to the rules in response to this comment. There is language in adopted §20.14(d)(1)(B) requiring prime contractors to explain their subcontractor selection if they choose a non-HUB. To additionally require primes to explain the choice of one HUB over another exceeds the primary intent of the program, which is to encourage the utilization of HUB businesses.

TAAACC commented that the rules should require uniformity in respondent bid forms throughout the state to reduce response time and avoid confusion. The comptroller has made a change to the rule which should address this concern. In revised §20.14(d)(1)(C) language has been modified to require that vendors follow methods established by the comptroller to provide notice of subcontracting opportunities to minority and women trade organizations. The comptroller anticipates creating a template document for prime contractors to use for this purpose, along with an online or email distribution system that will provide these notices rapidly to all interested organizations throughout the state.

Senator Royce West, RHCA, FWHCC, DFWMSDC, Bob Whistler, Susan Schmidt, Christi Redfearn, and Steve Cardwell commented that notice of potential subcontracting opportunities should be provided to more than just one minority or women trade organization. Some of the commenters stated that three organizations should be given notice, others felt that all organizations statewide should receive the notice. The comptroller has made a change to the rule which should address this concern. In revised §20.14(d)(1)(C) language has been modified to require that vendors follow methods established by the comptroller to provide notice of subcontracting opportunities to minority and women trade organizations. The comptroller anticipates creating a template document for prime contractors to use for this purpose, along with an online or email distribution system to distribute these notices rapidly to all interested organizations throughout the state.

TAAACC, DBCC, Carol Holley, Interior Design Group, Karen M. Kroh, Eve Clark, Roy Myers, Managed Care Concepts, Felix Batchassi, Teresa Kelly, Antonio Beltran, Cavallo Energy Texas, LLC, Bob Whistler, Susan Schmidt, Christi Redfearn, and Steve Cardwell commented that there should be enforcement against,

or penalties for, prime contractors who do not properly implement HUB subcontracting plans, or who otherwise do not follow directives of the program. The comptroller has made no change to the rules in response to these comments. The adopted rules contain sufficient tools for agencies to utilize in managing contractors' compliance with the HUB rules. These include agency contractor HUB performance tracking required by §20.16, and the tools given to agencies to enforce HUB commitments in adopted §20.14(g), as well as the ability to enforce HUB commitments as binding contractual terms. To impose automatic or monetary penalties on prime contractors for specified actions or failures to act is beyond the scope of the statutory language in Government Code, Chapter 2161, and would require legislative action.

TAAACC commented that state agencies should be required to give notice to HUB prime contractors who are not selected in a procurement. The comptroller disagrees with the comment, and has made no change to the rules in response to the comment. While the comptroller believes that good contracting procedure will result in all parties being made aware of the outcome of a procurement exercise, to order agencies to contact all parties bidding on a procurement to explain the outcome would require agencies to dedicate significant resources to notification of non-awarded bidders. Due to significant constraints on state resources, the comptroller does not agree that this blanket mandate should be applied through the HUB program.

TAAACC commented that the term "good faith effort" should not be used in the rules relative to prime contractors' efforts to locate and contract with HUBs. The comptroller disagrees with the comment, and has made no change to the rules in response to the comment. The term "good faith effort" arises directly from the statute which gives rise to the HUB program, Texas Government Code, Chapter 2161. Section 2161.253 of the statute specifically states that contractors "shall make a good faith effort to implement the (HUB subcontracting) plan."

FWHCC commented that prime contractors should be required to contact more than just three subcontractors. The comptroller disagrees with the comment, and has made no change to the rules in response to the comment. The requirement to contact three HUB businesses represents a minimum number, and prime vendors are required to contact at least three HUBs for every subcontracting opportunity. The comptroller believes that this number strikes a balance between the requirement for prime contractors to demonstrate "good faith effort" for outreach to HUBs and the desire of the HUB community to receive adequate notification of potential subcontracting opportunities.

FWHCC commented that if a HUB is replaced on a job it should be replaced with another HUB, Felix Batchassi and Managed Care Concepts commented that if a prime contractor lists a HUB on their plan, they should be required to use that HUB, or submit clear justification why they are no longer using that HUB. The comptroller disagrees with the comments, and has made no change to the rules in response to the comments. There are tools available for agencies in the adopted rules to manage contractors' compliance with the HUB rules. These include agency contractor HUB performance tracking required by §20.16, the tools given to agencies to enforce HUB commitments in adopted §20.14(g), and the ability to enforce HUB commitments as binding contractual terms. If a prime contractor fails to live up to its commitments to use a HUB, the agency managing the contract should use these tools to determine the reasons for that failure as well as an appropriate remedy, including requiring the vendor to submit a revised HUB subcontracting plan.

Felix Batchassi and Managed Care Concepts commented that the rules should require prime contractors to submit HUBs' signatures or a letter of commitment between the HUB and the prime. The comptroller disagrees with the comments, and has made no change to the rules in response to the comments. Prime contractors are required by the adopted rules to submit proof of good faith efforts in completing the HUB subcontracting plan. These comments presume that prime contractors must either contract with a HUB or at least obtain a HUB's signature prior to bidding. Such requirements would either exceed the statutory basis for the program by interjecting the state in a private contractual relationship, or would make the HUB subcontracting plan process unduly burdensome and time-consuming for the prime vendors and the contracting agencies.

DFWMSDC and Sherice Williams-Patty commented that §20.14(d)(1)(C) should require that notices to minority and women trade organizations be directed only "State of Texas" organizations. The comptroller has made a change to the rule which should address this concern. In revised §20.14(d)(1)(C) language has been modified to require that vendors follow methods established by the comptroller to provide notice of subcontracting opportunities to minority and women trade organizations. The comptroller anticipates creating a template document for prime contractors to use for this purpose, along with an online or email distribution system that will provide these notices rapidly to all interested organizations throughout the state. As a general matter, only in-state organizations will be interested in and registered to receive such correspondence. A state agency would be free to dismiss as non-responsive a bid containing outreach to an out-of-state organization.

HMSDC commented that the rules should create an electronic procurement portal where prime contractors can post bids available to subcontractors. Mike Castillo commented that agencies should produce and provide lists of likely subcontracting opportunities under solicitations. These comments are beyond the scope of this rulemaking, and the comptroller has made no changes to the rules in response to the comments. The comptroller is exploring possibilities similar to those suggestion by the commenters, but such changes would require additional rule-making and sizeable investments in technology infrastructure.

Samuel Yamthe, Applied Network Security and Brenda Vickrey Johnson commented that the rules should not delete sections 20.14(d)(6) - (8) from the existing rules. The comptroller has made no changes to the rules in response to this comment. The sections referenced by the commenter have actually been moved to §20.14(g), and remain in force.

Aztec Facility Services commented that large HUBs should be required to use smaller HUBs through HUB subcontracting plans. The comptroller has made no change to the rules in response to the comment. The requirement to demonstrate good faith effort through submission of a properly executed HUB subcontracting plan applies to HUB primes as well as non-HUB primes.

Jefferson Associates commented that the threshold of \$100,000 for contracts subject to HUB subcontracting plan is too low. The Office of the Attorney General commented that including the value of the contract "over the life of the contract (including renewals)" will make the threshold too low and will include too many contracts. Medical Auditing Solutions commented that the \$100,000 threshold is too high and should be lowered. The comptroller disagrees with the comments, and has made no change to the rules in response to the comments. The threshold

of \$100,000 for submission of a HUB subcontracting plan is set by statute at Texas Government Code, §2161.252. The extension of a "life of the contract" interpretation to the term "expected value" is a reasonable application of the meaning of the statute. The rules, at §20.13(c)(9), also anticipate that agencies should seek opportunities to implement HUB subcontracting plan requirements for contracts below \$100,000 whenever possible.

Jefferson Associates commented that agencies should give advance notice of solicitations to allow HUBs time to prepare to receive and respond to HUB subcontracting plans. The comptroller disagrees with the comment, and has made no change to the rules in response to the comment. Agencies' procurement plans are generally kept confidential in order to provide equal notice to all parties once the procurement is open and available for bid. To give unequal notice to HUBs would make the procurements available to some bidders earlier than others.

The Office of the Attorney General commented that if a HUB must be changed through no fault of the prime contractor, the prime contractor should not have to repeat the entire HUB subcontracting plan process. The comptroller disagrees with the comment and has made no change to the rules in response to this comment. The provisions of §20.14(g)(2) may be used by an agency to allow a prime contractor to make agreed changes in the implementation of its adopted HUB subcontracting plan. If the agency is convinced that the plan is not being changed through any fault of the contractor, the agency may allow the change. However, regardless of the prime contractor's intent, a revised HUB subcontracting plan always provides opportunity for outreach to new HUB vendors, and may present an opportunity to increase HUB participation, so agencies should always consider requiring this additional outreach.

Managed Care Concepts commented that the rules should require agencies to consider rebuttals from HUB vendors who have been requested to be dropped from the HUB subcontracting plan by the prime vendor. The comptroller disagrees with the comment and has made no change to the rules in response to the comment. The adopted rules contain sufficient language to allow state agency HUB coordinators to receive input on a prime contractor's proposed changes to the HUB subcontracting plan. The comptroller encourages state agencies to seek input from HUB subcontractors regarding their experiences operating under a HUB subcontracting plan, especially where it is proposed that the HUB be dropped from the plan.

Managed Care Concepts commented that when receiving HUB subcontracting plans, agencies should conduct market research including Requests for Information, Requests for Qualifications, public hearings or similar measures to ensure adequate HUB input on the solicitation. The comptroller disagrees with the comment and has made no change to the rules in response to the comment. To impose such requirements on state agencies would mandate significant use of resources to research the field in which the procurement is being conducted. Agencies do not have sufficient resources to implement such broad-ranging research on every purchase. Instead, agencies must rely to some degree on the expertise of their users as well as the expertise of vendors bidding on the contracts.

HCATSA commented that language requiring that three HUBs be contacted for "good faith effort" on a HUB subcontracting plan should not be removed. The comptroller has made no changes to the rules in response to this comment. The sections referenced by the commenter have actually been moved to §20.14(d)(1)(D)(i), and remain in force.

HCATSA commented that the rules should clarify the differences between HUB and other outreach or registration programs of the comptroller such as CMBL or TxMAS contracting. The comptroller disagrees with the comment, and has made no change to the rules in response to the comment. The comptroller does not wish to put language into the rules comparing and contrasting the HUB rules to other portions of the state's procurement rules. The comptroller will, however, take the comment into account as it develops guidance documents and training materials for outreach to external stakeholders, including HUBs.

Section 20.16 - State Agency Reporting Requirements.

Reliant Business Products commented that the language in §20.16(g) regarding agency credit for utilizing HUBs is inconsistent with comptroller guidance in its HUB Reporting Procedures manual. The comptroller has made no changes to the rule in response to this comment. The comptroller will review its guidance documents to ensure they are consistent with the adopted rules.

The Office of the Attorney General commented that in §20.16(b) and (c) "non-HUB" should not be included, and that the comptroller should be able to determine non-HUB spend by comparing with total spend. The comptroller disagrees with the comment, and has made no change to the rules in response to the comment. The reporting requirement for "non-HUB" spend was added to facilitate future calculations of HUB utilization. To compare against total spend as suggested by the commenter requires assessment of whether any amounts that are included in the total that are expenditures which were never available to any HUBs (such as payments to other government entities, direct grant payments, and the like).

Section 20.17 - Certification Process.

DFWMSDC, Esther Francis, 4 City Steel Fabrication, and HMSDC commented that the rules should retain the felony for false certifications previously found in §20.17(g). The comptroller disagrees with the comments, and has made no change to the rules in response to the comments. The criminal penalty for false certifications remains in effect in the HUB statute at Texas Government Code, §2161.231. The addition of a reference to this criminal penalty in the rule does not add or detract from its effect, nor does the deletion of the previous reference render the penalty less effective.

DFWMSDC commented that §20.17(j) should be modified to require recertification every two years, rather than every four. The comptroller disagrees with the comment, and has made no change to the rules in response to the comment. A four year time frame for certification is appropriate, given the amount of resources required to process applications and the number of applications being received by the comptroller and independent certifying agencies.

TAAACC commented that certification forms should be standardized between those used by the comptroller and those from outside certifying entities. The comptroller disagrees with the comment, and has made no change to the rules in response to the comment. Outside certifying agencies may utilize different forms so long as they meet the general requirements of subsection (e) of the section. These agencies may need to use different forms because they may need additional or different information than the comptroller. Some of these agencies are local governments and may require additional information to satisfy other needs driven by their procurement requirements.

Section 20.26 - HUB Coordinator Responsibilities.

HCATSA commented that agency HUB coordinators should actually perform all of the HUB outreach and advocacy on HUB issues within an agency. The comptroller disagrees with the comment, and has made no change to the rule in response to the comment. The adopted rule in §20.26(b) requires that the HUB coordinator responsibilities include "facilitating compliance with the agency's good faith effort criteria, HUB reporting, contract administration, and marketing and outreach efforts for HUB participation." This language is sufficient to give clear direction to agencies on the role of their HUB coordinators and the comptroller's expectations for that position.

TAAACC commented that the rules should provide some kind of bonus to agency HUB coordinators who reach or exceed their HUB goals. This comment is beyond the scope of this rulemaking, and the comptroller has made no changes to the rules in response to the comment. The expenditure of state funds for employee bonuses is controlled exclusively by the Texas Legislature through the budgeting process, as implemented by agencies through their approved budgets. The comptroller cannot, by rule, order agencies to pay or otherwise give performance incentives to their employees.

Senator Royce West and Mike Castillo commented that agency HUB coordinators should be required to do more than just make sure an HSP is done, and that they should be empowered to give greater scrutiny to vendor claims of "self-performance" in HUB subcontracting plans. The comptroller has made a change to the §20.14(d)(5) of the rule in response to this comment. The adopted rules allow vendors submitting HUB subcontracting plans to claim "self-performance" only if they will be performing all of the work under the contract with their own resources, rather than "any" of the potentially available subcontracting opportunities as the rule read previously. This language should give clear guidance to agency HUB coordinators to closely and critically review self-performance claims in HUB subcontracting plans submitted by prime contractors. The rules also give the HUB coordinators broad authority to ensure that the goals of the HUB program are appropriately implemented in their agencies.

Felix Batchassi commented that HUB coordinators should be required to give trainings to HUBs who are unsuccessful participants in a solicitation to improve the HUBs' chances on future bids. Managed Care Concepts commented that agency HUB coordinators should be required to prepare and submit training plans requiring them to provide periodic training to prime vendors who bid on their agency's solicitations. The comptroller disagrees with the comments, and has made no change to the rule in response to the comments. The adopted rules make outreach to HUBs a responsibility of the agency HUB coordinators. To specify a specific mandatory task to accompany each procurement oversteps the scope of this rule, and would increase the burden on agency staff. Such outreach may be appropriate where an agency does multiple large procurements for identical or similar services or commodities, but may not be as helpful to either party on smaller or less frequent solicitations. Agency HUB coordinators should be empowered use their judgment as to the most efficient use of their limited time to perform outreach designed to encourage greater HUB participation.

Section 20.28 - Mentor-Protégé Program.

Lone Star Supplies commented that although mentors can claim protégés on their HUB subcontracting plans, the converse is not allowed and should be. The comptroller disagrees with the com-

ment, and has made no change to the rule in response to the comment. The purpose of allowing mentors to claim protégé on their HSPs is to encourage larger, more experienced businesses to partner with their smaller protégé businesses to satisfy good faith effort for HUB outreach. The converse arrangement is much less likely to be successful, as smaller businesses are much less likely to be bidding as prime contractors.

Lone Star Supplies commented that there should be a four-year limit on Mentor-Protégé relationships. Mike Castillo disagreed with the language of §20.28(d)(7) regarding the appropriate time for mentor-protégé relationships to continue. The comptroller disagrees with the comments, and has made no change to the rule in response to the comments. The language in the adopted rule at subsection (d)(7) is merely guidance to state agencies as they formulate their mentor-protégé programs. Agencies are directed to consider the list of factors in subsection (d) but "are not limited" to those factors. The four years discussed in the section is not meant as an absolute limit, but merely a suggestion to agencies to determine whether there should be time limits on these relationships, and if so, what an appropriate time limit should be. Some business types may not allow for effective mentoring relationships within a specified timeframe, so it would not be appropriate to set and enforce a shorter limit. Agencies are still free to develop their mentor-protégé programs in a way that provides the maximum benefit to their agency.

Mike Castillo commented that the listing of mentor eligibility criteria, "former" should be added to "employees" in subsection (e)(8). The comptroller agrees with the comment and has made the suggested change.

Bob Whistler, Susan Schmidt, Christi Redfearn, and Steve Cardwell commented that mentor-protégé programs should not relegate HUBs to "apprentice status", thus hindering the overall goals of the HUB program. Antonio Beltran commented that the concept of mentor-protégé programs "strikes a bad note" for the program and smacks of a "master-slave" relationship. DBCC commented that the mentor-protégé program raises a concern that HUBs are not "real businesses." The comptroller disagrees with the comments, and has made no change to the rule in response to the comments. The comptroller is required by Texas Government Code, §2161.065 to create a mentor-protégé program to foster long term relationships between prime contractors and HUB businesses. The comptroller maintains that mentor-protégé programs can play an important role in the success of the HUB program overall.

Linda Labeau, R.N., and Construction Zone of Texas commented that forming partnerships with larger businesses is difficult. The comptroller has made no change to the rule in response to the comment. The purpose of mentor-protégé programs is to facilitate and encourage the formation of such relationships. The comptroller believes that a robust mentor-protégé program may be exactly what is needed to help those who, like the commenters, are facing difficulty in locating and cementing mentoring relationships.

Construction Zone of Texas is in favor of the Mentor-Protégé program. The comptroller thanks the commenter for its comment, and has made no changes to the rule in response.

Managed Care Concepts and SE3, LLC commented that the rule should allow for those in mentor-protégé relationships to receive some preference during the bidding process or some other incentives to encourage more mentoring. The comptroller disagrees with the comments, and has made no change to

the rule in response to the comments. The purpose of mentor-protégé relationships is to provide learning opportunities for smaller HUB businesses so they can more readily compete for state contracts. To create a preference or incentive for those in these relationships creates an artificial inducement that will not teach the lessons anticipated to result in future successful bids by HUB protégés.

DFWMSDC commented that real metrics should be applied to the mentor-protégé program. The comptroller has made no change to the rules in response to the comments. State agencies are required to maintain information on mentor-protégé relationships and report agreements to the comptroller.

TAAACC commented that mentor-protégé programs are too different between agencies and should be more standardized. The comptroller disagrees with the comment and has made no change to the rules in response to the comment. Mentor-protégé programs are a feature of the rules that is designed to benefit agencies. Each individual agency is free to set up such programs as it see fit using the guidelines presented in the rule to maximize the benefit that will be obtained from the mentor-protégé program. To standardize these programs may result in limiting the usefulness of the programs to one or more agencies.

Section 20.14(g)(1) has been revised to correct a typographical error from the proposal. The original rule contained a reference to state agencies filing contract nonperformance pursuant to Chapter 113 of the rules of the Texas Building and Procurement Commission, relating to Vendor Performance and Debarment. The proposal referenced 34 TAC §20.18, which relates to protests of HUB certification denials. The reference should have been to 34 TAC §20.108, which relates to reporting to the Vendor Performance Tracking System, and this reference has been substituted in the adopted rule.

The amendments are adopted under the authority of Government Code, Chapter 2161, which provides in §2161.0012 authority for the comptroller to adopt rules as necessary to efficiently and effectively administer the state's HUB program. Additionally, §2161.002(c) requires that the comptroller adopt rules as necessary to respond to the findings of the updated Disparity Study performed on behalf of the state.

The amendments implement Government Code, §§2161.0011, 2161.0012, 2161.002, 2161.0015, 2161.004, 2161.061, 2161.062, 2161.065, 2161.181, and 2161.252.

§20.13. *Statewide Annual HUB Utilization Goals.*

(a) In accordance with §20.10 of this title (relating to Policy and Purpose) and Government Code, §2161.181 and §2161.182, each state agency shall make a good faith effort to utilize HUBs in contracts for construction, services (including professional and consulting services) and commodities purchases. Each agency may achieve the statewide and/or agency-specific annual HUB goals specified in the agency's Legislative Appropriations Request by contracting directly with HUBs or indirectly through subcontracting opportunities.

(b) The statewide HUB goals for the procurement categories for the State of Texas are:

- (1) 11.2% for heavy construction other than building contracts;
- (2) 21.1% for all building construction, including general contractors and operative builders contracts;
- (3) 32.7% for all special trade construction contracts;

- (4) 23.6% for professional services contracts;
- (5) 24.6% for all other services contracts; and
- (6) 21% for commodities contracts.

(c) State agencies shall establish their own agency-specific HUB goals for each procurement category outlined in subsection (b) of this section. Agencies can set their agency-specific HUB goals higher or lower than the goals set out in subsection (b) of this section; however, at a minimum, the statewide HUB goals should be each agency's starting point for establishing agency-specific goals. Agency-specific goals should be based on:

- (1) an agency's fiscal year expenditures and totals contract expenditure;
- (2) the availability to an agency of HUBs in each procurement category;
- (3) the agency's historic utilization of HUBs; and
- (4) other relevant factors.

(d) Each state agency shall make a good faith effort to assist HUBs in receiving a portion of the total contract value of all contracts that the agency expects to award in a fiscal year. Factors in determining an agency's good faith shall include:

(1) the agency's performance in meeting or exceeding their agency-specific HUB goals or the statewide HUB goals as they included as part of their legislative appropriations request in accordance with Government Code, §2161.127; and

(2) the agency's adoption and implementation of procedures taking the following factors into consideration:

(A) prepare and distribute information on procurement procedures in a manner that encourages participation in state contracts by all businesses;

(B) divide proposed requisitions into reasonable lots in keeping with industry standards and competitive bid requirements;

(C) where feasible, assess bond and insurance requirements and design requirements that reasonably permit more than one business to perform the work;

(D) specify reasonable, realistic delivery schedules consistent with an agency's actual requirements;

(E) ensure that specifications, terms, and conditions reflect an agency's actual requirements, are clearly stated, and do not impose unreasonable or unnecessary contract requirements;

(F) provide potential bidders with referenced list of certified HUBs for subcontracting;

(G) develop and apply a written methodology to determine whether any agency-specific HUB goals are appropriate under the Disparity Study, as some HUB groups have not been underutilized within applicable contracting categories and should not be included in the HUB goals for that category, or whether the statewide goals from the Disparity Study are appropriate for the agency;

(H) identify potential subcontracting opportunities in all contracts and require a HUB subcontracting plan for contracts of \$100,000 or more over the life of the contract (including any renewals), where such opportunities exist, in accordance with Government Code, §2161.251; and

(I) seek HUB subcontracting in contracts that are less than \$100,000 whenever possible.

(e) A state agency may also demonstrate good faith under this section by submitting a supplemental letter with documentation to the comptroller with their HUB report or legislative appropriations request identifying the progress, including, but not limited to the following, as prescribed by the comptroller:

(1) identifying the percentage of contracts (prime and subcontracts) awarded to women and/or minority-owned businesses that are not certified as HUBs;

(2) demonstrating that a different goal from that identified in subsection (b) of this section was appropriate given the agency's types of purchases;

(3) demonstrating that a different goal was appropriate given the particular qualifications required by an agency for its contracts;

(4) demonstrating that a different goal was appropriate given that graduated HUBs cannot be counted toward the goal; or

(5) demonstrating assistance to noncertified HUBs in obtaining certification with the comptroller.

§20.14. Subcontracts.

(a) Analyzing potential contracts of \$100,000 or more. In accordance with Government Code, Chapter 2161, Subchapter F, each state agency that considers entering into a contract with an expected value of \$100,000 or more over the life of the contract (including any renewals) shall, before the agency solicits bids, proposals, offers, or other applicable expressions of interest, determine whether subcontracting opportunities are probable under the contract.

(1) State agencies shall use the following steps to determine if subcontracting opportunities are probable under the contract:

(A) examining the scope of work to be performed under the proposed contract and determining if it is likely that some of the work may be performed by a subcontractor;

(B) research the Centralized Master Bidders List, the HUB Directory, the Internet, and other directories, identified by the comptroller, for HUBs that may be available to perform the contract work; and

(C) an agency may determine that subcontracting is probable for only a subset of the work expected to be performed or the funds to be expended under the contract. If an agency determines that subcontracting is probable on only a portion of a contract, it shall document its reasons in writing for the procurement file.

(2) In addition, determination of subcontracting opportunities may include, but is not limited to, the following:

(A) contacting other state and local agencies and institutions of higher education to obtain information regarding similar contracting and subcontracting opportunities; and

(B) reviewing the history of similar agency purchasing transactions.

(b) Receipt of HUB subcontracting plans.

(1) If, through the analysis in subsection (a) of this section, an agency determines that subcontracting opportunities are probable, then its invitation for bids, request for proposals or other purchase solicitation documents shall state that probability and require a HUB subcontracting plan. A bid, proposal, offer, or other expression of interest to such a solicitation must include a completed HUB subcontracting plan to be considered responsive.

(2) The HUB subcontracting plan shall be submitted with the respondent's response on or before the due date for responses, except for construction contracts involving alternative delivery methods. For construction contracts involving alternative delivery methods, the HUB subcontracting plan may be submitted up to 24 hours following the date/time that responses are due provided that responses are not opened until the HUB subcontracting plan is received.

(3) Responses that do not include a completed HUB subcontracting plan in accordance with this subsection shall be rejected due to material failure to comply with Government Code, §2161.252(b).

(4) If a properly submitted HUB subcontracting plan contains minor deficiencies (e.g., failure to sign or date the plan, failure to submit already-existing evidence that three HUBs were contacted), the agency may contact the respondent for clarification to the plan if it contains sufficient evidence that the respondent developed and submitted the plan in good faith.

(c) Requirements of a HUB subcontracting plan.

(1) A state agency shall require a respondent to state whether it is a certified HUB. A state agency shall also require a respondent to state overall subcontracting and overall certified HUB subcontracting to be provided in the contract. Respondents shall follow procedures in paragraph (2)(A) - (D) of this subsection when developing the HUB subcontracting plan.

(2) The HUB subcontracting plan shall include the agency's HUB goals for its HUB business plan, and shall consist of completed forms prescribed by the comptroller and shall include the following:

(A) certification that respondent has made a good faith effort to meet the requirements of this section;

(B) identification of the subcontractors that will be used during the course of the contract;

(C) the expected percentage of work to be subcontracted; and

(D) the approximate dollar value of that percentage of work.

(3) The successful respondent shall provide all additional documentation required by the agency to demonstrate compliance with good faith effort requirements prior to contract award. If the successful respondent fails to provide supporting documentation (phone logs, fax transmittals, electronic mail, etc.) within the timeframe specified by the agency to demonstrate compliance with this subsection prior to contract award, that respondent's bid/proposal shall be rejected for material failure to comply with advertised specifications and state law.

(d) Establishing good faith effort by respondent.

(1) Any person submitting a bid, proposal, offer or other applicable expression of interest in obtaining a contract with the state shall submit a completed HUB subcontracting plan demonstrating evidence of good faith effort in developing that plan. Good faith effort shall be shown through utilization of all methods specified below, and in full conformance with any directions for demonstration and submission specified in the HUB subcontracting plan template.

(A) Divide the contract work into reasonable lots or portions to the extent consistent with prudent industry practices.

(B) Provide written justification of the selection process if the selected subcontractor is not a HUB.

(C) Provide notice to minority or women trade organizations or development centers according to methods established by the comptroller to assist in identifying HUBs by disseminating subcontracting opportunities to their membership/participants. The notice shall, in all instances, include the scope of work, information regarding location to review plans and specifications, information about bonding and insurance requirements, and identify a contact person. Respondent must provide notice to organizations or development centers no less than seven (7) working days prior to submission of the response unless circumstances require a different time period, which is determined by the agency and documented in the contract file.

(D) Provide documentation of meeting one or more of the following requirements:

(i) notify at least three (3) HUB businesses of the subcontracting opportunities that the respondent intends to subcontract. The respondent shall provide the notice described in this section to three or more HUBs per each subcontracting opportunity that provide the type of work required for each subcontracting opportunity identified in the contract specifications or any other subcontracting opportunity the respondent cannot complete with its own equipment, supplies, materials, and/or employees. The notification shall be in writing, and the respondent must document the HUBs contacted on the forms prescribed by the comptroller. The notice shall, in all instances, include the scope of the work, information regarding the location to review plans and specifications, information about bonding and insurance requirements, and identify a contact person. The notice shall be provided to potential HUB subcontractors at least seven (7) working days prior to submission of the respondent's response, unless circumstances require a different time period, which is determined by the agency and documented in the contract file;

(ii) submit documentation that 100% of all available subcontracting opportunities will be performed by one or more HUBs; or

(iii) submit documentation that one or more HUB subcontractors will be utilized and that the total value of those subcontracts will meet or exceed the statewide goal for the appropriate contract category found in §20.13(b) of this title, or the agency-specific goal for the contracting category established by the procuring agency, whichever is higher. When utilizing this demonstration method, only HUB contractors holding existing contracts with the person submitting the HUB subcontracting plan for five years or fewer may be claimed.

(2) The respondent shall use the comptroller's Centralized Master Bidders List, the HUB Directory, Internet resources, and/or other directories as identified by the comptroller or the agency when searching for HUB subcontractors. Respondents may utilize the services of minority, women, and community organizations contractor groups, local, state, and federal business assistance offices, and other organizations that provide assistance in identifying qualified applicants for the HUB program who are able to provide all or select elements of the HUB subcontracting plan.

(3) In making a determination if a good faith effort has been made in the development of the required HUB subcontracting plan, a state agency may require the respondent to submit supporting documentation explaining how the respondent has made a good faith effort according to each criterion listed in subsection (c)(2)(A) - (D) of this section. The documentation shall include at least the following:

(A) how the respondent divided the contract work into reasonable lots or portions consistent with prudent industry practices;

(B) how the respondent's notices contain adequate information about bonding, insurance, the availability of plans, the speci-

fications, scope of work, required qualifications and other requirements of the contract allowing reasonable time for HUBs to participate effectively;

(C) how the respondent negotiated in good faith with qualified HUBs, not rejecting qualified HUBs who were also the best value responsive bidder;

(D) how the respondent provided notice to minority and women trade organizations or development centers to assist in identifying HUBs by disseminating subcontracting opportunities to their membership/participants;

(E) for contracts subject to paragraph (1)(D)(ii) of this subsection, which HUBs were contracted to perform the subcontracting services for each subcontracting opportunity; and

(F) for contracts subject to paragraph (1)(D)(iii) of this subsection, which contractor(s) were utilized to perform the subcontracting opportunities, and the relevant dates for the respondent's contractual agreements with the contractor(s).

(4) A respondent's participation in a Mentor-Protégé Program under Government Code, §2161.065, and the submission of a protégé as a subcontractor in the HUB subcontracting plan constitutes a good faith effort for the particular area to be subcontracted with the protégé. When submitted, state agencies may accept a Mentor-Protégé Agreement that has been entered into by the respondent (mentor) and a certified HUB (protégé). The agency shall consider the following in determining the respondent's good faith effort:

(A) if the respondent has entered into a fully executed Mentor-Protégé Agreement that has been registered with the comptroller prior to submitting the plan, and

(B) if the respondent's HUB subcontracting plan identifies the areas of subcontracting that will be performed by the protégé.

(5) If the respondent is able to fulfill all of the potential subcontracting opportunities identified with its own equipment, supplies, materials and/or employees, respondent must sign an affidavit and provide a statement explaining how the respondent intends to fulfill each subcontracting opportunity. The respondent must agree to provide the following if requested by the agency:

(A) evidence of existing staffing to meet contract objectives;

(B) monthly payroll records showing company staff fully engaged in the contract;

(C) on site reviews of company headquarters or work site where services are to be performed; and

(D) documentation proving employment of qualified personnel holding the necessary licenses and certificates required to perform the work.

(e) Reviewing the HUB subcontracting plan. The HUB subcontracting plan shall be reviewed and evaluated prior to contract award and, if accepted, shall become a provision of the agency's contract. Revisions necessary to clarify and enhance information submitted in the original HUB subcontracting plan may be made in an effort to determine good faith effort. State agencies shall review the documentation submitted by the respondent to determine if a good faith effort has been made in accordance with this section. If the agency determines that a submitted HUB subcontracting plan was not developed in good faith, the agency shall treat that determination as a material failure to comply with advertised specifications, and the subject response (bid, proposal, offer, or other applicable expression of

interest) shall be rejected. The reasons for rejection shall be recorded in the procurement file.

(f) Maintaining records.

(1) Prime contractors shall maintain business records documenting compliance with the HUB subcontracting plan and shall submit a compliance report to the contracting agency monthly, in the format required by the comptroller. The compliance report submission shall be required as a condition for payment.

(2) During the term of the contract, the state agency shall monitor the HUB subcontracting plan monthly to determine if the value of the subcontracts to HUBs meets or exceeds the HUB subcontracting provisions specified in the contract. Accordingly, state agencies shall audit and require a prime contractor to report to the agency the identity and the amount paid to its subcontractors in accordance with §20.16(b) of this title (relating to State Agency Reporting Requirements). If the prime contractor is meeting or exceeding the provisions, the state agency shall maintain documentation of the prime contractor's efforts in the contract file. If the prime contractor fails to meet the HUB subcontracting provisions specified in the contract, the state agency shall notify the prime contractor of any deficiencies. The state agency shall give the prime contractor an opportunity to submit documentation and explain to the state agency why the failure to fulfill the HUB subcontracting plan should not be attributed to a lack of good faith effort by the prime contractor.

(g) Monitoring HUB subcontracting plan during the contract.

(1) If the selected respondent decides to subcontract any part of the contract in a manner that is not consistent with its HUB subcontracting plan, the selected respondent must comply with provisions of this section and submit a revised HUB subcontracting plan before subcontracting any of the work under the contract. If the selected respondent subcontracts any of the work without prior authorization and without complying with this section, the selected respondent is deemed to have breached the contract and is subject to any remedial actions provided by Government Code, Chapter 2161, other applicable state law and this section. Agencies shall report nonperformance relative to its contracts to the comptroller in accordance §20.108 of this title (relating to Vendor Performance Tracking System).

(2) If at any time during the term of the contract, the selected respondent desires to make changes to the approved HUB subcontracting plan, proposed changes must be received for prior review and approval by the state agency before changes will be effective under the contract. The selected respondent must comply with provisions of this section, relating to developing and submitting a subcontracting plan for substitution of work or of a subcontractor, prior to any alternatives being approved under the HUB subcontracting plan. The state agency shall approve changes by amending the contract or by another form of written agency approval. The reasons for amendments or other written approval shall be recorded in the procurement file.

(3) If a state agency expands the original scope of work through a change order or contract amendment, including a contract renewal that expands the scope of work, the state agency shall determine if the additional scope of work contains additional probable subcontracting opportunities not identified in the initial solicitation. If the agency determines probable subcontracting opportunities exist, the agency will require the selected respondent to submit a HUB subcontracting plan/revised HUB subcontracting plan for the additional probable subcontracting opportunities.

(4) To determine if the prime contractor is complying with the HUB subcontracting plan, the agency may consider the following:

(A) whether the prime contractor gave timely notice to the subcontractor regarding the time and place of the subcontracted work;

(B) whether the prime contractor facilitated access to the resources needed to complete the work; and

(C) whether the prime contractor complied with the approved HUB subcontracting plan.

(5) If a determination is made that the prime contractor failed to implement the HUB subcontracting plan in good faith, the agency, in addition to any other remedies, may report nonperformance to the comptroller in accordance with §20.105 of this title (relating to Debarment) and §20.106 of this title (relating to Procedures for Investigations and Debarment). In addition, if the prime contractor failed to implement the HUB subcontracting plan in good faith, the agency may revoke the contract for breach of contract and make a claim against the prime contractor.

(6) State agencies shall review their procurement procedures to ensure compliance with this section.

§20.28. *Mentor-Protégé Program.*

(a) In accordance with Government Code, §2161.065, the comptroller shall design a Mentor-Protégé Program to foster long-term relationships between prime contractors and Historically Underutilized Businesses (HUBs) and to increase the ability of HUBs to contract with the state or to receive subcontracts under a state contract. The objective of the Mentor-Protégé Program is to provide professional guidance and support to the protégé to facilitate their development and growth. All participation is voluntary and program features should remain flexible so as to maximize participation. Each state agency with a biennial appropriation that exceeds \$10 million shall implement a Mentor-Protégé Program.

(b) In efforts to design a Mentor-Protégé Program, each agency, because of its unique mission and resources, is encouraged to implement a Mentor-Protégé Program that considers;

(1) the needs of protégé businesses requesting to be mentored;

(2) the availability of mentors who possess unique skills, talents, and experience related to the mission of the agency's program; and

(3) the agency's staff and resources.

(c) Agencies may elect to implement Mentor-Protégé Programs individually or cooperatively with other agencies, and/or other public entities and private organizations, with skills, resources and experience in Mentor-Protégé Programs. Agencies are encouraged to implement a Mentor-Protégé Program to address the needs of its protégé businesses in the following critical areas of the state's procurements:

(1) construction,

(2) commodities, and/or

(3) services.

(d) State agencies may consider, but are not limited to, the following factors in developing their Mentor-Protégé Program:

(1) develop and implement internal procedures, including an application process, regarding the Mentor-Protégé Program which identifies the eligibility criteria and the selection criteria for mentors and potential HUB protégé businesses;

(2) recruit prime contractor or vendor mentors and protégé to voluntarily participate in the program;

(3) establish a Mentor-Protégé Program objective identifying both the roles and expectations of the agency, mentor and the protégé;

(4) monitor the progress of the mentor protégé relationship;

(5) identify key agency resources including senior managers and procurement personnel to assist with the implementation of the program;

(6) encourage partnerships with local governmental and nonprofit entities to implement a community based Mentor-Protégé Program;

(7) the appropriate length of time for mentor-protégé relationships to continue. As a general matter, the statewide HUB program recommends that such relationships be limited to four years;

(8) explore other methods and procedures related to Mentor-Protégé Programs recommended in the Texas Disparity Study-2009; and

(9) assess the effectiveness of their Mentor-Protégé Program by conducting periodic surveys/interviews of both mentors and protégés.

(e) An agency's Mentor-Protégé Program must include mentor eligibility and selection criteria. In determining the eligibility and selection of a mentor, state agencies may consider the following criteria:

(1) whether the mentor is a registered bidder on the comptroller's Centralized Master Bidders List (CMBL);

(2) whether the mentor has extensive work experience and can provide developmental guidance in areas that meet the needs of the protégé, including but not limited to, business, financial, and personnel management; technical matters such as production, inventory control and quality assurance; marketing; insurance; equipment and facilities; and/or other related resources;

(3) whether the mentor is in "good standing" with the State of Texas and is not in violation of any state statutes, rules or governing policies;

(4) whether the mentor has mentoring experience;

(5) the number of protégés that a mentor can appropriately assist;

(6) whether the mentor has a successful past work history with the agency;

(7) the amount of time a HUB has participated as a mentor in the program, or in other agencies' programs; and

(8) whether and to what extent the mentor and protégé businesses share management, board members, partners, current or former employees, or other resources that might indicate that they are related or affiliated businesses.

(f) An agency's Mentor-Protégé Program must include protégé eligibility and selection criteria. In determining the eligibility and selection of HUB protégés, state agencies may use the following criteria:

(1) whether the protégé is eligible and willing to become certified as a HUB;

(2) whether the protégé's business has been operational for at least one year;

(3) whether the protégé is willing to participate with a mentoring firm and will identify the type of guidance that is needed for its development;

(4) whether the protégé is in "good standing" with the State of Texas and is not in violation of any state statutes, rules or governing policies;

(5) whether the protégé is involved in a mentoring relationship with another contractor;

(6) the amount of time a HUB has participated as a protégé in the program, or in other agencies' programs; and

(7) whether and to what extent the mentor and protégé businesses share management, board members, partners, employees, or other resources that might indicate that they are related or affiliated businesses.

(g) The mentor and the protégé should agree on the nature of their involvement under the agency's mentor/protégé initiative. Each agency will monitor the process of the relationship. The mentor and protégé relationship should be reduced to writing and that agreement may include, but is not limited to, the following:

(1) identification of the developmental areas in which the protégé needs guidance;

(2) the time period which the developmental guidance will be provided by the mentor;

(3) name, address, phone and fax numbers, and the points of contact that will oversee the agreement of the mentor and protégé;

(4) procedure for a mentor firm to notify the protégé in advance if it intends to voluntarily withdraw from the program or terminate the mentor-protégé relationship;

(5) procedure for a protégé firm to notify the mentor in advance if it intends to terminate the mentor-protégé relationship; and

(6) a mutually agreed upon timeline to report the progress of the mentor-protégé relationship to the state agency.

(h) The protégé must maintain its HUB certification status for the duration of the agreement. If a prime contractor has been awarded a contract with a state agency, which requires a HUB subcontracting plan, and the Mentor-Protégé Agreement is terminated, or the protégé's HUB certification expires, the prime contractor must either:

(1) enter into a new agreement with a certified HUB protégé, or

(2) comply with the requirements of this title relating to developing and submitting a HUB subcontracting plan.

(i) Each agency must notify its mentors and protégés that participation is voluntary. The notice must include written documentation that participation in the agency's Mentor-Protégé Program is neither a guarantee for a contract opportunity nor a promise of business; but the program's intent is to foster positive long-term business relationships.

(j) State agencies may demonstrate their good faith under this section by submitting a supplemental letter with documentation to the comptroller with their HUB report or legislative appropriations request identifying the progress and testimonials of mentors and protégés that participate in the agency's program. In accordance with §20.26 of this title (relating to HUB Coordinator Responsibilities) the agency's HUB coordinator shall facilitate compliance by its agency.

(k) Each state agency that sponsors a Mentor-Protégé Program must report that information to the comptroller upon completion of a signed agreement by both parties. Information regarding the Men-

tor-Protégé Agreement shall be reported to the comptroller in a form prescribed by the comptroller within 21 calendar days after the agreement has been signed. The comptroller will register that agreement on the approved list of mentors and protégés. Approved Mentor-Protégé Agreements are valid for all state agencies in determining good faith effort for the particular area of subcontracting to be performed by the protégé as identified in the HUB subcontracting plan.

(l) The comptroller shall maintain and make available to state agencies all registered Mentor-Protégé Agreements. The sponsoring agency shall monitor and report the termination of an existing Mentor-Protégé Agreement that has been registered with the comptroller within 21 calendar days.

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

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

TRD-201103454

Ashley Harden

General Counsel

Comptroller of Public Accounts

Effective date: September 14, 2011

Proposal publication date: February 25, 2011

For further information, please call: (512) 475-0387



TITLE 37. PUBLIC SAFETY AND CORRECTIONS

PART 1. TEXAS DEPARTMENT OF PUBLIC SAFETY

CHAPTER 15. DRIVER LICENSE RULES SUBCHAPTER B. APPLICATION REQUIREMENTS--ORIGINAL, RENEWAL, DUPLICATE, IDENTIFICATION CERTIFICATES

37 TAC §15.25

The Texas Department of Public Safety (the department) adopts amendments to §15.25, concerning Address. This section is adopted without changes to the proposed text as published in the April 15, 2011, issue of the *Texas Register* (36 TexReg 2377) and will not be republished.

The amendments are made pursuant to Texas Transportation Code, §521.060 which requires the department to establish a system for identifying unique addresses that are submitted in license or certificate applications in a frequency or number that, in the department's determination, casts doubt on whether the addresses are actual addresses where the applicant resides. The amendments to this rule establish a process which further minimizes the potential for fraudulent driver license and identification card issuance through residential address review.

No comments were received regarding the adoption of the amendments.

The amendments are adopted pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work, and Texas Transportation Code, §521.060.

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

Filed with the Office of the Secretary of State on August 29, 2011.

TRD-201103506

D. Phillip Adkins

General Counsel

Texas Department of Public Safety

Effective date: September 18, 2011

Proposal publication date: April 15, 2011

For further information, please call: (512) 424-5848



PART 3. TEXAS YOUTH COMMISSION

CHAPTER 91. PROGRAM SERVICES

SUBCHAPTER D. HEALTH CARE SERVICES

The Texas Youth Commission (TYC) adopts the repeal of §91.91 concerning Psychopharmacotherapy and new §91.91 concerning Psychopharmacotherapy without changes to the proposed text as published in the July 22, 2011, issue of the *Texas Register* (36 TexReg 4644).

New §91.91 has been restructured to provide better organization of sections relating to prescribing psychotropic medication and psychotropic medication administration. Additionally, the new rule clarifies in more detail than the existing rule that psychopharmacotherapy is an established method of treatment for TYC youth exhibiting symptoms of mental illness, mental disorder, or emotional distress. The new rule also clarifies that psychotropic medication may only be prescribed in accordance with an established treatment plan after a youth has received nursing, medical, and mental health screenings and evaluations. The new rule further clarifies that psychotropic medication shall be prescribed only to a youth who meets the current Diagnostic and Statistical Manual criteria for a psychiatric disorder and that the schedule and dosage of prescribed psychotropic medication are consistent with established community standards of care and nationally accepted practice guidelines.

The justification for the new rule is the provision of a safe and healthy environment for youth in TYC regarding prescribing of psychotropic medication.

TYC did not receive any public comments regarding the proposed repeal and new rule.

37 TAC §91.91

The repeal is adopted under Human Resources Code §61.034, which provides TYC with the authority to adopt rules appropriate to the proper accomplishment of its functions.

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

Filed with the Office of the Secretary of State on August 29, 2011.

TRD-201103512

Cheryl K. Townsend
Executive Director
Texas Youth Commission
Effective date: September 19, 2011
Proposal publication date: July 22, 2011
For further information, please call: (512) 424-6014



37 TAC §91.91

The new rule is adopted under (1) Human Resources Code §61.0711, which authorizes the commission to deliver any medical, behavioral health, or rehabilitation services provided to a child in the custody of the commission; and (2) Human Resources Code §61.076, which authorizes the commission to provide any necessary medical or psychiatric treatment to youth committed to its care.

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

Filed with the Office of the Secretary of State on August 29, 2011.
TRD-201103511
Cheryl K. Townsend
Executive Director
Texas Youth Commission
Effective date: September 19, 2011
Proposal publication date: July 22, 2011
For further information, please call: (512) 424-6014



PART 5. TEXAS BOARD OF PARDONS AND PAROLES

CHAPTER 148. SEX OFFENDER CONDITIONS OF PAROLE OR MANDATORY SUPERVISION

37 TAC §§148.40 - 148.55

The Texas Board of Pardons and Paroles adopts new 37 TAC Chapter 148, §§148.40 - 148.55, concerning sex offender conditions of parole or mandatory supervision. New §§148.40 - 148.44 and 148.46 - 148.55 are adopted without changes to the proposed text as published in the June 24, 2011, issue of the *Texas Register* (36 TexReg 3899). The text of the rules will not be republished. Section 148.45 is adopted with changes and will be republished.

The new rules are adopted to provide a procedure for panel members when considering the imposition of sex offender conditions for releasees not convicted of a sex offense.

No public comments were received regarding adoption of these rules.

The new rules are adopted under §§508.036, 508.0441, 508.045, 508.141 and 508.147, Government Code. Section 508.036 authorizes the board to adopt rules relating to the decision-making processes used by the board and parole panels. Section 508.0441 and §508.045 authorize the Board to adopt reasonable rules as proper or necessary relating to the eligibility of an offender for release to mandatory supervision and to act on matters of release to mandatory supervision. Section 508.0441

provides the board with the authority to adopt reasonable rules as proper or necessary relating to the eligibility of an inmate for release on parole or release to mandatory supervision. Section 508.147 authorizes parole panels to determine the conditions of release to mandatory supervision.

§148.45. Witnesses.

(a) The panel member may determine whether a witness may be excused under the rule that excludes witnesses from the hearing.

(1) In no event shall the panel member exclude from the hearing a party under the authority of this section. For these purposes, the term "party" means the definition in §141.111 of this title (relating to Definition of Terms) and includes:

(A) the releasee;

(B) the releasee's attorney; and

(C) no more than one representative of the Texas Department of Criminal Justice-Parole Division (TDCJ-PD) who has acted or served in the capacity of supervising, advising, or agent officer in the case.

(2) In the event that it appears to the satisfaction of the panel member that an individual who is present at the hearing and intended to be called by a party as a witness has no relevant, probative, noncumulative testimony to offer on any material issue of fact or law, then the panel member, in his sound discretion, may determine that such individual should not be placed under the rule and excluded from the hearing.

(b) All witnesses who testify in person are subject to cross-examination unless the panel member specifically finds good cause for lack of confrontation and cross-examination.

(c) Witnesses personally served with a subpoena and who fail to appear at the hearing, and upon good cause determined by the panel member, may present testimony by written statement.

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

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



CHAPTER 149. MANDATORY SUPERVISION SUBCHAPTER C. HEARING FOR IMPOSITION OF SEX OFFENDER TREATMENT AND/OR SEX OFFENDER REGISTRATION

37 TAC §§149.40 - 149.55

The Texas Board of Pardons and Paroles adopts the repeal of 37 TAC §§149.40 - 149.55, concerning a hearing for the imposition of sex offender treatment and/or sex offender registration. The repeal of the rules is adopted without change to the proposed text as published in the June 24, 2011, issue of the *Texas Register* (36 TexReg 3902). The text of the rules will not be republished.

These sections are being repealed to delete the language within the rules and conditions of mandatory supervision because recent case law states this language applies to all offenders whether on parole or mandatory supervision.

No public comments were received regarding adoption of these repeals.

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

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 43. TRANSPORTATION

PART 1. TEXAS DEPARTMENT OF TRANSPORTATION

CHAPTER 1. MANAGEMENT

SUBCHAPTER A. ORGANIZATION AND RESPONSIBILITIES

43 TAC §1.1, §1.2

The Texas Department of Transportation (department) adopts amendments to §1.1, Texas Transportation Commission, and §1.2, Texas Department of Transportation, concerning organization and responsibilities. The amendments to §1.1 and §1.2 are adopted with changes to the proposed text as published in the July 15, 2011, issue of the *Texas Register* (36 TexReg 4535).

EXPLANATION OF ADOPTED AMENDMENTS

Title 43, Texas Administrative Code, §1.1 and §1.2 essentially track statutory language and provide basic information concerning the duties of the Texas Transportation Commission (commission) and the department. Several Acts of the 82nd Legislature, Regular Session, 2011, made various changes to those duties. Therefore, §1.1 and §1.2 must be revised to reflect those changes. The bill numbers cited in this preamble reference the numbers assigned to bills by the 82nd Legislature during its Regular Session held in 2011.

Amendments to §1.1, subsection (b)(1)(J), update the entities for which commission approval of a toll project that is to become a part of the state highway system is not required under Transportation Code, §362.055. Section 126 of H.B. No. 2702,

which updates statutory population brackets to take into account the new data contained in the 2010 federal census, amends Transportation Code, §362.055 changing the population of an excepted county from more than 1.5 million to more than 2 million. The amendments to subparagraph (J) change the county population in accordance with the statutory changes. The language added in subparagraph (J) is intended to more clearly inform the reader of the other exceptions found in Transportation Code, §362.055.

Amendments to §1.1, in their final form, delete subsection (b)(1)(R), relating to the approval of recommendations submitted by the chair under subsection (d)(1)(F). The requirement for subsection (d)(1)(F) was contained in Transportation Code, §201.053(b), which was repealed by Section 24 of S.B. No. 1179. Therefore, subsection (b)(1)(R) must be deleted. This amendment was inadvertently omitted from the proposed rules.

Amendments to §1.1 delete subsection (b)(1)(U), relating to the Trans-Texas Corridor, because H.B. No. 1201 repealed the authority for the establishment and operation of the corridor. The amendments also delete subsection (b)(1)(W), relating to a report to the legislature about statutory changes to improve the operation of the department, because Section 99 of S.B. No. 1420 repealed Transportation Code, §201.0545, which was the basis for subparagraph (W). The amendments to §1.1 add a new subsection (b)(1)(U), which provides that the commission will establish a compliance program that is required by Transportation Code, §201.451, as added by Section 15 of S.B. No. 1420.

The subparagraphs within §1.1(b)(1) are redesignated as required to accommodate the changes made to that paragraph.

Amendments to §1.1 delete subsection (d)(1)(C) and (E), relating to reports to the governor, and subsection (d)(1)(F), relating to the review of and recommended changes to the department's organizational structure. Those requirements were contained in Transportation Code, §201.053(b), and were repealed by Section 24 of S.B. No. 1179. The amendments also delete subsection (d)(1)(K), relating to a report to the governor and the legislature on the commission's legislative recommendations about the operation of the department. That provision was based on Transportation Code, §201.0545, which was repealed by Section 99 of S.B. No. 1420. The subparagraphs of subsection (d)(1) are redesignated accordingly.

Amendments to §1.1, subsection (d)(3), reflect the changes made in Section 9 of S.B. No. 656. That bill abolished the Coastal Coordination Council and requires the commissioner of the General Land Office to establish the Coastal Coordination Advisory Committee. Natural Resources Code, §33.2041(b)(1)(F), requires the chair of the commission to designate a representative of the department to that committee. Paragraph (3) is revised accordingly.

Amendments to §1.2, subsection (a)(2), indicate that the executive director of the department will employ a chief financial officer of the department. Section 7 of S.B. No. 1420 adds new Transportation Code, §201.1075, relating to the functions and duties of the department's chief financial officer. The amendments to subsection (a)(2) recognize the existence of that statutorily required position. The cross reference at §1.2(c) is corrected.

COMMENTS

No comments on the proposed amendments were received.

STATUTORY AUTHORITY

The amendments are adopted under Transportation Code, §201.101, which provides the commission with the authority to establish rules for the conduct of the work of the department.

CROSS REFERENCE TO STATUTE

Natural Resources Code, §33.2041, and Transportation Code, §201.1075, §201.451, and §362.055.

§1.1. *Texas Transportation Commission.*

(a) Commission.

(1) The Texas Department of Transportation is governed by the Texas Transportation Commission, consisting of five commissioners appointed by the governor with the advice and consent of the senate.

(2) The governor designates one commissioner as the chair of the commission.

(b) Commission responsibilities.

(1) The Texas Transportation Commission, with the advice and recommendations of the executive director, will:

(A) plan and make policies for the location, construction, and maintenance of a comprehensive system of state highways and public roads;

(B) lay out, construct, maintain, and operate a modern state highway system;

(C) develop a statewide transportation plan that contains all modes of transportation, including highways and turnpikes, aviation, mass transportation, railroads and high-speed railroads, and water traffic;

(D) award contracts necessary for the improvement of the state highway system, as provided by Transportation Code, Chapter 223, and §§9.10-9.21 of this title (relating to Highway Improvement Contracts);

(E) encourage, foster, and assist in the development of public and mass transportation in the state;

(F) encourage, foster, and assist in the development of aeronautics in the state and encourage, aid, and assist in the establishment of airports, airstrips, and air navigational facilities in the state;

(G) fulfill the local sponsorship requirements of the Gulf Intracoastal Waterway as agent for the state;

(H) provide for the development and operation of toll projects on the state highway system;

(I) approve a toll project constructed by a private entity or corporation if the project connects to the state highway system;

(J) approve the construction of a toll project by a governmental or private entity other than a county with a population of more than 2 million people, a local government corporation created by such a county, or a regional tollway authority, if it is to become a part of the state highway system;

(K) appoint an internal auditor for the department who shall report directly to the commission on the conduct of departmental affairs;

(L) adopt rules for the operation of the department;

(M) divide the department into districts to accomplish the department's functions and the duties assigned to it;

(N) carry out such transportation functions as may be delegated by the governor pursuant to applicable federal law;

(O) establish policy necessary to carry out the duties and functions of the department and the commission;

(P) administer the state infrastructure bank;

(Q) organize the department into divisions to accomplish the department's functions and duties assigned to it;

(R) plan and make policies for the location, construction, maintenance, and operation of rail facilities;

(S) administer the Texas Mobility Fund as a revolving fund to provide a method of financing the construction, reconstruction, acquisition, and expansion of state highways, and for the construction of other transportation projects;

(T) approve the creation of regional mobility authorities;

(U) establish a compliance program; and

(V) perform other duties required by law.

(2) The commission may, consistent with applicable law, delegate one or more of the functions listed under paragraph (1) of this subsection to the executive director. The executive director may further delegate such functions to one or more employees of the department.

(c) Attendance at meetings. Each commissioner shall: attend at least half of the regularly scheduled meetings that the commissioner is eligible to attend during a calendar year unless the absence is excused by majority vote of the commission.

(d) Chair of the commission.

(1) The chair of the commission, with the advice and recommendations of the executive director and the executive director's staff, shall:

(A) preside over commission meetings, make rulings on motions and points of order, and determine the order of business;

(B) represent the department in dealing with the governor;

(C) report suggestions made by the governor for departmental operations to the commission;

(D) designate one or more employees of the department as a civil rights division of the department and receive regular reports from the division on the department's efforts to comply with civil rights legislation and administrative rules;

(E) create subcommittees, appoint commissioners to subcommittees, and receive the reports of subcommittees to the commission as a whole;

(F) appoint a commissioner to act in the chair's absence;

(G) serve as the departmental liaison with the governor and the Office of State-Federal Relations to maximize federal funding for transportation;

(H) oversee the preparation of an agenda for each commission meeting and ensure that a copy is provided to each commissioner at least seven days before a regular meeting; and

(I) perform any other duties assigned by law.

(2) The chair may, consistent with applicable law, delegate one or more of the functions listed under paragraph (1) of this subsection to the executive director, who in turn may further delegate such functions to one or more employees of the department.

(3) The chair will designate a person to serve as a representative of the department on the Coastal Coordination Advisory Committee.

§1.2. Texas Department of Transportation.

(a) Executive director.

(1) The commission will elect an executive director for the department who shall be skilled in transportation planning and development and in organizational management. The executive director, as the chief executive officer of the department, is authorized to administer the day-to-day operations of the department. The executive director may hold that position until removed by the commission.

(2) To assist in discharging the duties and responsibilities of the executive director, the executive director may organize, appoint, and retain such administrative staff as he or she deems appropriate, including the chief financial officer of the department.

(3) The executive director shall:

(A) serve the commission in an advisory capacity, without vote;

(B) submit quarterly, annually, and biennially to the commission detailed reports of the progress of public road construction, public and mass transportation development, and detailed statement of expenditures;

(C) hire, promote, assign, re-assign, transfer, and, consistent with applicable law and policy, terminate staff necessary to accomplish the roles and missions of the department;

(D) notify the chair of grounds for removal of a commissioner if the executive director knows that a potential ground for removal exists, or, if the potential ground for removal relates to the chair, notify another commissioner;

(E) under the direction and with the approval of the commission, prepare a comprehensive plan providing a system of state highways; and

(F) perform other responsibilities as required by law or assigned by the commission.

(4) The executive director may, consistent with applicable law, delegate one or more of the functions listed under paragraph (3)(B) - (F) of this subsection to the staff of the department.

(b) Department staff. The staff of the Texas Department of Transportation, under the direction of the executive director, is responsible for:

(1) implementing the policies and programs of the commission by:

(A) formulating and applying operating procedures; and

(B) prescribing such other operating policies and procedures as may be consistent with and in furtherance of the roles and missions of the department;

(2) providing the chair and commissioners administrative support necessary to perform their respective duties and responsibilities, including:

(A) assigning staff to assist commissioners;

(B) providing necessary office space and equipment;

(C) furnishing in-house legal counsel;

(D) providing all information and documents necessary for the commission to effectively perform its responsibilities; and

(E) preparing an agenda under the direction of the chair, providing notice, and transcribing commission meetings and hearings as required by the Texas Open Meetings Act, Government Code, Chapter 551; and

(3) performing all other duties as prescribed by law or as assigned by the commission.

(c) Divisions. Consistent with commission direction provided under §1.1(b)(1)(Q) of this subchapter, the executive director shall organize the department into headquarters operating divisions and offices reflecting the various functions and duties assigned to the department, and shall designate a division or office director who shall administer each division or office.

(d) Districts.

(1) District office. The department is divided into geographical districts, each containing one district office. Each district is administered by a district engineer who is a registered professional engineer and is appointed by the executive director.

(2) Area office. A district contains one or more area offices, each of which is responsible for carrying out the department's primary functions at the local level for a designated geographical area. Each area office is normally administered by an area engineer who shall be a registered professional engineer.

(3) Project office. A district may contain one or more project offices, which is normally responsible for a specific project within an area.

(e) Regional Support Centers. The department has four regional support centers, which provide operational and project development support functions to the districts. The regional support centers are located in Fort Worth, Houston, San Antonio, and Lubbock.

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

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General Counsel

Texas Department of Transportation

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**CHAPTER 2. ENVIRONMENTAL POLICY
SUBCHAPTER A. ENVIRONMENTAL
REVIEW AND PUBLIC INVOLVEMENT FOR
TRANSPORTATION PROJECTS**

43 TAC §§2.1, 2.2, 2.5, 2.12, 2.16, 2.19

The Texas Department of Transportation (department) adopts amendments to §2.1, General; Emergency Action Procedures, §2.2, Definitions, §2.5, Public Involvement, §2.12, Environmental Impact Statement (EIS), §2.16, Mitigation, and §2.19, Rail Transportation Project, all concerning Environmental Review and Public Involvement for Transportation Projects. The amend-

ments to §§2.1, 2.2, 2.5, 2.12, 2.16, and 2.19 are adopted without changes to the proposed text as published in the July 15, 2011, issue of the *Texas Register* (36 TexReg 4537) and will not be republished.

EXPLANATION OF ADOPTED AMENDMENTS

House Bill No. 1201, Acts of 82nd Legislature, Regular Session, 2011, repealed the authority for the establishment and operation of the Trans-Texas Corridor and removed all references in state statutes to the Trans-Texas Corridor. The purpose of these amendments is to remove all provisions in Chapter 2 of the rules of the department relating to the Trans-Texas Corridor. The effect of these amendments in conjunction with amendments to other chapters of the department's rules being simultaneously considered by the Texas Transportation Commission (commission) is the removal of all provisions in department's rules relating to the Trans-Texas Corridor.

Amendments to §2.1, General; Emergency Action Procedures, remove the reference in subsection (b)(2) to a construction or operation project of a facility that is part of the Trans-Texas Corridor and to Transportation Code, Chapter 227, which related to the corridor and was repealed by H.B. No. 1201. The amendments to subsection (c) remove all references in that subsection to sections in Transportation Code, Chapter 227.

Amendments to §2.2, Definitions, remove the definition of Trans-Texas Corridor and renumber the following definition appropriately.

Amendments to §2.5, Public Involvement, remove subsection (e)(9) relating to the notice of availability of a Final Environmental Impact Statement (FEIS) for a Trans-Texas Corridor project and redesignate the following paragraph accordingly.

Amendments to §2.12, Environmental Impact Statement (EIS), remove subsection (e)(2) relating to the contents of a Draft Environmental Impact Statement (DEIS) for a Trans-Texas Corridor project and redesignate the following paragraphs accordingly.

Amendments to §2.16, Mitigation, remove subsection (b)(6), which provides for compensatory mitigation of an adverse environmental impact resulting from a Trans-Texas Corridor project and redesignate the following paragraph accordingly.

Amendments to §2.19, Rail Transportation Project, remove the references to Transportation Code, Chapter 227 in subsections (a) and (c).

COMMENTS

No comments were received on the proposed amendments.

STATUTORY AUTHORITY

The amendments are adopted under Transportation Code, §201.101, which provides the commission with the authority to establish rules for the conduct of the work of the department.

CROSS REFERENCE TO STATUTE

None.

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

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CHAPTER 9. CONTRACT AND GRANT MANAGEMENT

SUBCHAPTER A. GENERAL

43 TAC §9.6

The Texas Department of Transportation (department) adopts amendments to §9.6, concerning Contract Claim Procedure for Comprehensive Development Agreement. The amendments are adopted without changes to the proposed text as published in the July 15, 2011, issue of the *Texas Register* (36 TexReg 4539) and will not be republished.

EXPLANATION OF ADOPTED AMENDMENTS

House Bill No. 1201, Acts of 82nd Legislature, Regular Session, 2011, repealed the authority for the establishment and operation of the Trans-Texas Corridor and removed all references in state statutes to the Trans-Texas Corridor. The purpose of these amendments is to remove all provisions in Chapter 9 of the rules of the department relating to the Trans-Texas Corridor. The effect of these amendments in conjunction with amendments to other chapters of the department's rules being simultaneously considered by the Texas Transportation Commission (commission) is the removal of all provisions in the department's rules relating to the Trans-Texas Corridor.

Amendments to §9.6, Contract Claim Procedure for Comprehensive Development Agreement, remove the reference to Transportation Code, §227.023.

COMMENTS

No comments on the proposed amendments were received.

STATUTORY AUTHORITY

The amendments are adopted under Transportation Code, §201.101, which provides the commission with the authority to establish rules for the conduct of the work of the department.

CROSS REFERENCE TO STATUTE

None.

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CHAPTER 21. RIGHT OF WAY

The Texas Department of Transportation (department) adopts amendments to §21.10, Negotiations, §21.13, Highway Right-of-Way Values, §21.14, Qualifications of Real Estate Appraisers and Other Technical Experts or Estimators, §21.111, Definitions, and §21.118, Relocation Review Committee, all concerning department land acquisition procedures. The amendments to §§21.10, 21.13, 21.14, 21.111, and 21.118 are adopted without changes to the proposed text as published in the July 15, 2011, issue of the *Texas Register* (36 TexReg 4540) and will not be republished.

EXPLANATION OF ADOPTED AMENDMENTS

Title 43, Texas Administrative Code (TAC), Chapter 21, Subchapter A, Land Acquisition Procedures, was adopted to prescribe requirements for the acquisition of real property by the department in accordance with Property Code, Chapter 21, Subchapter B, Procedure. Senate Bill 18 (SB 18), 82nd Legislature, Regular Session, 2011, amended Property Code, §21.0111 and added Property Code, §21.0113 to require certain procedures be followed in connection with offers for real property made by entities with eminent domain authority, such as the department. The adopted amendments are necessary to comply with the provisions of SB 18 and to clarify existing language.

Amendments to §21.10 include multiple changes. The first change in §21.10(a) deletes the provision that a property owner will be provided with a copy of existing appraisal reports that were used in determining the final valuation offer, as the provision conflicts with the procedures required by SB 18. Second, new §21.10 adds negotiation procedures required by SB 18. Specifically, new subsection (b) requires the department to make a bona fide offer to acquire real property voluntarily and requires the offers be in writing and advise owners of their disclosure rights.

New subsection (c) requires that an initial offer include copies of all related appraisal reports prepared in the previous ten years that were produced or acquired by the department and be sent to the property owner by certified mail, return receipt requested.

New subsection (d) requires that the final offer be equal to or greater than the amount of an appraisal by a certified appraiser of the value of the property being acquired and any damages to any of the owner's remaining property. It also requires that the final offer include a copy of the appraisal the final offer is based on, the conveyance document to be signed by the property owner, and a copy of the statutorily required landowners' bill of rights statement, unless such items have been previously provided. Finally, it provides that the department will not make a final offer before the 30th day after the date of delivery of the initial offer.

New subsection (e) requires the department to give the property owner 14 days after the date of the final offer to respond to the offer before filing a petition of condemnation.

The last sentence of current §21.10(a) and paragraphs §21.10(a)(1), (2), and (3) are redesignated as new subsection (f), and current §21.10(b) is redesignated as new subsection (g).

New subsection (h) of §21.10 provides that for the purposes of §21.10 a document is considered delivered on the earlier of the delivery date on the certified mail receipt or the fifth day after the date the document, properly addressed with postage paid, is deposited with the United States Postal Service. This provision allows for certainty in determining when the department can make a final offer or begin a condemnation proceeding.

Amendments to §21.13 delete the original heading "Highway Right-of-Way Values" and add new heading "Valuation for Real Property to be Acquired", and delete the phrase "right-of-way" and replace it with "real property", to clarify that the section applies to all acquisitions of real property by the department. A new provision is added providing that the approved values used for the final offer will be determined based on a written appraisal by a certified appraiser, as required by SB 18.

Amendments to §21.14 delete the phrase "In the acquisition of highway right-of-way" and add the language "used in the acquisition of real property for highway purposes" to clarify that the section applies to all acquisitions of real property for highway purposes, not just right-of-way. The word "are" is deleted and replaced with "must be" to clarify that the department must approve qualifications of real estate appraisers and other technical experts or estimators. Finally, the amendments add a requirement that the qualifications of a real estate appraiser must include a requirement that the appraiser be certified, as required by SB 18.

Amendments to §21.111 clarify the definition of "Relocation Review Committee" by removing provisions regarding the appointment and composition of the committee and moving those provisions to §21.118.

Amendments to §21.118 add new subsection (a) to set forth the process for the appointment of members of the Relocation Review Committee. The amendments require the executive director to appoint at least three persons as members of the Relocation Review Committee. The amendments also establish that in order to be eligible for appointment to or service on the committee, a person may not be below the level of department division director, office director, or district engineer, and may not be directly involved with the relocation assistance program. The amendments designate the existing provisions of §21.118 as new subsection (b).

COMMENTS

No comments on the proposed amendments were received.

SUBCHAPTER A. LAND ACQUISITION PROCEDURES

43 TAC §§21.10, 21.13, 21.14

STATUTORY AUTHORITY

The amendments are adopted under Transportation Code, §201.101, which provides the commission with the authority to establish rules for the conduct of the work of the department, and more specifically, Transportation Code, §203.051, which provides the commission with the authority to acquire real property on behalf of the department.

CROSS REFERENCE TO STATUTE

Transportation Code, Chapter 203.

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

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SUBCHAPTER G. RELOCATION ASSISTANCE AND BENEFITS

43 TAC §21.111, §21.118

STATUTORY AUTHORITY

The amendments are adopted under Transportation Code, §201.101, which provides the commission with the authority to establish rules for the conduct of the work of the department, and more specifically, Transportation Code, §203.051, which provides the commission with the authority to acquire real property on behalf of the department.

CROSS REFERENCE TO STATUTE

Transportation Code, Chapter 203.

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CHAPTER 24. TRANS-TEXAS CORRIDOR SUBCHAPTER B. DEVELOPMENT OF FACILITIES

43 TAC §24.11, §24.12

The Texas Department of Transportation (department) adopts the repeal of §24.11, Comprehensive Development Agreements, and §24.12, Environmental Review and Public Involvement concerning Trans-Texas Corridor. The repeals are adopted without changes to the proposed text as published in the July 15, 2011, issue of the *Texas Register* (36 TexReg 4543) and will not be republished.

EXPLANATION OF ADOPTED REPEALS

House Bill No. 1201, Acts of 82nd Legislature, Regular Session, 2011, repealed the authority for the establishment and operation of the Trans-Texas Corridor and removed all references in state statutes to the Trans-Texas Corridor. The purpose of these amendments is to repeal all provisions in Chapter 24 of the rules of the department, which relate to the Trans-Texas Corridor. The effect of these repeals in conjunction with amendments to other chapters of the department's rules being simultaneously considered by the Texas Transportation Commission (commission) is

the removal of all provisions in the department's rules relating to the Trans-Texas Corridor.

Changes repeal §24.11 and §24.12, the two sections in Chapter 24, Trans-Texas Corridor.

COMMENTS

No comments on the proposed repeals were received.

STATUTORY AUTHORITY

The repeals are adopted under Transportation Code, §201.101, which provides the commission with the authority to establish rules for the conduct of the work of the department.

CROSS REFERENCE TO STATUTE

None.

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CHAPTER 25. TRAFFIC OPERATIONS SUBCHAPTER I. SAFE ROUTES TO SCHOOL PROGRAM

43 TAC §25.501

The Texas Department of Transportation (department) adopts amendments to §25.501, concerning the definitions in the Safe Routes to School Program. The amendments to §25.501 are adopted without changes to the proposed text as published in the June 10, 2011, issue of the *Texas Register* (36 TexReg 3588) and will not be republished.

EXPLANATION OF ADOPTED AMENDMENTS

The department administers the federal Safe Routes to School Program to enhance safety in and around school areas through a comprehensive program designed to improve the bicycle and pedestrian safety of school age children.

The current definition of "political subdivision" as contained in §25.501 is limited to municipalities and counties. The department is aware that there are other types of political subdivisions in the state, such as municipal utility districts, that may wish to apply for and be awarded funding for Safe Routes to School projects within their jurisdictions.

The amendments to §25.501 delete the current definition for "political subdivision." The department will rely on common usage of the term and existing state law to determine those entities that qualify as political subdivisions and, as such, eligible to apply for and receive Safe Routes to School program funding.

COMMENTS

No comments on the proposed amendments were received.

STATUTORY AUTHORITY

The amendments are adopted under Transportation Code, §201.101, which provides the Texas Transportation Commission (commission) with the authority to establish rules for the conduct of the work of the department, and more specifically, Transportation Code, §201.614, which authorizes the commission to adopt rules to implement a Safe Routes to School program.

CROSS REFERENCE TO STATUTE

Transportation Code, §201.614.

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

Filed with the Office of the Secretary of State on August 26, 2011.

TRD-201103478

Bob Jackson

General Counsel

Texas Department of Transportation

Effective date: September 15, 2011

Proposal publication date: June 10, 2011

For further information, please call: (512) 463-8683



CHAPTER 27. TOLL PROJECTS
SUBCHAPTER A. COMPREHENSIVE
DEVELOPMENT AGREEMENTS

43 TAC §27.2

The Texas Department of Transportation (department) adopts amendments to §27.2, Definitions concerning Comprehensive Development Agreements. The amendments are adopted without changes to the proposed text as published in the July 15, 2011, issue of the *Texas Register* (36 TexReg 4548) and will not be republished.

EXPLANATION OF ADOPTED AMENDMENTS

House Bill No. 1201, Acts of 82nd Legislature, Regular Session, 2011, repealed the authority for the establishment and operation of the Trans-Texas Corridor and removed all references in state statutes to the Trans-Texas Corridor. The purpose of these amendments is to remove all provisions in Chapter 27 of the rules of the department relating to the Trans-Texas Corridor. The effect of these amendments in conjunction with amendments to other chapters of the department's rules being simultaneously considered by the Texas Transportation Commission (commission) is the removal of all provisions in the department's rules relating to the Trans-Texas Corridor.

Amendments to §27.2 remove paragraph (15)(B) relating to a facility or a combination of facilities on the Trans-Texas Corridor being an eligible project for the purposes of 43 TAC Chapter 27, Subchapter A and redesignate the following subparagraphs accordingly.

COMMENTS

No comments on the proposed amendments were received.

STATUTORY AUTHORITY

The amendments are adopted under Transportation Code, §201.101, which provides the commission with the authority to establish rules for the conduct of the work of the department.

CROSS REFERENCE TO STATUTE

None.

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

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Bob Jackson

General Counsel

Texas Department of Transportation

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For further information, please call: (512) 463-8683



SUBCHAPTER H. DETERMINATION OF
TERMS FOR CERTAIN TOLL PROJECTS

43 TAC §§27.90 - 27.92

The Texas Department of Transportation (department) adopts new §27.90, Purpose, §27.91, Definitions, and §27.92, Financial Terms, concerning Determination of Terms for Certain Toll Projects. New §27.90 is adopted without changes to the proposed text as published in the July 15, 2011, issue of the *Texas Register* (36 TexReg 4549) and will not be republished. New §27.91 and §27.92 are adopted with changes to the proposed text as published in the July 15, 2011, issue of the *Texas Register* (36 TexReg 4549).

EXPLANATION OF ADOPTED NEW SECTIONS

Transportation Code, §228.013, added by Senate Bill 1420, 82nd Legislature, Regular Session, 2011, requires, for certain department toll projects in which a private entity has a financial interest in the project's performance, that the distribution of the project's financial risk, the method of financing for the project, and the tolling structure and methodology be determined by a committee comprised of representatives from the department, any local toll project entity for the area in which the project is located, the applicable metropolitan planning organization, and each municipality or county that provides revenue or right of way for the project. The new sections prescribe the process for a committee's issuance of its determination.

The new sections define the circumstances in which a committee must be established and the process for the issuance of a report containing the committee's determination. The terms determined by a committee will affect the project procurement and the terms of the comprehensive development agreement for the toll project. Accordingly, a determination must be issued as soon as practical after a procurement has been authorized. The new sections only apply to projects developed under comprehensive development agreements. Based on the terms of agreements that have been used by the department for the development, construction, and operation of toll projects, a private entity will only have a financial interest in the performance of a project developed under a comprehensive development agreement.

New §27.90 describes the purpose of the new sections.

New §27.91 defines words and terms used in the new sections.

New §27.92 provides that the new sections only apply to a department toll project that will be developed under a concession agreement or an availability payment contract. Of the comprehensive development agreements entered into or contemplated to be entered into by the department, only a concession agreement or an availability payment contract provides a private entity with a financial interest in the project's performance.

New §27.92 limits the applicability of the new sections to a department toll project for which funds allocated to a metropolitan planning organization or local funds are expected to be used to pay for project costs, property of a municipality or county is expected to be used as project right of way, or a municipality or county is expected to pay for the acquisition of right of way for the project. It is in the state's interest to have a determination issued as soon as possible. It may not be possible at that time to know with certainty whether funds allocated to a metropolitan planning organization or city or county funds will be used to pay for project costs. Accordingly, new §27.92 provides that new Subchapter H of Chapter 27 applies if those funds are expected to be used to pay project costs.

Transportation Code, §228.013 does not define what funds are dedicated to or controlled by a region, municipality, or county. The only funds a regional body has responsibility for allocating to department toll projects are the funds the Texas Transportation Commission (commission) allocates to metropolitan planning organizations. Funds of a city or county that are granted to the municipality or county by the department and not used to meet local participation requirements would not be dedicated to or controlled by the municipality or county. This construction of the statute is consistent with the department's understanding that the purpose of the statute is to provide local and regional stakeholders with a say in project terms that affect the risk of loss of local and regional funds committed to a project.

As the requirements of Transportation Code, §228.013 only apply to department toll projects, new §27.92 provides that for a project subject to the primacy determination process established in Transportation Code, Chapter 373, Subchapter B, the committee shall be formed after the department exercises its option under that subchapter to develop, finance, construct, and operate the project. New §27.92 provides that the membership of a committee will be determined after the commission authorizes the department to initiate a procurement for a toll project subject to the new sections.

New §27.92 also provides that a committee shall submit a report to the department's executive director prior to the date the department issues a request for qualifications for a toll project, except for a project for which the department and a local toll project entity have agreed on the terms and conditions for the project under Transportation Code, §228.0111, or for which a local toll project entity has waived its option to develop, construct, and operate the project. For those projects, many of the terms to be considered by a committee have already been settled. The report for those projects must be submitted prior to the date the department issues a request for proposals for the project. The terms determined by a committee will affect the project procurement, the delivery method used, and the terms of the comprehensive development agreement for the toll project. Accordingly, a determination must be issued as soon as practical after a procurement has been authorized. Delay in issuing a request for qualifications or request for proposals and entering into an agreement for the delivery of a toll project will result in

additional costs and increased congestion because of the delay in completing those needed projects and will affect the ability of private entities to put together proposer teams.

New §27.92 also provides that if a department toll project is subject to a market valuation agreement, market valuation waiver agreement, or similar agreement entered into under Transportation Code, §228.0111, or a toll project agreement entered into under Transportation Code, §373.006, the report may not include determinations that are inconsistent with the provisions of the agreement that relate to the determinations to be included in the report. Such an agreement will include agreed terms and conditions for the development, construction, and operation of a toll project, or other terms that relate to the development, construction, and operation of a toll project. Those terms have already been settled and the local toll project entity, the department, and the applicable region are relying on the terms of those agreements in their planning and budgeting efforts.

In order to have a determination issued as soon as possible, the membership of a committee could be determined before it is clear whether a particular entity is required to be represented. New §27.92 provides that a committee will be comprised of one member appointed by each metropolitan planning organization and local toll project entity within whose boundaries all or part of the proposed project may be located, and one member appointed by each city and county which has provided local funds to pay for project costs or has provided property of the city or county for use as project right of way, or has submitted to the department an order or resolution adopted by the city council or county commissioners court committing local funds or property to the project.

New §27.92 provides that a report issued by a committee will contain a determination concerning the distribution of project financial risk, which is defined as the allocation of revenue risk for a toll project between the department and the private entity with which the department enters into an agreement for the project. New §27.92 also provides that a report issued by a committee will contain a determination concerning the method of financing for the project, which is defined as a determination of whether the project should be funded with private or public funding or a combination of private and public funding. Transportation Code, §228.013 does not define those provisions. The definitions in the new sections are consistent with the department's understanding that the purpose of the statute is to provide local and regional stakeholders with a say in project terms that affect the risk of loss of local and regional funds committed to a project.

New §27.92 provides that a report issued by a committee will also contain a determination concerning the project's tolling structure and methodology, unless the project is subject to a regional tolling policy. Regional tolling policies have been adopted by certain metropolitan planning organizations that include, among other things, policies on toll rates and toll rate escalation. The membership of a metropolitan planning organization's policy board generally will include the municipalities, counties, and local toll project entities that would be part of a committee established under Transportation Code, §228.013.

New §27.92 provides that all members of a committee must utilize their best efforts to support the generation of a report, and if a committee does not submit a report by the date the department is scheduled to issue a request for qualifications or request for proposals, as applicable, for a project, the department will use any business terms applicable to the project that have been adopted by the metropolitan planning organization and that relate to the

determinations to be included in the report. As discussed above, the membership of a metropolitan planning organization's policy board generally will include the entities that would be part of a committee.

New §27.92(f)(5) has been revised to delete language that incorrectly indicated that these committees are advisory committees.

New §27.92 includes provisions relating to committee meetings and administrative support of a committee that are intended to ensure the efficient operation of the committee, including having a division or office of the department schedule meetings for the committee and having the committee chair and the department finalize meeting agendas. A committee's report may only discuss items that are within the committee's jurisdiction. Notices of meetings must comply with the requirements of the Open Meetings Act. The department shall provide information to the committee, including the project procurement schedule, necessary for a committee to issue a report in a timely manner.

New §27.92 defines a quorum of a committee as one half or more of the number of members appointed to the committee and provides that a committee may act only by majority vote of the members present at the meeting and voting. These provisions will ensure that a committee is able to carry out its functions in a timely manner.

New §27.92 provides that a committee will cease to exist after submitting its report, but that the department may reconvene a committee if changed circumstances may result in a change in the committee's determinations.

COMMENTS

Comments on the proposed new sections were received from Allen Clemson, Executive Director, North Texas Tollway Authority (NTTA).

Comment:

Because other toll authorities may enter into comprehensive development agreements, the NTTA requests that the definition of comprehensive development agreement in §27.91 be revised to clarify that these rules apply only to comprehensive development agreements between the department and a private entity, as authorized by Transportation Code, §223.201(a)(1).

Response:

The requested change has been made, with a revision that recognizes that the department is authorized to enter into comprehensive development agreements under various provisions in Transportation Code, Chapter 223, Subchapter E, not just Transportation Code, §223.201(a)(1).

Comment:

NTTA requests that §27.92(a) be amended to provide that the rules apply only to a department toll project, as this mirrors the provisions of Transportation Code, §228.013.

Response:

The requested change has been made.

Comment:

NTTA requests that §27.92(b) be amended to provide that for a project subject to Transportation Code, Chapter 373, Subchapter B, a committee shall be formed after the department exercises its option under that subchapter to develop, finance, construct, and operate the project. These changes make it explicit

that a committee will be formed after the department has elected to deliver the project. Only when the department exercises its option is the project a department project, as specified by Transportation Code, §228.013.

Response:

The requested change has been made.

Comment:

NTTA requests that §27.92(b)(3) be amended to provide that a committee will consist of one member appointed by each city or county that has provided or will provide local funds to pay for right of way acquisition or other project costs or to acquire right of way for the project, or has provided or will provide property of the city or county for use as project right of way. NTTA states that there does not seem to be a requirement in the statute for an agreement with the department in order to qualify for representation on the committee. Instead, the focus is much more practical and singular--whether funds or right of way provided by the municipality or county will be used on the project. Second, it appears that the support itself does not have to be prospective, as the rules indicate; only the use of the donation is stated in the future tense.

Response:

The department agrees that the support does not need to be prospective, and has revised the rules to provide that a city or county may appoint a member to a committee if the city or county has provided local funds to pay for right of way acquisition or other project costs or to acquire right of way for the project, or has provided property of the city or county for use as project right of way. In order to have a determination issued as soon as possible, a committee will be formed and members appointed as early as possible in the procurement process. It is possible that the membership of a committee could be determined before it is clear whether a particular entity is required to be represented. Accordingly, the department believes it is reasonable and appropriate to require some assurance the city or county will actually be providing funding or property for the project. The rules have been revised to provide that, in order to be able to appoint a member, a city or county that has not already provided local funds or property for the project must submit to the department an order or resolution adopted by the city council or county commissioners court committing local funds or property to the project.

Comment:

NTTA states that Senate Bill 1420 does not indicate that the commission is to select a committee's chair and vice-chair. Typically committees elect their own officers. NTTA requests that §27.92(c) be amended to remove the provisions authorizing the commission to appoint a chair and vice-chair, or to delegate that responsibility to the committee, and to provide that the committee will elect a chair and vice-chair.

Response:

Section 27.92(c) has been changed to provide that a committee will, subject to the commission's concurrence, elect a chair and vice-chair. The requirement for commission concurrence is necessary in order to ensure the efficient operation of the committee and issuance of a report, and the timely completion of a project procurement.

Comment:

NTTA notes that §27.92(d)(3) of the proposed rules requires a project's tolling structure and methodology to be consistent with agreements finalized under the former Senate Bill 792, 80th Legislature, 2007, market valuation process, and states that while that is appropriate, it does not go far enough in two respects. First, after a local toll project entity has waived its right to deliver a project on terms negotiated pursuant to the market valuation process and pursuant to a market valuation waiver agreement, the committee should not be allowed to alter any of those terms--not just tolling structure and methodology. Second, new Transportation Code, §373.006 authorizes the department and a local toll project entity to agree to any "alternative to the primacy determination process." A committee should not be allowed to override those agreements. The local toll project entity, the department, and the applicable region are reasonably relying on the terms of those agreements in their planning and budgeting efforts.

NTTA requests that §27.92(d) be amended to provide that if a project is subject to a market valuation agreement, market valuation waiver agreement, a memorandum of understanding regarding market valuation, or similar agreement, or to a toll project agreement under Transportation Code, §373.006, between the department and a local toll project entity, the committee's report must not include determinations that are inconsistent with the provisions of such an agreement or toll project agreement that relate to the determinations to be included in the report.

Response:

The requested changes have been made with minor changes in wording, including recognizing that the market valuation agreement or similar agreement must have been entered into under Transportation Code, §228.0111.

Comment:

NTTA states that consistent with the statutory expectations of Senate Bill 1420, a committee should have a clear mandate to use good-faith efforts to issue a report. Insofar as the statute makes the issuance of a report mandatory, the provision anticipating a "Failure to submit report" may be problematic. NTTA requests that §27.92(e) be amended to provide that all members of the committee will utilize their best efforts to support the generation of a report.

Response:

The requested change has been made.

Comment:

NTTA states that Senate Bill 1420 does not indicate that the department controls a committee's agenda. Committee members should be able to bring matters before the committee, provided they are consistent with applicable law and these rules. NTTA requests that §27.92(f)(2) be amended to provide that an agenda item requested by a committee member will be included on a committee meeting agenda unless the chair of the committee properly determines its inclusion would conflict with applicable law or these rules, and to remove the requirement for department approval of the agenda item.

Response:

The proposed rules include the requirement for chair and department approval to add an agenda item in order to ensure the efficient operation of the committee and issuance of a report, and the timely completion of a procurement. Transportation Code, §228.013 does not define a number of things relating to the op-

eration of a committee and the process for the issuance of a determination that the commission needed to define by rule. No change has been made.

Comment:

The NTTA states that sometimes it is only after a matter has been raised for discussion that it becomes apparent that the matter is beyond the scope of the committee's mandate. Limiting discussion to matters within the committee's jurisdiction could chill such deliberations. It is clear that the committee's ultimate report should be limited to matters within the committee's jurisdiction. The NTTA requests that §27.92(f)(2) be amended to provide that a committee's report may only discuss items that are within the committee's jurisdiction.

Response:

The requested change has been made.

STATUTORY AUTHORITY

The new sections are adopted under Transportation Code, §201.101, which provides the commission with the authority to establish rules for the conduct of the work of the department, and more specifically, Transportation Code, §223.209, which requires the commission to adopt rules, procedures, and guidelines governing selection of a developer for a comprehensive development agreement and negotiations to promote fairness, obtain private participants in projects, and promote confidence among those participants.

CROSS REFERENCE TO STATUTE

Transportation Code, §223.209 and §228.013.

§27.91. Definitions.

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

- (1) Availability payment contract--A comprehensive development agreement under which payments are made to a private entity from project and other revenue to compensate the private entity for capital, operating, and financial costs, which may be based on the private entity's performance under the agreement.
- (2) Commission--The Texas Transportation Commission.
- (3) Committee--A committee established under this subchapter.
- (4) Comprehensive development agreement--An agreement with a private entity authorized under Transportation Code, Chapter 223, Subchapter E that, at a minimum, provides for the design and construction, reconstruction, extension, expansion, or improvement of a toll project and may also provide for the financing, acquisition, maintenance, or operation of a toll project.
- (5) Concession agreement--A comprehensive development agreement under which a private entity agrees to develop, finance, and construct a toll project, and to assume operation or maintenance responsibilities for a toll project, in exchange for rights to revenue of the project.
- (6) Department--The Texas Department of Transportation.
- (7) Executive director--The executive director of the department or the executive director's designee.
- (8) Local funds--Funds of a city or county, any other funds paid by a city or county to meet local participation requirements, and

money deposited in a subaccount created under Transportation Code, §228.012.

(9) Local toll project entity--Has the meaning assigned by Transportation Code, §373.001.

(10) Metropolitan planning organization--The organization or policy board of an organization created and designated under 23 U.S.C. §134 and 49 U.S.C. §5303, as amended, to make transportation planning decisions for a metropolitan planning area in which a toll project is located and to carry out the metropolitan transportation planning process.

(11) Toll project--Has the meaning assigned by Transportation Code, §201.001.

§27.92. *Financial Terms.*

(a) Applicability. This subchapter applies only to a department toll project that will be developed under a concession agreement or an availability payment contract, and for which:

(1) funds allocated to a metropolitan planning organization are expected to be used to pay for project costs;

(2) local funds are expected to be used to pay for project costs; or

(3) property of a city or county is expected to be used as project right of way or a city or county is expected to pay for the acquisition of right of way for the project.

(b) Formation and membership of committee. For a project subject to Transportation Code, Chapter 373, Subchapter B, the committee shall be formed after the department exercises its option under that subchapter to develop, finance, construct, and operate the project. The membership of a committee shall be determined after the commission authorizes the department to initiate a procurement for a toll project that provides for the potential delivery of the project through a concession agreement or an availability payment contract. A committee consists of the following members:

(1) one member appointed by each metropolitan planning organization within whose boundaries all or part of the proposed project may be located;

(2) one member appointed by each local toll project entity within whose boundaries all or part of the proposed project may be located;

(3) one member appointed by each city and county which has:

(A) provided local funds to pay for right of way acquisition or other project costs or to acquire right of way for the project, or has provided property of the city or county for use as project right of way; or

(B) submitted to the department an order or resolution adopted by the city council or county commissioners court committing local funds or property to the project; and

(4) one member appointed by the executive director to represent the department.

(c) Officers. The committee will, subject to the concurrence of the commission, elect a chair and vice-chair by majority vote of the members of the committee.

(d) Duties. A committee established under this subchapter shall submit a report to the executive director before the date the department issues a request for qualifications for the toll project, except for a project for which the department and a local toll project entity have

agreed on the terms and conditions for the project under Transportation Code, §228.0111, or for which a local toll project entity has waived its option to develop, construct, and operate the project, in which case the report shall be submitted before the date the department issues a request for proposals for the project. If the project is subject to a market valuation agreement, market valuation waiver agreement, or similar agreement entered into under Transportation Code, §228.0111, or a toll project agreement entered into under Transportation Code, §373.006, the report may not include determinations that are inconsistent with the provisions of the agreement that relate to the determinations to be included in the report. A report shall contain the following determinations:

(1) the distribution of project financial risk, which is the allocation of revenue risk for a toll project between the department and the private entity with which the department enters into an agreement for the project;

(2) the method of financing for the project, which is a determination of whether the project should be funded with private or public funding or a combination of private and public funding; and

(3) unless the project is subject to a regional tolling policy, the project's tolling structure and methodology.

(e) Failure to submit report. All members of a committee will utilize their best efforts to support the generation of a report. If a committee does not submit a report by the date the department is scheduled to issue a request for qualifications or request for proposals, as applicable, for a project, the department will use any business terms applicable to the project that have been adopted by the metropolitan planning organization and that relate to the determinations to be included in the report.

(f) Meetings.

(1) Meeting requirements. The department's Office of General Counsel will submit to the Office of the Secretary of State notice of a meeting of the committee at least eight days before the date of the meeting. The notice will provide the date, time, place, and purpose of the meeting. A meeting of a committee will be open to the public. A committee will follow the agenda set for each meeting under paragraph (2) of this subsection.

(2) Scheduling of meetings. Meeting dates, times, places, and agendas will be set by the office designated under subsection (g) of this section. Any committee member may suggest an agenda item, provided that the agenda item must be approved by the chair of the committee and the department. A committee's report may only discuss items that are within the committee's jurisdiction. The office designated under subsection (g) of this section will provide notice of the time, date, place, and purpose of meetings to the members, by mail, email, telephone, or any combination of the three, at least eight calendar days before each meeting. All meetings must take place in Texas and must be held in a location that is readily accessible to the general public.

(3) Committee action. A quorum of the committee is one half or more of the number of members appointed to the committee. A committee may act only by majority vote of the members present at the meeting and voting.

(4) Record. Minutes of all committee meetings shall be prepared and filed with the executive director. The complete proceedings of all committee meetings must also be recorded by electronic means.

(5) Public information. All minutes, transcripts, and other records of the committees are records of the department and as such,

are subject to disclosure under the provisions of Government Code, Chapter 552.

(g) Administrative support. For each committee, the executive director will designate an office or division of the department that will be responsible for providing any necessary administrative support essential to the functions of the committee. The department will provide project information and other information to the committee to assist the committee in carrying out its duties, including the project procurement schedule.

(h) Duration. After a committee submits the report described in subsection (d) of this section, the committee ceases to exist. The department may, in its discretion, reconvene a committee if changed circumstances may result in a change in the committee's determinations.

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

Filed with the Office of the Secretary of State on August 26, 2011.

TRD-201103480

Bob Jackson

General Counsel

Texas Department of Transportation

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Proposal publication date: July 15, 2011

For further information, please call: (512) 463-8683



REVIEW OF AGENCY RULES

This section contains notices of state agency rules review as directed by the Texas Government Code, §2001.039. Included here are (1) notices of *plan to review*; (2)

notices of *intention to review*, which invite public comment to specified rules; and (3) notices of *readoption*, which summarize public comment to specified rules. The complete text of an agency's *plan to review* is available after it is filed with the Secretary of State on the Secretary of State's web site (<http://www.sos.state.tx.us/texreg>). The complete text of an agency's rule being reviewed and considered for *readoption* is available in the *Texas Administrative Code* on the web site (<http://www.sos.state.tx.us/tac>).

For questions about the content and subject matter of rules, please contact the state agency that is reviewing the rules. Questions about the web site and printed copies of these notices may be directed to the *Texas Register* office.

Proposed Rule Reviews

Texas Department of Insurance, Division of Workers' Compensation

Title 28, Part 2

The Texas Department of Insurance (Department), Division of Workers' Compensation (Division) will review and consider for readoption, revision, or repeal all sections of the following chapter of Title 28, Part 2 of the Texas Administrative Code, in accordance with the Texas Government Code §2001.039: Chapter 64, Representing Claimants Before the Board.

§64.25. Discharged Attorney.

§64.30. Adverse Representation in Claims for Death Benefits.

The Division will consider whether the reasons for initially adopting these rules continue to exist and whether these rules should be repealed, readopted, or readopted with amendments. Any repeals or necessary amendments identified during the review of these rules will be proposed and published in the *Texas Register* in accordance with the Administrative Procedure Act, Texas Government Code Chapter 2001.

To be considered, written comments relating to whether these rules should be repealed, readopted, or readopted with amendments must be submitted by 5:00 p.m. CST October 10, 2011. Comments may be submitted by email at rulereviewcomments@tdi.state.tx.us or by mailing or delivering your comments to Maria Jimenez, Legal Services, MS-4D, Texas Department of Insurance, Division of Workers' Compensation, 7551 Metro Center Drive, Suite 100, Austin, Texas 78744-1645.

Comments should clearly specify the particular section of the rule to which they apply. Comments should include proposed alternative language as appropriate. General comments should be designated as such.

TRD-201103560

Dirk Johnson

General Counsel

Texas Department of Insurance, Division of Workers' Compensation

Filed: August 31, 2011



The Texas Department of Insurance (Department), Division of Workers' Compensation (Division) will review and consider for readoption, revision, or repeal all sections of the following chapter of Title 28, Part 2 of the Texas Administrative Code, in accordance with the Texas Government Code §2001.039: Chapter 67, Allegations of Fraud.

§67.5. Referral to Attorney General.

The Division will consider whether the reasons for initially adopting this rule continues to exist and whether this rule should be repealed, readopted, or readopted with amendments. Any repeals or necessary amendments identified during the review of this rule will be proposed and published in the *Texas Register* in accordance with the Administrative Procedure Act, Texas Government Code Chapter 2001.

To be considered, written comments relating to whether this rule should be repealed, readopted, or readopted with amendments must be submitted by 5:00 p.m. CST October 10, 2011. Comments may be submitted by email at rulereviewcomments@tdi.state.tx.us or by mailing or delivering your comments to Maria Jimenez, Legal Services, MS-4D, Texas Department of Insurance, Division of Workers' Compensation, 7551 Metro Center Drive, Suite 100, Austin, Texas 78744-1645.

Comments should clearly specify the particular section of the rule to which they apply. Comments should include proposed alternative language as appropriate. General comments should be designated as such.

TRD-201103551

Dirk Johnson

General Counsel

Texas Department of Insurance, Division of Workers' Compensation

Filed: August 31, 2011



The Texas Department of Insurance (Department), Division of Workers' Compensation (Division) will review and consider for readoption, revision, or repeal all sections of the following chapter of Title 28, Part 2 of the Texas Administrative Code, in accordance with the Texas Government Code §2001.039: Chapter 102, Practices and Procedures--General Provisions.

§102.2. Gifts, Grants, and Donations.

§102.3. Computation of Time.

§102.4. General Rules for Non-Commission Communications.

§102.5. General Rules for Written Communications to and from the Commission.

§102.7. Abbreviations.

§102.8. Information Requested on Written Communications to the Commission.

§102.9. Submission of Information Requested by the Commission.

§102.10. Interest, General.

§102.11. Electronic Formats for Electronic Claim Data Request and Report.

The Division will consider whether the reasons for initially adopting these rules continue to exist and whether these rules should be repealed, readopted, or readopted with amendments. Any repeals or necessary amendments identified during the review of these rules will be proposed and published in the *Texas Register* in accordance with the Administrative Procedure Act, Texas Government Code Chapter 2001.

To be considered, written comments relating to whether these rules should be repealed, readopted, or readopted with amendments must be submitted by 5:00 p.m. CST October 10, 2011. Comments may be submitted by email at rulereviewcomments@tdi.state.tx.us or by mailing or delivering your comments to Maria Jimenez, Legal Services, MS-4D, Texas Department of Insurance, Division of Workers' Compensation, 7551 Metro Center Drive, Suite 100, Austin, Texas 78744-1645.

Comments should clearly specify the particular section of the rule to which they apply. Comments should include proposed alternative language as appropriate. General comments should be designated as such.

TRD-201103552

Dirk Johnson

General Counsel

Texas Department of Insurance, Division of Workers' Compensation

Filed: August 31, 2011



The Texas Department of Insurance (Department), Division of Workers' Compensation (Division) will review and consider for readoption, revision, or repeal all sections of the following chapter of Title 28, Part 2 of the Texas Administrative Code, in accordance with the Texas Government Code §2001.039: Chapter 104, General Provisions--Rule-Making.

§104.1. Contents of Rule-Making Petitions.

The Division will consider whether the reasons for initially adopting this rule continues to exist and whether this rule should be repealed, readopted, or readopted with amendments. Any repeals or necessary amendments identified during the review of this rule will be proposed and published in the *Texas Register* in accordance with the Administrative Procedure Act, Texas Government Code Chapter 2001.

To be considered, written comments relating to whether this rule should be repealed, readopted, or readopted with amendments must be submitted by 5:00 p.m. CST October 10, 2011. Comments may be submitted by email at rulereviewcomments@tdi.state.tx.us or by mailing or delivering your comments to Maria Jimenez, Legal Services, MS-4D, Texas Department of Insurance, Division of Workers' Compensation, 7551 Metro Center Drive, Suite 100, Austin, Texas 78744-1645.

Comments should clearly specify the particular section of the rule to which they apply. Comments should include proposed alternative language as appropriate. General comments should be designated as such.

TRD-201103553

Dirk Johnson

General Counsel

Texas Department of Insurance, Division of Workers' Compensation

Filed: August 31, 2011



The Texas Department of Insurance (Department), Division of Workers' Compensation (Division) will review and consider for readoption, revision, or repeal all sections of the following chapter of Title 28, Part 2 of the Texas Administrative Code, in accordance with the Texas Gov-

ernment Code §2001.039: Chapter 109, Workers' Compensation Coverage for State Employees.

§109.1. State Agencies: General Provisions.

The Division will consider whether the reasons for initially adopting this rule continues to exist and whether this rule should be repealed, readopted, or readopted with amendments. Any repeals or necessary amendments identified during the review of this rule will be proposed and published in the *Texas Register* in accordance with the Administrative Procedure Act, Texas Government Code Chapter 2001.

To be considered, written comments relating to whether this rule should be repealed, readopted, or readopted with amendments must be submitted by 5:00 p.m. CST October 10, 2011. Comments may be submitted by email at rulereviewcomments@tdi.state.tx.us or by mailing or delivering your comments to Maria Jimenez, Legal Services, MS-4D, Texas Department of Insurance, Division of Workers' Compensation, 7551 Metro Center Drive, Suite 100, Austin, Texas 78744-1645.

Comments should clearly specify the particular section of the rule to which they apply. Comments should include proposed alternative language as appropriate. General comments should be designated as such.

TRD-201103554

Dirk Johnson

General Counsel

Texas Department of Insurance, Division of Workers' Compensation

Filed: August 31, 2011



Texas Board of Pardons and Paroles

Title 37, Part 5

Under the 1997 General Appropriations Act, Article IX, Section 167, Review of Agency Rules, the Texas Board of Pardons and Paroles files this notice of intent to review and consider for readoption, revision, or repeal Texas Administrative Code, Title 37, Public Safety and Corrections, Part 5, Chapter 141 (General Provisions).

The Board undertakes its review pursuant to Government Code, §2001.039, Government Code. The Board will accept comments for 30 days following the publication of this notice in the *Texas Register* and will assess whether the reasons for adopting the sections under review continue to exist. Proposed changes to the rule as a result of the rule review will be published in the Proposed Rules section of the *Texas Register*. The proposed rules will be open for public comment prior to final adoption by the Board, in accordance with the requirements of the Administrative Procedure Act, Government Code, Chapter 2001.

Any questions or written comments pertaining to this notice of intention to review should, for the next 30-day comment period, be directed to Bettie Wells, General Counsel, Texas Board of Pardons and Paroles, 209 W. 14th Street, Suite 500, Austin, Texas 78701, or by e-mail to bettie.wells@tdcj.state.tx.us.

TRD-201103497

Bettie Wells

General Counsel

Texas Board of Pardons and Paroles

Filed: August 29, 2011



Adopted Rule Reviews

Texas Department of Criminal Justice

Title 37, Part 6

The Texas Board of Criminal Justice (Board) has completed its review of §163.40, concerning Substance Abuse Treatment, in accordance with the requirements of Texas Government Code §2001.039. The Board has determined the reason for initially adopting this rule continues to exist and hereby readopts this section.

Notice of the review was published in the June 24, 2011, issue of the *Texas Register* (36 TexReg 3903). Comments were received as a result of that notice.

As a result of the rule review, the Texas Department of Criminal Justice published proposed amendments to §163.40 in the June 24, 2011,

issue of the *Texas Register* (36 TexReg 3903). The Board adopted the amended rule on August 19, 2011, and the adoption notice was published in the September 2, 2011, issue of the *Texas Register*.

TRD-201103459

Melinda Hoyle Bozarth

General Counsel

Texas Department of Criminal Justice

Filed: August 26, 2011



TABLES & GRAPHICS

Graphic images included in rules are published separately in this tables and graphics section. Graphic images are arranged in this section in the following order: Title Number, Part Number, Chapter Number and Section Number.

Graphic images are indicated in the text of the emergency, proposed, and adopted rules by the following tag: the word "Figure" followed by the TAC citation, rule number, and the appropriate subsection, paragraph, subparagraph, and so on.

Figure: 16 TAC §3.29(f)(3)

REQUEST TO CHALLENGE CLAIM OF ENTITLEMENT TO TRADE SECRET PROTECTION OF HYDRAULIC FRACTURING TREATMENT CHEMICAL COMPOSITION

I, _____ (name) _____, challenge the claim of entitlement to trade secret protection for portions of the chemicals or other substances used in the hydraulic fracturing treatment of the following well:

Operator name: _____
County name: _____
API number: _____
Field Name: _____
Railroad Commission oil lease name and number: _____
Railroad Commission gas identification number: _____
Well Number: _____

I certify that I am listed on the appraisal roll as owning the property on which the relevant well-head is located or I am listed on the appraisal roll as owning property adjacent to the property on which the relevant well-head is located.

Name of requestor: _____
Mailing address of Requestor: _____
Phone number of requestor: _____
Email address of requestor (optional): _____

EMAIL ADDRESS: YOU ARE NOT REQUIRED TO PROVIDE AN EMAIL ADDRESS when completing and filing this form. Please be aware that information provided to any governmental body may be subject to disclosure pursuant to the Texas Public Information Act or other applicable federal or state legislation. **IF YOU PROVIDE AN EMAIL ADDRESS, YOU AFFIRMATIVELY CONSENT TO THE RELEASE OF THAT EMAIL ADDRESS TO THIRD PARTIES.** Other departments within the Railroad Commission also may use the email address you provide to communicate with you.

Signature of Requestor: _____
Date: _____

Figure: 16 TAC §3.78(n)(2)

Table 1. Schedule of Fees and Surcharges

	Current fee (\$)	Surcharge (\$)	Total fee (\$)
3313 Oil & Gas Well Drilling Permit Fees			
Drilling permits less than 2,000 feet	200.00	300.00	500.00
Drilling permits 2,001 to 4,000 feet	225.00	337.50	562.50
Drilling permits 4,001 to 9,000 feet	250.00	375.00	625.00
Drilling permits greater than 9,000 feet	300.00	450.00	750.00
Expedite fee	150.00	225.00	375.00
Rule 37/38 exception fee	200.00	300.00	500.00
Discharge fee	300.00	450.00	750.00
Fluid injection well permit	200.00	300.00	500.00
Hydrocarbon storage permits	200.00	300.00	500.00
3338 P-5 Organization Report Fees			
Operator fewer than 26 wells	300.00	450.00	750.00
Operator 26-100 wells	500.00	750.00	1,250.00
Operator more than 100 wells	1,000.00	1,500.00	2,500.00
Operator natural gas pipeline	225.00	337.50	562.50
Operator liquid pipeline	625.00	937.50	1,562.50
No activities	300.00	450.00	750.00
Service/facilities activities			
Cleanup contractor	300.00	450.00	750.00
Directional surveyor	300.00	450.00	750.00
Cementer	300.00	450.00	750.00
Mover/storage	300.00	450.00	750.00
Commercial facility	500.00	750.00	1,250.00
Gas plant	500.00	750.00	1,250.00
Reclamation plant	500.00	750.00	1,250.00
Refinery	500.00	750.00	1,250.00
Saltwater hauler	500.00	750.00	1,250.00
Waste hauler	500.00	750.00	1,250.00
3339 Voluntary Cleanup Application Fee	1,000.00	1,500.00	2,500.00
3369 Reimbursement for Well Plugging Costs			
Abeance of plugging report (W3-X)	100.00	150.00	250.00
Well test report filing fee	50.00	75.00	125.00
3382 Railroad Commission rule exception fee	150.00	225.00	375.00
3384 Oil & Gas certificate of compliance reissue fee	300.00	450.00	750.00
3592 Waste Disposal Facility			
Waste hauler's permit	100.00	150.00	250.00
LQG operator hazardous oil & gas waste generation			
base fee	1,000.00	1,500.00	2,500.00
additional fee	1,000.00	1,500.00	2,500.00
SQG operator hazardous oil & gas waste generation			
base fee	200.00	300.00	500.00
additional fee	200.00	300.00	500.00

Figure: 16 TAC §3.80(a)

Table 1. Railroad Commission Oil and Gas Division Forms

Form Number	Form Title	Creation or Last Revision Date (* No date available)	Statewide Rule Number (16 TAC § __) or Other Authority
AOF-1	Field Application for AOF Status	10/95	3.31
AOF-2	Individual Operator Application for AOF Status	10/95	3.31
AOF-3	Operator's Review of AOF Status	12/95	3.31
C-1	Carbon Black Plant Report	7/66	3.54, 3.63
C-2	Application for Permit to Operate a Carbon Black Plant	7/66	3.54, 3.63
C-3	Permit to Operate Carbon Black Plant	12/67	3.54, 3.63
CF-1	Commercial Facility Bond	8/98	3.78
CF-2	Commercial Facility Irrevocable Letter of Credit	8/98	3.78
G-1	Gas Well Back Pressure Test, Completion or Recompletion Report, and Log	4/83	3.4, 3.9, 3.16, 3.28, 3.31
G-3	Gas Storage Data Sheet	10/94	3.96, 3.97
G-5	Gas Well Classification Report	1/86	3.53
G-9	Gas Cycling Report	4/71	
G-10	Gas Well Status Report	9/00	3.28, 3.53, 3.55, 3.71
GC-1	Gas Well Capability	5/92	3.31
GT-1	Geothermal Production Test, Completion or Recompletion Report, and Log	01/76	3.4, 3.16, 3.33
GT-2	Producer's Monthly Report of Geothermal Wells	01/76	Tex. Nat. Res. Code, Ch. 141
GT-3	Monthly Geothermal Gatherer's Report	01/76	Tex. Nat. Res. Code, Ch. 141
GT-4	Producer's Certificate of Compliance and Authorization to Transport Geothermal Energy and/or Natural Gas and/or Other Minerals	01/76	Tex. Nat. Res. Code, Ch. 141
GT-5	Application to Inject Fluid into a Reservoir Productive of Geothermal Resources	9/75	Tex. Nat. Res. Code, Ch. 141
H-1	Application to Inject Fluid into a Reservoir Productive of Oil or Gas	05/01/04	3.46
H-1A	Injection Well Data for H-1 Application	05/01/04	3.46
H-1S	Injection Well Area Permit	12/98	3.46
H-2	Permit Application to Create, Operate and Maintain a Brine Mining Facility	5/99	3.81
H-4	Application to Create, Operate and Maintain an Underground Hydrocarbon Storage Facility	4/82	3.95, 3.97
H-5	Disposal/Injection Well Pressure Test Report	6/85	3.9, 3.46, 3.96
H-7	Fresh Water Data Form	3/68	3.46
H-8	Crude Oil, Gas Well Liquids, or Associated Products Loss Report	6/70	3.20
N/A	Interim H-8 Crude Oil Spill Sheet	12/93	3.20
H-9	Certificate of Compliance, Statewide Rule 36 (Hydrogen Sulfide)	12/77	3.36
H-10	Annual Disposal/Injection Well Monitoring Report (RRC computer-generated)	9/11	3.9, 3.46, 5.207
H-10H	Annual Well Monitoring Report Underground Storage in Salt Formations	7/95	3.95, 3.96, 3.97
H-11	Application for Permit to Maintain and Use a Pit	5/84	3.8
H-12	New or Expanded Enhanced Oil Recovery Project and Area Designation Approval Application	10/03	3.50

Form Number	Form Title	Creation or Last Revision Date (* No date available)	Statewide Rule Number (16 TAC § __) or Other Authority
H-12 A	Application for Certification for Additional Tax Rate Reduction for Enhanced Oil Recovery Projects Using Anthropogenic Carbon Dioxide	01/2008	3.50
H-13	EOR Positive Production Response Certification Application	4/90	3.50
H-14	Enhanced Oil Recovery Reduced Tax Annual Report	01/2008	3.50
H-15	Test on an Inactive Well More than 25 Years Old	8/93	3.14
H-20	Hazardous Oil and Gas Waste Generator (and Transporter) Notification	6/96	3.98
H-21	Annual Hazardous Oil and Gas Waste Report	10/01	3.98
L-1	Electric Log Status Report	1/02	3.16
MD-1	Optional Operator Market Demand Forecast for Gas Well Gas in Prorated Fields	5/92	3.31
OW-3	Application for Payment for Reactivating or Plugging an Orphaned Oil or Gas Well	04/2006	Tex. Nat. Res. Code, §89.060
PR	Monthly Production Report	02/11/05	3.27, 3.54, 3.58
P-1B	Producer's Monthly Supplemental Report	9/90	3.50, 3.80
P-3	Authority to Transport Recovered Load or Frac Oil	9/11	3.58
P-4	Producer's Certificate of Compliance and Transportation Authority	5/02	3.1, 3.14, 3.30, 3.58, 3.73, 3.78
P-5	Organization Report	9/11	3.1
P-5A	Organization Report Non-Employee Agent Listing	9/11	3.1
P-5O	Organization Report Officer Listing	9/11	3.1
P-5LC	Irrevocable Documentary Blanket Letter of Credit	01/2008	3.78
P-5 PB(1)	Individual Performance Bond	2/01	3.78
P-5PB(2)	Blanket Performance Bond	2/01	3.78
P-6	Request for Permission to Consolidate/Subdivide Leases	5/02	3.26, 3.27, 3.38, 3.39, 3.58
P-7	New Field Designation and/or Discovery Allowable Application	2/89	3.41, 3.42
P-8	Request for Clearance of Storage Tanks Prior to Potential Test	12/82	3.58
P-12	Certificate of Pooling Authority	5/01	3.31, 3.38, 3.40
P-13	Application of Landowner to Condition an Abandoned Well for Fresh Water Production	10/2004	3.14
P-15	Statement of Productivity of Acreage Assigned to Proration Units	5/71	3.31
P-17	Application for Exception to Statewide Rules 26 and/or 27 (Commingling)	01/2008	3.26, 3.27
P-18	Skim Oil/Condensate Report	1/86	3.56
PS-79	Application for a Permit to Construct a Sour Gas Pipeline Facility	3/98	3.106
PSA-12	Production Sharing Agreement Code Sheet	9/11	3.38, 3.40, 3.86
R-1	Monthly Report and Operations Statement for Refineries	1974	3.61
R-2	Monthly Report for Reclaiming and Treating Plants	12/77	3.8, 3.57
R-3	Monthly Report for Gas Processing Plants	10/00	3.54, 3.56, 3.60, 3.62
R-4	Gas Processing Plant Report of Gas Injected	9/75	3.54
R-5	Certificate of Compliance (Gasoline Plants and Refineries)	3/72	3.61
R-6	Application for Certificate of Compliance (Cycling Plant)	9/75	3.62
R-7	Pressure Maintenance & Repressuring Plant Report	*	3.54
R-9	Application for Permit to Operate Reclamation Plant	2/90	3.57
S-10	Application for Transfer of Allowable, Casing Leak Well East Texas (Field)	2/89	Field Rules
ST-1	Application for Texas Severance Tax Incentive Certification	10/03	3.83, 3.101, 3.103
T-1	Monthly Transportation & Storage Report	3/72	3.59

Form Number	Form Title	Creation or Last Revision Date (* No date available)	Statewide Rule Number (16 TAC § __) or Other Authority
T-4, T-4A, T-4C	Forms relating to pipeline permits; under jurisdiction of the Safety Division	T-4: 9/99 T-4A: 4/99 T-4C: 4/97	3.70
T-6	Pipeline Company Monthly Report of Gas Exported from Texas	1948	Exec. Order
T-7	Dist. 10 Panhandle Fields Monthly Gas Gatherer Report	6/91	Dkt. 10-87017
VCP-1	Voluntary Cleanup Program Application	11/03	4.401-4.405
VCP-2	Voluntary Cleanup Program Agreement	11/03	4.401-4.405
W-1	Application to Drill, Deepen, Plug Back, or Reenter	07/01/04	3.5
W-1A	Substandard Acreage Drilling Unit Certification	5/01	3.38
W-1D	Supplemental Directional Well Information	07/01/04	3.5
W-1H	Supplemental Horizontal Well Information	07/01/04	3.5
W-2	Oil Well Potential Test, Completion or Recompletion Report, and Log	4/83	3.4, 3.9, 3.16, 3.46, 3.51
W-3	Plugging Record	12/92	3.14
W-3A	Notice of Intention to Plug and Abandon	1/83	3.14
W-3C	Certification of Surface Equipment Removal for an Inactive Well	9/11	3.15
W-3X	Application for Extension of Deadline for Plugging an Inactive Well	9/11	3.15, 3.78
W-4	Application for Multiple Completion	8/69	3.6
W-4A	Sketch of Multiple Completion Installation	8/69	3.6
W-5	Packer Setting Report	8/69	3.6
W-6	Communication or Packer Leakage Test	1/70	3.6
W-7	Bottom-hole Pressure Report	*	3.41
W-9	Net Gas-Oil Ratio Report	7/69	RRC Order, §49
W-10	Oil Well Status Report	7/95	3.26, 3.27, 3.52, 3.53
W-12	Inclination Report	1/71	3.11
W-14	Application to Dispose of Oil & Gas Waste by Injection into a Porous Formation Not Productive of Oil or Gas	05/01/04	3.9
W-15	Cementing Report	4/83	3.8, 3.13, 3.14
WH-1	Application for Oil and Gas Waste Hauler's Permit (formerly Application for Salt Water Hauler's Permit)	4/94	3.8
WH-2	Oil and Gas Waste Hauler's List of Vehicles (formerly Salt Water Hauler's Permit Bond)	4/94	3.8
WH-3	Oil and Gas Waste Hauler's Authority to Use Approved Disposal/Injection System	4/94	3.8
W-21	Application for Exception to Statewide Rule 21 to Produce by Swabbing, Bailing, or Jetting	2/03	3.21
Data Sheet	SWR 32 Exception Data Sheet	2/99	3.32
Data Sheet	SWR 10 Exception Data Sheet	*	3.10
EPA 8700-12	RCRA Subtitle C Site Identification Form (not an RRC form but required)	01/04	3.98
N/A	Claim for Proceeds of Salvage	9/94	Tex. Nat. Res. Code, §89.086
N/A	Request for Notice by Lienholder or Non-Operator	9/94	Tex. Nat. Res. Code, §§89.043(c), 89.085(f), 91.115(f)
SAD	Security Administrator Designation (SAD) Form	07/04	3.80

Figure: 22 TAC §139.35(b)

Classification	Violation	Citation	Suggested Sanctions
Administrative	Failure to return seal imprint and/or portrait	§§133.97(e), (f); 137.31(a)	Reprimand/\$250.00
	Failure to report: change of address or employment, or of any criminal convictions	§137.5	Reprimand/\$100.00
	Failure to respond to board communications	§137.51(c)	Reprimand/\$500.00
	Failure to include "inactive" or "retired" representation with title while in inactive status	§137.13(f)	Reprimand/\$250.00
Engineering Misconduct	Gross negligence	§137.55(a), (b)	Revocation/\$3,000.00
	Failure to exercise care and diligence in the practice of engineering	§137.55(b), §137.63(b)(6)	1 year suspension/\$1500.00
	Incompetence; includes performing work outside area of expertise	§137.59(a), (b)	3 year suspension/\$3,000.00
	Misdemeanor or felony conviction without incarceration relating to duties and responsibilities as a professional engineer	§139.43(b)	3 year suspension/\$3,000.00
	Felony Conviction with incarceration	§139.43(a)	Revocation/\$3,000.00
Licensing	Fraud or deceit in obtaining a license	§1001.452(2), §1001.453	Revocation/\$3,000.00
	Retaliation against a reference	§137.63(c)(3)	1 year suspension/\$1,500.00
	Enter into a business relationship which is in violation of §137.77(Firm Compliance)	§137.51(d)	1 year suspension/\$1,000.00
Ethics Violations	Failure to engage in professional and business activities in an honest and ethical manner	§137.63(a)	2 year suspension/\$2,500.00
	Failure to follow TDI qualified windstorm inspection procedures.	§1001.652 and §137.19	Reprimand/\$1000.00
	Failure to design a structure associated with windstorm insurance that did not comply with cited windstorm code design criteria.	§§1001.652, 1001.653. and 137.19	1 year suspension / \$2000.00 / Roster Removal
	Misrepresentation; issuing oral or written assertions in the practice of engineering that are fraudulent or deceitful.	§137.57(a) and §137.57(b)(1) or (2)	2 year suspension/ \$2,500.00
	Misrepresentation; issuing oral or written assertions in the practice of engineering that are misleading	§137.57(a) and §137.57(b)(3)	1 year suspension/\$1000.00
	Conflict of interest	§137.57(c), (d)	2 year suspension/\$2,500.00
	Inducement to secure specific engineering work or assignment	§137.63(c)(4)	2 year suspension/\$2,500.00
	Accept compensation from more than one party for services on the same project	§137.63(c)(5)	2 year suspension/\$2,500.00
	Solicit professional employment in any false or misleading advertising	§137.63(c)(6)	1 year suspension/\$2,500.00
	Offer or practice engineering while license is expired or inactive	§137.7(a), §137.13(g)	1 year suspension/\$500.00
	Failure to act as a faithful agent to their employers or clients	§ 137.63(b)(4)	1 year suspension/\$1,500.00
	Reveal confidences and private information	§137.61(a), (b), (c)	Reprimand/\$1,500.00
	Attempt to injure the reputation of another	§137.63(c)(2)	1 year suspension/\$1,500.00
	Retaliation against a complainant	§137.63(c)(3)	1 year suspension/\$1,500.00
Aiding and abetting unlicensed practice or other assistance	§137.63(b)(3), §137.63(c)(1)	3 year suspension/\$3,000.00	
Failure to report violations of others	§137.55(c)	Reprimand/\$1,500.00	

	Failure to consider societal and environmental impact of actions	§137.55(d)	Reprimand/\$1,500.00
	Failure to prevent violation of laws, codes, or ordinances	§137.63(b)(1), (2)	Reprimand/\$1,500.00
	Failure to conduct engineering and related business in a manner that is respectful of the client, involved parties and employees	§137.63(b)(5)	1 year suspension/\$1,500.00
	Competitive bidding with governmental entity	§137.53	Reprimand/\$1,500.00
	Expressing an opinion before a court or other public forum which is contrary to generally accepted scientific and engineering principles without fully disclosing the basis and rationale for such an opinion.	§137.59(c)	2 year suspension/\$2,500.00
	Falsifying documentation to demonstrate compliance with CEP	§137.17(p)(2), (3)	2 year suspension/\$2,500.00
	Action in another jurisdiction	§ 137.65(a) and (b)	Similar sanction as listed in this table if action had occurred in Texas
Improper use of Seal	Failure to safeguard seal and/or electronic signature.	§137.33(d)	Reprimand/\$1,000.00
	Failure to sign, seal, date, or include firm identification on work	§137.33(e), (f), (h), (n), §137.35(a), (b)	Reprimand/\$500.00
	Alter work of another	§137.33(i), §137.37(3)	1 year suspension/\$1,500.00
	Sealing work not performed or directly supervised by the professional engineer	§ 137.33(b)	Reprimand/\$1,000.00
	Practice or affix seal with expired or inactive license	§137.13(h), §137.37(2)	1 year suspension/\$500.00
	Practice or affix seal with suspended license	§137.37(2)	Revocation/\$3,000.00
	Preprinting of blank forms with engineer seal; use of a decal or other seal replicas	§137.31(e)	1 year suspension/\$1,500.00
	Sealing work endangering the public	§137.37(1)	Revocation/\$3,000.00
	Work performed by more than one engineer not attributed to each engineer	§137.33(g)	Reprimand/\$500.00
	Improper use of standards	§137.33(c)	Reprimand/\$500.00

Figure: 22 TAC §139.35(e)

VIOLATION	CITATION	SUGGESTED SANCTION	
		FIRST OCCURRENCE	SECOND OCCURRENCE
Failure to engage a professional engineer in the construction of any public work involving professional engineering	§1001.407(1)	Voluntary Compliance	Notice to Cease & Desist \$3000.00
Accepting engineering plans, specifications and estimates that were not prepared by a professional engineer	§1001.402	Voluntary Compliance	Notice to Cease & Desist \$3000.00
Failure to ensure that the engineering construction is performed under the direct supervision of a professional engineer	§1001.407(2)	Voluntary Compliance	Notice to Cease & Desist \$3000.00

Figure: 25 TAC §289.202(ee)(4)(A)(ii)

Contaminant	<u>Maximum Permissible Limits</u>	
	pCi/cm ² *	dpm/cm ²
Beta-gamma emitting radionuclides; all radionuclides with half-lives less than 10 days; natural uranium; natural thorium, uranium-235; uranium-238; thorium-232; thorium-228; and thorium-230 when contained in ores or physical concentrates....	100	220
All other alpha emitting radionuclides....	10	22

* To convert picocuries (pCi) to SI units of millibecquerels, multiply the values by 37.

Figure: 25 TAC §289.202(ggg)(6)

NUCLIDE ^a	AVERAGE ^{bct}	MAXIMUM ^{bdt}	REMOVABLE ^{bcef}
U-nat, U-235, U-238, and associated decay products except Ra-226, Th-230, Ac-227, and Pa-231	5,000 dpm alpha/100 cm ²	15,000 dpm alpha/100 cm ²	1,000 dpm alpha/100 cm ²
Transuranics, Ra-223, Ra-224, Ra-226, Ra-228, Th-nat, Th-228, Th-230, Th-232, U-232, Pa-231, Ac-227, Sr-90, I-129	1,000 dpm/100 cm ²	3,000 dpm/100 cm ²	200 dpm/100 cm ²
Beta-gamma emitters (nuclides with decay modes other than alpha emission or spontaneous fission) except Sr-90 and others noted above.	5,000 dpm beta, gamma/100 cm ²	15,000 dpm beta, gamma/100 cm ²	1,000 dpm beta, gamma/100 cm ²
Tritium (applicable to surface and subsurface) ^g	NA	NA	10,000 dpm/100 cm ²

^a Where surface contamination by both alpha and beta-gamma emitting nuclides exists, the limits established for alpha and beta-gamma emitting nuclides should apply independently.

^b As used in this table, dpm (disintegrations per minute) means the rate of emission by radioactive material as determined by correcting the counts per minute observed by an appropriate detector for background, efficiency, and geometric factors associated with the instrumentation.

- ^c Measurements of average contamination level should not be averaged over more than 1 square meter. For objects of less surface area, the average should be derived for each object.
- ^d The maximum contamination level applies to an area of not more than 100 cm².
- ^e The amount of removable radioactive material per 100 cm² of surface area should be determined by wiping that area with dry filter or soft absorbent paper, applying moderate pressure, and assessing the amount of radioactive material on the wipe with an appropriate instrument of known efficiency. When removable contamination on objects of less surface area is determined, the pertinent levels should be reduced proportionally and the entire surface should be wiped.
- ^f The average and maximum radiation levels associated with surface contamination resulting from beta-gamma emitters should not exceed 0.2 mrad/hr at 1 centimeter and 1.0 mrad/hr at 1 centimeter, respectively, measured through not more than 7 mg/cm² of total absorber.
- ^g Property recently exposed or decontaminated should have measurements (smears) at regular time intervals to ensure that there is not a build-up of contamination over time. Because tritium typically penetrates material it contacts, the surface guidelines in group 4 are not applicable to tritium. The agency has reviewed the analysis conducted by the Department of Energy Tritium Surface Contamination Limits Committee ("Recommended Tritium Surface Contamination Release Guides," February 1991), and has assessed potential doses associated with the release of property containing residual tritium. The agency recommends the use of the stated guideline as an interim value for removable tritium. Measurements demonstrating compliance of the removable fraction of tritium on surfaces with this guideline are acceptable to ensure that non-removable fractions and residual tritium in mass will not cause exposures that exceed dose limits as specified in this section and agency constraints.

Figure: 25 TAC §289.202(ggg)(8)

Texas Department of State Health Services/Radiation Control											
CUMULATIVE OCCUPATIONAL EXPOSURE HISTORY											
1. NAME (LAST, FIRST, MIDDLE INITIAL)		2. IDENTIFICATION NUMBER		3. ID TYPE		4. SEX		5. DATE OF BIRTH			
6. MONITORING PERIOD		7. LICENSEE OR REGISTRANT NAME		8. LICENSE OR REGISTRATION NUMBER		9.		10.			
11. DDE	12. LDE	13. SDE, WB	14. SDE, ME	15. CEDE	16. CDE	17. TEDE	18. TODE	19. RECORD ESTIMATE NO RECORD	20. ROUTINE PSE		
6. MONITORING PERIOD		7. LICENSEE OR REGISTRANT NAME		8. LICENSE OR REGISTRATION NUMBER		9.		10.			
11. DDE	12. LDE	13. SDE, WB	14. SDE, ME	15. CEDE	16. CDE	17. TEDE	18. TODE	19. RECORD ESTIMATE NO RECORD	20. ROUTINE PSE		
6. MONITORING PERIOD		7. LICENSEE OR REGISTRANT NAME		8. LICENSE OR REGISTRATION NUMBER		9.		10.			
11. DDE	12. LDE	13. SDE, WB	14. SDE, ME	15. CEDE	16. CDE	17. TEDE	18. TODE	19. RECORD ESTIMATE NO RECORD	20. ROUTINE PSE		
6. MONITORING PERIOD		7. LICENSEE OR REGISTRANT NAME		8. LICENSE OR REGISTRATION NUMBER		9.		10.			
11. DDE	12. LDE	13. SDE, WB	14. SDE, ME	15. CEDE	16. CDE	17. TEDE	18. TODE	19. RECORD ESTIMATE NO RECORD	20. ROUTINE PSE		
6. MONITORING PERIOD		7. LICENSEE OR REGISTRANT NAME		8. LICENSE OR REGISTRATION NUMBER		9.		10.			
11. DDE	12. LDE	13. SDE, WB	14. SDE, ME	15. CEDE	16. CDE	17. TEDE	18. TODE	19. RECORD ESTIMATE NO RECORD	20. ROUTINE PSE		
6. MONITORING PERIOD		7. LICENSEE OR REGISTRANT NAME		8. LICENSE OR REGISTRATION NUMBER		9.		10.			
11. DDE	12. LDE	13. SDE, WB	14. SDE, ME	15. CEDE	16. CDE	17. TEDE	18. TODE	19. RECORD ESTIMATE NO RECORD	20. ROUTINE PSE		
19. SIGNATURE OF MONITORED INDIVIDUAL		20. DATE SIGNED		21. CERTIFYING ORGANIZATION		22. SIGNATURE OF DESIGNEE		23. DATE SIGNED			

**INSTRUCTIONS AND ADDITIONAL INFORMATION PERTINENT TO THE
COMPLETION OF RC FORM 202-2
(All doses should be stated in rems)**

1. Type or print the full name of the monitored individual in the order of last name (include "Jr," "Sr," "III," etc.), first name, middle initial (if applicable).
2. Enter the individual's identification number, including punctuation. This number should be the 9-digit social security number if at all possible. If the individual has no social security number, enter the number from another official identification such as a passport or work permit.
3. Enter the code for the type of identification used as shown below:

CODE	IDENTYPE
SSN	U.S. Social Security Number
PPN	Passport Number
CSI	Canadian Social Insurance Number
WPN	Work Permit Number
IND	INDEX Identification Number
OTH	Other
4. Check the box that denotes the sex of the individual being monitored.
5. Enter the date of birth of the individual being monitored in the format MM/DD/YY.
6. Enter the monitoring period for which this report is filed. The format should be MM/DD/YY - MM/DD/YY.
7. Enter the name of the licensee, registrant, or facility not licensed by the Agency that provided monitoring.
8. Enter the Agency license or registration number or numbers.
9. Place an "X" in Record, Estimate, or No Record. Choose "Record" if the dose data listed represent a final determination of the dose received to the best of the licensee's or registrant's knowledge. Choose "Estimate" only if the listed dose data are preliminary and will be superseded by a final determination resulting in a subsequent report. An example of such an instance would be dose data based on self-reading dosimeter results and the licensee or registrant intends to assign the record dose on the basis of TLD results that are not yet available.

10. Place an "X" in either Routine or PSE. Choose "Routine" if the data represent the results of monitoring for routine exposures. Choose "PSE" if the listed dose data represents the results of monitoring of planned special exposures received during the monitoring period. If more than one PSE was received in a single year, the licensee should sum them and report the total of all PSEs.
11. Enter the deep dose equivalent (DDE) to the whole body.
12. Enter the eye dose equivalent (LDE) recorded for the lens of the eye.
13. Enter the shallow dose equivalent recorded for the skin of the whole body (SIDE, WB).
14. Enter the shallow dose equivalent recorded for the skin of the extremity receiving the maximum dose (SDE, ME).
15. Enter the committed effective dose equivalent (CEDE).
16. Enter the committed dose equivalent (CDE) recorded for the maximally exposed organ.
17. Enter the total effective dose equivalent (TEDE). The TEDE is the sum of items 11 and 13.
18. Enter the total organ dose equivalent (TODE) for the maximally exposed organ. The TODE is the sum of items 11 and 16.
19. Signature of the monitored individual. The signature of the monitored individual on this form indicates that the information contained on the form is complete and correct to the best of his or her knowledge.
20. Enter the date this form was signed by the monitored individual.
21. [OPTIONAL] Enter the name of the licensee, registrant or facility not licensed by the Agency, providing monitoring for exposure to radiation (such as a DOE facility) or the employer if the individual is not employed by the licensee or registrant and the employer chooses to maintain exposure records for its employees.

22. [OPTIONAL] Signature of the person designated to represent the licensee, registrant or employer entered in item 21. The licensee, registrant or employer who chooses to countersign the form should have on file documentation of all the information on the Agency Form Y being signed.

23. [OPTIONAL] Enter the date this form was signed by the designated representative.

Figure: 25 TAC §289.202(ggg)(9)

Texas Department of State Health Services/Radiation Control OCCUPATIONAL EXPOSURE RECORD FOR A MONITORING PERIOD										
1. NAME (LAST, FIRST, MIDDLE INITIAL)			2. IDENTIFICATION NUMBER			3. ID TYPE		4. SEX <input type="checkbox"/> MALE <input type="checkbox"/> FEMALE		5. DATE OF BIRTH
6. MONITORING PERIOD		7. LICENSEE OR REGISTRANT NAME				8. LICENSE OR REGISTRATION NUMBER(S)		9A. RECORD <input type="checkbox"/> ESTIMATE <input type="checkbox"/> ROUTINE		9B. PSE <input type="checkbox"/>
INTAKES										
10A. RADIONUCLIDE	10B. CLASS		10C. MODE		10D. INTAKE IN ϕ ci			DOSES (in rem)		
										11. DEEP DOSE EQUIVALENT (DDE)
										12. EYE DOSE EQUIVALENT TO THE LENS OF THE EYE (LDE)
										13. SHALLOW DOSE EQUIVALENT, WHOLE BODY (SDE, WB)
										14. SHALLOW DOSE EQUIVALENT, MAX EXTREMITY (SDE, ME)
										15. COMMITTED EFFECTIVE DOSE EQUIVALENT (CEDE)
										16. COMMITTED DOSE EQUIVALENT, MAXIMALLY EXPOSED ORGAN (CDE)
										17. TOTAL EFFECTIVE DOSE EQUIVALENT (BLOCKS 11+15) (TEDE)
										18. TOTAL ORGAN DOSE EQUIVALENT, MAX ORGAN (BLOCKS 11+16) (TODE)
19. COMMENTS										
20. SIGNATURE -- LICENSEE OR REGISTRANT										21. DATE PREPARED

**INSTRUCTIONS AND ADDITIONAL INFORMATION PERTINENT TO THE
COMPLETION OF RC FORM 202-3**
(All doses should be stated in rems)

1. Type or print the full name of the monitored individual in the order of last name (include "Jr.", "Sr.", "III," etc.), first name, middle initial (if applicable).
2. Enter the individual's identification number, including punctuation. This number should be the 9-digit social security number if at all possible. If the individual has no social security number, enter the number from another official identification such as a passport or work permit.
3. Enter the code for the type of identification used as shown below.

CODE	ID TYPE
SSN	U.S. Social Security Number
PPN	Passport Number
CSI	Canadian Social Insurance Number
WPN	Work Permit Number
IND	INDEX Identification Number
OTH	Other
4. Check the box that denotes the sex of the individual being monitored.
5. Enter the date of birth of the individual being monitored in the format MM/DD/YY.
6. Enter the monitoring period for which this report is filed. The format should be MM/DD/YY - MM/DD/YY.
7. Enter the name of the licensee or registrant.
8. Enter the Agency license or registration number or numbers.
- 9A. Place an "X" in Record or Estimate. Choose "Record" if the dose data listed represent a final determination of the dose received to the best of the licensee's or registrant's knowledge. Choose "Estimate" only if the listed dose data are preliminary and will be superseded by a final determination resulting in a subsequent report. An example of such an instance would be dose data based on self-reading dosimeter results and the licensee intends to assign the record dose on the basis of TLD results that are not yet available.
- 9B. Place an "X" in either Routine or PSE. Choose "Routine" if the data represent the results of monitoring for routine exposures. Choose "PSE" if the listed dose data represents the results of monitoring of planned special exposures received during the monitoring

- 10A. Enter the symbol for each radionuclide that resulted in an internal exposure recorded for the individual, using the format "Xx-#/#x," for instance, Cs-137 or Tc-99m.
- 10B. Enter the lung clearance class as listed in subsection (ggg)(2)(F) of this section for all intakes by inhalation.
- 10C. Enter the mode of intake. For inhalation, enter "H." For absorption through the skin, enter "B." For oral ingestion, enter "G." For injection, enter "J."
- 10D. Enter the intake of each radionuclide in Φ CI.
11. Enter the deep dose equivalent (DDE) to the whole body.
12. Enter the eye dose equivalent (LDE) recorded for the lens of the eye.
13. Enter the shallow dose equivalent recorded for the skin of the whole body (SDE,WB).
14. Enter the shallow dose equivalent recorded for the skin of the extremity receiving the maximum dose (SDE,ME).
15. Enter the committed effective dose equivalent (CEDE) or "NR" for "Not Required" or "NC" for "Not Calculated".
16. Enter the committed dose equivalent (CDE) recorded for the maximally exposed organ or "NR" for "Not Required" or "NC" for "Not Calculated".
17. Enter the total effective dose equivalent (TEDE). The TEDE is the sum of items 11 and 15.
18. Enter the total organ dose equivalent (TODE) for the maximally exposed organ. The TODE is the sum of items 11 and 16.

19. **COMMENTS.**
In the space provided, enter additional information that might be needed to determine compliance with limits. An example might be to enter the note that the SDE,ME was the result of exposure from a discrete hot particle. Another possibility would be to indicate that an overexposed report has been sent to the Agency in reference to the exposure report.
20. Signature of the person designated to represent the licensee or registrant.
21. Enter the date this form was prepared.

Figure: 25 TAC §289.256(www)

Rule Cross Reference	Name of Records/Documents	Time Interval for Keeping Records/Documents
§289.201(d)(1)	Records of receipt, transfer, and disposal of radioactive material	Until disposal is authorized by the agency
§289.201(g)(7), §289.202(bbb)	Records of leak tests for specific devices and sealed sources	3 years
§289.203(b)(1)(B)	Current applicable sections of this chapter as listed in the radioactive material license	Until termination of the radioactive material license
§289.203(b)(1)(B)	Copy of the current radioactive material license	Until termination of the radioactive material license
§289.203(b)(1)(C), §289.256(f)(3)(A)	Current operating, safety, and emergency procedures	Until termination of the radioactive material license
§289.256 (f)(3)(C)(i)	Qualifications of RSO	Duration of employment
§289.256(f)(3)(C)(ii)	Qualifications of authorized users	Duration of employment
§289.256(f)(3)(C)(iii)	Qualifications of authorized medical physicist	Duration of employment
§289.256(f)(3)(C)(iv)	Qualifications of authorized nuclear pharmacist, if applicable	Duration of employment
§289.256(g)(1)	Authority of RSO	Duration of employment
§289.256(g)(5)	Qualifications and dates of service for temporary RSO	3 years
§289.256(i)(4)	RSC meetings	3 years
§289.256(t)(3)	Written directives	3 years
§289.256(v)(4)	Calibration of instruments (dose calibrators)	3 years
§289.256(x)(6)	Dosage determinations of unsealed radioactive material for medical use	3 years
§289.256(y)(6)	Physical inventory for all sealed sources received, possessed, and transferred	Until termination of the radioactive material license
§289.256(z)(2)	Sealed source/brachytherapy inventory	3 years
§289.256(bb)(3)	Surveys for ambient radiation exposure rate	3 years
§289.256(cc)(3) §289.256(eee)(2)	Patient release	3 years after date of release
§289.256(dd)(3)	Mobile nuclear medicine service client letters	Duration of licensee/client relationship
§289.256(dd)(3)	Mobile nuclear medicine service surveys	3 years
§289.256(ee)(2)	Decay in storage/disposal	3 years
§289.256(ii)(3)	Molybdenum-99 concentrations	3 years

Rule Cross Reference	Name of Records/Documents	Time Interval for Keeping Records/Documents
§289.256(ll)(2)	Safety instructions - unsealed radioactive materials	3 years
§289.256(ss)(3)	Surveys after sealed source implant and removal	3 years
§289.256(tt)(3)	Brachytherapy sealed sources accountability	3 years
§289.256(uu)(2)	Safety instructions - brachytherapy	3 years
§289.256(ww)(4)	Calibration measurements of brachytherapy sealed sources	3 years
§289.256(xx)(2)	Strontium 90 activity of source	Duration of life of source
§289.256(bbb)(2)	Service provider documentation	3 years
§289.256(fff)(4)	Installation, maintenance, adjustment and repair-remote afterloader units, teletherapy units, and gamma stereotactic radiosurgery units	3 years
§289.256(iii)(3)	Dosimetry equipment calibration, intercomparison and comparison	Until termination of the radioactive material license
§289.256(jjj)(7)	Calibration – teletherapy units	3 years
§289.256(kkk)(9)	Calibration – remote afterleader units	3 years
§289.256(lll)(7)	Calibration – gamma stereotactic radiosurgery units	3 years
§289.256(mmm)(2)	Written procedures for spot checks-teletherapy units	Until licensee no longer possesses unit
§289.256(mmm)(6)	Spot checks- teletherapy units	Until licensee no longer possesses unit
§289.256(nnn)(2)	Written procedures for spot checks - remote afterloaders	3 years
§289.256(nnn)(6)	Spot checks- remote afterloader	3 years
§289.256(ooo)(2)	Written procedures for spot checks-gamma stereotactic radiosurgery units	3 years
§289.256(ooo)(8)	Spot checks-gamma stereotactic radiosurgery units	3 years
§289.256(ppp)(5)	Technical requirements for mobile remote afterloader units	3 years
§289.256(qqq)(3)	Radiation surveys	Duration of the use of the unit
§289.256(rrr)(3)	Five-year inspection for teletherapy and gamma sterotactic radiosurgery units	Duration of the use of the unit
§289.256(uuu)(9)	Annotated report – medical event	Until termination of the radioactive material license
§289.256(vvv)(8)	Annotated report – dose to embryo/fetus or nursing child	Until termination of the radioactive material license

Figure: 25 TAC §289.257(ee)(4)(A)

$$\sum_i \frac{B(i)}{A_1(i)} \leq 1$$

where B(i) is the activity of radionuclide I, and A₁(i) is the A₁ value for radionuclide I.

Figure: 25 TAC §289.257(ee)(4)(B)

$$\sum_i \frac{B(i)}{A_2(i)} \leq 1$$

where B(i) is the activity of radionuclide I and A₂(i) is the A₂ value for radionuclide I.

Figure: 25 TAC §289.257(ee)(4)(C)

$$A_1 \text{ for mixture} = \frac{1}{\sum_i \frac{f(i)}{A_1(i)}}$$

where f(i) is the fraction of activity of nuclide I in the mixture and A₁(i) is the appropriate A₁ value for nuclide I.

Figure: 25 TAC §289.257(ee)(4)(D)

$$A_2 \text{ for mixture} = \frac{1}{\sum_i \frac{f(i)}{A_2(i)}}$$

where f(i) is the fraction of activity of nuclide I in the mixture and A₂(i) is the appropriate A₂ value for nuclide I.

Figure: 25 TAC §289.257(ee)(4)(E)

$$\text{Exempt activity concentration for mixture} = \frac{1}{\sum \frac{f(i)}{[A](i)}}$$

where f(i) is the fraction of activity concentration of radionuclide I in the mixture, and [A] is the activity concentration for exempt material containing radionuclide I.

Figure: 25 TAC §289.257(ee)(4)(F)

$$\text{Exempt activity concentration for mixture} = \frac{1}{\sum \frac{f(i)}{A(i)}}$$

where $f(i)$ is the fraction of activity of radionuclide I in the mixture, and A is the activity limit for exempt consignments for radionuclide I.

Figure: 25 TAC §289.257(ee)(6)

Table 257-3

Symbol of radionuclide	Element and atomic number	A ₁ (TBq)	A ₁ (Ci) ^b	A ₂ (TBq)	A ₂ (Ci) ^b	Specific activity	
						(TBq/g)	(Ci/g)
Ac-225 (a)	Actinium (89)	8.0X10 ⁻¹	2.2X10 ¹	6.0X10 ⁻³	1.6X10 ⁻¹	2.1X10 ³	5.8X10 ⁴
Ac-227 (a)		9.0X10 ⁻¹	2.4X10 ¹	9.0X10 ⁻⁵	2.4X10 ⁻³	2.7	7.2X10 ¹
Ac-228		6.0X10 ⁻¹	1.6X10 ¹	5.0X10 ⁻¹	1.4X10 ¹	8.4X10 ⁴	2.2X10 ⁶
Ag-105	Silver (47)	2.0	5.4X10 ¹	2.0	5.4X10 ¹	1.1X10 ³	3.0X10 ⁴
Ag-108m (a)		7.0X10 ⁻¹	1.9X10 ¹	7.0X10 ⁻¹	1.9X10 ¹	9.7X10 ⁻¹	2.6X10 ¹
Ag-110m (a)		4.0X10 ⁻¹	1.1X10 ¹	4.0X10 ⁻¹	1.1X10 ¹	1.8X10 ²	4.7X10 ³
Ag-111		2.0	5.4X10 ¹	6.0X10 ⁻¹	1.6X10 ¹	5.8X10 ³	1.6X10 ⁵
Al-26	Aluminum (13)	1.0X10 ⁻¹	2.7	1.0X10 ⁻¹	2.7	7.0X10 ⁻⁴	1.9X10 ⁻²
Am-241	Americium (95)	1.0X10 ¹	2.7X10 ²	1.0X10 ⁻³	2.7X10 ⁻²	1.3X10 ⁻¹	3.4
Am-242m (a)		1.0X10 ¹	2.7X10 ²	1.0X10 ⁻³	2.7X10 ⁻²	3.6X10 ⁻¹	1.0X10 ¹
Am-243 (a)		5.0	1.4X10 ²	1.0X10 ⁻³	2.7X10 ⁻²	7.4X10 ⁻³	2.0X10 ⁻¹
Ar-37	Argon (18)	4.0X10 ¹	1.1X10 ³	4.0X10 ¹	1.1X10 ³	3.7X10 ³	9.9X10 ⁴
Ar-39		4.0X10 ¹	1.1X10 ³	2.0X10 ¹	5.4X10 ²	1.3	3.4X10 ¹
Ar-41		3.0X10 ⁻¹	8.1	3.0X10 ⁻¹	8.1	1.5X10 ⁶	4.2X10 ⁷
As-72	Arsenic (33)	3.0X10 ⁻¹	8.1	3.0X10 ⁻¹	8.1	6.2X10 ⁴	1.7X10 ⁶
As-73		4.0X10 ¹	1.1X10 ³	4.0X10 ¹	1.1X10 ³	8.2X10 ²	2.2X10 ⁴
As-74		1.0	2.7X10 ¹	9.0X10 ⁻¹	2.4X10 ¹	3.7X10 ³	9.9X10 ⁴
As-76		3.0X10 ⁻¹	8.1	3.0X10 ⁻¹	8.1	5.8X10 ⁴	1.6X10 ⁶
As-77		2.0X10 ¹	5.4X10 ²	7.0X10 ⁻¹	1.9X10 ¹	3.9X10 ⁴	1.0X10 ⁶

Symbol of radionuclide	Element and atomic number	A ₁ (TBq)	A ₁ (Ci) ^b	A ₂ (TBq)	A ₂ (Ci) ^b	Specific activity	
						(TBq/g)	(Ci/g)
At-211 (a)	Astatine (85)	2.0X10 ¹	5.4X10 ²	5.0X10 ⁻¹	1.4X10 ¹	7.6X10 ⁴	2.1X10 ⁶
Au-193	Gold (79)	7.0	1.9X10 ²	2.0	5.4X10 ¹	3.4X10 ⁴	9.2X10 ⁵
Au-194		1.0	2.7X10 ¹	1.0	2.7X10 ¹	1.5X10 ⁴	4.1X10 ⁵
Au-195		1.0X10 ¹	2.7X10 ²	6.0	1.6X10 ²	1.4X10 ²	3.7X10 ³
Au-198		1.0	2.7X10 ¹	6.0X10 ⁻¹	1.6X10 ¹	9.0X10 ³	2.4X10 ⁵
Au-199		1.0X10 ¹	2.7X10 ²	6.0X10 ⁻¹	1.6X10 ¹	7.7X10 ³	2.1X10 ⁵
Ba-131 (a)	Barium (56)	2.0	5.4X10 ¹	2.0	5.4X10 ¹	3.1X10 ³	8.4X10 ⁴
Ba-133		3.0	8.1X10 ¹	3.0	8.1X10 ¹	9.4	2.6X10 ²
Ba-133m		2.0X10 ¹	5.4X10 ²	6.0X10 ⁻¹	1.6X10 ¹	2.2X10 ⁴	6.1X10 ⁵
Ba-140 (a)		5.0X10 ⁻¹	1.4X10 ¹	3.0X10 ⁻¹	8.1	2.7X10 ³	7.3X10 ⁴
Be-7	Beryllium (4)	2.0X10 ¹	5.4X10 ²	2.0X10 ¹	5.4X10 ²	1.3X10 ⁴	3.5X10 ⁵
Be-10		4.0X10 ¹	1.1X10 ³	6.0X10 ⁻¹	1.6X10 ¹	8.3X10 ⁻⁴	2.2X10 ⁻²
Bi-205	Bismuth (83)	7.0X10 ⁻¹	1.9X10 ¹	7.0X10 ⁻¹	1.9X10 ¹	1.5X10 ³	4.2X10 ⁴
Bi-206		3.0X10 ⁻¹	8.1	3.0X10 ⁻¹	8.1	3.8X10 ³	1.0X10 ⁵
Bi-207		7.0X10 ⁻¹	1.9X10 ¹	7.0X10 ⁻¹	1.9X10 ¹	1.9	5.2X10 ¹
Bi-210		1.0	2.7X10 ¹	6.0X10 ⁻¹	1.6X10 ¹	4.6X10 ³	1.2X10 ⁵
Bi-210m (a)		6.0X10 ⁻¹	1.6X10 ¹	2.0X10 ⁻²	5.4X10 ⁻¹	2.1X10 ⁻⁵	5.7X10 ⁻⁴
Bi-212 (a)		7.0X10 ⁻¹	1.9X10 ¹	6.0X10 ⁻¹	1.6X10 ¹	5.4X10 ⁵	1.5X10 ⁷
Bk-247	Berkelium (97)	8.0	2.2X10 ²	8.0X10 ⁻⁴	2.2X10 ⁻²	3.8X10 ⁻²	1.0
Bk-249 (a)		4.0X10 ¹	1.1X10 ³	3.0X10 ⁻¹	8.1	6.1X10 ¹	1.6X10 ³
Br-76	Bromine (35)	4.0X10 ⁻¹	1.1X10 ¹	4.0X10 ⁻¹	1.1X10 ¹	9.4X10 ⁴	2.5X10 ⁶

Symbol of radionuclide	Element and atomic number	A ₁ (TBq)	A ₁ (Ci) ^b	A ₂ (TBq)	A ₂ (Ci) ^b	Specific activity	
						(TBq/g)	(Ci/g)
Br-77		3.0	8.1X10 ¹	3.0	8.1X10 ¹	2.6X10 ⁴	7.1X10 ⁵
Br-82		4.0X10 ⁻¹	1.1X10 ¹	4.0X10 ⁻¹	1.1X10 ¹	4.0X10 ⁴	1.1X10 ⁶
C-11	Carbon (6)	1.0	2.7X10 ¹	6.0X10 ⁻¹	1.6X10 ¹	3.1X10 ⁷	8.4X10 ⁸
C-14		4.0X10 ¹	1.1X10 ³	3.0	8.1X10 ¹	1.6X10 ⁻¹	4.5
Ca-41	Calcium (20)	Unlimited	Unlimited	Unlimited	Unlimited	3.1X10 ⁻³	8.5X10 ⁻²
Ca-45		4.0X10 ¹	1.1X10 ³	1.0	2.7X10 ¹	6.6X10 ²	1.8X10 ⁴
Ca-47 (a)		3.0	8.1X10 ¹	3.0X10 ⁻¹	8.1	2.3X10 ⁴	6.1X10 ⁵
Cd-109	Cadmium (48)	3.0X10 ¹	8.1X10 ²	2.0	5.4X10 ¹	9.6X10 ¹	2.6X10 ³
Cd-113m		4.0X10 ¹	1.1X10 ³	5.0X10 ⁻¹	1.4X10 ¹	8.3	2.2X10 ²
Cd-115 (a)		3.0	8.1X10 ¹	4.0X10 ⁻¹	1.1X10 ¹	1.9X10 ⁴	5.1X10 ⁵
Cd-115m		5.0X10 ⁻¹	1.4X10 ¹	5.0X10 ⁻¹	1.4X10 ¹	9.4X10 ²	2.5X10 ⁴
Ce-139	Cerium (58)	7.0	1.9X10 ²	2.0	5.4X10 ¹	2.5X10 ²	6.8X10 ³
Ce-141		2.0X10 ¹	5.4X10 ²	6.0X10 ⁻¹	1.6X10 ¹	1.1X10 ³	2.8X10 ⁴
Ce-143		9.0X10 ⁻¹	2.4X10 ¹	6.0X10 ⁻¹	1.6X10 ¹	2.5X10 ⁴	6.6X10 ⁵
Ce-144 (a)		2.0X10 ⁻¹	5.4	2.0X10 ⁻¹	5.4	1.2X10 ²	3.2X10 ³
Cf-248	Californium (98)	4.0X10 ¹	1.1X10 ³	6.0X10 ⁻³	1.6X10 ⁻¹	5.8X10 ¹	1.6X10 ³
Cf-249		3.0	8.1X10 ¹	8.0X10 ⁻⁴	2.2X10 ⁻²	1.5X10 ⁻¹	4.1
Cf-250		2.0X10 ¹	5.4X10 ²	2.0X10 ⁻³	5.4X10 ⁻²	4.0	1.1X10 ²
Cf-251		7.0	1.9X10 ²	7.0X10 ⁻⁴	1.9X10 ⁻²	5.9X10 ⁻²	1.6
Cf-252 (h)		5.0X10 ⁻²	1.4	3.0X10 ⁻³	8.1X10 ⁻²	2.0X10 ¹	5.4X10 ²
Cf-253 (a)		4.0X10 ¹	1.1X10 ³	4.0X10 ⁻²	1.1	1.1X10 ³	2.9X10 ⁴

Symbol of radionuclide	Element and atomic number	A ₁ (TBq)	A ₁ (Ci) ^b	A ₂ (TBq)	A ₂ (Ci) ^b	Specific activity	
						(TBq/g)	(Ci/g)
Cf-254		1.0X10 ⁻³	2.7X10 ⁻²	1.0X10 ⁻³	2.7X10 ⁻²	3.1X10 ²	8.5X10 ³
Cl-36	Chlorine (17)	1.0X10 ¹	2.7X10 ²	6.0X10 ⁻¹	1.6X10 ¹	1.2X10 ⁻³	3.3X10 ⁻²
Cl-38		2.0X10 ⁻¹	5.4	2.0X10 ⁻¹	5.4	4.9X10 ⁶	1.3X10 ⁸
Cm-240	Curium (96)	4.0X10 ¹	1.1X10 ³	2.0X10 ²	5.4X10 ⁻¹	7.5X10 ²	2.0X10 ⁴
Cm-241		2.0	5.4X10 ¹	1.0	2.7X10 ¹	6.1X10 ²	1.7X10 ⁴
Cm-242		4.0X10 ¹	1.1X10 ³	1.0X10 ²	2.7X10 ⁻¹	1.2X10 ²	3.3X10 ³
Cm-243		9.0	2.4X10 ²	1.0X10 ⁻³	2.7X10 ⁻²	1.9X10 ⁻³	5.2X10 ¹
Cm-244		2.0X10 ¹	5.4X10 ²	2.0X10 ⁻³	5.4X10 ⁻²	3.0	8.1X10 ¹
Cm-245		9.0	2.4X10 ²	9.0X10 ⁻⁴	2.4X10 ⁻²	6.4X10 ⁻³	1.7X10 ⁻¹
Cm-246		9.0	2.4X10 ²	9.0X10 ⁻⁴	2.4X10 ⁻²	1.1X10 ⁻²	3.1X10 ⁻¹
Cm-247 (a)		3.0	8.1X10 ¹	1.0X10 ⁻³	2.7X10 ⁻²	3.4X10 ⁻⁶	9.3X10 ⁻⁵
Cm-248		2.0X10 ⁻²	5.4X10 ⁻¹	3.0X10 ⁻⁴	8.1X10 ⁻³	1.6X10 ⁻⁴	4.2X10 ⁻³
Co-55	Cobalt (27)	5.0X10 ⁻¹	1.4X10 ¹	5.0X10 ⁻¹	1.4X10 ¹	1.1X10 ⁵	3.1X10 ⁶
Co-56		3.0X10 ⁻¹	8.1	3.0X10 ⁻¹	8.1	1.1X10 ³	3.0X10 ⁴
Co-57		1.0X10 ¹	2.7X10 ²	1.0X10 ¹	2.7X10 ²	3.1X10 ²	8.4X10 ³
Co-58		1.0	2.7X10 ¹	1.0	2.7X10 ¹	1.2X10 ³	3.2X10 ⁴
Co-58m		4.0X10 ¹	1.1X10 ³	4.0X10 ¹	1.1X10 ³	2.2X10 ⁵	5.9X10 ⁶
Co-60		4.0X10 ⁻¹	1.1X10 ¹	4.0X10 ⁻¹	1.1X10 ¹	4.2X10 ¹	1.1X10 ³
Cr-51	Chromium (24)	3.0X10 ¹	8.1X10 ²	3.0X10 ¹	8.1X10 ²	3.4X10 ³	9.2X10 ⁴
Cs-129	Cesium (55)	4.0	1.1X10 ²	4.0	1.1X10 ²	2.8X10 ⁴	7.6X10 ⁵
Cs-131		3.0X10 ¹	8.1X10 ²	3.0X10 ¹	8.1X10 ²	3.8X10 ³	1.0X10 ⁵

Symbol of radionuclide	Element and atomic number	A ₁ (TBq)	A ₁ (Ci) ^b	A ₂ (TBq)	A ₂ (Ci) ^b	Specific activity	
						(TBq/g)	(Ci/g)
Cs-132		1.0	2.7X10 ¹	1.0	2.7X10 ¹	5.7X10 ³	1.5X10 ⁵
Cs-134		7.0X10 ⁻¹	1.9X10 ¹	7.0X10 ⁻¹	1.9X10 ¹	4.8X10 ¹	1.3X10 ³
Cs-134m		4.0X10 ¹	1.1X10 ³	6.0X10 ⁻¹	1.6X10 ¹	3.0X10 ⁵	8.0X10 ⁶
Cs-135		4.0X10 ¹	1.1X10 ³	1.0	2.7X10 ¹	4.3X10 ⁻⁵	1.2X10 ⁻³
Cs-136		5.0X10 ⁻¹	1.4X10 ¹	5.0X10 ⁻¹	1.4X10 ¹	2.7X10 ³	7.3X10 ⁴
Cs-137 (a)		2.0	5.4X10 ¹	6.0X10 ⁻¹	1.6X10 ¹	3.2	8.7X10 ¹
Cu-64	Copper (29)	6.0	1.6X10 ²	1.0	2.7X10 ¹	1.4X10 ⁵	3.9X10 ⁶
Cu-67		1.0X10 ¹	2.7X10 ²	7.0X10 ⁻¹	1.9X10 ¹	2.8X10 ⁴	7.6X10 ⁵
Dy-159	Dysprosium (66)	2.0X10 ¹	5.4X10 ²	2.0X10 ¹	5.4X10 ²	2.1X10 ²	5.7X10 ³
Dy-165		9.0X10 ⁻¹	2.4X10 ¹	6.0X10 ⁻¹	1.6X10 ¹	3.0X10 ⁵	8.2X10 ⁶
Dy-166 (a)		9.0X10 ⁻¹	2.4X10 ¹	3.0X10 ⁻¹	8.1	8.6X10 ³	2.3X10 ⁵
Er-169	Erbium (68)	4.0X10 ¹	1.1X10 ³	1.0	2.7X10 ¹	3.1X10 ³	8.3X10 ⁴
Er-171		8.0X10 ⁻¹	2.2X10 ¹	5.0X10 ⁻¹	1.4X10 ¹	9.0X10 ⁴	2.4X10 ⁶
Eu-147	Europium (63)	2.0	5.4X10 ¹	2.0	5.4X10 ¹	1.4X10 ³	3.7X10 ⁴
Eu-148		5.0X10 ⁻¹	1.4X10 ¹	5.0X10 ⁻¹	1.4X10 ¹	6.0X10 ²	1.6X10 ⁴
Eu-149		2.0X10 ¹	5.4X10 ²	2.0X10 ¹	5.4X10 ²	3.5X10 ²	9.4X10 ³
Eu-150 (short lived)		2.0	5.4X10 ¹	7.0X10 ⁻¹	1.9X10 ¹	6.1X10 ⁴	1.6X10 ⁶
Eu-150 (long lived)		7.0X10 ⁻¹	1.9X10 ¹	7.0X10 ⁻¹	1.9X10 ¹	6.1X10 ⁴	1.6X10 ⁶
Eu-152		1.0	2.7X10 ¹	1.0	2.7X10 ¹	6.5	1.8X10 ²
Eu-152m		8.0X10 ⁻¹	2.2X10 ¹	8.0X10 ⁻¹	2.2X10 ¹	8.2X10 ⁴	2.2X10 ⁶
Eu-154		9.0X10 ⁻¹	2.4X10 ¹	6.0X10 ⁻¹	1.6X10 ¹	9.8	2.6X10 ²

Symbol of radionuclide	Element and atomic number	A ₁ (TBq)	A ₁ (Ci) ^b	A ₂ (TBq)	A ₂ (Ci) ^b	Specific activity	
						(TBq/g)	(Ci/g)
Eu-155		2.0X10 ¹	5.4X10 ²	3.0	8.1X10 ¹	1.8X10 ¹	4.9X10 ²
Eu-156		7.0X10 ⁻¹	1.9X10 ¹	7.0X10 ⁻¹	1.9X10 ¹	2.0X10 ³	5.5X10 ⁴
F-18	Fluorine (9)	1.0	2.7X10 ¹	6.0X10 ⁻¹	1.6X10 ¹	3.5X10 ⁶	9.5X10 ⁷
Fe-52 (a)	Iron (26)	3.0X10 ⁻¹	8.1	3.0X10 ⁻¹	8.1	2.7X10 ⁵	7.3X10 ⁶
Fe-55		4.0X10 ¹	1.1X10 ³	4.0X10 ¹	1.1X10 ³	8.8X10 ¹	2.4X10 ³
Fe-59		9.0X10 ⁻¹	2.4X10 ¹	9.0X10 ⁻¹	2.4X10 ¹	1.8X10 ³	5.0X10 ⁴
Fe-60 (a)		4.0X10 ¹	1.1X10 ³	2.0X10 ⁻¹	5.4	7.4X10 ⁻⁴	2.0X10 ⁻²
Ga-67	Gallium (31)	7.0	1.9X10 ²	3.0	8.1X10 ¹	2.2X10 ⁴	6.0X10 ⁵
Ga-68		5.0X10 ⁻¹	1.4X10 ¹	5.0X10 ⁻¹	1.4X10 ¹	1.5X10 ⁶	4.1X10 ⁷
Ga-72		4.0X10 ⁻¹	1.1X10 ¹	4.0X10 ⁻¹	1.1X10 ¹	1.1X10 ⁵	3.1X10 ⁶
Gd-146 (a)	Gadolinium (64)	5.0X10 ⁻¹	1.4X10 ¹	5.0X10 ⁻¹	1.4X10 ¹	6.9X10 ²	1.9X10 ⁴
Gd-148		2.0X10 ¹	5.4X10 ²	2.0X10 ⁻³	5.4X10 ⁻²	1.2	3.2X10 ¹
Gd-153		1.0X10 ¹	2.7X10 ²	9.0	2.4X10 ²	1.3X10 ²	3.5X10 ³
Gd-159		3.0	8.1X10 ¹	6.0X10 ⁻¹	1.6X10 ¹	3.9X10 ⁴	1.1X10 ⁶
Ge-68 (a)	Germanium (32)	5.0X10 ⁻¹	1.4X10 ¹	5.0X10 ⁻¹	1.4X10 ¹	2.6X10 ²	7.1X10 ³
Ge-71		4.0X10 ¹	1.1X10 ³	4.0X10 ¹	1.1X10 ³	5.8X10 ³	1.6X10 ⁵
Ge-77		3.0X10 ⁻¹	8.1	3.0X10 ⁻¹	8.1	1.3X10 ⁵	3.6X10 ⁶
Hf-172 (a)	Hafnium (72)	6.0X10 ⁻¹	1.6X10 ¹	6.0X10 ⁻¹	1.6X10 ¹	4.1X10 ¹	1.1X10 ³
Hf-175		3.0	8.1X10 ¹	3.0	8.1X10 ¹	3.9X10 ²	1.1X10 ⁴
Hf-181		2.0	5.4X10 ¹	5.0X10 ⁻¹	1.4X10 ¹	6.3X10 ²	1.7X10 ⁴
Hf-182		Unlimited	Unlimited	Unlimited	Unlimited	8.1X10 ⁻⁶	2.2X10 ⁻⁴

Symbol of radionuclide	Element and atomic number	A ₁ (TBq)	A ₁ (Ci) ^b	A ₂ (TBq)	A ₂ (Ci) ^b	Specific activity	
						(TBq/g)	(Ci/g)
Hg-194 (a)	Mercury (80)	1.0	2.7X10 ¹	1.0	2.7X10 ¹	1.3X10 ⁻¹	3.5
Hg-195m (a)		3.0	8.1X10 ¹	7.0X10 ⁻¹	1.9X10 ¹	1.5X10 ⁴	4.0X10 ⁵
Hg-197		2.0X10 ¹	5.4X10 ²	1.0X10 ¹	2.7X10 ²	9.2X10 ³	2.5X10 ⁵
Hg-197m		1.0X10 ¹	2.7X10 ²	4.0X10 ⁻¹	1.1X10 ¹	2.5X10 ⁴	6.7X10 ⁵
Hg-203		5.0	1.4X10 ²	1.0	2.7X10 ¹	5.1X10 ²	1.4X10 ⁴
Ho-166	Holmium (67)	4.0X10 ⁻¹	1.1X10 ¹	4.0X10 ⁻¹	1.1X10 ¹	2.6X10 ⁴	7.0X10 ⁵
Ho-166m		6.0X10 ⁻¹	1.6X10 ¹	5.0X10 ⁻¹	1.4X10 ¹	6.6X10 ⁻²	1.8
I-123	Iodine (53)	6.0	1.6X10 ²	3.0	8.1X10 ¹	7.1X10 ⁴	1.9X10 ⁶
I-124		1.0	2.7X10 ¹	1.0	2.7X10 ¹	9.3X10 ³	2.5X10 ⁵
I-125		2.0X10 ¹	5.4X10 ²	3.0	8.1X10 ¹	6.4X10 ²	1.7X10 ⁴
I-126		2.0	5.4X10 ¹	1.0	2.7X10 ¹	2.9X10 ³	8.0X10 ⁴
I-129		Unlimited	Unlimited	Unlimited	Unlimited	6.5X10 ⁻⁶	1.8X10 ⁻⁴
I-131		3.0	8.1X10 ¹	7.0X10 ⁻¹	1.9X10 ¹	4.6X10 ³	1.2X10 ⁵
I-132		4.0X10 ⁻¹	1.1X10 ¹	4.0X10 ⁻¹	1.1X10 ¹	3.8X10 ⁵	1.0X10 ⁷
I-133		7.0X10 ⁻¹	1.9X10 ¹	6.0X10 ⁻¹	1.6X10 ¹	4.2X10 ⁴	1.1X10 ⁶
I-134		3.0X10 ⁻¹	8.1	3.0X10 ⁻¹	8.1	9.9X10 ⁵	2.7X10 ⁷
I-135 (a)		6.0X10 ⁻¹	1.6X10 ¹	6.0X10 ⁻¹	1.6X10 ¹	1.3X10 ⁵	3.5X10 ⁶
In-111	Indium (49)	3.0	8.1X10 ¹	3.0	8.1X10 ¹	1.5X10 ⁴	4.2X10 ⁵
In-113m		4.0	1.1X10 ²	2.0	5.4X10 ¹	6.2X10 ⁵	1.7X10 ⁷
In-114m (a)		1.0X10 ¹	2.7X10 ²	5.0X10 ⁻¹	1.4X10 ¹	8.6X10 ²	2.3X10 ⁴
In-115m		7.0	1.9X10 ²	1.0	2.7X10 ¹	2.2X10 ⁵	6.1X10 ⁶

Symbol of radionuclide	Element and atomic number	A ₁ (TBq)	A ₁ (Ci) ^b	A ₂ (TBq)	A ₂ (Ci) ^b	Specific activity	
						(TBq/g)	(Ci/g)
Ir-189 (a)	Iridium (77)	1.0X10 ¹	2.7X10 ²	1.0X10 ¹	2.7X10 ²	1.9X10 ³	5.2X10 ⁴
Ir-190		7.0X10 ⁻¹	1.9X10 ¹	7.0X10 ⁻¹	1.9X10 ¹	2.3X10 ³	6.2X10 ⁴
Ir-192 (c)		1.0	2.7X10 ¹	6.0X10 ⁻¹	1.6X10 ¹	3.4X10 ²	9.2X10 ³
Ir-194		3.0X10 ⁻¹	8.1	3.0X10 ⁻¹	8.1	3.1X10 ⁴	8.4X10 ⁵
K-40	Potassium (19)	9.0X10 ⁻¹	2.4X10 ¹	9.0X10 ⁻¹	2.4X10 ¹	2.4X10 ⁻⁷	6.4X10 ⁻⁶
K-42		2.0X10 ⁻¹	5.4	2.0X10 ⁻¹	5.4	2.2X10 ⁵	6.0X10 ⁶
K-43		7.0X10 ⁻¹	1.9X10 ¹	6.0X10 ⁻¹	1.6X10 ¹	1.2X10 ⁵	3.3X10 ⁶
Kr-81	Krypton (36)	4.0X10 ¹	1.1X10 ³	4.0X10 ¹	1.1X10 ³	7.8X10 ⁻⁴	2.1X10 ⁻²
Kr-85		1.0X10 ¹	2.7X10 ²	1.0X10 ¹	2.7X10 ²	1.5X10 ¹	3.9X10 ²
Kr-85m		8.0	2.2X10 ²	3.0	8.1X10 ¹	3.0X10 ⁵	8.2X10 ⁶
Kr-87		2.0X10 ⁻¹	5.4	2.0X10 ⁻¹	5.4	1.0X10 ⁶	2.8X10 ⁷
La-137	Lanthanum (57)	3.0X10 ¹	8.1X10 ²	6.0	1.6X10 ²	1.6X10 ⁻³	4.4X10 ⁻²
La-140		4.0X10 ⁻¹	1.1X10 ¹	4.0X10 ⁻¹	1.1X10 ¹	2.1X10 ⁴	5.6X10 ⁵
Lu-172	Lutetium (71)	6.0X10 ⁻¹	1.6X10 ¹	6.0X10 ⁻¹	1.6X10 ¹	4.2X10 ³	1.1X10 ⁵
Lu-173		8.0	2.2X10 ²	8.0	2.2X10 ²	5.6X10 ¹	1.5X10 ³
Lu-174		9.0	2.4X10 ²	9.0	2.4X10 ²	2.3X10 ¹	6.2X10 ²
Lu-174m		2.0X10 ¹	5.4X10 ²	1.0X10 ¹	2.7X10 ²	2.0X10 ²	5.3X10 ³
Lu-177		3.0X10 ¹	8.1X10 ²	7.0X10 ⁻¹	1.9X10 ¹	4.1X10 ³	1.1X10 ⁵
Mg-28 (a)	Magnesium (12)	3.0X10 ⁻¹	8.1	3.0X10 ⁻¹	8.1	2.0X10 ⁵	5.4X10 ⁶
Mn-52	Manganese (25)	3.0X10 ⁻¹	8.1	3.0X10 ⁻¹	8.1	1.6X10 ⁴	4.4X10 ⁵
Mn-53		Unlimited	Unlimited	Unlimited	Unlimited	6.8X10 ⁻⁵	1.8X10 ⁻³

Symbol of radionuclide	Element and atomic number	A ₁ (TBq)	A ₁ (Ci) ^b	A ₂ (TBq)	A ₂ (Ci) ^b	Specific activity	
						(TBq/g)	(Ci/g)
Mn-54		1.0	2.7X10 ¹	1.0	2.7X10 ¹	2.9X10 ²	7.7X10 ³
Mn-56		3.0X10 ⁻¹	8.1	3.0X10 ⁻¹	8.1	8.0X10 ⁵	2.2X10 ⁷
Mo-93	Molybdenum (42)	4.0X10 ¹	1.1X10 ³	2.0X10 ¹	5.4X10 ²	4.1X10 ⁻²	1.1
Mo-99 (a) (i)		1.0	2.7X10 ¹	6.0X10 ⁻¹	1.6X10 ¹	1.8X10 ⁴	4.8X10 ⁵
N-13	Nitrogen (7)	9.0X10 ⁻¹	2.4X10 ¹	6.0X10 ⁻¹	1.6X10 ¹	5.4X10 ⁷	1.5X10 ⁹
Na-22	Sodium (11)	5.0X10 ⁻¹	1.4X10 ¹	5.0X10 ⁻¹	1.4X10 ¹	2.3X10 ²	6.3X10 ³
Na-24		2.0X10 ⁻¹	5.4	2.0X10 ⁻¹	5.4	3.2X10 ⁵	8.7X10 ⁶
Nb-93m	Niobium (41)	4.0X10 ¹	1.1X10 ³	3.0X10 ¹	8.1X10 ²	8.8	2.4X10 ²
Nb-94		7.0X10 ⁻¹	1.9X10 ¹	7.0X10 ⁻¹	1.9X10 ¹	6.9X10 ⁻³	1.9X10 ⁻¹
Nb-95		1.0	2.7X10 ¹	1.0	2.7X10 ¹	1.5X10 ³	3.9X10 ⁴
Nb-97		9.0X10 ⁻¹	2.4X10 ¹	6.0X10 ⁻¹	1.6X10 ¹	9.9X10 ⁵	2.7X10 ⁷
Nd-147	Neodymium (60)	6.0	1.6X10 ²	6.0X10 ⁻¹	1.6X10 ¹	3.0X10 ³	8.1X10 ⁴
Nd-149		6.0X10 ⁻¹	1.6X10 ¹	5.0X10 ⁻¹	1.4X10 ¹	4.5X10 ⁵	1.2X10 ⁷
Ni-59	Nickel (28)	Unlimited	Unlimited	Unlimited	Unlimited	3.0X10 ⁻³	8.0X10 ⁻²
Ni-63		4.0X10 ¹	1.1X10 ³	3.0X10 ¹	8.1X10 ²	2.1	5.7X10 ¹
Ni-65		4.0X10 ⁻¹	1.1X10 ¹	4.0X10 ⁻¹	1.1X10 ¹	7.1X10 ⁵	1.9X10 ⁷
Np-235	Neptunium (93)	4.0X10 ¹	1.1X10 ³	4.0X10 ¹	1.1X10 ³	5.2X10 ¹	1.4X10 ³
Np-236 (short-lived)		2.0X10 ¹	5.4X10 ²	2.0	5.4X10 ¹	4.7X10 ⁻⁴	1.3X10 ⁻²
Np-236 (long-lived)		9.0X10 ⁰	2.4X10 ²	2.0X10 ⁻²	5.4X10 ⁻¹	4.7X10 ⁻⁴	1.3X10 ⁻²
Np-237		2.0X10 ¹	5.4X10 ²	2.0X10 ⁻³	5.4X10 ⁻²	2.6X10 ⁻⁵	7.1X10 ⁻⁴
Np-239		7.0	1.9X10 ²	4.0X10 ⁻¹	1.1X10 ¹	8.6X10 ³	2.3X10 ⁵

Symbol of radionuclide	Element and atomic number	A ₁ (TBq)	A ₁ (Ci) ^b	A ₂ (TBq)	A ₂ (Ci) ^b	Specific activity	
						(TBq/g)	(Ci/g)
Os-185	Osmium (76)	1.0	2.7X10 ¹	1.0	2.7X10 ¹	2.8X10 ²	7.5X10 ³
Os-191		1.0X10 ¹	2.7X10 ²	2.0	5.4X10 ¹	1.6X10 ³	4.4X10 ⁴
Os-191m		4.0X10 ¹	1.1X10 ³	3.0X10 ¹	8.1X10 ²	4.6X10 ⁴	1.3X10 ⁶
Os-193		2.0	5.4X10 ¹	6.0X10 ⁻¹	1.6X10 ¹	2.0X10 ⁴	5.3X10 ⁵
Os-194 (a)		3.0X10 ⁻¹	8.1	3.0X10 ⁻¹	8.1	1.1X10 ¹	3.1X10 ²
P-32	Phosphorus (15)	5.0X10 ⁻¹	1.4X10 ¹	5.0X10 ⁻¹	1.4X10 ¹	1.1X10 ⁴	2.9X10 ⁵
P-33		4.0X10 ¹	1.1X10 ³	1.0	2.7X10 ¹	5.8X10 ³	1.6X10 ⁵
Pa-230 (a)	Protactinium (91)	2.0	5.4X10 ¹	7.0X10 ⁻²	1.9	1.2X10 ³	3.3X10 ⁴
Pa-231		4.0	1.1X10 ²	4.0X10 ⁻⁴	1.1X10 ⁻²	1.7X10 ⁻³	4.7X10 ⁻²
Pa-233		5.0	1.4X10 ²	7.0X10 ⁻¹	1.9X10 ¹	7.7X10 ²	2.1X10 ⁴
Pb-201	Lead (82)	1.0	2.7X10 ¹	1.0	2.7X10 ¹	6.2X10 ⁴	1.7X10 ⁶
Pb-202		4.0X10 ¹	1.1X10 ³	2.0X10 ¹	5.4X10 ²	1.2X10 ⁻⁴	3.4X10 ⁻³
Pb-203		4.0	1.1X10 ²	3.0	8.1X10 ¹	1.1X10 ⁴	3.0X10 ⁵
Pb-205		Unlimited	Unlimited	Unlimited	Unlimited	4.5X10 ⁻⁶	1.2X10 ⁻⁴
Pb-210 (a)		1.0	2.7X10 ¹	5.0X10 ⁻²	1.4	2.8	7.6X10 ¹
Pb-212 (a)		7.0X10 ⁻¹	1.9X10 ¹	2.0X10 ⁻¹	5.4	5.1X10 ⁴	1.4X10 ⁶
Pd-103 (a)	Palladium (46)	4.0X10 ¹	1.1X10 ³	4.0X10 ¹	1.1X10 ³	2.8X10 ³	7.5X10 ⁴
Pd-107		Unlimited	Unlimited	Unlimited	Unlimited	1.9X10 ⁻⁵	5.1X10 ⁻⁴
Pd-109		2.0	5.4X10 ¹	5.0X10 ⁻¹	1.4X10 ¹	7.9X10 ⁴	2.1X10 ⁶
Pm-143	Promethium (61)	3.0	8.1X10 ¹	3.0	8.1X10 ¹	1.3X10 ²	3.4X10 ³
Pm-144		7.0X10 ⁻¹	1.9X10 ¹	7.0X10 ⁻¹	1.9X10 ¹	9.2X10 ¹	2.5X10 ³

Symbol of radionuclide	Element and atomic number	A ₁ (TBq)	A ₁ (Ci) ^b	A ₂ (TBq)	A ₂ (Ci) ^b	Specific activity	
						(TBq/g)	(Ci/g)
Pm-145		3.0X10 ¹	8.1X10 ²	1.0X10 ¹	2.7X10 ²	5.2	1.4X10 ²
Pm-147		4.0X10 ¹	1.1X10 ³	2.0	5.4X10 ¹	3.4X10 ¹	9.3X10 ²
Pm-148m (a)		8.0X10 ⁻¹	2.2X10 ¹	7.0X10 ⁻¹	1.9X10 ¹	7.9X10 ²	2.1X10 ⁴
Pm-149		2.0	5.4X10 ¹	6.0X10 ⁻¹	1.6X10 ¹	1.5X10 ⁴	4.0X10 ⁵
Pm-151		2.0	5.4X10 ¹	6.0X10 ⁻¹	1.6X10 ¹	2.7X10 ⁴	7.3X10 ⁵
Po-210	Polonium (84)	4.0X10 ¹	1.1X10 ³	2.0X10 ⁻²	5.4X10 ⁻¹	1.7X10 ²	4.5X10 ³
Pr-142	Praseodymium (59)	4.0X10 ⁻¹	1.1X10 ¹	4.0X10 ⁻¹	1.1X10 ¹	4.3X10 ⁴	1.2X10 ⁶
Pr-143		3.0	8.1X10 ¹	6.0X10 ⁻¹	1.6X10 ¹	2.5X10 ³	6.7X10 ⁴
Pt-188 (a)	Platinum (78)	1.0	2.7X10 ¹	8.0X10 ⁻¹	2.2X10 ¹	2.5X10 ³	6.8X10 ⁴
Pt-191		4.0	1.1X10 ²	3.0	8.1X10 ¹	8.7X10 ³	2.4X10 ⁵
Pt-193		4.0X10 ¹	1.1X10 ³	4.0X10 ¹	1.1X10 ³	1.4	3.7X10 ¹
Pt-193m		4.0X10 ¹	1.1X10 ³	5.0X10 ⁻¹	1.4X10 ¹	5.8X10 ³	1.6X10 ⁵
Pt-195m		1.0X10 ¹	2.7X10 ²	5.0X10 ⁻¹	1.4X10 ¹	6.2X10 ³	1.7X10 ⁵
Pt-197		2.0X10 ¹	5.4X10 ²	6.0X10 ⁻¹	1.6X10 ¹	3.2X10 ⁴	8.7X10 ⁵
Pt-197m		1.0X10 ¹	2.7X10 ²	6.0X10 ⁻¹	1.6X10 ¹	3.7X10 ⁵	1.0X10 ⁷
Pu-236	Plutonium (94)	3.0X10 ¹	8.1X10 ²	3.0X10 ⁻³	8.1X10 ⁻²	2.0X10 ¹	5.3X10 ²
Pu-237		2.0X10 ¹	5.4X10 ²	2.0X10 ¹	5.4X10 ²	4.5X10 ²	1.2X10 ⁴
Pu-238		1.0X10 ¹	2.7X10 ²	1.0X10 ⁻³	2.7X10 ⁻²	6.3X10 ⁻¹	1.7X10 ¹
Pu-239		1.0X10 ¹	2.7X10 ²	1.0X10 ⁻³	2.7X10 ⁻²	2.3X10 ⁻³	6.2X10 ⁻²
Pu-240		1.0X10 ¹	2.7X10 ²	1.0X10 ⁻³	2.7X10 ⁻²	8.4X10 ⁻³	2.3X10 ⁻¹
Pu-241 (a)		4.0X10 ¹	1.1X10 ³	6.0X10 ⁻²	1.6	3.8	1.0X10 ²

Symbol of radionuclide	Element and atomic number	A ₁ (TBq)	A ₁ (Ci) ^b	A ₂ (TBq)	A ₂ (Ci) ^b	Specific activity	
						(TBq/g)	(Ci/g)
Pu-242		1.0X10 ⁻¹	2.7X10 ²	1.0X10 ⁻³	2.7X10 ⁻²	1.5X10 ⁻⁴	3.9X10 ⁻³
Pu-244 (a)		4.0X10 ⁻¹	1.1X10 ¹	1.0X10 ⁻³	2.7X10 ⁻²	6.7X10 ⁻⁷	1.8X10 ⁻⁵
Ra-223 (a)	Radium (88)	4.0X10 ⁻¹	1.1X10 ¹	7.0X10 ⁻³	1.9X10 ⁻¹	1.9X10 ³	5.1X10 ⁴
Ra-224 (a)		4.0X10 ⁻¹	1.1X10 ¹	2.0X10 ⁻²	5.4X10 ⁻¹	5.9X10 ³	1.6X10 ⁵
Ra-225 (a)		2.0X10 ⁻¹	5.4	4.0X10 ⁻³	1.1X10 ⁻¹	1.5X10 ³	3.9X10 ⁴
Ra-226 (a)		2.0X10 ⁻¹	5.4	3.0X10 ⁻³	8.1X10 ⁻²	3.7X10 ⁻²	1.0
Ra-228 (a)		6.0X10 ⁻¹	1.6X10 ¹	2.0X10 ⁻²	5.4X10 ⁻¹	1.0X10 ¹	2.7X10 ²
Rb-81	Rubidium (37)	2.0	5.4X10 ¹	8.0X10 ⁻¹	2.2X10 ¹	3.1X10 ⁵	8.4X10 ⁶
Rb-83 (a)		2.0	5.4X10 ¹	2.0	5.4X10 ¹	6.8X10 ²	1.8X10 ⁴
Rb-84		1.0	2.7X10 ¹	1.0	2.7X10 ¹	1.8X10 ³	4.7X10 ⁴
Rb-86		5.0X10 ⁻¹	1.4X10 ¹	5.0X10 ⁻¹	1.4X10 ¹	3.0X10 ³	8.1X10 ⁴
Rb-87		Unlimited	Unlimited	Unlimited	Unlimited	3.2X10 ⁻⁹	8.6X10 ⁻⁸
Rb(nat)		Unlimited	Unlimited	Unlimited	Unlimited	6.7X10 ⁶	1.8X10 ⁸
Re-184	Rhenium (75)	1.0	2.7X10 ¹	1.0	2.7X10 ¹	6.9X10 ²	1.9X10 ⁴
Re-184m		3.0	8.1X10 ¹	1.0	2.7X10 ¹	1.6X10 ²	4.3X10 ³
Re-186		2.0	5.4X10 ¹	6.0X10 ⁻¹	1.6X10 ¹	6.9X10 ³	1.9X10 ⁵
Re-187		Unlimited	Unlimited	Unlimited	Unlimited	1.4X10 ⁻⁹	3.8X10 ⁻⁸
Re-188		4.0X10 ⁻¹	1.1X10 ¹	4.0X10 ⁻¹	1.1X10 ¹	3.6X10 ⁴	9.8X10 ⁵
Re-189 (a)		3.0	8.1X10 ¹	6.0X10 ⁻¹	1.6X10 ¹	2.5X10 ⁴	6.8X10 ⁵
Re(nat)		Unlimited	Unlimited	Unlimited	Unlimited	0.0	2.4X10 ⁻⁸
Rh-99	Rhodium (45)	2.0	5.4X10 ¹	2.0	5.4X10 ¹	3.0X10 ³	8.2X10 ⁴

Symbol of radionuclide	Element and atomic number	A ₁ (TBq)	A ₁ (Ci) ^b	A ₂ (TBq)	A ₂ (Ci) ^b	Specific activity	
						(TBq/g)	(Ci/g)
Rh-101		4.0	1.1X10 ²	3.0	8.1X10 ¹	4.1X10 ¹	1.1X10 ³
Rh-102		5.0X10 ⁻¹	1.4X10 ¹	5.0X10 ⁻¹	1.4X10 ¹	4.5X10 ¹	1.2X10 ³
Rh-102m		2.0	5.4X10 ¹	2.0	5.4X10 ¹	2.3X10 ²	6.2X10 ³
Rh-103m		4.0X10 ¹	1.1X10 ³	4.0X10 ¹	1.1X10 ³	1.2X10 ⁶	3.3X10 ⁷
Rh-105		1.0X10 ¹	2.7X10 ²	8.0X10 ⁻¹	2.2X10 ¹	3.1X10 ⁴	8.4X10 ⁵
Rn-222 (a)	Radon (86)	3.0X10 ⁻¹	8.1	4.0X10 ⁻³	1.1X10 ⁻¹	5.7X10 ³	1.5X10 ⁵
Ru-97	Ruthenium (44)	5.0	1.4X10 ²	5.0	1.4X10 ²	1.7X10 ⁴	4.6X10 ⁵
Ru-103 (a)		2.0	5.4X10 ¹	2.0	5.4X10 ¹	1.2X10 ³	3.2X10 ⁴
Ru-105		1.0	2.7X10 ¹	6.0X10 ⁻¹	1.6X10 ¹	2.5X10 ⁵	6.7X10 ⁶
Ru-106 (a)		2.0X10 ⁻¹	5.4	2.0X10 ⁻¹	5.4	1.2X10 ²	3.3X10 ³
S-35	Sulphur (16)	4.0X10 ¹	1.1X10 ³	3.0	8.1X10 ¹	1.6X10 ³	4.3X10 ⁴
Sb-122	Antimony (51)	4.0X10 ⁻¹	1.1X10 ¹	4.0X10 ⁻¹	1.1X10 ¹	1.5X10 ⁴	4.0X10 ⁵
Sb-124		6.0X10 ⁻¹	1.6X10 ¹	6.0X10 ⁻¹	1.6X10 ¹	6.5X10 ²	1.7X10 ⁴
Sb-125		2.0	5.4X10 ¹	1.0	2.7X10 ¹	3.9X10 ¹	1.0X10 ³
Sb-126		4.0X10 ⁻¹	1.1X10 ¹	4.0X10 ⁻¹	1.1X10 ¹	3.1X10 ³	8.4X10 ⁴
Sc-44	Scandium (21)	5.0X10 ⁻¹	1.4X10 ¹	5.0X10 ⁻¹	1.4X10 ¹	6.7X10 ⁵	1.8X10 ⁷
Sc-46		5.0X10 ⁻¹	1.4X10 ¹	5.0X10 ⁻¹	1.4X10 ¹	1.3X10 ³	3.4X10 ⁴
Sc-47		1.0X10 ¹	2.7X10 ²	7.0X10 ⁻¹	1.9X10 ¹	3.1X10 ⁴	8.3X10 ⁵
Sc-48		3.0X10 ⁻¹	8.1	3.0X10 ⁻¹	8.1	5.5X10 ⁴	1.5X10 ⁶
Se-75	Selenium (34)	3.0	8.1X10 ¹	3.0	8.1X10 ¹	5.4X10 ²	1.5X10 ⁴
Se-79		4.0X10 ¹	1.1X10 ³	2.0	5.4X10 ¹	2.6X10 ⁻³	7.0X10 ⁻²

Symbol of radionuclide	Element and atomic number	A ₁ (TBq)	A ₁ (Ci) ^b	A ₂ (TBq)	A ₂ (Ci) ^b	Specific activity	
						(TBq/g)	(Ci/g)
Si-31	Silicon (14)	6.0X10 ⁻¹	1.6X10 ¹	6.0X10 ⁻¹	1.6X10 ¹	1.4X10 ⁶	3.9X10 ⁷
Si-32		4.0X10 ¹	1.1X10 ³	5.0X10 ⁻¹	1.4X10 ¹	3.9	1.1X10 ²
Sm-145	Samarium (62)	1.0X10 ¹	2.7X10 ²	1.0X10 ¹	2.7X10 ²	9.8X10 ¹	2.6X10 ³
Sm-147		Unlimited	Unlimited	Unlimited	Unlimited	8.5X10 ⁻¹	2.3X10 ⁻⁸
Sm-151		4.0X10 ¹	1.1X10 ³	1.0X10 ¹	2.7X10 ²	9.7X10 ⁻¹	2.6X10 ¹
Sm-153		9.0	2.4X10 ²	6.0X10 ⁻¹	1.6X10 ¹	1.6X10 ⁴	4.4X10 ⁵
Sn-113 (a)	Tin (50)	4.0	1.1X10 ²	2.0	5.4X10 ¹	3.7X10 ²	1.0X10 ⁴
Sn-117m		7.0	1.9X10 ²	4.0X10 ⁻¹	1.1X10 ¹	3.0X10 ³	8.2X10 ⁴
Sn-119m		4.0X10 ¹	1.1X10 ³	3.0X10 ¹	8.1X10 ²	1.4X10 ²	3.7X10 ³
Sn-121m (a)		4.0X10 ¹	1.1X10 ³	9.0X10 ⁻¹	2.4X10 ¹	2.0	5.4X10 ¹
Sn-123		8.0X10 ⁻¹	2.2X10 ¹	6.0X10 ⁻¹	1.6X10 ¹	3.0X10 ²	8.2X10 ³
Sn-125		4.0X10 ⁻¹	1.1X10 ¹	4.0X10 ⁻¹	1.1X10 ¹	4.0X10 ³	1.1X10 ⁵
Sn-126 (a)		6.0X10 ⁻¹	1.6X10 ¹	4.0X10 ⁻¹	1.1X10 ¹	1.0X10 ⁻³	2.8X10 ⁻²
Sr-82 (a)	Strontium (38)	2.0X10 ⁻¹	5.4	2.0X10 ⁻¹	5.4	2.3X10 ³	6.2X10 ⁴
Sr-85		2.0	5.4X10 ¹	2.0	5.4X10 ¹	8.8X10 ²	2.4X10 ⁴
Sr-85m		5.0	1.4X10 ²	5.0	1.4X10 ²	1.2X10 ⁶	3.3X10 ⁷
Sr-87m		3.0	8.1X10 ¹	3.0	8.1X10 ¹	4.8X10 ⁵	1.3X10 ⁷
Sr-89		6.0X10 ⁻¹	1.6X10 ¹	6.0X10 ⁻¹	1.6X10 ¹	1.1X10 ³	2.9X10 ⁴
Sr-90 (a)		3.0X10 ⁻¹	8.1	3.0X10 ⁻¹	8.1	5.1	1.4X10 ²
Sr-91 (a)		3.0X10 ⁻¹	8.1	3.0X10 ⁻¹	8.1	1.3X10 ⁵	3.6X10 ⁶
Sr-92 (a)		1.0	2.7X10 ¹	3.0X10 ⁻¹	8.1	4.7X10 ⁵	1.3X10 ⁷

Symbol of radionuclide	Element and atomic number	A ₁ (TBq)	A ₁ (Ci) ^b	A ₂ (TBq)	A ₂ (Ci) ^b	Specific activity	
						(TBq/g)	(Ci/g)
T(H-3)	Tritium (1)	4.0X10 ¹	1.1X10 ³	4.0X10 ¹	1.1X10 ³	3.6X10 ²	9.7X10 ³
Ta-178 (long-lived)	Tantalum (73)	1.0	2.7X10 ¹	8.0X10 ⁻¹	2.2X10 ¹	4.2X10 ⁶	1.1X10 ⁸
Ta-179		3.0X10 ¹	8.1X10 ²	3.0X10 ¹	8.1X10 ²	4.1X10 ¹	1.1X10 ³
Ta-182		9.0X10 ⁻¹	2.4X10 ¹	5.0X10 ⁻¹	1.4X10 ¹	2.3X10 ²	6.2X10 ³
Tb-157	Terbium (65)	4.0X10 ¹	1.1X10 ³	4.0X10 ¹	1.1X10 ³	5.6X10 ⁻¹	1.5X10 ¹
Tb-158		1.0	2.7X10 ¹	1.0	2.7X10 ¹	5.6X10 ⁻¹	1.5X10 ¹
Tb-160		1.0	2.7X10 ¹	6.0X10 ⁻¹	1.6X10 ¹	4.2X10 ²	1.1X10 ⁴
Tc-95m (a)	Technetium (43)	2.0	5.4X10 ¹	2.0	5.4X10 ¹	8.3X10 ²	2.2X10 ⁴
Tc-96		4.0X10 ⁻¹	1.1X10 ¹	4.0X10 ⁻¹	1.1X10 ¹	1.2X10 ⁴	3.2X10 ⁵
Tc-96m (a)		4.0X10 ⁻¹	1.1X10 ¹	4.0X10 ⁻¹	1.1X10 ¹	1.4X10 ⁶	3.8X10 ⁷
Tc-97		Unlimited	Unlimited	Unlimited	Unlimited	5.2X10 ⁻⁵	1.4X10 ⁻³
Tc-97m		4.0X10 ¹	1.1X10 ³	1.0	2.7X10 ¹	5.6X10 ²	1.5X10 ⁴
Tc-98		8.0X10 ⁻¹	2.2X10 ¹	7.0X10 ⁻¹	1.9X10 ¹	3.2X10 ⁻⁵	8.7X10 ⁻⁴
Tc-99		4.0X10 ¹	1.1X10 ³	9.0X10 ⁻¹	2.4X10 ¹	6.3X10 ⁻⁴	1.7X10 ⁻²
Tc-99m		1.0X10 ¹	2.7X10 ²	4.0	1.1X10 ²	1.9X10 ⁵	5.3X10 ⁶
Te-121	Tellurium (52)	2.0	5.4X10 ¹	2.0	5.4X10 ¹	2.4X10 ³	6.4X10 ⁴
Te-121m		5.0	1.4X10 ²	3.0	8.1X10 ¹	2.6X10 ²	7.0X10 ³
Te-123m		8.0	2.2X10 ²	1.0	2.7X10 ¹	3.3X10 ²	8.9X10 ³
Te-125m		2.0X10 ¹	5.4X10 ²	9.0X10 ⁻¹	2.4X10 ¹	6.7X10 ²	1.8X10 ⁴
Te-127		2.0X10 ¹	5.4X10 ²	7.0X10 ⁻¹	1.9X10 ¹	9.8X10 ⁴	2.6X10 ⁶
Te-127m (a)		2.0X10 ¹	5.4X10 ²	5.0X10 ⁻¹	1.4X10 ¹	3.5X10 ²	9.4X10 ³

Symbol of radionuclide	Element and atomic number	A ₁ (TBq)	A ₁ (Ci) ^b	A ₂ (TBq)	A ₂ (Ci) ^b	Specific activity	
						(TBq/g)	(Ci/g)
Te-129		7.0X10 ⁻¹	1.9X10 ¹	6.0X10 ⁻¹	1.6X10 ¹	7.7X10 ⁵	2.1X10 ⁷
Te-129m (a)		8.0X10 ⁻¹	2.2X10 ¹	4.0X10 ⁻¹	1.1X10 ¹	1.1X10 ³	3.0X10 ⁴
Te-131m (a)		7.0X10 ⁻¹	1.9X10 ¹	5.0X10 ⁻¹	1.4X10 ¹	3.0X10 ⁴	8.0X10 ⁵
Te-132 (a)		5.0X10 ⁻¹	1.4X10 ¹	4.0X10 ⁻¹	1.1X10 ¹	3.1X10 ⁴	3.0X10 ⁵
Th-227	Thorium (90)	1.0X10 ¹	2.7X10 ²	5.0X10 ⁻³	1.4X10 ⁻¹	1.1X10 ³	3.1X10 ⁴
Th-228 (a)		5.0X10 ⁻¹	1.4X10 ¹	1.0X10 ⁻³	2.7X10 ⁻²	3.0X10 ¹	8.2X10 ²
Th-229		5.0	1.4X10 ²	5.0X10 ⁻⁴	1.4X10 ⁻²	7.9X10 ⁻³	2.1X10 ⁻¹
Th-230		1.0X10 ¹	2.7X10 ²	1.0X10 ⁻³	2.7X10 ⁻²	7.6X10 ⁻⁴	2.1X10 ⁻²
Th-231		4.0X10 ¹	1.1X10 ³	2.0X10 ⁻²	5.4X10 ⁻¹	2.0X10 ⁴	5.3X10 ⁵
Th-232		Unlimited	Unlimited	Unlimited	Unlimited	4.0X10 ⁻⁹	1.1X10 ⁻⁷
Th-234 (a)		3.0X10 ⁻¹	8.1	3.0X10 ⁻¹	8.1	8.6X10 ²	2.3X10 ⁴
Th(nat)		Unlimited	Unlimited	Unlimited	Unlimited	8.1X10 ⁻⁹	2.2X10 ⁻⁷
Ti-44 (a)	Titanium (22)	5.0X10 ⁻¹	1.4X10 ¹	4.0X10 ⁻¹	1.1X10 ¹	6.4	1.7X10 ²
Tl-200	Thallium (81)	9.0X10 ⁻¹	2.4X10 ¹	9.0X10 ⁻¹	2.4X10 ¹	2.2X10 ⁴	6.0X10 ⁵
Tl-201		1.0X10 ¹	2.7X10 ²	4.0	1.1X10 ²	7.9X10 ³	2.1X10 ⁵
Tl-202		2.0	5.4X10 ¹	2.0	5.4X10 ¹	2.0X10 ³	5.3X10 ⁴
Tl-204		1.0X10 ¹	2.7X10 ²	7.0X10 ⁻¹	1.9X10 ¹	1.7X10 ¹	4.6X10 ²
Tm-167	Thulium (69)	7.0	1.9X10 ²	8.0X10 ⁻¹	2.2X10 ¹	3.1X10 ³	8.5X10 ⁴
Tm-170		3.0	8.1X10 ¹	6.0X10 ⁻¹	1.6X10 ¹	2.2X10 ²	6.0X10 ³
Tm-171		4.0X10 ¹	1.1X10 ³	4.0X10 ¹	1.1X10 ³	4.0X10 ¹	1.1X10 ³
U-230 (fast lung)	Uranium (92)	4.0X10 ¹	1.1X10 ³	1.0X10 ⁻¹	2.7	1.0X10 ³	2.7X10 ⁴

Symbol of radionuclide	Element and atomic number	A ₁ (TBq)	A ₁ (Ci) ^b	A ₂ (TBq)	A ₂ (Ci) ^b	Specific activity	
						(TBq/g)	(Ci/g)
absorption) (a)(d)							
U-230 (medium lung absorption) (a)(e)		4.0X10 ¹	1.1X10 ³	4.0X10 ⁻³	1.1X10 ⁻¹	1.0X10 ³	2.7X10 ⁴
U-230 (slow lung absorption) (a)(f)		3.0X10 ¹	8.1X10 ²	3.0X10 ⁻³	8.1X10 ⁻²	1.0X10 ³	2.7X10 ⁴
U-232 (fast lung absorption) (d)		4.0X10 ¹	1.1X10 ³	1.0X10 ⁻²	2.7X10 ⁻¹	8.3X10 ⁻¹	2.2X10 ¹
U-232 (medium lung absorption) (e)		4.0X10 ¹	1.1X10 ³	7.0X10 ⁻³	1.9X10 ⁻¹	8.3X10 ⁻¹	2.2X10 ¹
U-232 (slow lung absorption) (f)		1.0X10 ¹	2.7X10 ²	1.0X10 ⁻³	2.7X10 ⁻²	8.3X10 ⁻¹	2.2X10 ¹
U-233 (fast lung absorption) (d)		4.0X10 ¹	1.1X10 ³	9.0X10 ⁻²	2.4	3.6X10 ⁻⁴	9.7X10 ⁻³
U-233 (medium lung absorption) (e)		4.0X10 ¹	1.1X10 ³	2.0X10 ⁻²	5.4X10 ⁻¹	3.6X10 ⁻⁴	9.7X10 ⁻³
U-233 (slow lung absorption) (f)		4.0X10 ¹	1.1X10 ³	6.0X10 ⁻³	1.6X10 ⁻¹	3.6X10 ⁻⁴	9.7X10 ⁻³
U-234 (fast lung absorption) (d)		4.0X10 ¹	1.1X10 ³	9.0X10 ⁻²	2.4	2.3X10 ⁻⁴	6.2X10 ⁻³
U-234 (medium lung absorption) (e)		4.0X10 ¹	1.1X10 ³	2.0X10 ⁻²	5.4X10 ⁻¹	2.3X10 ⁻⁴	6.2X10 ⁻³
U-234 (slow lung absorption) (f)		4.0X10 ¹	1.1X10 ³	6.0X10 ⁻³	1.6X10 ⁻¹	2.3X10 ⁻⁴	6.2X10 ⁻³
U-235 (all lung absorption types)		Unlimited	Unlimited	Unlimited	Unlimited	8.0X10 ⁻⁸	2.2X10 ⁻⁶

Symbol of radionuclide	Element and atomic number	A ₁ (TBq)	A ₁ (Ci) ^b	A ₂ (TBq)	A ₂ (Ci) ^b	Specific activity	
						(TBq/g)	(Ci/g)
(a),(d),(e),(f)							
U-236 (fast lung absorption) (d)		Unlimited	Unlimited	Unlimited	Unlimited	2.4X10 ⁻⁶	6.5X10 ⁻⁵
U-236 (medium lung absorption) (e)		4.0X10 ¹	1.1X10 ³	2.0X10 ⁻²	5.4X10 ⁻¹	2.4X10 ⁻⁶	6.5X10 ⁻⁵
U-236 (slow lung absorption) (f)		4.0X10 ¹	1.1X10 ³	6.0X10 ⁻³	1.6X10 ⁻¹	2.4X10 ⁻⁶	6.5X10 ⁻⁵
U-238 (all lung absorption types) (d),(e),(f)		Unlimited	Unlimited	Unlimited	Unlimited	1.2X10 ⁻⁸	3.4X10 ⁻⁷
U (nat)		Unlimited	Unlimited	Unlimited	Unlimited	2.6X10 ⁻⁸	7.1X10 ⁻⁷
U (enriched to 20% or less) (g)		Unlimited	Unlimited	Unlimited	Unlimited	See Table 257-6	See Table 257-6
U (dep)		Unlimited	Unlimited	Unlimited	Unlimited	See Table 257-6	(See Table 257-5)
V-48	Vanadium (23)	4.0X10 ⁻¹	1.1X10 ¹	4.0X10 ⁻¹	1.1X10 ¹	6.3X10 ³	1.7X10 ⁵
V-49		4.0X10 ¹	1.1X10 ³	4.0X10 ¹	1.1X10 ³	3.0X10 ²	8.1X10 ³
W-178 (a)	Tungsten (74)	9.0	2.4X10 ²	5.0	1.4X10 ²	1.3X10 ³	3.4X10 ⁴
W-181		3.0X10 ¹	8.1X10 ²	3.0X10 ¹	8.1X10 ²	2.2X10 ²	6.0X10 ³
W-185		4.0X10 ¹	1.1X10 ³	8.0X10 ⁻¹	2.2X10 ¹	3.5X10 ²	9.4X10 ³
W-187		2.0	5.4X10 ¹	6.0X10 ⁻¹	1.6X10 ¹	2.6X10 ⁴	7.0X10 ⁵
W-188 (a)		4.0X10 ⁻¹	1.1X10 ¹	3.0X10 ⁻¹	8.1	3.7X10 ²	1.0X10 ⁴
Xe-122 (a)	Xenon (54)	4.0X10 ⁻¹	1.1X10 ¹	4.0X10 ⁻¹	1.1X10 ¹	4.8X10 ⁴	1.3X10 ⁶
Xe-123		2.0	5.4X10 ¹	7.0X10 ⁻¹	1.9X10 ¹	4.4X10 ⁵	1.2X10 ⁷

Symbol of radionuclide	Element and atomic number	A ₁ (TBq)	A ₁ (Ci) ^b	A ₂ (TBq)	A ₂ (Ci) ^b	Specific activity	
						(TBq/g)	(Ci/g)
Xe-127		4.0	1.1X10 ²	2.0	5.4X10 ¹	1.0X10 ³	2.8X10 ⁴
Xe-131m		4.0X10 ¹	1.1X10 ³	4.0X10 ¹	1.1X10 ³	3.1X10 ³	8.4X10 ⁴
Xe-133		2.0X10 ¹	5.4X10 ²	1.0X10 ¹	2.7X10 ²	6.9X10 ³	1.9X10 ⁵
Xe-135		3.0	8.1X10 ¹	2.0	5.4X10 ¹	9.5X10 ⁴	2.6X10 ⁶
Y-87 (a)	Yttrium (39)	1.0	2.7X10 ¹	1.0	2.7X10 ¹	1.7X10 ⁴	4.5X10 ⁵
Y-88		4.0X10 ⁻¹	1.1X10 ¹	4.0X10 ⁻¹	1.1X10 ¹	5.2X10 ²	1.4X10 ⁴
Y-90		3.0X10 ⁻¹	8.1	3.0X10 ⁻¹	8.1	2.0X10 ⁴	5.4X10 ⁵
Y-91		6.0X10 ⁻¹	1.6X10 ¹	6.0X10 ⁻¹	1.6X10 ¹	9.1X10 ²	2.5X10 ⁴
Y-91m		2.0	5.4X10 ¹	2.0	5.4X10 ¹	1.5X10 ⁶	4.2X10 ⁷
Y-92		2.0X10 ⁻¹	5.4	2.0X10 ⁻¹	5.4	3.6X10 ⁵	9.6X10 ⁶
Y-93		3.0X10 ⁻¹	8.1	3.0X10 ⁻¹	8.1	1.2X10 ⁵	3.3X10 ⁶
Yb-169	Ytterbium (70)	4.0	1.1X10 ²	1.0	2.7X10 ¹	8.9X10 ²	2.4X10 ⁴
Yb-175		3.0X10 ¹	8.1X10 ²	9.0X10 ⁻¹	2.4X10 ¹	6.6X10 ³	1.8X10 ⁵
Zn-65	Zinc (30)	2.0	5.4X10 ¹	2.0	5.4X10 ¹	3.0X10 ²	8.2X10 ³
Zn-69		3.0	8.1X10 ¹	6.0X10 ⁻¹	1.6X10 ¹	1.8X10 ⁶	4.9X10 ⁷
Zn-69m (a)		3.0	8.1X10 ¹	6.0X10 ⁻¹	1.6X10 ¹	1.2X10 ⁵	3.3X10 ⁶
Zr-88	Zirconium (40)	3.0	8.1X10 ¹	3.0	8.1X10 ¹	6.6X10 ²	1.8X10 ⁴
Zr-93		Unlimited	Unlimited	Unlimited	Unlimited	9.3X10 ⁻⁵	2.5X10 ⁻³
Zr-95 (a)		2.0	5.4X10 ¹	8.0X10 ⁻¹	2.2X10 ¹	7.9X10 ²	2.1X10 ⁴
Zr-97 (a)		4.0X10 ⁻¹	1.1X10 ¹	4.0X10 ⁻¹	1.1X10 ¹	7.1X10 ⁴	1.9X10 ⁶

^a A₁ and/or A₂ values include contributions from daughter nuclides with half-lives less than 10 days.

- ^b The values of A_1 and A_2 in Curies (Ci) are approximate and for information only; the regulatory standard units are Terabecquerels (TBq), (subsection (ee)(1) of this section - Determination of A_1 and A_2 , Section I.).
- ^c The quantity may be determined from a measurement of the rate of decay or a measurement of the radiation level at a prescribed distance from the source.
- ^d These values apply only to compounds of uranium that take the chemical form of UF_6 , UO_2F_2 and $UO_2(NO_3)_2$ in both normal and accident conditions of transport.
- ^e These values apply only to compounds of uranium that take the chemical form of UO_3 , UF_4 , UCl_4 and hexavalent compounds in both normal and accident conditions of transport.
- ^f These values apply to all compounds of uranium other than those specified in notes (d) and (e) of this table.
- ^g These values apply to unirradiated uranium only.
- ^h $A_1 = 0.1$ TBq (2.7 Ci) and $A_2 = 0.001$ TBq (0.027 Ci) for Cf-252 for domestic use.
- ⁱ $A_2 = 0.74$ TBq (20 Ci) for Mo-99 for domestic use.

Figure: 25 TAC §289.257(ee)(7)

Table 257-4

Symbol of radionuclide	Element and atomic number	Activity concentration for exempt material (Bq/g)	Activity concentration for exempt material (Ci/g)	Activity limit for exempt consignment (Bq)	Activity limit for exempt consignment (Ci)
Ac-225	Actinium (89)	1.0X10 ¹	2.7X10 ⁻¹⁰	1.0X10 ⁴	2.7X10 ⁻⁷
Ac-227		1.0X10 ⁻¹	2.7X10 ⁻¹²	1.0X10 ³	2.7X10 ⁻⁸
Ac-228		1.0X10 ¹	2.7X10 ⁻¹⁰	1.0X10 ⁶	2.7X10 ⁻⁵
Ag-105	Silver (47)	1.0X10 ²	2.7X10 ⁻⁹	1.0X10 ⁶	2.7X10 ⁻⁵
Ag-108m (b)		1.0X10 ¹	2.7X10 ⁻¹⁰	1.0X10 ⁶	2.7X10 ⁻⁵
Ag-110m		1.0X10 ¹	2.7X10 ⁻¹⁰	1.0X10 ⁶	2.7X10 ⁻⁵
Ag-111		1.0X10 ³	2.7X10 ⁻⁸	1.0X10 ⁶	2.7X10 ⁻⁵
Al-26	Aluminum (13)	1.0X10 ¹	2.7X10 ⁻¹⁰	1.0X10 ⁵	2.7X10 ⁻⁶
Am-241	Americium (95)	1.0	2.7X10 ⁻¹¹	1.0X10 ⁴	2.7X10 ⁻⁷
Am-242m (b)		1.0	2.7X10 ⁻¹¹	1.0X10 ⁴	2.7X10 ⁻⁷
Am-243 (b)		1.0	2.7X10 ⁻¹¹	1.0X10 ³	2.7X10 ⁻⁸
Ar-37	Argon (18)	1.0X10 ⁶	2.7X10 ⁻⁵	1.0X10 ⁸	2.7X10 ⁻³
Ar-39		1.0X10 ⁷	2.7X10 ⁻⁴	1.0X10 ⁴	2.7X10 ⁻⁷
Ar-41		1.0X10 ²	2.7X10 ⁻⁹	1.0X10 ⁹	2.7X10 ⁻²
As-72	Arsenic (33)	1.0X10 ¹	2.7X10 ⁻¹⁰	1.0X10 ⁵	2.7X10 ⁻⁶
As-73		1.0X10 ³	2.7X10 ⁻⁸	1.0X10 ⁷	2.7X10 ⁻⁴
As-74		1.0X10 ¹	2.7X10 ⁻¹⁰	1.0X10 ⁶	2.7X10 ⁻⁵
As-76		1.0X10 ²	2.7X10 ⁻⁹	1.0X10 ⁵	2.7X10 ⁻⁶

Symbol of radionuclide	Element and atomic number	Activity concentration for exempt material (Bq/g)	Activity concentration for exempt material (Ci/g)	Activity limit for exempt consignment (Bq)	Activity limit for exempt consignment (Ci)
As-77		1.0X10 ³	2.7X10 ⁻⁸	1.0X10 ⁶	2.7X10 ⁻⁵
At-211	Astatine (85)	1.0X10 ³	2.7X10 ⁻⁸	1.0X10 ⁷	2.7X10 ⁻⁴
Au-193	Gold (79)	1.0X10 ²	2.7X10 ⁻⁹	1.0X10 ⁷	2.7X10 ⁻⁴
Au-194		1.0X10 ¹	2.7X10 ⁻¹⁰	1.0X10 ⁶	2.7X10 ⁻⁵
Au-195		1.0X10 ²	2.7X10 ⁻⁹	1.0X10 ⁷	2.7X10 ⁻⁴
Au-198		1.0X10 ²	2.7X10 ⁻⁹	1.0X10 ⁶	2.7X10 ⁻⁵
Au-199		1.0X10 ²	2.7X10 ⁻⁹	1.0X10 ⁶	2.7X10 ⁻⁵
Ba-131	Barium (56)	1.0X10 ²	2.7X10 ⁻⁹	1.0X10 ⁶	2.7X10 ⁻⁵
Ba-133		1.0X10 ²	2.7X10 ⁻⁹	1.0X10 ⁶	2.7X10 ⁻⁵
Ba-133m		1.0X10 ²	2.7X10 ⁻⁹	1.0X10 ⁶	2.7X10 ⁻⁵
Ba-140 (b)		1.0X10 ¹	2.7X10 ⁻¹⁰	1.0X10 ⁵	2.7X10 ⁻⁶
Be-7	Beryllium (4)	1.0X10 ³	2.7X10 ⁻⁸	1.0X10 ⁷	2.7X10 ⁻⁴
Be-10		1.0X10 ⁴	2.7X10 ⁻⁷	1.0X10 ⁶	2.7X10 ⁻⁵
Bi-205	Bismuth (83)	1.0X10 ¹	2.7X10 ⁻¹⁰	1.0X10 ⁶	2.7X10 ⁻⁵
Bi-206		1.0X10 ¹	2.7X10 ⁻¹⁰	1.0X10 ⁵	2.7X10 ⁻⁶
Bi-207		1.0X10 ¹	2.7X10 ⁻¹⁰	1.0X10 ⁶	2.7X10 ⁻⁵
Bi-210		1.0X10 ³	2.7X10 ⁻⁸	1.0X10 ⁶	2.7X10 ⁻⁵
Bi-210m		1.0X10 ¹	2.7X10 ⁻¹⁰	1.0X10 ⁵	2.7X10 ⁻⁶
Bi-212 (b)		1.0X10 ¹	2.7X10 ⁻¹⁰	1.0X10 ⁵	2.7X10 ⁻⁶
Bk-247	Berkelium (97)	1.0	2.7X10 ⁻¹¹	1.0X10 ⁴	2.7X10 ⁻⁷

Symbol of radionuclide	Element and atomic number	Activity concentration for exempt material (Bq/g)	Activity concentration for exempt material (Ci/g)	Activity limit for exempt consignment (Bq)	Activity limit for exempt consignment (Ci)
Bk-249		1.0X10 ³	2.7X10 ⁻⁸	1.0X10 ⁶	2.7X10 ⁻⁵
Br-76	Bromine (35)	1.0X10 ¹	2.7X10 ⁻¹⁰	1.0X10 ⁵	2.7X10 ⁻⁶
Br-77		1.0X10 ²	2.7X10 ⁻⁹	1.0X10 ⁶	2.7X10 ⁻⁵
Br-82		1.0X10 ¹	2.7X10 ⁻¹⁰	1.0X10 ⁶	2.7X10 ⁻⁵
C-11	Carbon (6)	1.0X10 ¹	2.7X10 ⁻¹⁰	1.0X10 ⁶	2.7X10 ⁻⁵
C-14		1.0X10 ⁴	2.7X10 ⁻⁷	1.0X10 ⁷	2.7X10 ⁻⁴
Ca-41	Calcium (20)	1.0X10 ⁵	2.7X10 ⁻⁶	1.0X10 ⁷	2.7X10 ⁻⁴
Ca-45		1.0X10 ⁴	2.7X10 ⁻⁷	1.0X10 ⁷	2.7X10 ⁻⁴
Ca-47		1.0X10 ¹	2.7X10 ⁻¹⁰	1.0X10 ⁶	2.7X10 ⁻⁵
Cd-109	Cadmium (48)	1.0X10 ⁴	2.7X10 ⁻⁷	1.0X10 ⁶	2.7X10 ⁻⁵
Cd-113m		1.0X10 ³	2.7X10 ⁻⁸	1.0X10 ⁶	2.7X10 ⁻⁵
Cd-115		1.0X10 ²	2.7X10 ⁻⁹	1.0X10 ⁶	2.7X10 ⁻⁵
Cd-115m		1.0X10 ³	2.7X10 ⁻⁸	1.0X10 ⁶	2.7X10 ⁻⁵
Ce-139	Cerium (58)	1.0X10 ²	2.7X10 ⁻⁹	1.0X10 ⁶	2.7X10 ⁻⁵
Ce-141		1.0X10 ²	2.7X10 ⁻⁹	1.0X10 ⁷	2.7X10 ⁻⁴
Ce-143		1.0X10 ²	2.7X10 ⁻⁹	1.0X10 ⁶	2.7X10 ⁻⁵
Ce-144 (b)		1.0X10 ²	2.7X10 ⁻⁹	1.0X10 ⁵	2.7X10 ⁻⁶
Cf-248	Californium (98)	1.0X10 ¹	2.7X10 ⁻¹⁰	1.0X10 ⁴	2.7X10 ⁻⁷
Cf-249		1.0	2.7X10 ⁻¹¹	1.0X10 ³	2.7X10 ⁻⁸
Cf-250		1.0X10 ¹	2.7X10 ⁻¹⁰	1.0X10 ⁴	2.7X10 ⁻⁷

Symbol of radionuclide	Element and atomic number	Activity concentration for exempt material (Bq/g)	Activity concentration for exempt material (Ci/g)	Activity limit for exempt consignment (Bq)	Activity limit for exempt consignment (Ci)
Cf-251		1.0	2.7×10^{-11}	1.0×10^3	2.7×10^{-8}
Cf-252		1.0×10^1	2.7×10^{-10}	1.0×10^4	2.7×10^{-7}
Cf-253		1.0×10^2	2.7×10^{-9}	1.0×10^5	2.7×10^{-6}
Cf-254		1.0	2.7×10^{-11}	1.0×10^3	2.7×10^{-8}
Cl-36	Chlorine (17)	1.0×10^4	2.7×10^{-7}	1.0×10^6	2.7×10^{-5}
Cl-38		1.0×10^1	2.7×10^{-10}	1.0×10^5	2.7×10^{-6}
Cm-240	Curium (96)	1.0×10^2	2.7×10^{-9}	1.0×10^5	2.7×10^{-6}
Cm-241		1.0×10^2	2.7×10^{-9}	1.0×10^6	2.7×10^{-5}
Cm-242		1.0×10^2	2.7×10^{-9}	1.0×10^5	2.7×10^{-6}
Cm-243		1.0	2.7×10^{-11}	1.0×10^4	2.7×10^{-7}
Cm-244		1.0×10^1	2.7×10^{-10}	1.0×10^4	2.7×10^{-7}
Cm-245		1.0	2.7×10^{-11}	1.0×10^3	2.7×10^{-8}
Cm-246		1.0	2.7×10^{-11}	1.0×10^3	2.7×10^{-8}
Cm-247		1.0	2.7×10^{-11}	1.0×10^4	2.7×10^{-7}
Cm-248		1.0	2.7×10^{-11}	1.0×10^3	2.7×10^{-8}
Co-55	Cobalt (27)	1.0×10^1	2.7×10^{-10}	1.0×10^6	2.7×10^{-5}
Co-56		1.0×10^1	2.7×10^{-10}	1.0×10^5	2.7×10^{-6}
Co-57		1.0×10^2	2.7×10^{-9}	1.0×10^6	2.7×10^{-5}
Co-58		1.0×10^1	2.7×10^{-10}	1.0×10^6	2.7×10^{-5}
Co-58m		1.0×10^4	2.7×10^{-7}	1.0×10^7	2.7×10^{-4}

Symbol of radionuclide	Element and atomic number	Activity concentration for exempt material (Bq/g)	Activity concentration for exempt material (Ci/g)	Activity limit for exempt consignment (Bq)	Activity limit for exempt consignment (Ci)
Co-60		1.0×10^1	2.7×10^{-10}	1.0×10^5	2.7×10^{-6}
Cr-51	Chromium (24)	1.0×10^3	2.7×10^{-8}	1.0×10^7	2.7×10^{-4}
Cs-129	Cesium (55)	1.0×10^2	2.7×10^{-9}	1.0×10^5	2.7×10^{-6}
Cs-131		1.0×10^3	2.7×10^{-8}	1.0×10^6	2.7×10^{-5}
Cs-132		1.0×10^1	2.7×10^{-10}	1.0×10^5	2.7×10^{-6}
Cs-134		1.0×10^1	2.7×10^{-10}	1.0×10^4	2.7×10^{-7}
Cs-134m		1.0×10^3	2.7×10^{-8}	1.0×10^5	2.7×10^{-6}
Cs-135		1.0×10^4	2.7×10^{-7}	1.0×10^7	2.7×10^{-4}
Cs-136		1.0×10^1	2.7×10^{-10}	1.0×10^5	2.7×10^{-6}
Cs-137 (b)		1.0×10^1	2.7×10^{-10}	1.0×10^4	2.7×10^{-7}
Cu-64	Copper (29)	1.0×10^2	2.7×10^{-9}	1.0×10^6	2.7×10^{-5}
Cu-67		1.0×10^2	2.7×10^{-9}	1.0×10^6	2.7×10^{-5}
Dy-159	Dysprosium (66)	1.0×10^3	2.7×10^{-8}	1.0×10^7	2.7×10^{-4}
Dy-165		1.0×10^3	2.7×10^{-8}	1.0×10^6	2.7×10^{-5}
Dy-166		1.0×10^3	2.7×10^{-8}	1.0×10^6	2.7×10^{-5}
Er-169	Erbium (68)	1.0×10^4	2.7×10^{-7}	1.0×10^7	2.7×10^{-4}
Er-171		1.0×10^2	2.7×10^{-9}	1.0×10^6	2.7×10^{-5}
Eu-147	Europium (63)	1.0×10^2	2.7×10^{-9}	1.0×10^6	2.7×10^{-5}
Eu-148		1.0×10^1	2.7×10^{-10}	1.0×10^6	2.7×10^{-5}
Eu-149		1.0×10^2	2.7×10^{-9}	1.0×10^7	2.7×10^{-4}

Symbol of radionuclide	Element and atomic number	Activity concentration for exempt material (Bq/g)	Activity concentration for exempt material (Ci/g)	Activity limit for exempt consignment (Bq)	Activity limit for exempt consignment (Ci)
Eu-150 (short lived)		1.0X10 ³	2.7X10 ⁻⁸	1.0X10 ⁶	2.7X10 ⁻⁵
Eu-150 (long lived)		1.0X10 ¹	2.7X10 ⁻¹⁰	1.0X10 ⁶	2.7X10 ⁻⁵
Eu-152		1.0X10 ¹	2.7X10 ⁻¹⁰	1.0X10 ⁶	2.7X10 ⁻⁵
Eu-152m		1.0X10 ²	2.7X10 ⁻⁹	1.0X10 ⁶	2.7X10 ⁻⁵
Eu-154		1.0X10 ¹	2.7X10 ⁻¹⁰	1.0X10 ⁶	2.7X10 ⁻⁵
Eu-155		1.0X10 ²	2.7X10 ⁻⁹	1.0X10 ⁷	2.7X10 ⁻⁴
Eu-156		1.0X10 ¹	2.7X10 ⁻¹⁰	1.0X10 ⁶	2.7X10 ⁻⁵
F-18	Fluorine (9)	1.0X10 ¹	2.7X10 ⁻¹⁰	1.0X10 ⁶	2.7X10 ⁻⁵
Fe-52	Iron (26)	1.0X10 ¹	2.7X10 ⁻¹⁰	1.0X10 ⁶	2.7X10 ⁻⁵
Fe-55		1.0X10 ⁴	2.7X10 ⁻⁷	1.0X10 ⁶	2.7X10 ⁻⁵
Fe-59		1.0X10 ¹	2.7X10 ⁻¹⁰	1.0X10 ⁶	2.7X10 ⁻⁵
Fe-60		1.0X10 ²	2.7X10 ⁻⁹	1.0X10 ⁵	2.7X10 ⁻⁶
Ga-67	Gallium (31)	1.0X10 ²	2.7X10 ⁻⁹	1.0X10 ⁶	2.7X10 ⁻⁵
Ga-68		1.0X10 ¹	2.7X10 ⁻¹⁰	1.0X10 ⁵	2.7X10 ⁻⁶
Ga-72		1.0X10 ¹	2.7X10 ⁻¹⁰	1.0X10 ⁵	2.7X10 ⁻⁶
Gd-146	Gadolinium (64)	1.0X10 ¹	2.7X10 ⁻¹⁰	1.0X10 ⁶	2.7X10 ⁻⁵
Gd-148		1.0X10 ¹	2.7X10 ⁻¹⁰	1.0X10 ⁴	2.7X10 ⁻⁷
Gd-153		1.0X10 ²	2.7X10 ⁻⁹	1.0X10 ⁷	2.7X10 ⁻⁴
Gd-159		1.0X10 ³	2.7X10 ⁻⁸	1.0X10 ⁶	2.7X10 ⁻⁵
Ge-68	Germanium (32)	1.0X10 ¹	2.7X10 ⁻¹⁰	1.0X10 ⁵	2.7X10 ⁻⁶

Symbol of radionuclide	Element and atomic number	Activity concentration for exempt material (Bq/g)	Activity concentration for exempt material (Ci/g)	Activity limit for exempt consignment (Bq)	Activity limit for exempt consignment (Ci)
Ge-71		1.0X10 ⁴	2.7X10 ⁻⁷	1.0X10 ⁸	2.7X10 ⁻³
Ge-77		1.0X10 ¹	2.7X10 ⁻¹⁰	1.0X10 ⁵	2.7X10 ⁻⁶
Hf-172	Hafnium (72)	1.0X10 ¹	2.7X10 ⁻¹⁰	1.0X10 ⁶	2.7X10 ⁻⁵
Hf-175		1.0X10 ²	2.7X10 ⁻⁹	1.0X10 ⁶	2.7X10 ⁻⁵
Hf-181		1.0X10 ¹	2.7X10 ⁻¹⁰	1.0X10 ⁶	2.7X10 ⁻⁵
Hf-182		1.0X10 ²	2.7X10 ⁻⁹	1.0X10 ⁶	2.7X10 ⁻⁵
Hg-194	Mercury (80)	1.0X10 ¹	2.7X10 ⁻¹⁰	1.0X10 ⁶	2.7X10 ⁻⁵
Hg-195m		1.0X10 ²	2.7X10 ⁻⁹	1.0X10 ⁶	2.7X10 ⁻⁵
Hg-197		1.0X10 ²	2.7X10 ⁻⁹	1.0X10 ⁷	2.7X10 ⁻⁴
Hg-197m		1.0X10 ²	2.7X10 ⁻⁹	1.0X10 ⁶	2.7X10 ⁻⁵
Hg-203		1.0X10 ²	2.7X10 ⁻⁹	1.0X10 ⁵	2.7X10 ⁻⁶
Ho-166	Holmium (67)	1.0X10 ³	2.7X10 ⁻⁸	1.0X10 ⁵	2.7X10 ⁻⁶
Ho-166m		1.0X10 ¹	2.7X10 ⁻¹⁰	1.0X10 ⁶	2.7X10 ⁻⁵
I-123	Iodine (53)	1.0X10 ²	2.7X10 ⁻⁹	1.0X10 ⁷	2.7X10 ⁻⁴
I-124		1.0X10 ¹	2.7X10 ⁻¹⁰	1.0X10 ⁶	2.7X10 ⁻⁵
I-125		1.0X10 ³	2.7X10 ⁻⁸	1.0X10 ⁶	2.7X10 ⁻⁵
I-126		1.0X10 ²	2.7X10 ⁻⁹	1.0X10 ⁶	2.7X10 ⁻⁵
I-129		1.0X10 ²	2.7X10 ⁻⁹	1.0X10 ⁵	2.7X10 ⁻⁶
I-131		1.0X10 ²	2.7X10 ⁻⁹	1.0X10 ⁶	2.7X10 ⁻⁵
I-132		1.0X10 ¹	2.7X10 ⁻¹⁰	1.0X10 ⁵	2.7X10 ⁻⁶

Symbol of radionuclide	Element and atomic number	Activity concentration for exempt material (Bq/g)	Activity concentration for exempt material (Ci/g)	Activity limit for exempt consignment (Bq)	Activity limit for exempt consignment (Ci)
I-133		1.0X10 ¹	2.7X10 ⁻¹⁰	1.0X10 ⁶	2.7X10 ⁻⁵
I-134		1.0X10 ¹	2.7X10 ⁻¹⁰	1.0X10 ⁵	2.7X10 ⁻⁶
I-135		1.0X10 ¹	2.7X10 ⁻¹⁰	1.0X10 ⁶	2.7X10 ⁻⁵
In-111	Indium (49)	1.0X10 ²	2.7X10 ⁻⁹	1.0X10 ⁶	2.7X10 ⁻⁵
In-113m		1.0X10 ²	2.7X10 ⁻⁹	1.0X10 ⁶	2.7X10 ⁻⁵
In-114m		1.0X10 ²	2.7X10 ⁻⁹	1.0X10 ⁶	2.7X10 ⁻⁵
In-115m		1.0X10 ²	2.7X10 ⁻⁹	1.0X10 ⁶	2.7X10 ⁻⁵
Ir-189	Iridium (77)	1.0X10 ²	2.7X10 ⁻⁹	1.0X10 ⁷	2.7X10 ⁻⁴
Ir-190		1.0X10 ¹	2.7X10 ⁻¹⁰	1.0X10 ⁶	2.7X10 ⁻⁵
Ir-192		1.0X10 ¹	2.7X10 ⁻¹⁰	1.0X10 ⁴	2.7X10 ⁻⁷
Ir-194		1.0X10 ²	2.7X10 ⁻⁹	1.0X10 ⁵	2.7X10 ⁻⁶
K-40	Potassium (19)	1.0X10 ²	2.7X10 ⁻⁹	1.0X10 ⁶	2.7X10 ⁻⁵
K-42		1.0X10 ²	2.7X10 ⁻⁹	1.0X10 ⁶	2.7X10 ⁻⁵
K-43		1.0X10 ¹	2.7X10 ⁻¹⁰	1.0X10 ⁶	2.7X10 ⁻⁵
Kr-81	Krypton (36)	1.0X10 ⁴	2.7X10 ⁻⁷	1.0X10 ⁷	2.7X10 ⁻⁴
Kr-85		1.0X10 ⁵	2.7X10 ⁻⁶	1.0X10 ⁴	2.7X10 ⁻⁷
Kr-85m		1.0X10 ³	2.7X10 ⁻⁸	1.0X10 ¹⁰	2.7X10 ⁻¹
Kr-87		1.0X10 ²	2.7X10 ⁻⁹	1.0X10 ⁹	2.7X10 ⁻²
La-137	Lanthanum (57)	1.0X10 ³	2.7X10 ⁻⁸	1.0X10 ⁷	2.7X10 ⁻⁴
La-140		1.0X10 ¹	2.7X10 ⁻¹⁰	1.0X10 ⁵	2.7X10 ⁻⁶

Symbol of radionuclide	Element and atomic number	Activity concentration for exempt material (Bq/g)	Activity concentration for exempt material (Ci/g)	Activity limit for exempt consignment (Bq)	Activity limit for exempt consignment (Ci)
Lu-172	Lutetium (71)	1.0X10 ¹	2.7X10 ⁻¹⁰	1.0X10 ⁶	2.7X10 ⁻⁵
Lu-173		1.0X10 ²	2.7X10 ⁻⁹	1.0X10 ⁷	2.7X10 ⁻⁴
Lu-174		1.0X10 ²	2.7X10 ⁻⁹	1.0X10 ⁷	2.7X10 ⁻⁴
Lu-174m		1.0X10 ²	2.7X10 ⁻⁹	1.0X10 ⁷	2.7X10 ⁻⁴
Lu-177		1.0X10 ³	2.7X10 ⁻⁸	1.0X10 ⁷	2.7X10 ⁻⁴
Mg-28	Magnesium (12)	1.0X10 ¹	2.7X10 ⁻¹⁰	1.0X10 ⁵	2.7X10 ⁻⁶
Mn-52	Manganese (25)	1.0X10 ¹	2.7X10 ⁻¹⁰	1.0X10 ⁵	2.7X10 ⁻⁶
Mn-53		1.0X10 ⁴	2.7X10 ⁻⁷	1.0X10 ⁹	2.7X10 ⁻²
Mn-54		1.0X10 ¹	2.7X10 ⁻¹⁰	1.0X10 ⁶	2.7X10 ⁻⁵
Mn-56		1.0X10 ¹	2.7X10 ⁻¹⁰	1.0X10 ⁵	2.7X10 ⁻⁶
Mo-93	Molybdenum (42)	1.0X10 ³	2.7X10 ⁻⁸	1.0X10 ⁸	2.7X10 ⁻³
Mo-99		1.0X10 ²	2.7X10 ⁻⁹	1.0X10 ⁶	2.7X10 ⁻⁵
N-13	Nitrogen (7)	1.0X10 ²	2.7X10 ⁻⁹	1.0X10 ⁹	2.7X10 ⁻²
Na-22	Sodium (11)	1.0X10 ¹	2.7X10 ⁻¹⁰	1.0X10 ⁶	2.7X10 ⁻⁵
Na-24		1.0X10 ¹	2.7X10 ⁻¹⁰	1.0X10 ⁵	2.7X10 ⁻⁶
Nb-93m	Niobium (41)	1.0X10 ⁴	2.7X10 ⁻⁷	1.0X10 ⁷	2.7X10 ⁻⁴
Nb-94		1.0X10 ¹	2.7X10 ⁻¹⁰	1.0X10 ⁶	2.7X10 ⁻⁵
Nb-95		1.0X10 ¹	2.7X10 ⁻¹⁰	1.0X10 ⁶	2.7X10 ⁻⁵
Nb-97		1.0X10 ¹	2.7X10 ⁻¹⁰	1.0X10 ⁶	2.7X10 ⁻⁵
Nd-147	Neodymium (60)	1.0X10 ²	2.7X10 ⁻⁹	1.0X10 ⁶	2.7X10 ⁻⁵

Symbol of radionuclide	Element and atomic number	Activity concentration for exempt material (Bq/g)	Activity concentration for exempt material (Ci/g)	Activity limit for exempt consignment (Bq)	Activity limit for exempt consignment (Ci)
Nd-149		1.0X10 ²	2.7X10 ⁻⁹	1.0X10 ⁶	2.7X10 ⁻⁵
Ni-59	Nickel (28)	1.0X10 ⁴	2.7X10 ⁻⁷	1.0X10 ⁸	2.7X10 ⁻³
Ni-63		1.0X10 ⁵	2.7X10 ⁻⁶	1.0X10 ⁸	2.7X10 ⁻³
Ni-65		1.0X10 ¹	2.7X10 ⁻¹⁰	1.0X10 ⁶	2.7X10 ⁻⁵
Np-235	Neptunium (93)	1.0X10 ³	2.7X10 ⁻⁸	1.0X10 ⁷	2.7X10 ⁻⁴
Np-236 (short-lived)		1.0X10 ³	2.7X10 ⁻⁸	1.0X10 ⁷	2.7X10 ⁻⁴
Np-236 (long-lived)		1.0X10 ²	2.7X10 ⁻⁹	1.0X10 ⁵	2.7X10 ⁻⁶
Np-237 (b)		1.0	2.7X10 ⁻¹¹	1.0X10 ³	2.7X10 ⁻⁸
Np-239		1.0X10 ²	2.7X10 ⁻⁹	1.0X10 ⁷	2.7X10 ⁻⁴
Os-185	Osmium (76)	1.0X10 ¹	2.7X10 ⁻¹⁰	1.0X10 ⁶	2.7X10 ⁻⁵
Os-191		1.0X10 ²	2.7X10 ⁻⁹	1.0X10 ⁷	2.7X10 ⁻⁴
Os-191m		1.0X10 ³	2.7X10 ⁻⁸	1.0X10 ⁷	2.7X10 ⁻⁴
Os-193		1.0X10 ²	2.7X10 ⁻⁹	1.0X10 ⁶	2.7X10 ⁻⁵
Os-194		1.0X10 ²	2.7X10 ⁻⁹	1.0X10 ⁵	2.7X10 ⁻⁶
P-32	Phosphorus (15)	1.0X10 ³	2.7X10 ⁻⁸	1.0X10 ⁵	2.7X10 ⁻⁶
P-33		1.0X10 ⁵	2.7X10 ⁻⁶	1.0X10 ⁸	2.7X10 ⁻³
Pa-230	Protactinium (91)	1.0X10 ¹	2.7X10 ⁻¹⁰	1.0X10 ⁶	2.7X10 ⁻⁵
Pa-231		1.0	2.7X10 ⁻¹¹	1.0X10 ³	2.7X10 ⁻⁸
Pa-233		1.0X10 ²	2.7X10 ⁻⁹	1.0X10 ⁷	2.7X10 ⁻⁴
Pb-201	Lead (82)	1.0X10 ¹	2.7X10 ⁻¹⁰	1.0X10 ⁶	2.7X10 ⁻⁵

Symbol of radionuclide	Element and atomic number	Activity concentration for exempt material (Bq/g)	Activity concentration for exempt material (Ci/g)	Activity limit for exempt consignment (Bq)	Activity limit for exempt consignment (Ci)
Pb-202		1.0X10 ³	2.7X10 ⁻⁸	1.0X10 ⁶	2.7X10 ⁻⁵
Pb-203		1.0X10 ²	2.7X10 ⁻⁹	1.0X10 ⁶	2.7X10 ⁻⁵
Pb-205		1.0X10 ⁴	2.7X10 ⁻⁷	1.0X10 ⁷	2.7X10 ⁻⁴
Pb-210 (b)		1.0X10 ¹	2.7X10 ⁻¹⁰	1.0X10 ⁴	2.7X10 ⁻⁷
Pb-212 (b)		1.0X10 ¹	2.7X10 ⁻¹⁰	1.0X10 ⁵	2.7X10 ⁻⁶
Pd-103	Palladium (46)	1.0X10 ³	2.7X10 ⁻⁸	1.0X10 ⁸	2.7X10 ⁻³
Pd-107		1.0X10 ⁵	2.7X10 ⁻⁶	1.0X10 ⁸	2.7X10 ⁻³
Pd-109		1.0X10 ³	2.7X10 ⁻⁸	1.0X10 ⁶	2.7X10 ⁻⁵
Pm-143	Promethium (61)	1.0X10 ²	2.7X10 ⁻⁹	1.0X10 ⁶	2.7X10 ⁻⁵
Pm-144		1.0X10 ¹	2.7X10 ⁻¹⁰	1.0X10 ⁶	2.7X10 ⁻⁵
Pm-145		1.0X10 ³	2.7X10 ⁻⁸	1.0X10 ⁷	2.7X10 ⁻⁴
Pm-147		1.0X10 ⁴	2.7X10 ⁻⁷	1.0X10 ⁷	2.7X10 ⁻⁴
Pm-148m		1.0X10 ¹	2.7X10 ⁻¹⁰	1.0X10 ⁶	2.7X10 ⁻⁵
Pm-149		1.0X10 ³	2.7X10 ⁻⁸	1.0X10 ⁶	2.7X10 ⁻⁵
Pm-151		1.0X10 ²	2.7X10 ⁻⁹	1.0X10 ⁶	2.7X10 ⁻⁵
Po-210	Polonium (84)	1.0X10 ¹	2.7X10 ⁻¹⁰	1.0X10 ⁴	2.7X10 ⁻⁷
Pt-142	Praseodymium (59)	1.0X10 ²	2.7X10 ⁻⁹	1.0X10 ⁵	2.7X10 ⁻⁶
Pt-143		1.0X10 ⁴	2.7X10 ⁻⁷	1.0X10 ⁶	2.7X10 ⁻⁵
Pt-188	Platinum (78)	1.0X10 ¹	2.7X10 ⁻¹⁰	1.0X10 ⁶	2.7X10 ⁻⁵
Pt-191		1.0X10 ²	2.7X10 ⁻⁹	1.0X10 ⁶	2.7X10 ⁻⁵

Symbol of radionuclide	Element and atomic number	Activity concentration for exempt material (Bq/g)	Activity concentration for exempt material (Ci/g)	Activity limit for exempt consignment (Bq)	Activity limit for exempt consignment (Ci)
Pt-193		1.0X10 ⁴	2.7X10 ⁻⁷	1.0X10 ⁷	2.7X10 ⁻⁴
Pt-193m		1.0X10 ³	2.7X10 ⁻⁸	1.0X10 ⁷	2.7X10 ⁻⁴
Pt-195m		1.0X10 ²	2.7X10 ⁻⁹	1.0X10 ⁶	2.7X10 ⁻⁵
Pt-197		1.0X10 ³	2.7X10 ⁻⁸	1.0X10 ⁶	2.7X10 ⁻⁵
Pt-197m		1.0X10 ²	2.7X10 ⁻⁹	1.0X10 ⁶	2.7X10 ⁻⁵
Pu-236	Plutonium (94)	1.0X10 ¹	2.7X10 ⁻¹⁰	1.0X10 ⁴	2.7X10 ⁻⁷
Pu-237		1.0X10 ³	2.7X10 ⁻⁸	1.0X10 ⁷	2.7X10 ⁻⁴
Pu-238		1.0	2.7X10 ⁻¹¹	1.0X10 ⁴	2.7X10 ⁻⁷
Pu-239		1.0	2.7X10 ⁻¹¹	1.0X10 ⁴	2.7X10 ⁻⁷
Pu-240		1.0	2.7X10 ⁻¹¹	1.0X10 ³	2.7X10 ⁻⁸
Pu-241		1.0X10 ²	2.7X10 ⁻⁹	1.0X10 ⁵	2.7X10 ⁻⁶
Pu-242		1.0	2.7X10 ⁻¹¹	1.0X10 ⁴	2.7X10 ⁻⁷
Pu-244		1.0	2.7X10 ⁻¹¹	1.0X10 ⁴	2.7X10 ⁻⁷
Ra-223 (b)	Radium (88)	1.0X10 ²	2.7X10 ⁻⁹	1.0X10 ⁵	2.7X10 ⁻⁶
Ra-224 (b)		1.0X10 ¹	2.7X10 ⁻¹⁰	1.0X10 ⁵	2.7X10 ⁻⁶
Ra-225		1.0X10 ²	2.7X10 ⁻⁹	1.0X10 ⁵	2.7X10 ⁻⁶
Ra-226 (b)		1.0X10 ¹	2.7X10 ⁻¹⁰	1.0X10 ⁴	2.7X10 ⁻⁷
Ra-228 (b)		1.0X10 ¹	2.7X10 ⁻¹⁰	1.0X10 ⁵	2.7X10 ⁻⁶
Rb-81	Rubidium (37)	1.0X10 ¹	2.7X10 ⁻¹⁰	1.0X10 ⁶	2.7X10 ⁻⁵
Rb-83		1.0X10 ²	2.7X10 ⁻⁹	1.0X10 ⁶	2.7X10 ⁻⁵

Symbol of radionuclide	Element and atomic number	Activity concentration for exempt material (Bq/g)	Activity concentration for exempt material (Ci/g)	Activity limit for exempt consignment (Bq)	Activity limit for exempt consignment (Ci)
Rb-84		1.0X10 ¹	2.7X10 ⁻¹⁰	1.0X10 ⁶	2.7X10 ⁻⁵
Rb-86		1.0X10 ²	2.7X10 ⁻⁹	1.0X10 ⁵	2.7X10 ⁻⁶
Rb-87		1.0X10 ⁴	2.7X10 ⁻⁷	1.0X10 ⁷	2.7X10 ⁻⁴
Rb(nat)		1.0X10 ⁴	2.7X10 ⁻⁷	1.0X10 ⁷	2.7X10 ⁻⁴
Re-184	Rhenium (75)	1.0X10 ¹	2.7X10 ⁻¹⁰	1.0X10 ⁶	2.7X10 ⁻⁵
Re-184m		1.0X10 ²	2.7X10 ⁻⁹	1.0X10 ⁶	2.7X10 ⁻⁵
Re-186		1.0X10 ³	2.7X10 ⁻⁸	1.0X10 ⁶	2.7X10 ⁻⁵
Re-187		1.0X10 ⁶	2.7X10 ⁻⁵	1.0X10 ⁹	2.7X10 ⁻²
Re-188		1.0X10 ²	2.7X10 ⁻⁹	1.0X10 ⁵	2.7X10 ⁻⁶
Re-189		1.0X10 ²	2.7X10 ⁻⁹	1.0X10 ⁶	2.7X10 ⁻⁵
Re(nat)		1.0X10 ⁶	2.7X10 ⁻⁵	1.0X10 ⁹	2.7X10 ⁻²
Rh-99	Rhodium (45)	1.0X10 ¹	2.7X10 ⁻¹⁰	1.0X10 ⁶	2.7X10 ⁻⁵
Rh-101		1.0X10 ²	2.7X10 ⁻⁹	1.0X10 ⁷	2.7X10 ⁻⁴
Rh-102		1.0X10 ¹	2.7X10 ⁻¹⁰	1.0X10 ⁶	2.7X10 ⁻⁵
Rh-102m		1.0X10 ²	2.7X10 ⁻⁹	1.0X10 ⁶	2.7X10 ⁻⁵
Rh-103m		1.0X10 ⁴	2.7X10 ⁻⁷	1.0X10 ⁸	2.7X10 ⁻³
Rh-105		1.0X10 ²	2.7X10 ⁻⁹	1.0X10 ⁷	2.7X10 ⁻⁴
Rn-222 (b)	Radon (86)	1.0X10 ¹	2.7X10 ⁻¹⁰	1.0X10 ⁸	2.7X10 ⁻³
Ru-97	Ruthenium (44)	1.0X10 ²	2.7X10 ⁻⁹	1.0X10 ⁷	2.7X10 ⁻⁴
Ru-103		1.0X10 ²	2.7X10 ⁻⁹	1.0X10 ⁶	2.7X10 ⁻⁵

Symbol of radionuclide	Element and atomic number	Activity concentration for exempt material (Bq/g)	Activity concentration for exempt material (Ci/g)	Activity limit for exempt consignment (Bq)	Activity limit for exempt consignment (Ci)
Ru-105		1.0X10 ¹	2.7X10 ⁻¹⁰	1.0X10 ⁶	2.7X10 ⁻⁵
Ru-106 (b)		1.0X10 ²	2.7X10 ⁻⁹	1.0X10 ⁵	2.7X10 ⁻⁶
S-35	Sulfur (16)	1.0X10 ⁵	2.7X10 ⁻⁶	1.0X10 ⁸	2.7X10 ⁻³
Sb-122	Antimony (51)	1.0X10 ²	2.7X10 ⁻⁹	1.0X10 ⁴	2.7X10 ⁻⁷
Sb-124		1.0X10 ¹	2.7X10 ⁻¹⁰	1.0X10 ⁶	2.7X10 ⁻⁵
Sb-125		1.0X10 ²	2.7X10 ⁻⁹	1.0X10 ⁶	2.7X10 ⁻⁵
Sb-126		1.0X10 ¹	2.7X10 ⁻¹⁰	1.0X10 ⁵	2.7X10 ⁻⁶
Sc-44	Scandium (21)	1.0X10 ¹	2.7X10 ⁻¹⁰	1.0X10 ⁵	2.7X10 ⁻⁶
Sc-46		1.0X10 ¹	2.7X10 ⁻¹⁰	1.0X10 ⁶	2.7X10 ⁻⁵
Sc-47		1.0X10 ²	2.7X10 ⁻⁹	1.0X10 ⁶	2.7X10 ⁻⁵
Sc-48		1.0X10 ¹	2.7X10 ⁻¹⁰	1.0X10 ⁵	2.7X10 ⁻⁶
Se-75	Selenium (34)	1.0X10 ²	2.7X10 ⁻⁹	1.0X10 ⁶	2.7X10 ⁻⁵
Se-79		1.0X10 ⁴	2.7X10 ⁻⁷	1.0X10 ⁷	2.7X10 ⁻⁴
Si-31	Silicon (14)	1.0X10 ³	2.7X10 ⁻⁸	1.0X10 ⁶	2.7X10 ⁻⁵
Si-32		1.0X10 ³	2.7X10 ⁻⁸	1.0X10 ⁶	2.7X10 ⁻⁵
Sm-145	Samarium (62)	1.0X10 ²	2.7X10 ⁻⁹	1.0X10 ⁷	2.7X10 ⁻⁴
Sm-147		1.0X10 ¹	2.7X10 ⁻¹⁰	1.0X10 ⁴	2.7X10 ⁻⁷
Sm-151		1.0X10 ⁴	2.7X10 ⁻⁷	1.0X10 ⁸	2.7X10 ⁻³
Sm-153		1.0X10 ²	2.7X10 ⁻⁹	1.0X10 ⁶	2.7X10 ⁻⁵
Sn-113	Tin (50)	1.0X10 ³	2.7X10 ⁻⁸	1.0X10 ⁷	2.7X10 ⁻⁴

Symbol of radionuclide	Element and atomic number	Activity concentration for exempt material (Bq/g)	Activity concentration for exempt material (Ci/g)	Activity limit for exempt consignment (Bq)	Activity limit for exempt consignment (Ci)
Sn-117m		1.0X10 ²	2.7X10 ⁻⁹	1.0X10 ⁶	2.7X10 ⁻⁵
Sn-119m		1.0X10 ³	2.7X10 ⁻⁸	1.0X10 ⁷	2.7X10 ⁻⁴
Sn-121m		1.0X10 ³	2.7X10 ⁻⁸	1.0X10 ⁷	2.7X10 ⁻⁴
Sn-123		1.0X10 ³	2.7X10 ⁻⁸	1.0X10 ⁶	2.7X10 ⁻⁵
Sn-125		1.0X10 ²	2.7X10 ⁻⁹	1.0X10 ⁵	2.7X10 ⁻⁶
Sn-126		1.0X10 ¹	2.7X10 ⁻¹⁰	1.0X10 ⁵	2.7X10 ⁻⁶
Sr-82	Strontium (38)	1.0X10 ¹	2.7X10 ⁻¹⁰	1.0X10 ⁵	2.7X10 ⁻⁶
Sr-85		1.0X10 ²	2.7X10 ⁻⁹	1.0X10 ⁶	2.7X10 ⁻⁵
Sr-85m		1.0X10 ²	2.7X10 ⁻⁹	1.0X10 ⁷	2.7X10 ⁻⁴
Sr-87m		1.0X10 ²	2.7X10 ⁻⁹	1.0X10 ⁶	2.7X10 ⁻⁵
Sr-89		1.0X10 ³	2.7X10 ⁻⁸	1.0X10 ⁶	2.7X10 ⁻⁵
Sr-90 (b)		1.0X10 ²	2.7X10 ⁻⁹	1.0X10 ⁴	2.7X10 ⁻⁷
Sr-91		1.0X10 ¹	2.7X10 ⁻¹⁰	1.0X10 ⁵	2.7X10 ⁻⁶
Sr-92		1.0X10 ¹	2.7X10 ⁻¹⁰	1.0X10 ⁶	2.7X10 ⁻⁵
T(H-3)	Tritium (1)	1.0X10 ⁶	2.7X10 ⁻⁵	1.0X10 ⁹	2.7X10 ⁻²
Ta-178 (long-lived)	Tantalum (73)	1.0X10 ¹	2.7X10 ⁻¹⁰	1.0X10 ⁶	2.7X10 ⁻⁵
Ta-179		1.0X10 ³	2.7X10 ⁻⁸	1.0X10 ⁷	2.7X10 ⁻⁴
Ta-182		1.0X10 ¹	2.7X10 ⁻¹⁰	1.0X10 ⁴	2.7X10 ⁻⁷
Tb-157	Terbium (65)	1.0X10 ⁴	2.7X10 ⁻⁷	1.0X10 ⁷	2.7X10 ⁻⁴
Tb-158		1.0X10 ¹	2.7X10 ⁻¹⁰	1.0X10 ⁶	2.7X10 ⁻⁵

Symbol of radionuclide	Element and atomic number	Activity concentration for exempt material (Bq/g)	Activity concentration for exempt material (Ci/g)	Activity limit for exempt consignment (Bq)	Activity limit for exempt consignment (Ci)
Tb-160		1.0X10 ¹	2.7X10 ⁻¹⁰	1.0X10 ⁶	2.7X10 ⁻⁵
Tc-95m	Technetium (43)	1.0X10 ¹	2.7X10 ⁻¹⁰	1.0X10 ⁶	2.7X10 ⁻⁵
Tc-96		1.0X10 ¹	2.7X10 ⁻¹⁰	1.0X10 ⁶	2.7X10 ⁻⁵
Tc-96m		1.0X10 ³	2.7X10 ⁻⁸	1.0X10 ⁷	2.7X10 ⁻⁴
Tc-97		1.0X10 ³	2.7X10 ⁻⁸	1.0X10 ⁸	2.7X10 ⁻³
Tc-97m		1.0X10 ³	2.7X10 ⁻⁸	1.0X10 ⁷	2.7X10 ⁻⁴
Tc-98		1.0X10 ¹	2.7X10 ⁻¹⁰	1.0X10 ⁶	2.7X10 ⁻⁵
Tc-99		1.0X10 ⁴	2.7X10 ⁻⁷	1.0X10 ⁷	2.7X10 ⁻⁴
Tc-99m		1.0X10 ²	2.7X10 ⁻⁹	1.0X10 ⁷	2.7X10 ⁻⁴
Te-121	Tellurium (52)	1.0X10 ¹	2.7X10 ⁻¹⁰	1.0X10 ⁶	2.7X10 ⁻⁵
Te-121m		1.0X10 ²	2.7X10 ⁻⁹	1.0X10 ⁵	2.7X10 ⁻⁶
Te-123m		1.0X10 ²	2.7X10 ⁻⁹	1.0X10 ⁷	2.7X10 ⁻⁴
Te-125m		1.0X10 ³	2.7X10 ⁻⁸	1.0X10 ⁷	2.7X10 ⁻⁴
Te-127		1.0X10 ³	2.7X10 ⁻⁸	1.0X10 ⁶	2.7X10 ⁻⁵
Te-127m		1.0X10 ³	2.7X10 ⁻⁸	1.0X10 ⁷	2.7X10 ⁻⁴
Te-129		1.0X10 ²	2.7X10 ⁻⁹	1.0X10 ⁶	2.7X10 ⁻⁵
Te-129m		1.0X10 ³	2.7X10 ⁻⁸	1.0X10 ⁶	2.7X10 ⁻⁵
Te-131m		1.0X10 ¹	2.7X10 ⁻¹⁰	1.0X10 ⁶	2.7X10 ⁻⁵
Te-132		1.0X10 ²	2.7X10 ⁻⁹	1.0X10 ⁷	2.7X10 ⁻⁴
Th-227	Thorium (90)	1.0X10 ¹	2.7X10 ⁻¹⁰	1.0X10 ⁴	2.7X10 ⁻⁷

Symbol of radionuclide	Element and atomic number	Activity concentration for exempt material (Bq/g)	Activity concentration for exempt material (Ci/g)	Activity limit for exempt consignment (Bq)	Activity limit for exempt consignment (Ci)
Th-228 (b)		1.0	2.7×10^{-11}	1.0×10^4	2.7×10^{-7}
Th-229 (b)		1.0	2.7×10^{-11}	1.0×10^3	2.7×10^{-8}
Th-230		1.0	2.7×10^{-11}	1.0×10^4	2.7×10^{-7}
Th-231		1.0×10^3	2.7×10^{-8}	1.0×10^7	2.7×10^{-4}
Th-232		1.0×10^1	2.7×10^{-10}	1.0×10^4	2.7×10^{-7}
Th-234 (b)		1.0×10^3	2.7×10^{-8}	1.0×10^5	2.7×10^{-6}
Th (nat) (b)		1.0	2.7×10^{-11}	1.0×10^3	2.7×10^{-8}
Ti-44	Titanium (22)	1.0×10^1	2.7×10^{-10}	1.0×10^5	2.7×10^{-6}
Tl-200	Thallium (81)	1.0×10^1	2.7×10^{-10}	1.0×10^6	2.7×10^{-5}
Tl-201		1.0×10^2	2.7×10^{-9}	1.0×10^6	2.7×10^{-5}
Tl-202		1.0×10^2	2.7×10^{-9}	1.0×10^6	2.7×10^{-5}
Tl-204		1.0×10^4	2.7×10^{-7}	1.0×10^4	2.7×10^{-7}
Tm-167	Thulium (69)	1.0×10^2	2.7×10^{-9}	1.0×10^6	2.7×10^{-5}
Tm-170		1.0×10^3	2.7×10^{-8}	1.0×10^6	2.7×10^{-5}
Tm-171		1.0×10^4	2.7×10^{-7}	1.0×10^8	2.7×10^{-3}
U-230 (fast lung absorption) (b),(d)	Uranium (92)	1.0×10^1	2.7×10^{-10}	1.0×10^5	2.7×10^{-6}
U-230 (medium lung absorption) (c)		1.0×10^1	2.7×10^{-10}	1.0×10^4	2.7×10^{-7}
U-230 (slow lung absorption) (f)		1.0×10^1	2.7×10^{-10}	1.0×10^4	2.7×10^{-7}

Symbol of radionuclide	Element and atomic number	Activity concentration for exempt material (Bq/g)	Activity concentration for exempt material (Ci/g)	Activity limit for exempt consignment (Bq)	Activity limit for exempt consignment (Ci)
U-232 (fast lung absorption) (b),(d)		1.0	2.7×10^{-11}	1.0×10^3	2.7×10^{-8}
U-232 (medium lung absorption) (e)		1.0×10^1	2.7×10^{-10}	1.0×10^4	2.7×10^{-7}
U-232 (slow lung absorption) (f)		1.0×10^1	2.7×10^{-10}	1.0×10^4	2.7×10^{-7}
U-233 (fast lung absorption) (d)		1.0×10^1	2.7×10^{-10}	1.0×10^4	2.7×10^{-7}
U-233 (medium lung absorption) (e)		1.0×10^2	2.7×10^{-9}	1.0×10^5	2.7×10^{-6}
U-233 (slow lung absorption) (f)		1.0×10^1	2.7×10^{-10}	1.0×10^5	2.7×10^{-6}
U-234 (fast lung absorption) (d)		1.0×10^1	2.7×10^{-10}	1.0×10^4	2.7×10^{-7}
U-234 (medium lung absorption) (e)		1.0×10^2	2.7×10^{-9}	1.0×10^5	2.7×10^{-6}
U-234 (slow lung absorption) (f)		1.0×10^1	2.7×10^{-10}	1.0×10^5	2.7×10^{-6}
U-235 (all lung types) (b),(d),(e),(f)		1.0×10^1	2.7×10^{-10}	1.0×10^4	2.7×10^{-7}
U-236 (fast lung absorption) (d)		1.0×10^1	2.7×10^{-10}	1.0×10^4	2.7×10^{-7}
U-236 (medium lung absorption) (d)		1.0×10^2	2.7×10^{-9}	1.0×10^5	2.7×10^{-6}

Symbol of radionuclide	Element and atomic number	Activity concentration for exempt material (Bq/g)	Activity concentration for exempt material (Ci/g)	Activity limit for exempt consignment (Bq)	Activity limit for exempt consignment (Ci)
absorption) (e)					
U-236 (slow lung absorption) (f)		1.0X10 ¹	2.7X10 ⁻¹⁰	1.0X10 ⁴	2.7X10 ⁻⁷
U-238 (all lung types) absorption (b),(d),(e),(f)		1.0X10 ¹	2.7X10 ⁻¹⁰	1.0X10 ⁴	2.7X10 ⁻⁷
U (nat) (b)		1.0	2.7X10 ⁻¹¹	1.0X10 ³	2.7X10 ⁻⁸
U (enriched to 20% or less) (g)		1.0	2.7X10 ⁻¹¹	1.0X10 ³	2.7X10 ⁻⁸
U (dep)		1.0	2.7X10 ⁻¹¹	1.0X10 ³	2.7X10 ⁻⁸
V-48	Vanadium (23)	1.0X10 ¹	2.7X10 ⁻¹⁰	1.0X10 ⁵	2.7X10 ⁻⁶
V-49		1.0X10 ⁴	2.7X10 ⁻⁷	1.0X10 ⁷	2.7X10 ⁻⁴
W-178	Tungsten (74)	1.0X10 ¹	2.7X10 ⁻¹⁰	1.0X10 ⁶	2.7X10 ⁻⁵
W-181		1.0X10 ³	2.7X10 ⁻⁸	1.0X10 ⁷	2.7X10 ⁻⁴
W-185		1.0X10 ⁴	2.7X10 ⁻⁷	1.0X10 ⁷	2.7X10 ⁻⁴
W-187		1.0X10 ²	2.7X10 ⁻⁹	1.0X10 ⁶	2.7X10 ⁻⁵
W-188		1.0X10 ²	2.7X10 ⁻⁹	1.0X10 ⁵	2.7X10 ⁻⁶
Xe-122	Xenon (54)	1.0X10 ²	2.7X10 ⁻⁹	1.0X10 ⁹	2.7X10 ⁻²
Xe-123		1.0X10 ²	2.7X10 ⁻⁹	1.0X10 ⁹	2.7X10 ⁻²
Xe-127		1.0X10 ³	2.7X10 ⁻⁸	1.0X10 ⁵	2.7X10 ⁻⁶
Xe-131m		1.0X10 ⁴	2.7X10 ⁻⁷	1.0X10 ⁴	2.7X10 ⁻⁷

Symbol of radionuclide	Element and atomic number	Activity concentration for exempt material (Bq/g)	Activity concentration for exempt material (Ci/g)	Activity limit for exempt consignment (Bq)	Activity limit for exempt consignment (Ci)
Xe-133		1.0X10 ³	2.7X10 ⁻⁸	1.0X10 ⁴	2.7X10 ⁻⁷
Xe-135		1.0X10 ³	2.7X10 ⁻⁸	1.0X10 ¹⁰	2.7X10 ⁻¹
Y-87	Yttrium (39)	1.0X10 ¹	2.7X10 ⁻¹⁰	1.0X10 ⁶	2.7X10 ⁻⁵
Y-88		1.0X10 ¹	2.7X10 ⁻¹⁰	1.0X10 ⁶	2.7X10 ⁻⁵
Y-90		1.0X10 ³	2.7X10 ⁻⁸	1.0X10 ⁵	2.7X10 ⁻⁶
Y-91		1.0X10 ³	2.7X10 ⁻⁸	1.0X10 ⁶	2.7X10 ⁻⁵
Y-91m		1.0X10 ²	2.7X10 ⁻⁹	1.0X10 ⁶	2.7X10 ⁻⁵
Y-92		1.0X10 ²	2.7X10 ⁻⁹	1.0X10 ⁵	2.7X10 ⁻⁶
Y-93		1.0X10 ²	2.7X10 ⁻⁹	1.0X10 ⁵	2.7X10 ⁻⁶
Yb-169	Ytterbium (70)	1.0X10 ²	2.7X10 ⁻⁹	1.0X10 ⁷	2.7X10 ⁻⁴
Yb-175		1.0X10 ³	2.7X10 ⁻⁸	1.0X10 ⁷	2.7X10 ⁻⁴
Zn-65	Zinc (30)	1.0X10 ¹	2.7X10 ⁻¹⁰	1.0X10 ⁶	2.7X10 ⁻⁵
Zn-69		1.0X10 ⁴	2.7X10 ⁻⁷	1.0X10 ⁶	2.7X10 ⁻⁵
Zn-69m		1.0X10 ²	2.7X10 ⁻⁹	1.0X10 ⁶	2.7X10 ⁻⁵
Zr-88	Zirconium (40)	1.0X10 ²	2.7X10 ⁻⁹	1.0X10 ⁶	2.7X10 ⁻⁵
Zr-93 (b)		1.0X10 ³	2.7X10 ⁻⁸	1.0X10 ⁷	2.7X10 ⁻⁴
Zr-95		1.0X10 ¹	2.7X10 ⁻¹⁰	1.0X10 ⁶	2.7X10 ⁻⁵
Zr-97 (b)		1.0X10 ¹	2.7X10 ⁻¹⁰	1.0X10 ⁵	2.7X10 ⁻⁶

^a[Reserved]

^b Parent nuclides and their progeny included in secular equilibrium are listed in the following:

Sr-90	Y-90
Zr-93	Nb-93m
Zr-97	Nb-97
Ru-106	Rh-106
Cs-137	Ba-137m
Ce-134	La-134
Ce-144	Pr-144
Ba-140	La-140
Bi-212	Tl-208 (0.36), Po-212 (0.64)
Pb-210	Bi-210, Po-210
Pb-212	Bi-212, Tl-208 (0.36), Po-212 (0.64)
Rn-220	Po-216
Rn-222	Po-218, Pb-214, Bi-214, Po-214
Ra-223	Rn-219, Po-215, Pb-211, Bi-211, Tl-207
Ra-224	Rn-220, Po-216, Pb-212, Bi-212, Tl-208(0.36), Po-212 (0.64)
Ra-226	Rn-222, Po-218, Pb-214, Bi-214, Po-214, Pb-210, Bi-210, Po-210
Ra-228	Ac-228
Th-226	Ra-222, Rn-218, Po-214
Th-228	Ra-224, Rn-220, Po-216, Pb-212, Bi-212, Tl-208 (0.36), Po-212 (0.64)
Th-229	Ra-225, Ac-225, Fr-221, At-217, Bi-213, Po-213, Pb-210
Th-nat	Ra-228, Ac-228, Th-228, Ra-224, Rn-220, Po-216, Pb-212, Bi-212, Tl-208 0.36), Po-212 (0.64)
Th-234	Pa-234m
U-230	Th-226, Ra-222, Rn-218, Po-214
U-232	Th-228, Ra-224, Rn-220, Po-216, Pb-212, Bi-212, Tl-208 (0.36), Po-212 (0.64)
U-235	Th-231
U-238	Th-234, Pa-234m
U-nat	Th-234, Pa-234m, U-234, Th-230, Ra-226, Rn-222, Po-218, Pb-214, Bi-214, Po-214, Pb-210, Bi-210, Po-210
U-240	Np-240m
Np-237	Pa-233
Am-242m	Am-242
Am-243	Np-239

°[Reserved]

^d These values apply only to compounds of uranium that take the chemical form of UF₆, UO₂F₂ and UO₂(NO₃)₂ in both normal and accident conditions of transport.

^e These values apply only to compounds of uranium that take the chemical form of UO₃, UF₄, UCl₄ and hexavalent compounds in both normal and accident conditions of transport.

^f These values apply to all compounds of uranium other than those specified in notes (d) and (e) of this table.

^g These values apply to unirradiated uranium only.

Figure: 25 TAC §289.257(ee)(8)

Table 257-5: General Values For A₁ And A₂

Contents	A ₁		A ₂		Activity concentration for exempt material (Bq/g)	Activity concentration for exempt material (Ci/g)	Activity limits for exempt consignments (Bq)	Activity limits for exempt consignments (Ci)
	(TBq)	(Ci)	(TBq)	(Ci)				
Only beta or gamma emitting radionuclides are known to be present	1×10^{-1}	2.7×10^0	2×10^{-2}	5.4×10^{-1}	1×10^1	2.7×10^{-10}	1×10^4	2.7×10^{-7}
Only alpha emitting radionuclides are known to be present	2×10^{-1}	5.4×10^0	9×10^{-5}	2.4×10^{-3}	1×10^{-1}	2.7×10^{-12}	1×10^3	2.7×10^{-8}
No relevant data are available	1×10^{-3}	2.7×10^{-2}	9×10^{-5}	2.4×10^{-3}	1×10^{-1}	2.7×10^{-12}	1×10^3	2.7×10^{-8}

Figure: 25 TAC §289.257(ee)(9)

Table 257-6: Activity-mass Relationships for Uranium

Uranium Enrichment* wt % U-235 present	Specific Activity TBq/g	Specific Activity Ci/g
0.45	1.8×10^{-8}	5.0×10^{-7}
0.72	2.6×10^{-8}	7.1×10^{-7}
1.0	2.8×10^{-8}	7.6×10^{-7}
1.5	3.7×10^{-8}	1.0×10^{-6}
5.0	1.0×10^{-7}	2.7×10^{-6}
10.0	1.8×10^{-7}	4.8×10^{-6}
20.0	3.7×10^{-7}	1.0×10^{-5}
35.0	7.4×10^{-7}	2.0×10^{-5}
50.0	9.3×10^{-7}	2.5×10^{-5}
90.0	2.2×10^{-6}	5.8×10^{-5}
93.0	2.6×10^{-6}	7.0×10^{-5}
95.0	3.4×10^{-6}	9.1×10^{-5}

* The figures for uranium include representative values for the activity of the uranium-235 which is concentrated during the enrichment process.

Figure: 34 TAC §9.4031(1)

Discount Cash Flow Method
(Working Interest Portion Only)

Year	(1) Net Oil Production (bbls)	(2) Oil Price (\$/bbls)	(3) Gross Income (\$)	(4) Op Exp + SevTaxes (\$)	(5) Net Income (\$)	(6) Discount Factor @ 16.7%	(7) Discounted Cash Flow (\$)
1	31,938	\$ 19.75	\$ 630,776	\$ 159,015	\$ 471,761	.925688	\$ 436,703
2	25,550	20.54	524,797	159,341	365,456	.793220	289,887
3	20,440	21.36	436,598	160,692	275,906	.679709	187,536
4	16,352	22.22	363,341	162,946	200,395	.582441	116,718
5	13,081	23.10	302,171	165,982	136,189	.499093	67,971
6	10,465	24.03	251,474	169,733	81,741	.427671	34,958
7	8,372	24.99	209,216	174,115	35,101	.366471	12,863
						Subtotal	\$ 1,146,636
Salvage					\$ 10,000	.339238*	3,392
						Total	\$ 1,150,028

* End of year seven factor = $1/(1+.167)^7$

Calculation Procedures:

- (1) Net Oil Production is Gross Oil Production times Net Revenue Interest (NRI). NRI equals 87.5%.
- (2) Starting Oil Price, \$19.75/bbl with an escalation rate of 4%/yr
- (3) Gross Income equals Net Oil Production multiplied by Oil Price
- (4) Op. Exp. + Sev. Taxes: Operating Expenses escalated at a rate of 4%/yr; severance tax on oil is 4.6%/yr
- (5) Net Income equals Gross Income less Op. Exp. and Sev. Taxes
- (6) Discount Factor (mid-year) @16.7% equals:

Year 1	$1/((1+.167)^{(1-.5)}) = .925688$
Year 2	$1/((1+.167)^{(2-.5)}) = .793220$
Year 3	$1/((1+.167)^{(3-.5)}) = .679709$
Year 4	$1/((1+.167)^{(4-.5)}) = .582441$
Year 5	$1/((1+.167)^{(5-.5)}) = .499093$
Year 6	$1/((1+.167)^{(6-.5)}) = .427671$
Year 7	$1/((1+.167)^{(7-.5)}) = .366471$

NOTE: The discount factor of 16.7% includes 1.7% for property taxes. Some appraisers handle property taxes as a deduction from gross income.

(7) Discounted Cash Flow equals Net Income multiplied by the Discount Factor

Other factors that should be considered in the DCF method include capital expenditures, environmental remediation costs, and the present worth of the salvage value of equipment less well plugging costs.

Figure: 34 TAC §9.4031(m)

Estimation of Weighted Average cost of Capital (WACC)

1. Derive the typical capital structure of a broad sample of potential purchasers as a proportion of debt and equity.

Data can be found in the 12/31/20xx issue of The Value Line Investment Survey under the headings "Petroleum (Integrated) Industry" and "Petroleum (Producing) Industry."

Outstanding Common Stock (Oil Company)
= 157,627,284 shares @ 12/31/20xx

Closing Common Stock Price
= \$106.75/share

Common Stock Equity
= (157,627,284 shares) x (\$106.75/share)
= \$16,827,000,000 @ 12/31/20xx

Total Debt
= \$6,791,000,000 @ 12/31/20xx

Total Capital
= Debt + Equity
= \$6,791,000,000 + \$16,827,000,000
= \$23,618,000,000

Debt
= \$6,791,000,000/\$23,618,000,000
= .288 or 28.8%

Equity
= \$16,827,000,000/\$23,618,000,000
= .712 or 71.2%

The capital structure is 28.8% debt and 71.2% equity.

Repeat this procedure for each company in the sample.

2. Calculate the cost of outstanding debt

Data can be found using Standard & Poor's Bond Guide (12/20xx issue)

YTM = Yield-to-Maturity @ 12/31/20xx

Debt Instrument	Debt (MM\$)	YTM (%/yr)	Debt x YTM
Debt A	\$ 27	6.29	\$ 170
Debt B	586	8.42	4,934
Debt C	132	7.52	993
Debt D	600	7.84	4,704
Debt E	265	4.95	1,312
Debt F	100	8.65	865
Debt G	300	7.87	2,361
Debt H	450	8.28	3,726
Debt I	123	8.70	1,070
Debt J	224	8.78	1,967
Debt K	300	8.29	2,487
Debt L	500	8.38	4,190
	\$ 3,607		\$ 28,779

Sum of Debt

= Debt (MM\$) x YTM
= \$28,779 MM

Cost of Debt

= Sum of Debt (MM\$) / Debt (MM\$)
= (\$28,779 MM) / (\$3,607 MM)
= 7.98 %/year

Repeat this procedure for each company in the sample.

3. Calculate the cost of equity

Use the Capital Asset Pricing Model (CAPM) equation:

$$K = R_{fc} + B(R_m - R_{fh})$$

where:

K = cost of equity (after tax), %/year

R_{fc} = current risk-free rate, %/yr, can be found in the Federal Reserve Statistical Release (January of current year)

R_{fh} = historic market return on long-term government bonds, %/year, can be found in Ibbotson & Associates: Stocks, Bonds, Bills and Inflation

R_m = historic market return on equities, %/year, can be found in Ibbotson & Associates: Stocks, Bonds, Bills and Inflation

B = beta coefficient, can be found in The Value Line Investment Survey, 4th Qtr, 20xx

Given:

$$R_{fc} = 5.1\%/year$$

$$R_{fh} = 5.5\%/year$$

$$R_m = 12.4\%/year$$

$$B = .80$$

$$\begin{aligned} K &= R_{fc} + B(R_m - R_{fh}) \\ &= 5.1 + .8(12.4 - 5.5) \\ &= 10.6\%/year \end{aligned}$$

$$\begin{aligned} K \text{ (pre-tax)} &= 10.6 / (1 - .34) \\ \text{Cost of equity} &= 16.1\%/year \end{aligned}$$

Repeat this procedure for each company in the sample.

4. Calculate a typical weighted average cost of capital by plugging the mean (or other measure of central tendency) cost of debt, cost of equity and capital structure from the sample companies into the following formula:

$$\begin{aligned} \text{WACC} &= ((\text{cost of debt}) \times (\% \text{ debt})) + \\ &\quad ((\text{cost of equity}) \times (\% \text{ equity})) \\ &= (7.98 \times .288) + (16.1 \times .712) \\ &= 13.8\%/year \end{aligned}$$

Figure: 34 TAC §9.4031(n)

Standard Deviation

The standard deviation is the square root of the average squared difference between the individual observations and the average value. The first step in the calculation of the standard deviation is to average the data arithmetically. The arithmetic average or “mean” value is denoted as z. An equation to calculate the mean value, z, of a data set is as follows:

$$z = 1/n(x_1 + x_2 + x_3 + \dots + x_n)$$

where:

z = mean value of a data set of n values

x₁ = unique value in data set

n = total number of values in data set

The standard deviation, usually denoted by the symbol, S, would be calculated using the following equation:

$$S = \left(\frac{(x_1 - z)^2 + \dots + (x_n - z)^2}{(n-1)} \right)^{.5}$$

where:

S = standard deviation of a data set with n values

x₁ = unique value in data set

x_n = nth value in data set

n = total number in data set

Example: Procedure for calculating the standard deviation of a data set that has 10 sales with various internal rates of return (IRR).

Sale No.		IRR (%)	(x - z)	(x - z) ²
1	x1	11.0	-4.7	22.09
2	x2	25.0	9.3	86.49
3	x3	6.0	-9.7	94.09
4	x4	16.0	0.3	0.09
5	x5	16.0	0.3	0.09
6	x6	22.0	6.3	39.69
7	x7	9.0	-6.7	44.89
8	x8	14.0	-1.7	2.89
9	x9	13.0	-2.7	7.29
10	x10	25.0	9.3	86.49
		157.0		384.10

Calculate the arithmetic average, z:

$$z = 157.0/10 = 15.7 \text{ IRR\%}$$

Calculate the standard deviation, S:

$$S = (384.1/(10-1))^{.5} = 6.5 \text{ IRR\%}$$

Range of 1 standard deviation

$$= 15.7 \pm 6.5 = 9.2 < 15.7 < 22.2$$

Range of 2 standard deviations

$$= 15.7 \pm 6.5(2) = 2.7 < 15.7 < 28.7$$

28.7%/year could be used as an upper limit to the discount rate range for high-risk properties.

Figure: 34 TAC §9.4031(o)

Property Specific Risk Factors

- A. One well lease
- B. Oil lease with high water production
- C. Lease near the end of its economic life
- D. Gas well reservoir under partial or active water drive (recovery uncertain)
- E. Curtailed gas well
- F. Rapidly declining lease
- G. Lease with less than six (6) months production history
- H. Secondary Recovery Project in early stages before fill-up
- I. Offshore oil or gas lease
- J. Unusually high operating expenses (ex: paraffin problems, sour gas, etc.)
- K. The appraiser should add to the base discount rate (WACC) for any other property specific factors that increase the investor's risk.

Figure: 34 TAC §9.4031(p)

Formula for the Escalation or De-Escalation of Crude Oil and Natural Gas Prices

The formula to determine the maximum average annual escalation or de-escalation percentage for years two through six of an appraisal is:

$$((X/100)^{(1/Y)} - 1) \times 100 = \text{Percentage}$$

Where:

X = Most recent year annual average (not seasonally adjusted) Producer Price Index (PPI) for crude petroleum (domestic production) [Commodity Code 0561, Series ID# WPU0561] or natural gas [Commodity Code 0531] obtained from the Bureau of Labor Statistics during the month of January, which may contain preliminary statistics.

Y = Number of years from base year 1982 through the most recent year (most recent year minus base year).

The 100 denominator in the formula is the PPI annual average for domestically produced petroleum and natural gas in base year 1982.

Example Computation:

Most recent year = 2010

X = 218.6 for Crude Petroleum Domestic Production (Commodity Code 0561) [Series ID# WPU0561]
185.8 for Natural Gas (Commodity Code 0531)

Y = 2010 - 1982 = 28 years

1/Y = 1/28 = 0.035714286

Crude Petroleum (Domestic Production):

$$((218.6/100)^{0.035714286} - 1) \times 100 = 2.832\%$$

Natural Gas:

$$((185.8/100)^{0.035714286} - 1) \times 100 = 2.237\%$$

IN

ADDITION

The *Texas Register* is required by statute to publish certain documents, including applications to purchase control of state banks, notices of rate ceilings issued by the Office of Consumer Credit Commissioner, and consultant proposal requests and awards. State agencies also may publish other notices of general interest as space permits.

Texas Department of Agriculture

Notice of Intent to Participate in the Hog Out County Grants Program

The Texas Department of Agriculture (TDA) is seeking participation in the Hog Out County Grants Program. The Program is designed to encourage counties across the State of Texas to make a concentrated and coordinated effort to reduce the feral hog population and damage caused by these animals during the three-month period starting October 1, 2011. In order to participate, the county must complete the Notice of Intent to Participate form and submit it to TDA by **September 30, 2011**. Any county that submits their Notice of Intent after the deadline will not be eligible for grant funds. Notices may be submitted via mail, fax or email to one of the addresses listed on the TDA website. Filing a Notice of Intent to Participate does not legally bind the county to participate in the Program.

In order to be eligible for a grant, Texas counties will be required to submit a completed Grant Application by January 13, 2012. Counties that received, or are currently receiving, grant funds from TDA's previous 2011 Feral Hog County Grants are not eligible to receive another award in 2011. Participating counties will be required to document the following results for the period of October 1, 2011 through December 31, 2011:

Number of feral hogs taken in the county, as certified by the county.

Number of participants at a county-approved education program about feral hog abatement technologies.

Based on the criteria above, awards will be made in the form of a grant that the county will be able to use on feral hog abatement related expenditures during the 2012 calendar year. Awards will be made as follows: The five highest scoring counties will be awarded grants, ranging from \$20,000 to \$7,500.

Complete guidelines and the Notice of Intent to Participate form are available on TDA's website: www.TexasAgriculture.gov, under the Grants/Funding link. Awardees will be required to enter into a grant agreement with the Department.

For additional information please contact Ms. Lindsay Dickens, Grants Specialist, at (512) 463-6695 or by emailing Grants@TexasAgriculture.gov.

TRD-201103484

Dolores Alvarado Hibbs
General Counsel

Texas Department of Agriculture
Filed: August 26, 2011

Office of Consumer Credit Commissioner

Notice of Rate Ceilings

The Consumer Credit Commissioner of Texas has ascertained the following rate ceilings by use of the formulas and methods described in

§§303.003, 303.005, 303.008, 303.009, 304.003, and 346.111, Texas Finance Code.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 09/05/11 - 09/11/11 is 18% for Consumer¹/Agricultural/Commercial² credit through \$250,000.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 09/05/11 - 09/11/11 is 18% for Commercial over \$250,000.

The monthly ceiling as prescribed by §303.005 and §303.009³ for the period of 08/01/11 - 08/31/11 is 18% for Consumer/Agricultural/Commercial/credit through \$250,000.

The monthly ceiling as prescribed by §303.005 and §303.009 for the period of 08/01/11 - 08/31/11 is 18% for Commercial over \$250,000.

The standard quarterly rate as prescribed by §303.008 and §303.009 for the period of 10/01/11 - 12/31/11 is 18% for Consumer/Agricultural/Commercial/credit through \$250,000.

The standard quarterly rate as prescribed by §303.008 and §303.009 for the period of 10/01/11 - 12/31/11 is 18% for Commercial over \$250,000.

The retail credit card quarterly rate as prescribed by §303.009¹ for the period of 10/01/11 - 12/31/11 is 18% for Consumer/Agricultural/Commercial/credit through \$250,000.

The lender credit card quarterly rate as prescribed by §346.111 Texas Finance Code¹ for the period of 10/01/11 - 12/31/11 is 18% for Consumer/Agricultural/Commercial/credit through \$250,000.

The standard annual rate as prescribed by §303.008 and §303.009⁴ for the period of 10/01/11 - 12/31/11 is 18% for Consumer/Agricultural/Commercial/credit through \$250,000.

The standard annual rate as prescribed by §303.008 and §303.009 for the period of 10/01/11 - 12/31/11 is 18% for Commercial over \$250,000.

The retail credit card annual rate as prescribed by §303.009¹ for the period of 10/01/11 - 12/31/11 is 18% for Consumer/Agricultural/Commercial/credit through \$250,000.

The judgment ceiling as prescribed by §304.003 for the period of 09/01/11 - 09/30/11 is 5.00% for Consumer/Agricultural/Commercial/credit through \$250,000.

The judgment ceiling as prescribed §304.003 for the period of 09/01/11 - 09/30/11 is 5.00% for Commercial over \$250,000.

¹ Credit for personal, family or household use.

² Credit for business, commercial, investment or other similar purpose.

³ For variable rate commercial transactions only.

⁴ Only for open-end credit as defined in §301.002(14), Texas Finance Code.

TRD-201103530

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Texas Commission on Environmental Quality

Agreed Orders

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on the listed Agreed Orders (AOs) in accordance with Texas Water Code (TWC) §7.075. TWC §7.075 requires that before the commission may approve the AOs, the commission shall allow the public an opportunity to submit written comments on the proposed AOs. TWC §7.075 requires that notice of the proposed orders and the opportunity to comment must be published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is October 10, 2011. TWC §7.075 also requires that the commission promptly consider any written comments received and that the commission may withdraw or withhold approval of an AO if a comment discloses facts or considerations that indicate that consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the commission's jurisdiction or the commission's orders and permits issued in accordance with the commission's regulatory authority. Additional notice of changes to a proposed AO is not required to be published if those changes are made in response to written comments.

A copy of each proposed AO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building C, 1st Floor, Austin, Texas 78753, (512) 239-2545 and at the applicable regional office listed as follows. Written comments about an AO should be sent to the enforcement coordinator designated for each AO at the commission's central office at P.O. Box 13087, Austin, Texas 78711-3087 and must be received by 5:00 p.m. on October 10, 2011. Written comments may also be sent by facsimile machine to the enforcement coordinator at (512) 239-2550. The commission enforcement coordinators are available to discuss the AOs and/or the comment procedure at the listed phone numbers; however, TWC §7.075 provides that comments on the AOs shall be submitted to the commission in **writing**.

(1) COMPANY: ABF FREIGHT SYSTEM, INCORPORATED; DOCKET NUMBER: 2011-0672-PST-E; IDENTIFIER: RN101474716; LOCATION: Houston, Harris County; TYPE OF FACILITY: fleet fueling facility; RULE VIOLATED: 30 TAC §334.50(b)(1)(A) and TWC §26.3475(c)(1), by failing to monitor the underground storage tanks for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring); PENALTY: \$2,500; ENFORCEMENT COORDINATOR: Mike Pace, (817) 588-5933; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(2) COMPANY: C & R WATER SUPPLY INCORPORATED; DOCKET NUMBER: 2011-0342-MWD-E; IDENTIFIER: RN102181765; LOCATION: Willis, Montgomery County; TYPE OF FACILITY: wastewater treatment plant; RULE VIOLATED: 30 TAC §305.125(1) and (5), and §317.4(d)(2) and Texas Pollutant Discharge Elimination System (TPDES) Permit Number WQ0013575001, Operational Requirements Number 1, by failing to properly operate and maintain all facilities and systems of treatment and control; 30 TAC §305.125(1) and (5), §317.3(b)(1) and (e)(5) and TPDES Permit Number WQ0013575001, Operational Requirements Number 1, by failing to properly operate and maintain all facilities and systems of

treatment and control; 30 TAC §317.6(b)(1)(E), by failing to properly operate and maintain the chlorination system; TWC §26.121(a)(1), 30 TAC §305.125(1), and TPDES Permit Number WQ0013575001, Permit Conditions Number 2.g., by failing to prevent the unauthorized discharge of wastewater into or adjacent to water in the state; TWC §26.121(a)(1), 30 TAC §305.125(1), and TPDES Permit Number WQ0013575001, Effluent Limitations and Monitoring Requirements Number 1, by failing to comply with permitted effluent limits; 30 TAC §§305.125(1), 319.1 and 319.5(e) and TPDES Permit Number WQ0013575001, Monitoring and Reporting Numbers 1 and 4, by failing to accurately complete the discharge monitoring reports; 30 TAC §305.125(9)(A) and TPDES Permit Number WQ0013575001, Monitoring and Reporting Requirements Number 7, by failing to report any noncompliance to the executive director which may endanger human health or safety, or the environment; PENALTY: \$23,419; ENFORCEMENT COORDINATOR: Steve Villatoro, (512) 239-4930; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(3) COMPANY: Charles C. Crowley; DOCKET NUMBER: 2011-1014-LII-E; IDENTIFIER: RN105131247; LOCATION: San Antonio, Bexar County; TYPE OF FACILITY: irrigation and landscaping services; RULE VIOLATED: 30 TAC §344.35(d)(2) and (3), by failing to comply with local regulations by failing to obtain a permit prior to installing an irrigation system; PENALTY: \$188; ENFORCEMENT COORDINATOR: Audra Benoit, (409) 899-8799; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(4) COMPANY: City of Center; DOCKET NUMBER: 2011-0951-PWS-E; IDENTIFIER: RN101390409; LOCATION: Center, Shelby County; TYPE OF FACILITY: municipal public water supply; RULE VIOLATED: 30 TAC §290.46(f)(3)(A)(iii), by failing to maintain complete records of complaints, including the date, location and nature of the water quality, pressure, or outage complaint received and the results of any subsequent complaint investigation; 30 TAC §290.46(q)(1) and (2), by failing to issue a boil water notification to the customers of the facility within 24 hours of a water outage using the prescribed notification format as specified in 30 TAC §290.47(e); PENALTY: \$855; ENFORCEMENT COORDINATOR: Rebecca Clausewitz, (210) 403-4012; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(5) COMPANY: City of Jacksonville; DOCKET NUMBER: 2011-0203-MWD-E; IDENTIFIER: RN101613305 (Canada Street Facility) and RN101613180 (Double Creek Facility); LOCATION: Jacksonville, Cherokee County; TYPE OF FACILITY: wastewater treatment facility; RULE VIOLATED: 30 TAC §315.1, 40 Code of Federal Regulations (CFR) §403.5(c)(1), and TPDES Permit Numbers WQ0010693001 and WQ0010693003, Contributing Industries and Pretreatment Requirements Number 2, by failing to submit to TCEQ a technically based local limits package and other components of the pretreatment program; 30 TAC §315.1, 40 CFR §403.5(c)(1) and §403.8(f)(1)(iii)(B), and TPDES Permit Numbers WQ0010693001 and WQ0010693003, Contributing Industries and Pretreatment Requirements Numbers 1.d.(3) and (4), by failing to exercise the legal authority and implement procedures contained in Section 5.2A.3 and 4 of the Respondent's Industrial Pretreatment Ordinance Number 960 and Industrial Pretreatment Ordinance 970, Section 1; 30 TAC §315.1, 40 CFR §403.8(f)(5) and TPDES Permit Numbers WQ0010693001 and WQ0010693003, Contributing Industries and Pretreatment Requirements Number 1.c, by failing to identify and address a reporting violation by a telephone call or a notice of violation, as described within the enforcement response plan (ERP); 30 TAC §315.1, 40 CFR §403.8(f)(5), and TPDES Permit Numbers WQ0010693001 and WQ0010693003, Contributing Industries and Pretreatment Require-

ments Number 1, by failing to conduct inspections at the frequency described within the ERP; TWC §26.121(a)(1), 30 TAC §305.125(1), and TPDES Permit Number WQ0010693001, Effluent Limitations and Monitoring Requirements Numbers 1 and 6, by failing to comply with permit effluent limits; PENALTY: \$43,702; Supplemental Environmental Project offset amount of \$34,962 applied to Household Collection Events; ENFORCEMENT COORDINATOR: Merrilee Hupp, (512) 239-4490; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

(6) COMPANY: City of Lone Star; DOCKET NUMBER: 2011-0812-MWD-E; IDENTIFIER: RN101920056; LOCATION: Morris County; TYPE OF FACILITY: domestic wastewater treatment plant; RULE VIOLATED: TWC §26.121(a), 30 TAC §305.125(1), and TPDES Permit Number WQ0014365001, Effluent Limitation and Monitoring Requirements Numbers 1 and 3, by failing to comply with permitted effluent limits; PENALTY: \$4,120; ENFORCEMENT COORDINATOR: Jeremy Escobar, (361) 825-3422; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

(7) COMPANY: City of Sabinal; DOCKET NUMBER: 2010-1656-MWD-E; IDENTIFIER: RN103014908; LOCATION: Uvalde County; TYPE OF FACILITY: wastewater treatment plant; RULE VIOLATED: TWC §26.121(a)(1), 30 TAC §305.125(1), TPDES Permit Number WQ0014342001, Effluent Limitations and Monitoring Requirements Number 1, by failing to comply with the permitted effluent limitations; 30 TAC §305.125(1) and (17) and §319.7(d) and TPDES Permit Number WQ0014342001, Monitoring and Reporting Requirements Number 1, by failing to timely submit the discharge monitoring reports for the monitoring periods ending November 30, 2009 and June 30, 2010 by the 20th day of the following month; PENALTY: \$10,720; ENFORCEMENT COORDINATOR: Jennifer Graves, (956) 430-6023; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(8) COMPANY: City of Whitney; DOCKET NUMBER: 2011-0856-PWS-E; IDENTIFIER: RN102688934; LOCATION: Whitney, Hill County; TYPE OF FACILITY: municipal public water supply; RULE VIOLATED: 30 TAC §290.41(c)(3)(F)(i), by failing to collect and submit raw water samples for microbiological analysis prior to placing existing wells that were reworked back into service; 30 TAC §290.110(c)(4)(B), by failing to monitor the disinfectant residual at representative locations throughout the distribution system at least once per day; 30 TAC §290.41(c)(3)(N), by failing to provide a flow measuring device for each well to measure production yields and provide for the accumulation of water production data; 30 TAC §290.46(f)(2) and (f)(3)(B)(vi), by failing to maintain copies of facility records that are kept on file or stored electronically and made accessible for review during inspections; 30 TAC §290.44(h)(4), by failing to test all backflow prevention assemblies on an annual basis by a recognized backflow assembly tester and certify that they are operating within specifications; 30 TAC §290.44(h)(1)(A) and (B), by failing to ensure that a backflow prevention assembly or an air gap is installed at all residences and establishments where an actual or potential contamination hazard exists and by failing to implement an internal cross-connection control program; 30 TAC §290.46(t), by failing to post a legible sign at the facility's production, treatment and storage facilities that contains the name of the facility and emergency telephone numbers where a responsible official can be contacted; 30 TAC §290.42(e)(4)(A), by failing to provide a small bottle of fresh ammonia solution (or approved equal) for testing for chlorine leakage that is readily accessible outside the chlorinator room and immediately available to the operator in the event of an emergency; 30 TAC §290.42(e)(4)(C), by failing to provide adequate ventilation which includes high level and floor level screened vents for all enclosures in which chlorine gas is being stored or fed; 30 TAC §290.43(c)(4),

by failing to provide all water storage tanks with a water level indicator located at the tank site; PENALTY: \$2,500; ENFORCEMENT COORDINATOR: Epifanio Villarreal, (361) 825-3425; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(9) COMPANY: Country Club Retirement Community, L.P.; DOCKET NUMBER: 2011-0883-MWD-E; IDENTIFIER: RN105460646; LOCATION: Whitney, Hill County; TYPE OF FACILITY: wastewater treatment facility; RULE VIOLATED: 30 TAC §305.125(1) and (17), and §319.7(d) and TPDES Permit Number WQ0014871001, Monitoring and Reporting Requirements Number 1, by failing to timely submit the discharge monitoring reports for the monthly monitoring periods ending September 30, 2009; December 31, 2009; and January 31, 2010 - August 31, 2010; 30 TAC §305.125(1) and (17) and TPDES Permit Number WQ0014871001, Sludge Provisions, by failing to timely submit the annual sludge report for the monitoring period ending July 31, 2010; PENALTY: \$990; ENFORCEMENT COORDINATOR: Merrilee Hupp, (512) 239-4490; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(10) COMPANY: Dorsett Brothers Concrete Supply, Incorporated; DOCKET NUMBER: 2011-0644-IWD-E; IDENTIFIER: RN105805691; LOCATION: Houston, Harris County; TYPE OF FACILITY: ready-mix concrete batch plant; RULE VIOLATED: 30 TAC §305.125(17) and §319.1, and TPDES General Permit Number TXG110986, Part IV Standard Permit Conditions 7(f), by failing to timely submit the discharge monitoring reports for the monitoring periods ending January 31, 2010 - December 31, 2010; by failing to timely submit the annual metals report for the monitoring period ending July 31, 2010 by the September 1, 2010 due date and by failing to timely submit the annual toxicity report for the monitoring period ending July 31, 2010 by the September 1, 2010 due date; PENALTY: \$1,400; ENFORCEMENT COORDINATOR: Jeremy Escobar, (361) 825-3422; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(11) COMPANY: Equistar Chemicals, LP; DOCKET NUMBER: 2011-0727-AIR-E; IDENTIFIER: RN100210574; LOCATION: Liverpool, Brazoria County; TYPE OF FACILITY: ethylene manufacturing plant; RULE VIOLATED: 30 TAC §122.143(4) and §122.146(1), Texas Health and Safety Code (THSC), §382.085(b), and Federal Operating Permit (FOP) Number O1287, General Terms and Conditions (GTC), and Special Terms and Conditions Number 18, by failing to submit the Permit Compliance Certification within 30 days from the end of the certification period; 30 TAC §122.143(4) and §122.145(2)(C), THSC §382.085(b), and FOP Number O1287, GTC, by failing to submit a semi-annual deviation report within 30 days from the end of the reporting period; PENALTY: \$20,550; ENFORCEMENT COORDINATOR: Heather Podlipny, (512) 239-2603; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(12) COMPANY: FONDREN ADP, LTD. dba Fondren Mobil; DOCKET NUMBER: 2011-0760-PST-E; IDENTIFIER: RN100527142; LOCATION: Houston, Harris County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.50(b)(1)(A) and TWC §26.3475(c)(1), by failing to monitor the underground storage tanks in a manner which will detect a release at a frequency of at least once every month (not to exceed 35 days between monitoring); PENALTY: \$3,050; ENFORCEMENT COORDINATOR: Michael Meyer, (512) 239-4492; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(13) COMPANY: Harris County Municipal Utility District 420; DOCKET NUMBER: 2011-0480-UTL-E; IDENTIFIER:

RN105371793; LOCATION: Houston, Harris County; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.39(o)(1) and §291.162(a) and (j) and TWC §13.1395(b)(2), by failing to submit to the executive director for approval by the required deadline, an adoptable emergency preparedness plan that demonstrates the facility's ability to provide emergency operations; PENALTY: \$475; ENFORCEMENT COORDINATOR: Andrea Linson-Mgbeoduru, (512) 239-1482; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(14) COMPANY: Joe Johs, Jr.; DOCKET NUMBER: 2011-0820-PST-E; IDENTIFIER: RN101852119; LOCATION: Blessing, Matagorda County; TYPE OF FACILITY: automobile repair facility; RULE VIOLATED: 30 TAC §334.7(d)(3), by failing to provide an amended registration for any change or additional information regarding the underground storage tanks (USTs) within 30 days from the date of the occurrence of the change or addition; 30 TAC §334.47(a)(2), by failing to permanently remove from service, no later than 60 days after the prescribed upgrade implementation date, a UST system for which any applicable component of the system is not brought into timely compliance with the upgrade requirements; PENALTY: \$4,025; ENFORCEMENT COORDINATOR: Clinton Sims, (512) 239-6933; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(15) COMPANY: Jorge Burgos dba Burgos Lawn Care; DOCKET NUMBER: 2011-0725-MSW-E; IDENTIFIER: RN106097801; LOCATION: Austin, Travis County; TYPE OF FACILITY: composting and mulching; RULE VIOLATED: 30 TAC §328.5(b) and §330.11(a)(2), by failing to submit a Notice of Intent to operate a recycling facility to the executive director at least 90 days prior to commencing a recycling operation for compost and mulch; 30 TAC §332.8(b)(1), by failing to maintain the setback distance of at least 50 feet from all property boundaries for storing mulched and/or composted, including in-process and processed, materials; PENALTY: \$2,500; ENFORCEMENT COORDINATOR: Michael Meyer, (512)239-4492; REGIONAL OFFICE: 2800 South IH 35, Suite 100, Austin, Texas 78704-5712, (512) 339-2929.

(16) COMPANY: NAFISA INCORPORATED dba New Texaco Food Mart; DOCKET NUMBER: 2011-0715-PST-E; IDENTIFIER: RN101778470; LOCATION: Fort Worth, Tarrant County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.50(b)(1)(A) and TWC §26.3475(c)(1), by failing to monitor the underground storage tanks (USTs) for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring), and by failing to provide release detection for the piping associated with the UST; PENALTY: \$3,570; ENFORCEMENT COORDINATOR: Clinton Sims, (512) 239-6933; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(17) COMPANY: Trailer, Wheel & Frame Co.; DOCKET NUMBER: 2011-0579-OSS-E; IDENTIFIER: RN102294253; LOCATION: Houston, Harris County; TYPE OF FACILITY: on-site sewage facility; RULE VIOLATED: 30 TAC §285.7(d)(2), by failing to have a new maintenance contract signed and submitted to the TCEQ at least 30 days before the contract expires; 30 TAC §285.33(d)(2)(A), by failing to have an acceptable surface application area; 30 TAC §285.32(b)(1)(D), by failing to fit the risers with water tight caps; PENALTY: \$1,756; ENFORCEMENT COORDINATOR: Merrilee Hupp, (512) 239-4490; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(18) COMPANY: TRINITY INDUSTRIES, INCORPORATED; DOCKET NUMBER: 2011-0898-PST-E; IDENTIFIER: RN100225804; LOCATION: Saginaw, Tarrant County; TYPE

OF FACILITY: railroad tank car manufacturing plant; RULE VIOLATED: 30 TAC §334.50(b)(1)(A) and (2) and TWC §26.3475(b) and (c)(1), by failing to monitor underground storage tanks (USTs) for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring); and by failing to provide proper release detection for the suction piping associated with the UST system; PENALTY: \$3,141; ENFORCEMENT COORDINATOR: Brianna Carlson, (956) 430-6021; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

TRD-201103540
Kathleen C. Decker
Director, Litigation Division
Texas Commission on Environmental Quality
Filed: August 30, 2011

◆ ◆ ◆
Enforcement Orders

An order was entered regarding Federico C. Villareal dba A-1 Paint & Body Shop aka A-1 Paint & Body Works, Docket No. 2009-0942-PST-E on August 22, 2011 assessing \$7,875 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Phillip M. Goodwin, P.G., Staff Attorney at (512) 239-0675, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Ace Pumping & Septic Services, Inc., Docket No. 2010-0060-SLG-E on August 18, 2011 assessing \$12,305 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Stephanie J. Frazee, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Ascend Performance Materials, LLC, Docket No. 2010-0088-AIR-E on August 18, 2011 assessing \$22,175 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Jeffrey Huhn, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding LANXESS Corporation, Docket No. 2010-0224-IWD-E on August 18, 2011 assessing \$20,824 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Jorge Ibarra, Enforcement Coordinator at (817) 588-5890, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Cemex Construction Materials South, LLC fka Cemex Cement of Texas, LP, Docket No. 2010-0424-IHW-E on August 18, 2011 assessing \$23,850 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Kari L. Gilbreth, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding B & F Jolly 2, LP, Docket No. 2010-0453-PST-E on August 18, 2011 assessing \$26,828 in administrative penalties with \$5,365 deferred.

Information concerning any aspect of this order may be obtained by contacting Elvia Maske, Enforcement Coordinator at (512) 239-0789, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Ganiu Bello, Docket No. 2010-0538-PST-E on August 18, 2011 assessing \$2,625 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Sharesa Y. Alexander, Staff Attorney at (512) 239-3503, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding STAR FUELS, INC. dba Brookshire Conoco, Docket No. 2010-0696-PST-E on August 18, 2011 assessing \$15,226 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting James Sallans, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding AET Inc. Limited, Docket No. 2010-0703-AIR-E on August 18, 2011 assessing \$36,000 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Anna Treadwell, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Intergulf Corporation, Docket No. 2010-0888-IHW-E on August 18, 2011 assessing \$52,600 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Kari L. Gilbreth, Staff Attorney at (512) 239-1320, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding Richard J. Duda, Docket No. 2010-1023-PWS-E on August 18, 2011 assessing \$3,542 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Rudy Calderon, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Brothers Materials, Ltd., Docket No. 2010-1147-AIR-E on August 18, 2011 assessing \$12,625 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Jeffrey Huhn, Staff Attorney at (210) 403-4023, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Munday, Docket No. 2010-1233-MWD-E on August 18, 2011 assessing \$25,338 in administrative penalties with \$25,338 deferred.

Information concerning any aspect of this order may be obtained by contacting Jennifer Graves, Enforcement Coordinator at (956) 430-6023, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding Mike Jason Tilley, Docket No. 2010-1385-LII-E on August 18, 2011 assessing \$1,018 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Steven M. Fishburn, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Southwest Grain Co., Docket No. 2010-1456-AIR-E on August 18, 2011 assessing \$2,040 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Gary Shiu, Staff Attorney at (713) 422-8916, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding Noureen Inc, Docket No. 2010-1531-PST-E on August 18, 2011 assessing \$2,625 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Gary K. Shiu, Staff Attorney at (713) 422-8916, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding DIAMOND SHAMROCK REFINING COMPANY, L.P., Docket No. 2010-1729-IHW-E on August 18, 2011 assessing \$103,075 in administrative penalties with \$20,615 deferred.

Information concerning any aspect of this order may be obtained by contacting Elvia Maske, Enforcement Coordinator at (512) 239-0789, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Harris County Water Corporation, Docket No. 2010-1803-UTL-E on August 18, 2011 assessing \$315 in administrative penalties with \$63 deferred.

Information concerning any aspect of this order may be obtained by contacting Epifanio Villarreal, Enforcement Coordinator at (361) 825-3425, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding Moorpark Village, Inc., Docket No. 2010-1813-UTL-E on August 18, 2011 assessing \$428 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Peipey Tang, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Akram Rihani dba Oakland Shell, Docket No. 2010-1868-PST-E on August 18, 2011 assessing \$8,699 in administrative penalties with \$1,739 deferred.

Information concerning any aspect of this order may be obtained by contacting Cara Windle, Enforcement Coordinator at (512) 239-2581, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding John Alihemati dba Station 66, Docket No. 2010-1869-AIR-E on August 18, 2011 assessing \$1,400 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Steven M. Fishburn, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Montgomery, Docket No. 2010-1872-MWD-E on August 18, 2011 assessing \$264 in administrative penalties with \$52 deferred.

Information concerning any aspect of this order may be obtained by contacting Jeremy Escobar, Enforcement Coordinator at (361) 825-3422, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Cisco, Docket No. 2010-1885-MWD-E on August 18, 2011 assessing \$10,584 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting JR Cao, Enforcement Coordinator at (512) 239-2543, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding COUNTRY TERRACE WATER COMPANY, INC., Docket No. 2010-1911-UTL-E on August 18, 2011 assessing \$303 in administrative penalties with \$60 deferred.

Information concerning any aspect of this order may be obtained by contacting Amanda Henry, Enforcement Coordinator at (713) 767-3672, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Thornton, Docket No. 2010-1977-MWD-E on August 18, 2011 assessing \$5,490 in administrative penalties with \$1,098 deferred.

Information concerning any aspect of this order may be obtained by contacting Steve Villatoro, Enforcement Coordinator at (512) 239-4930, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Amanda Koller, Christina Koller, and Johnny Minze Koller dba Koller Dairy, Docket No. 2010-2045-AGR-E on August 18, 2011 assessing \$1,900 in administrative penalties with \$380 deferred.

Information concerning any aspect of this order may be obtained by contacting Thomas Jecha, P.G., Enforcement Coordinator at (512) 239-2576, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding J-W Operating Company, Docket No. 2011-0039-AIR-E on August 18, 2011 assessing \$212,500 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting John Muennink, Enforcement Coordinator at (713) 422-8970, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Aqua Operations, Inc. and City of Kyle, Docket No. 2011-0047-MWD-E on August 18, 2011 assessing \$20,000 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Jeremy Escobar, Enforcement Coordinator at (361) 825-3422, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding La Joya Independent School District, Docket No. 2011-0070-MWD-E on August 18, 2011 assessing \$5,000 in administrative penalties with \$1,000 deferred.

Information concerning any aspect of this order may be obtained by contacting Thomas Jecha, P.G., Enforcement Coordinator at (512) 239-2576, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding FTR-FIRST TEXAS REALTY, LTD. dba Time Saver Grocery, Docket No. 2011-0075-PST-E on Au-

gust 18, 2011 assessing \$2,681 in administrative penalties with \$536 deferred.

Information concerning any aspect of this order may be obtained by contacting Rajesh Acharya, Enforcement Coordinator at (512) 239-0577, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding GREENSPOINT ENTERPRISES LLC dba Courtesy Chevron 6, Docket No. 2011-0100-PST-E on August 18, 2011 assessing \$11,317 in administrative penalties with \$2,263 deferred.

Information concerning any aspect of this order may be obtained by contacting Cara Windle, Enforcement Coordinator at (512) 239-2581, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding AUSTIN S & S, INC. dba Super Mart, Docket No. 2011-0126-PST-E on August 18, 2011 assessing \$1,500 in administrative penalties with \$300 deferred.

Information concerning any aspect of this order may be obtained by contacting Katy Schumann, Enforcement Coordinator at (512) 239-2602, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Cherokee Water Company, Docket No. 2011-0131-AIR-E on August 18, 2011 assessing \$4,985 in administrative penalties with \$997 deferred.

Information concerning any aspect of this order may be obtained by contacting Raymond Marlow, P.G., Enforcement Coordinator at (409) 899-8785, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Arlington, Docket No. 2011-0134-PST-E on August 18, 2011 assessing \$5,000 in administrative penalties with \$1,000 deferred.

Information concerning any aspect of this order may be obtained by contacting Michaelle Sherlock, Enforcement Coordinator at (210) 403-4076, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Rosebud, Docket No. 2011-0136-PWS-E on August 18, 2011 assessing \$1,667 in administrative penalties with \$333 deferred.

Information concerning any aspect of this order may be obtained by contacting Andrea Linson-Mgbeoduru, Enforcement Coordinator at (512) 239-1482, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding B F Beverage, Inc dba NRH Shell, Docket No. 2011-0144-PST-E on August 18, 2011 assessing \$15,855 in administrative penalties with \$3,171 deferred.

Information concerning any aspect of this order may be obtained by contacting Thomas Greimel, Enforcement Coordinator at (512) 239-5690, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding MANKI LLC, Docket No. 2011-0154-MWD-E on August 18, 2011 assessing \$1,540 in administrative penalties with \$308 deferred.

Information concerning any aspect of this order may be obtained by contacting Jennifer Graves, Enforcement Coordinator at (956) 430-6023, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Gray Utility Service L.L.C., Docket No. 2011-0160-MWD-E on August 18, 2011 assessing \$9,781 in administrative penalties with \$1,956 deferred.

Information concerning any aspect of this order may be obtained by contacting Harvey Wilson, Enforcement Coordinator at (512) 239-0321, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Irkasa Inc. dba Grapevine Market 2, Docket No. 2011-0164-PST-E on August 18, 2011 assessing \$2,000 in administrative penalties with \$400 deferred.

Information concerning any aspect of this order may be obtained by contacting Roshondra Lowe, Enforcement Coordinator at (713) 767-3553, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Rays Acquisition Company LLC, Docket No. 2011-0182-PWS-E on August 18, 2011 assessing \$2,483 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Andrea Byington, Enforcement Coordinator at (512) 239-2579, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding NURAMINCO INC. dba Sunrise Mini Mart 4, Docket No. 2011-0188-PST-E on August 18, 2011 assessing \$1,625 in administrative penalties with \$325 deferred.

Information concerning any aspect of this order may be obtained by contacting Jeremy Escobar, Enforcement Coordinator at (361) 825-3422, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Flint Hills Resources Port Arthur, LLC, Docket No. 2011-0192-AIR-E on August 18, 2011 assessing \$10,000 in administrative penalties with \$2,000 deferred.

Information concerning any aspect of this order may be obtained by contacting Roshondra Lowe, Enforcement Coordinator at (713) 767-3553, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding ALLIED WASTE SYSTEM, INC. dba Allied Waste Services of Fort Worth, Docket No. 2011-0196-PST-E on August 18, 2011 assessing \$14,368 in administrative penalties with \$2,873 deferred.

Information concerning any aspect of this order may be obtained by contacting Judy Kluge, Enforcement Coordinator at (817) 563-6720, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Equistar Chemicals, LP, Docket No. 2011-0198-AIR-E on August 18, 2011 assessing \$20,000 in administrative penalties with \$4,000 deferred.

Information concerning any aspect of this order may be obtained by contacting Trina Grieco, Enforcement Coordinator at (210) 403-4006, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding STRAWBERRY FOOD, LLC dba Strawberry Food Mart, Docket No. 2011-0200-PST-E on August 18, 2011 assessing \$4,630 in administrative penalties with \$926 deferred.

Information concerning any aspect of this order may be obtained by contacting Danielle Porras, Enforcement Coordinator at (713) 767-

3682, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding VARDHMAN INVESTMENT, INC. dba Dickinson Food Mart, Docket No. 2011-0205-PST-E on August 18, 2011 assessing \$9,423 in administrative penalties with \$1,884 deferred.

Information concerning any aspect of this order may be obtained by contacting Bridget Lee, Enforcement Coordinator at (512) 239-2565, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding PVR Gas Resources, LLC, Docket No. 2011-0214-AIR-E on August 18, 2011 assessing \$10,235 in administrative penalties with \$2,047 deferred.

Information concerning any aspect of this order may be obtained by contacting James Nolan, Enforcement Coordinator at (512) 239-6634, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding MPR Investments, LLC, Docket No. 2011-0217-MWD-E on August 18, 2011 assessing \$5,440 in administrative penalties with \$1,088 deferred.

Information concerning any aspect of this order may be obtained by contacting Jorge Ibarra, P.E., Enforcement Coordinator at (817) 588-5890, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Charlene F. Howell dba Union Hill Store, Docket No. 2011-0219-PST-E on August 18, 2011 assessing \$2,629 in administrative penalties with \$525 deferred.

Information concerning any aspect of this order may be obtained by contacting Cara Windle, Enforcement Coordinator at (512) 239-2581, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Ascend Performance Materials LLC, Docket No. 2011-0222-AIR-E on August 18, 2011 assessing \$10,000 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Rebecca Johnson, Enforcement Coordinator at (361) 825-3420, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding INEOS USA LLC, Docket No. 2011-0223-AIR-E on August 18, 2011 assessing \$59,520 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Miriam Hall, Enforcement Coordinator at (512) 239-1044, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding ROCK CREEK GROCERY & CAJUN CUISINE, INC., Docket No. 2011-0232-PST-E on August 18, 2011 assessing \$2,621 in administrative penalties with \$524 deferred.

Information concerning any aspect of this order may be obtained by contacting Wallace Myers, Enforcement Coordinator at (512) 239-6580, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding STANDARD WASTE SERVICES, LLC, Docket No. 2011-0246-MSW-E on August 18, 2011 assessing \$2,000 in administrative penalties with \$400 deferred.

Information concerning any aspect of this order may be obtained by contacting Andrea Park, Enforcement Coordinator at (512) 239-4575, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Joseph T. Endari dba Endari's Exxon, Docket No. 2011-0251-PST-E on August 18, 2011 assessing \$9,329 in administrative penalties with \$1,865 deferred.

Information concerning any aspect of this order may be obtained by contacting Bridget Lee, Enforcement Coordinator at (512) 239-2565, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding The Salvation Army, Docket No. 2011-0258-MWD-E on August 18, 2011 assessing \$5,140 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Jorge Ibarra, P.E., Enforcement Coordinator at (512) 239-2569, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding TOTAL PETROCHEMICALS USA, INC., Docket No. 2011-0260-AIR-E on August 18, 2011 assessing \$10,000 in administrative penalties with \$2,000 deferred.

Information concerning any aspect of this order may be obtained by contacting Audra Benoit, Enforcement Coordinator at (409) 899-8799, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Monarch Utilities IL.P., Docket No. 2011-0261-PWS-E on August 18, 2011 assessing \$267 in administrative penalties with \$53 deferred.

Information concerning any aspect of this order may be obtained by contacting Stephen Thompson, Enforcement Coordinator at (512) 239-2558, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Jefferson, Neil D, Docket No. 2011-0265-LII-E on August 18, 2011 assessing \$375 in administrative penalties with \$75 deferred.

Information concerning any aspect of this order may be obtained by contacting Nadia Hameed, Enforcement Coordinator at (713) 767-3629, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Speedy Shop, LLC dba Kold Spot #31, Docket No. 2011-0277-PST-E on August 18, 2011 assessing \$2,550 in administrative penalties with \$510 deferred.

Information concerning any aspect of this order may be obtained by contacting Philip Aldridge, Enforcement Coordinator at (512) 239-0855, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Temple, Docket No. 2011-0280-PWS-E on August 18, 2011 assessing \$6,339 in administrative penalties with \$1,267 deferred.

Information concerning any aspect of this order may be obtained by contacting Amanda Henry, Enforcement Coordinator at (713) 767-3672, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding WTG Gas Processing, L.P., Docket No. 2011-0283-AIR-E on August 18, 2011 assessing \$10,000 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Miriam Hall, Enforcement Coordinator at (512) 239-1044, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Flint Hills Resources Port Arthur, LLC, Docket No. 2011-0287-AIR-E on August 18, 2011 assessing \$10,000 in administrative penalties with \$2,000 deferred.

Information concerning any aspect of this order may be obtained by contacting Roshondra Lowe, Enforcement Coordinator at (713) 767-3553, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding DCP Midstream, LP, Docket No. 2011-0297-AIR-E on August 18, 2011 assessing \$15,050 in administrative penalties with \$3,010 deferred.

Information concerning any aspect of this order may be obtained by contacting Heather Podlipny, Enforcement Coordinator at (512) 239-2603, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding TA Operating LLC dba Baytown Travel Center, Docket No. 2011-0302-PST-E on August 18, 2011 assessing \$4,764 in administrative penalties with \$952 deferred.

Information concerning any aspect of this order may be obtained by contacting Andrea Park, Enforcement Coordinator at (512) 239-4575, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Houston Refining LP, Docket No. 2011-0308-AIR-E on August 18, 2011 assessing \$10,568 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Todd Huddleson, Enforcement Coordinator at (512) 239-2541, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding LANXESS Corporation, Docket No. 2011-0312-AIR-E on August 18, 2011 assessing \$6,275 in administrative penalties with \$1,255 deferred.

Information concerning any aspect of this order may be obtained by contacting Audra Benoit, Enforcement Coordinator at (409) 899-8799, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding SUPER FIVE INC. dba AMS Mart, Docket No. 2011-0328-PST-E on August 18, 2011 assessing \$4,605 in administrative penalties with \$921 deferred.

Information concerning any aspect of this order may be obtained by contacting Rajesh Acharya, Enforcement Coordinator at (512) 239-0577, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding EKN CORPORATION dba SSG All Seasons, Docket No. 2011-0334-PST-E on August 18, 2011 assessing \$2,478 in administrative penalties with \$495 deferred.

Information concerning any aspect of this order may be obtained by contacting Bridget Lee, Enforcement Coordinator at (512) 239-2565, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Beverly Minaldi dba Timberlane Water System, Docket No. 2011-0350-PWS-E on August 18, 2011 assessing \$1,878 in administrative penalties with \$375 deferred.

Information concerning any aspect of this order may be obtained by contacting Epifanio Villarreal, Enforcement Coordinator at (361) 825-3425, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Lovelady, Docket No. 2011-0351-MWD-E on August 18, 2011 assessing \$3,972 in administrative penalties with \$794 deferred.

Information concerning any aspect of this order may be obtained by contacting Jorge Ibarra, P.E., Enforcement Coordinator at (817) 588-5890, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Huntsman Petrochemical LLC, Docket No. 2011-0358-AIR-E on August 18, 2011 assessing \$20,000 in administrative penalties with \$4,000 deferred.

Information concerning any aspect of this order may be obtained by contacting Trina Grieco, Enforcement Coordinator at (210) 403-4006, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding SANR, INC. dba China Market, Docket No. 2011-0362-PST-E on August 18, 2011 assessing \$3,925 in administrative penalties with \$785 deferred.

Information concerning any aspect of this order may be obtained by contacting Michael Pace, Enforcement Coordinator at (817) 588-5933, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Chiwoo Park dba Dunlavy Mart, Docket No. 2011-0365-PST-E on August 18, 2011 assessing \$5,730 in administrative penalties with \$1,146 deferred.

Information concerning any aspect of this order may be obtained by contacting Mike Pace, Enforcement Coordinator at (817) 588-5933, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding SCHILLING OIL CO. INC., Docket No. 2011-0369-PST-E on August 18, 2011 assessing \$5,550 in administrative penalties with \$1,110 deferred.

Information concerning any aspect of this order may be obtained by contacting Brianna Carlson, Enforcement Coordinator at (956) 430-6021, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Amin Ladha dba Express Mart, Docket No. 2011-0393-PST-E on August 18, 2011 assessing \$2,135 in administrative penalties with \$427 deferred.

Information concerning any aspect of this order may be obtained by contacting Rajesh Acharya, Enforcement Coordinator at (512) 239-0577, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Exxon Mobil Corporation, Docket No. 2011-0396-AIR-E on August 18, 2011 assessing \$10,000 in administrative penalties with \$2,000 deferred.

Information concerning any aspect of this order may be obtained by contacting Trina Grieco, Enforcement Coordinator at (210) 403-4006, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding INEOS USA LLC, Docket No. 2011-0406-AIR-E on August 18, 2011 assessing \$3,200 in administrative penalties with \$640 deferred.

Information concerning any aspect of this order may be obtained by contacting Trina Grieco, Enforcement Coordinator at (210) 403-4006, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding PromiseLand San Marcos, Docket No. 2011-0409-EAQ-E on August 18, 2011 assessing \$1,000 in administrative penalties with \$200 deferred.

Information concerning any aspect of this order may be obtained by contacting JR Cao, Enforcement Coordinator at (512) 239-2543, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Oglesby, Docket No. 2011-0439-MWD-E on August 18, 2011 assessing \$4,740 in administrative penalties with \$948 deferred.

Information concerning any aspect of this order may be obtained by contacting Heather Brister, Enforcement Coordinator at (254) 761-3034, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding R & S CONCRETE, L.L.C., Docket No. 2011-0441-IWD-E on August 18, 2011 assessing \$1,560 in administrative penalties with \$312 deferred.

Information concerning any aspect of this order may be obtained by contacting Samuel Short, Enforcement Coordinator at (512) 239-5363, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Akzo Nobel Surface Chemistry LLC, Docket No. 2011-0451-AIR-E on August 18, 2011 assessing \$3,300 in administrative penalties with \$660 deferred.

Information concerning any aspect of this order may be obtained by contacting Nadia Hameed, Enforcement Coordinator at (713) 767-3629, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Martin Operating Partnership L.P., Docket No. 2011-0503-AIR-E on August 18, 2011 assessing \$2,320 in administrative penalties with \$464 deferred.

Information concerning any aspect of this order may be obtained by contacting Allison Fischer, Enforcement Coordinator at (512) 239-2574, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding CHILTON WATER SUPPLY AND SEWER SERVICE CORPORATION, Docket No. 2011-0527-MWD-E on August 18, 2011 assessing \$1,152 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Jorge Ibarra, P.E., Enforcement Coordinator at (817) 588-5890, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Star Harbor, Docket No. 2011-0562-PWS-E on August 18, 2011 assessing \$305 in administrative penalties with \$61 deferred.

Information concerning any aspect of this order may be obtained by contacting Michaelle Sherlock, Enforcement Coordinator at (210) 403-4076, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Aus-Tex Body & Frame, Inc., Docket No. 2011-0602-AIR-E on August 18, 2011 assessing \$900 in administrative penalties with \$180 deferred.

Information concerning any aspect of this order may be obtained by contacting James Nolan, Enforcement Coordinator at (512) 239-6634, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A field citation was entered regarding Melvin E. Wilson, Docket No. 2011-0789-WOC-E on August 18, 2011 assessing \$210 in administrative penalties.

Information concerning any aspect of this citation may be obtained by contacting Melissa Keller, Citation Coordinator at (512) 239-1769, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A field citation was entered regarding Beatrice Hernandez, Docket No. 2011-0826-WOC-E on August 18, 2011 assessing \$210 in administrative penalties.

Information concerning any aspect of this citation may be obtained by contacting Melissa Keller, Citation Coordinator at (512) 239-1769, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A field citation was entered regarding Larry R. Williams, Docket No. 2011-0795-WOC-E on August 18, 2011 assessing \$210 in administrative penalties.

Information concerning any aspect of this citation may be obtained by contacting Melissa Keller, Citation Coordinator at (512) 239-1769, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A field citation was entered regarding Emmons Construction Management, LC, Docket No. 2011-0680-WQ-E on August 18, 2011 assessing \$700 in administrative penalties.

Information concerning any aspect of this citation may be obtained by contacting Melissa Keller, Citation Coordinator at (512) 239-1769, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A field citation was entered regarding Clarity Homes, Ltd., Docket No. 2011-0753-WQ-E on August 18, 2011 assessing \$700 in administrative penalties.

Information concerning any aspect of this citation may be obtained by contacting Melissa Keller, Citation Coordinator at (512) 239-1769, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A field citation was entered regarding Rose City Sand Corporation, Docket No. 2011-0681-WQ-E on August 18, 2011 assessing \$700 in administrative penalties.

Information concerning any aspect of this citation may be obtained by contacting Melissa Keller, Citation Coordinator at (512) 239-1769, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

TRD-201103563
Melissa Chao
Acting Chief Clerk
Texas Commission on Environmental Quality
Filed: August 31, 2011



Notice of Costs to Administer the Voluntary Cleanup Program

In accordance with Solid Waste Disposal Act, §361.613, Subchapter S, the executive director of the Texas Commission of Environmental Quality (TCEQ or commission) shall calculate and publish annu-

ally the commission's costs to administer the Voluntary Cleanup Program (VCP). The Innocent Owner/Operator Program, based on authority from Solid Waste Disposal Act, §361.752(b), shall also calculate and publish annually a rate established for the purposes of identifying the costs recoverable by the commission. The TCEQ is publishing the hourly billing rate of \$107 for both the VCP and the Innocent Owner/Operator Program for Fiscal Year 2012.

The VCP and the Innocent Owner/Operator Program are implemented by the same TCEQ staff. Therefore, a single hourly billing rate for both programs was derived from current projections for salaries plus the fringe benefit rate and the indirect cost rate, less federal funding and application fees, divided by the estimated hours to complete program tasks. The hourly rate for the two programs was calculated and then rounded to a whole dollar amount. Billable salary hours were derived by subtracting the release time hours from the total available hours and a further reduction of 25.5% to account for non-site-specific hours. The release time includes sick leave, jury duty, holidays, etc., and is set at 22.14%. Fringe benefits include retirement, social security, and insurance expenses and are calculated at a rate that applies to the agency as a whole. The current fringe benefit rate is 27.27%. Indirect costs include allowable overhead expenses and are also calculated at a rate that applies to the whole agency. The indirect cost rate is 28.02%. The billing process for Fiscal Year 2012 will use the hourly billing rate of \$107 for both the VCP and the Innocent Owner/Operator Program and will not be adjusted. All travel-related expenses will be billed as a separate expense. After an applicant's initial \$1,000 application fee has been expended by the Innocent Owner/Operator Program or the VCP review and oversight, invoices will be sent to the applicant on a monthly basis for payment of additional program expenses.

The commission anticipates receiving federal funding during Fiscal Year 2012 for the continued development and enhancement of the VCP and the Innocent Owner/Operator Program. If the federal funding anticipated for Fiscal Year 2012 does not become available, the commission may publish a new rate. Federal funding of the VCP and the Innocent Owner/Operator Program should occur prior to October 1, 2011.

For more information, please contact Mr. Robert Musick, P.G., VCP-CA Section, Remediation Division, Texas Commission on Environmental Quality, MC 221, 12100 Park 35 Circle, Austin, Texas 78753 or call (512) 239-2243 or email: robert.musick@tceq.texas.gov.

TRD-201103531
Kathleen C. Decker
Director, Litigation Division
Texas Commission on Environmental Quality
Filed: August 30, 2011



Notice of District Petition

Notice issued August 24, 2011.

TCEQ Internal Control No. D-04122011-011; Kiowa Homeowners Water Supply Corporation (Petitioner) has filed a petition with the Texas Commission on Environmental Quality (TCEQ) to convert Kiowa Homeowners Water Supply Corporation to Lake Kiowa Special Utility District (District), and to transfer Certificate of Convenience and Necessity (CCN) No. 11140 from Kiowa Homeowners Water Supply Corporation to Lake Kiowa Special Utility District. Lake Kiowa Special Utility District's business address will be: 100 Kiowa Drive W #105, Lake Kiowa, Texas 76240. The petition was filed pursuant to Chapters 49 and 65 of the Texas Water Code; 30 Texas Administrative Code Chapter 293; and the procedural rules of the TCEQ. The nature and purpose of the petition are for the conversion of Kiowa Homeowners Water Supply Corporation and the organization,

creation and establishment of Lake Kiowa Special Utility District under the provisions of Article XVI, Section 59, Texas Constitution, and Chapter 65 of the Texas Water Code, as amended. The District shall have the purposes and powers provided in Chapter 65 of the Texas Water Code, and CCN No. 11140 shall be transferred as provided in Chapter 13, of the Texas Water Code, as amended. The nature of the services presently performed by Kiowa Homeowners Water Supply Corporation is to provide water supply for municipal uses, domestic uses, power and commercial purposes, and other beneficial uses or controls. The nature of the services proposed to be provided by Lake Kiowa Special Utility District is to provide water supply for municipal uses, domestic uses, power and commercial purposes, and other beneficial uses or controls. Additionally, it is proposed that the District will protect, preserve and restore the purity and sanitary condition of the water within the District. It is anticipated that conversion will have no adverse effects on the rates and services provided to the customers.

INFORMATION SECTION

To view the complete issued notice, view the notice on our web site at www.tceq.state.tx.us/comm_exec/cc/pub_notice.html or call the Office of the Chief Clerk at (512) 239-3300 to obtain a copy of the complete notice. When searching the web site, type in the issued date range shown at the top of this document to obtain search results.

The TCEQ may grant a contested case hearing on the petition if a written hearing request is filed within 30 days after the newspaper publication of the notice. To request a contested case hearing, you must submit the following: (1) your name (or for a group or association, an official representative), mailing address, daytime phone number, and fax number, if any; (2) the name of the Petitioner and the TCEQ Internal Control Number; (3) the statement "I/we request a contested case hearing"; (4) a brief description of how you would be affected by the petition in a way not common to the general public; and (5) the location of your property relative to the proposed District's boundaries. You may also submit your proposed adjustments to the petition. Requests for a contested case hearing must be submitted in writing to the Office of the Chief Clerk at the address provided in the information section below. The Executive Director may approve the petition unless a written request for a contested case hearing is filed within 30 days after the newspaper publication of this notice. If a hearing request is filed, the Executive Director will not approve the petition and will forward the petition and hearing request to the TCEQ Commissioners for their consideration at a scheduled Commission meeting. If a contested case hearing is held, it will be a legal proceeding similar to a civil trial in state district court. Written hearing requests should be submitted to the Office of the Chief Clerk, MC 105, TCEQ, P.O. Box 13087, Austin, TX 78711-3087. For information concerning the hearing process, please contact the Public Interest Counsel, MC 103, at the same address. For additional information, individual members of the general public may contact the Districts Review Team, at (512) 239-4691. Si desea información en español, puede llamar al (512) 239-0200. General information regarding TCEQ can be found at our web site at www.tceq.state.tx.us.

TRD-201103565

Melissa Chao

Acting Chief Clerk

Texas Commission on Environmental Quality

Filed: August 31, 2011



Notice of Receipt of Application for Land Use Compatibility Determination for a Municipal Solid Waste Permit Proposed Permit No. 2377

APPLICATION. Pintail Landfill, LLC, 24644 Highway 6, Hempstead, Waller County, Texas 77445, has applied to the Texas Commission on Environmental Quality (TCEQ) for proposed Permit No. 2377, to authorize the Pintail Landfill, a new Type I Municipal Solid Waste Disposal Facility and has requested a land-use only determination. The facility is located at 24644 Highway 6, Hempstead, Waller County, Texas 77445. The land use compatibility portion of the application was received by the TCEQ on July 22, 2011. This application is available for viewing and copying at the Waller County Library, 2331 11th Street, Hempstead, Waller County, Texas 77445.

ADDITIONAL NOTICE. The TCEQ Executive Director has determined that the land use compatibility portion of the application is administratively complete and will conduct a substantive review of this portion of the application. Following completion of that review, the TCEQ will make a separate determination on the question of land use compatibility. If the site is determined to be acceptable on the basis of land use, the Executive Director will consider technical matters related to the permit application at a later time. After completing the land use compatibility review, the TCEQ will issue a Notice of Application and Preliminary Decision. Notice of the Application and Preliminary Decision will be published and mailed to those who are on the county-wide mailing list and to those who are on the mailing list for this application. That notice will contain the deadline for submitting public comments.

PUBLIC COMMENT/PUBLIC MEETING. You may submit public comments or request a public meeting on this application. The purpose of a public meeting is to provide the opportunity to submit comments or to ask questions about the application. TCEQ will hold a public meeting if the Executive Director determines that there is a significant degree of public interest in the application or if requested by a local legislator. A public meeting is not a contested case hearing.

OPPORTUNITY FOR A CONTESTED CASE HEARING. After the deadline for submitting public comments, the Executive Director will consider all timely comments and prepare a response to all relevant and material, or significant public comments. Unless the application is directly referred for a contested case hearing, the response to comments, and the Executive Director's decision on the application, will be mailed to everyone who submitted public comments and to those persons who are on the mailing list for this application. If comments are received, the mailing will also provide instructions for requesting reconsideration of the Executive Director's decision and for requesting a contested case hearing. A person who may be affected by the facility is entitled to request a contested case hearing from the commission. A contested case hearing is a legal proceeding similar to a civil trial in state district court.

TO REQUEST A CONTESTED CASE HEARING, YOU MUST INCLUDE THE FOLLOWING ITEMS IN YOUR REQUEST: your name, address, phone number; applicant's name and permit number; the location and distance of your property/activities relative to the facility; a specific description of how you would be adversely affected by the facility in a way not common to the general public; and, the statement "[I/we] request a contested case hearing." If the request for contested case hearing is filed on behalf of a group or association, the request must designate the group's representative for receiving future correspondence; identify an individual member of the group who would be adversely affected by the facility or activity; provide the information discussed above regarding the affected member's location and distance from the facility or activity; explain how and why the member would be affected; and explain how the interests the group seeks to protect are relevant to the group's purpose. Following the close of all applicable comment and request periods, the Executive Director will forward the application and any requests for reconsideration or for a contested case hearing to the TCEQ Commissioners

for their consideration at a scheduled Commission meeting. The Commission will only grant a contested case hearing on disputed issues of fact that are relevant and material to the Commission's decision on the application. Further, the Commission will only grant a hearing on issues that were raised in timely filed comments that were not subsequently withdrawn.

MAILING LIST. If you submit public comments, a request for a contested case hearing or a reconsideration of the Executive Director's decision, you will be added to the mailing list for this specific application to receive future public notices mailed by the Office of the Chief Clerk. In addition, you may request to be placed on: (1) the permanent mailing list for a specific applicant name and permit number; and/or (2) the mailing list for a specific county. If you wish to be placed on the permanent and/or the county mailing list, clearly specify which list(s) and send your request to TCEQ Office of the Chief Clerk at the address below.

AGENCY CONTACTS AND INFORMATION. All written public comments and requests must be submitted to the Office of the Chief Clerk, MC 105, TCEQ, P.O. Box 13087, Austin, TX 78711-3087 or electronically at www.tceq.state.tx.us/about/comments.html. If you need more information about this permit application or the permitting process, please call TCEQ Public Participation and Education Program, Toll Free, at 1-800-687-4040. Si desea información en español, puede llamar al 1-800-687-4040. General information about TCEQ can be found at our web site at www.tceq.state.tx.us. Further information may also be obtained from Pintail Landfill, LLC at the address stated above or by calling Mr. Ernest Kaufmann, President, Green Group Holdings, LLC, Manager of Pintail Landfill, LLC at (770) 720-2717.

TRD-201103564

Melissa Chao

Acting Chief Clerk

Texas Commission on Environmental Quality

Filed: August 31, 2011



Notice of Water Quality Applications

The following notices were issued on August 19, 2011 through August 26, 2011.

The following require the applicants to publish notice in a newspaper. Public comments, requests for public meetings, or requests for a contested case hearing may be submitted to the Office of the Chief Clerk, Mail Code 105, P.O. Box 13087, Austin, Texas 78711-3087, **WITHIN 30 DAYS OF THE DATE OF NEWSPAPER PUBLICATION OF THE NOTICE.**

INFORMATION SECTION

HARRIS COUNTY MUNICIPAL UTILITY DISTRICT NO 36 has applied for a renewal of Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ0012239001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 990,000 gallons per day. The facility is located at 20650 Northridge Park Drive, adjacent to Lateral H of Turkey Creek; approximately 2.2 miles south and 1.2 miles east of the intersection of Farm-to-Market Road 1960 and Interstate Highway 45 in Harris County, Texas 77073.

ACME BRICK COMPANY which operates Sewell Pit, a clay mining site, has applied for a renewal of TPDES Permit No. WQ0003840000, which authorizes the discharge of mine pit water and storm water runoff on an intermittent and variable basis via Outfall 001. The facility is located adjacent to the north side of Farm-to-Market Road 2181 and approximately 1.7 miles west of the intersection of Farm-to-Market

Road 2181 and Interstate Highway 35 East, south of the City of Corinth, Denton County, Texas 76201.

SAFETY-KLEEN SYSTEMS INC which operates an industrial and hazardous waste treatment and storage facility, has applied for a renewal of TPDES Permit No. WQ0004336000, which authorizes discharge of storm water associated with industrial activities on an intermittent and flow variable basis via Outfall 001. The facility is located at 1722 Cooper Creek Road, 0.5 mile north of State Highway 380 on Cooper Creek Road, Denton County, Texas 76208.

THE CITY OF LAREDO AND LAREDO COMMUNITY COLLEGE AND TEXAS DEPARTMENT OF TRANSPORTATION DISTRICT 22 which operate the City of Laredo Municipal Separate Storm Sewer System (MS4) have applied for a renewal of TPDES Permit No. WQ0004592000 (NPDES Permit No. TXS001401) to authorize storm water point source discharges to surface water in the state from the City of Laredo MS4. The MS4 is located within the corporate boundaries or under the jurisdiction (except agricultural lands) of the City of Laredo, 78040, 78041, 78042, 78043, 78044, 78045, 78046, and 78049 in Webb County, Texas.

CITY OF MADISONVILLE has applied for a renewal of TPDES Permit No. WQ0010215001 which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 940,000 gallons per day. The facility is located at 701 South Martin Luther King Street, approximately 550 feet east of South Martin Luther King Street and 750 feet south of the intersection of South Martin Luther King Street and 4th Street in Madison County, Texas 77864.

SMITH COUNTY MUNICIPAL UTILITY DISTRICT NO 1 has applied for a major amendment to TPDES Permit No. WQ0010285001 to authorize: the removal of toxicity testing, metal testing, and dechlorination requirements; and a change in the classification of the facility from a major to a minor facility. The current permit authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 875,000 gallons per day. TCEQ received this application on April 8, 2011. The facility is located 0.4 mile south of the intersection of State Highway 155 and Farm-to-Market Road 3311 and 0.4 mile north of Interstate 20 in Smith County, Texas 75708

CITY OF FARMERSVILLE has applied for a renewal of TPDES Permit No. WQ0010442001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 225,000 gallons per day. The facility is located at 1201 Elm Street, approximately 1,600 feet south of the intersection of State Highway 78 and U.S. Highway 380 in the southwest corner of the City of Farmersville in Collin County, Texas 75442.

CITY OF FARMERSVILLE has applied for a renewal of TPDES Permit No. WQ0010442002, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 530,000 gallons per day. The facility is located at 1201 Elm Street, approximately 1,600 feet south of the intersection of State Highway 78 and U.S. Highway 380 in the southwest corner of the City of Farmersville in Collin County, Texas 75442.

THE CITY OF TYLER has applied for a renewal of TPDES Permit No. WQ0010653002, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 9,000,000 gallons per day. The facility is located 1.5 miles northwest of the intersection of U.S. Highway 69 and Farm-to-Market Road 2813 and approximately 3.4 miles south-southwest of the intersection of State Loop 323 and U.S. Highway 69 in Smith County, Texas 75703.

FORT HANCOCK WATER CONTROL AND IMPROVEMENT DISTRICT has applied for a renewal of TPDES Permit No. WQ0011173001, which authorizes the disposal of treated domestic

wastewater via evaporation at a daily average flow not to exceed 33,000 gallons per day in the interim phase and the discharge of treated domestic wastewater at a daily average flow not to exceed and 452,000 gallons per day in the final phase. The facility is located on the north side of and adjacent to State Highway 20, approximately one mile southeast of the City of Fort Hancock in Hudspeth County, Texas 79839.

CITY OF PFLUGERVILLE has applied for a major amendment to TPDES Permit No. WQ0011845002 to authorize an increase in the discharge of treated domestic wastewater from an annual average flow not to exceed 5,300,000 gallons per day to an annual average flow not to exceed 5,850,000 gallons per day. The current permit also includes the following authorizations: composting of sewage sludge at the treatment facility; distribution and marketing of sludge; and land application of Class A sludge on property owned, leased, or under the direct control of the permittee. The facility is located at 2609 East Pecan Street, approximately 1.7 miles southeast of the City of Pflugerville and approximately 1.0 mile southeast of the intersection of Dessau Road and Farm-to-Market Road 1825 on the east bank of Gilleland Creek in Travis County, Texas 78660.

SPX CORPORATION has applied for a renewal of TPDES Permit No. WQ0012397001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 12,000 gallons per day. The facility is located at 19191 Hempstead Road (Old U.S. Highway 290), approximately 1 mile south of the intersection of Old U.S. Highway 290 and State Highway 6 in Harris County, Texas 77065

RA-TE INC has applied for a renewal of TPDES Permit No. WQ0013017001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 25,000 gallons per day. The facility is located approximately 2,200 feet southwest of the intersection of Smith Road and Kidd Road in Jefferson County, Texas 77707.

GARRETT CREEK RANCH INC has applied for a renewal of TPDES Permit No. WQ0013427001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 8,020 gallons per day. The facility is located at 270 Private Road 3475, approximately 1.5 miles east of Farm Road 2123 and 3.5 miles southwest of the City of Paradise in Wise County, Texas 76073.

BOSQUE UTILITIES CORPORATION has applied for a renewal of TPDES Permit No. WQ0013528001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 60,000 gallons per day. The facility is located on a private road, approximately 1.3 miles southwest of the intersection of County Road 3300 and U.S. Highway 287 and approximately 0.9 mile east of the abutment of the U.S. Highway 287 bridge over Richland-Chambers Reservoir in Navarro County, Texas 75144.

CITY OF SANGER has applied for a renewal of TPDES Permit No. WQ0014372003 which authorizes the discharge of treated domestic wastewater at an annual average flow not to exceed 2,000,000 gallons per day. The facility will be located approximately 8,500 feet south of the intersection of East Willow Street and Railroad Avenue, and south of the intersection of Railroad Avenue and Rector Road in Denton County, Texas 76266.

HARRIS COUNTY MUNICIPAL UTILITY DISTRICT NO 400 has applied for a renewal of TPDES Permit No. WQ0014419001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 800,000 gallons per day. The facility is located approximately 0.7 mile east of the intersection of Wilson Road and Beltway 8 in Harris County, Texas 77396.

THE CITY OF WILLS POINT has applied for a new permit, proposed Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ0014834002, to authorize the discharge of treated filter backwash effluent from a water treatment plant at a daily average flow not to exceed 100,000 gallons per day. The facility is located 1.73 miles north of U.S. Highway 80 and 0.848 mile west of Farm-to-Market Road 47 on Van Zandt County Road 3802 in Van Vandt County, Texas 75169.

The following do not require publication in a newspaper. Written comments or requests for a public meeting may be submitted to the Office of the Chief Clerk, at the address provided in the information section above, WITHIN 10 DAYS OF THE ISSUED DATE OF THE NOTICE.

THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY (TCEQ) has initiated a minor modification of the Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ0010710003 issued to City of Honey Grove, to correct a typographical error in specifying the upper limit of the effluent pH limit range from 9.0 to 10.0. The existing permit authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 500,000 gallons per day. The facility is located approximately 2,000 feet west from Farm-to-Market Road 100 and approximately 3,000 feet north of U.S. Highway 82 in Fannin County, Texas 75446.

If you need more information about these permit applications or the permitting process, please call the TCEQ Public Participation and Education Program, Toll Free, at 1-800-687-4040. General information about the TCEQ can be found at our web site at www.TCEQ.state.tx.us. Si desea información en español, puede llamar al 1-800-687-4040.

TRD-201103562

Melissa Chao

Acting Chief Clerk

Texas Commission on Environmental Quality

Filed: August 31, 2011



Notice of Water Rights Application

Notice issued August 19, 2011.

APPLICATION NO. 4117A; The City of Victoria, Applicant, 105 W. Juan Linn, Victoria, Texas 77901, seeks to amend Water Use Permit No. 4117 to add uses; change the place of use; request an exempt inter-basin transfer; change the diversion point to a point on the Guadalupe River, Guadalupe River Basin; and to allow storage of the authorized 200 acre-feet of water in the off-channel reservoirs that are authorized by Water Use Permit No. 5466. More information on the application and how to participate in the permitting process is given below. The application was received on June 30, 2009. Additional information and fees were received on August 11, and August 18, 2009, February 22, and June 14, 2010. The application was declared administratively complete and accepted for filing on September 11, 2009. The Executive Director has completed the technical review of the application and prepared a draft amendment. The draft amendment, if granted, would include special conditions, including streamflow restrictions. The application, technical memoranda, and Executive Director's draft amendment are available for viewing and copying at the Office of the Chief Clerk, 12100 Park 35 Circle, Bldg. F, Austin, TX 78753. Written public comments and requests for a public meeting should be submitted to the Office of the Chief Clerk, at the address provided in the information section below by September 7, 2011.

INFORMATION SECTION

To view the complete issued notice, view the notice on our web site at www.tceq.state.tx.us/comm_exec/cc/pub_notice.html or call the Office

of the Chief Clerk at 512-239-3300 to obtain a copy of the complete notice. When searching the web site, type in the issued date range shown at the top of this document to obtain search results.

A public meeting is intended for the taking of public comment, and is not a contested case hearing.

The Executive Director can consider approval of an application unless a written request for a contested case hearing is filed. To request a contested case hearing, you must submit the following: (1) your name (or for a group or association, an official representative), mailing address, daytime phone number, and fax number, if any; (2) applicant's name and permit number; (3) the statement "[I/we] request a contested case hearing"; and (4) a brief and specific description of how you would be affected by the application in a way not common to the general public. You may also submit any proposed conditions to the requested application which would satisfy your concerns. Requests for a contested case hearing must be submitted in writing to the TCEQ Office of the Chief Clerk at the address provided in the information section below.

If a hearing request is filed, the Executive Director will not issue the requested permit and may forward the application and hearing request to the TCEQ Commissioners for their consideration at a scheduled Commission meeting.

Written hearing requests, public comments or requests for a public meeting should be submitted to the Office of the Chief Clerk, MC 105, TCEQ, P.O. Box 13087, Austin, TX 78711-3087. For information concerning the hearing process, please contact the Public Interest Counsel, MC 103, at the same address. For additional information, individual members of the general public may contact the Public Participation and Education Program at 1-800-687-4040. General information regarding the TCEQ can be found at our web site at www.tceq.state.tx.us. Si desea información en español, puede llamar al 1-800-687-4040.

TRD-201103566

Melissa Chao

Acting Chief Clerk

Texas Commission on Environmental Quality

Filed: August 31, 2011



Proposal for Decision

The State Office of Administrative Hearings issued a Proposal for Decision and Order to the Texas Commission on Environmental Quality on August 25, 2011, in the matter of the Executive Director of the Texas Commission on Environmental Quality, Petitioner v. Mostafa A. Soliman d/b/a Willowbrook Subdivision; SOAH Docket No. 582-10-5983; TCEQ Docket No. 2010-0222-PWS-E. The Commission will consider the Administrative Law Judge's Proposal for Decision and Order regarding the enforcement action against Mostafa A. Soliman d/b/a Willowbrook Subdivision on a date and time to be determined by the Office of the Chief Clerk in Room 201S of Building E, 12100 N. Interstate 35, Austin, Texas. This posting is Notice of Opportunity to Comment on the Proposal for Decision and Order. The comment period will end 30 days from date of this publication. Written public comments should be submitted to the Office of the Chief Clerk, MC-105, TCEQ, P.O. Box 13087, Austin, Texas 78711-3087. If you have any questions or need assistance, please contact Melissa Chao, Office of the Chief Clerk, (512) 239-3300.

TRD-201103567

Melissa Chao

Acting Chief Clerk

Texas Commission on Environmental Quality

Filed: August 31, 2011

Request for Nominations - Water Utility Operator Licensing Advisory Committee

The Texas Commission on Environmental Quality (TCEQ) is requesting nominations for seven individuals to serve on the TCEQ Water Utility Operator Licensing Advisory Committee (the Committee). The Committee membership represents various geographic areas of the state, ethnicity, businesses, governments, associations, and industries. If you have served on this advisory committee or nominated someone or self-nominated in the past, you may do so again. When members' terms expire, the committee representation changes and individuals with varying backgrounds and geographic locations are needed each time.

The authority for the committee is found in 30 TAC Chapter 5. The objectives of the 13-member committee are: 1) to review training and educational material to promote quality education and training; 2) to review Job Analysis exam validations and to advise and assist regarding licensing requirements; 3) to assist with the review of rules, regulations, guidance documents, and policy statements; 4) to represent a diversity of viewpoints; and 5) to promote interaction with outside organizations.

These seven appointments will be made by the TCEQ commissioners and will be for four-year terms, beginning September 1, 2012. The committee meets as needed, usually four times a year. Meetings are held at the TCEQ offices located at 12100 Park 35 Circle in Austin, Texas, and last approximately two to four hours. No financial compensation is available. Additional information regarding the Committee is available at the following website: http://www.tceq.texas.gov/licensing/groups/wuoc_comm.html.

To nominate an individual or to self-nominate, submit a resume of the nominee. The resume must include: work history, dates of employment, job titles and duties, educational background, professional licenses held, and dates of past and current memberships on TCEQ advisory committees, councils and work groups. Also, submit a letter from the nominee indicating his/her agreement to serve, if appointed, and indicating that he/she has employer approval to serve, if required.

Nominations must be received at TCEQ by 5:00 p.m., on October 14, 2011. Nominations may be mailed to Joseph Hildenbrand, Occupational Licensing Section, MC 178, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087. Nominations may also be faxed to Mr. Hildenbrand at (512) 239-6272 or sent by email to joseph.hildenbrand@tceq.texas.gov.

Questions regarding the committee can be directed to Mr. Hildenbrand at (512) 239-6394 or to Paul Munguia at (512) 239-1477.

TRD-201103539

Robert Martinez

Director, Environmental Law Division

Texas Commission on Environmental Quality

Filed: August 30, 2011



Texas Public Finance Authority

Notice of Public Hearing

Texas Public Finance Authority Charter School Finance Corporation Education Revenue Bonds (Orenda Education), Series 2011A

Texas Public Finance Authority Charter School Finance Corporation Taxable Education Revenue Bonds (Orenda Education), Series 2011B

Texas Public Finance Authority Charter School Finance Corporation Taxable Education Revenue Bonds (Orenda Education) Series 2011Q (Qualified School Construction Bonds - Direct Pay)

Notice is hereby given of a public hearing to be held on behalf of the Texas Public Finance Authority Charter School Finance Corporation (the "Issuer") on September 23, 2011, at 10:00 a.m. in the Texas Public Finance Authority Conference Room, William P. Clements State Office Building, 300 W. 15th St., Suite 411, Austin, Texas 78701, with respect to the captioned Series 2011A Bonds, Series 2011B Bonds and Series 2011Q Bonds (collectively "the Bonds") to be issued in an aggregate principal amount not to exceed \$9,500,000. The Issuer will loan the proceeds of the Bonds to Orenda Education, a Texas non-profit corporation (the "Borrower"), for the purposes of (1) financing and reimbursing certain costs for the purchase, construction, renovation and/or equipment of educational facilities, including a new K-12 campus for the Gateway College Preparatory School, located at 3360 CR 111, Georgetown, Texas 78626 (the "Project"), (2) funding a debt service reserve fund; and (3) paying a portion of the costs of issuance of the Bonds. The Borrower will own and serve as the exclusive operator of the Project. The Issuer has no taxing authority and no general revenue of the State or any other taxing authority is pledged to the repayment of the Bonds. The Bonds are secured by and payable solely from funds provided by the Borrower.

The public hearing will be conducted by Susan Durso, Interim Executive Director and General Counsel of the Texas Public Finance Authority, or her designee (the Hearing Officer). All interested persons are invited to attend such public hearing to express their views with respect to the above-described project and the Bonds. Questions or requests for additional information may be directed to Hoang Vu, Esq. at telephone number (713) 220-3879. Any interested persons unable to attend the hearing may submit their views in writing to Mr. Vu prior to the date scheduled for the hearing, at fax number (713) 238-7129.

TRD-201103550
Susan Durso
General Counsel
Texas Public Finance Authority
Filed: August 31, 2011



Department of State Health Services

Maximum Fees Allowed for Providing Health Care Information Effective September 9, 2011

The Department of State Health Services licenses general and special hospitals in accordance with Health and Safety Code, Chapter 241. In 1995, the Texas Legislature amended the law to address the release and confidentiality of health care information. In 2009, the Texas Legislature amended the law to change the definition of health care information and to add a category of fees for records provided on and delivered in a digital or other electronic media.

In accordance with Health and Safety Code, §241.154(e), the fee effective as of September 9, 2011, for providing a patient's health care information has been adjusted by increasing by 4.1% the 2010 rate to reflect the most recent changes to the consumer price index that measures the average changes in prices of goods and services purchased by urban wage earners and clerical workers as published by the Bureau of Labor Statistics of the United States Department of Labor.

Health and Safety Code, §241.154(b) - (d) Provisions:

(b) Except as provided by subsection (d), the hospital or its agent may charge a reasonable fee for providing the health care information except payment information and is not required to permit the examination,

copying, or release of the information requested until the fee is paid unless there is a medical emergency. The fee may not exceed the sum of:

(1) a basic retrieval or processing fee, which must include the fee for providing the first 10 pages of copies and which may not exceed \$43.78; and

(A) a charge for each page of:

(i) \$1.47 for the 11th through the 60th page of provided copies;

(ii) \$.73 for the 61st through the 400th page of provided copies;

(iii) \$.38 for any remaining pages of the provided copies; and

(B) the actual cost of mailing, shipping, or otherwise delivering the provided copies;

(2) if the requested records are stored on microform, a retrieval or processing fee, which must include the fee for providing the first 10 pages of the copies and which may not exceed \$66.70; and

(A) \$1.47 per page thereafter; and

(B) the actual cost of mailing, shipping, or otherwise delivering the provided copies; or

(3) if the requested records are provided on a digital or other electronic medium and the requesting party requests delivery in a digital or electronic medium, including electronic mail:

(A) a retrieval or processing fee, which may not exceed \$79.32; and

(B) the actual cost of mailing, shipping, or otherwise delivering the provided copies.

(c) In addition, the hospital or its agent may charge a reasonable fee for:

(1) execution of an affidavit or certification of a document, not to exceed the charge authorized by Civil Practice and Remedies Code, §22.004; and

(2) written responses to a written set of questions, not to exceed \$10.41 for a set.

(d) A hospital may not charge a fee for:

(1) providing health care information under subsection (b) to the extent the fee is prohibited under Health and Safety Code, Chapter 161, Subchapter M;

(2) a patient to examine the patient's own health care information;

(3) providing an itemized statement of billed services to a patient or third-party payer, except as provided under §311.002(f); or

(4) health care information relating to treatment or hospitalization for which workers' compensation benefits are being sought, except to the extent permitted under Labor Code, Chapter 408.

This information is provided only as a courtesy to licensed hospitals. Hospitals are responsible for verifying that fees for health care information are charged in accordance with Health and Safety Code, Chapters 241, 311, and 324.

The statutes referenced in this notice may be found on the Internet at:

Health and Safety Code, <http://www.statutes.legis.state.tx.us?link=HS>
Labor Code, <http://www.statutes.legis.state.tx.us?link=LA>

Civil Practice and Remedies Code, <http://www.statutes.legis.state.tx.us?link=CP>

Should you have questions, you may contact the Department of State Health Services, Facility Licensing Group, Mail Code 2835, P.O. Box 149347, Austin, Texas 78714-9347, telephone (512) 834-6648.

TRD-201103547
Lisa Hernandez
General Counsel
Department of State Health Services
Filed: August 31, 2011

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Texas Health and Human Services Commission

Notice of Adopted Reimbursement Rates for Non-state Operated Intermediate Care Facilities for Persons with Mental Retardation (ICF/MR)

Adopted Rates. As the single state agency for the state Medicaid program, the Texas Health and Human Services Commission (HHSC) has adopted new per diem payment rates for the non-state operated Intermediate Care Facilities for Persons with Mental Retardation (ICF/MR) program operated by the Texas Department of Aging and Disability Services (DADS). The Notice of Public Hearing for these proposed rates was published in the June 10, 2011, issue of the *Texas Register* (36 TexReg 3642) and the proposed rates were published in the June 24, 2011, issue of the *Texas Register* (36 TexReg 3990).

The adopted payment rates, to be effective September 1, 2011, are as follows:

Per Diem Rates for Non-state Operated ICF/MR Services by Level of Need and Facility Size.

Level of Need	8 or Less Beds	9-13 Beds	14+ Beds
1 Intermittent	141.40	115.70	109.86
5 Limited	157.56	131.40	117.27
8 Extensive	179.19	155.76	130.58
6 Pervasive	219.44	186.46	175.85
9 Pervasive +	398.07	378.20	379.58

Methodology and Justification. The adopted rates were determined in accordance with the rate setting methodologies codified at Texas Administrative Code (TAC), Title 1, Chapter 355, Subchapter A, §355.112, Attendant Compensation Rate Enhancement, and Subchapter D, §355.456, Rate Setting Methodology. These rates were subsequently adjusted in accordance with 1 TAC Chapter 355, Subchapter A, §355.101, Introduction, §355.109, Adjusting Reimbursement When New Legislation, Regulations or Economic Factors Affect Costs and 1 TAC Chapter 355, Subchapter B, §355.201, Establishment and Adjustment of Reimbursement Rates by the Health and Human Services Commission. These rate adjustments are being made as a result of the 2012-2013 General Appropriations Act (Article II, H.B. 1, 82nd Legislature, Regular Session, 2011).

TRD-201103541
Steve Aragon
Chief Counsel
Texas Health and Human Services Commission
Filed: August 30, 2011

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Public Notice

The Texas Health and Human Services Commission announces its intent to submit amendments to the Texas State Plan for Medical Assistance, under Title XIX of the Social Security Act. The proposed amendments are effective October 1, 2011.

These rate actions are being taken to comply with Texas Administrative Code, Title 1, §355.8085, Texas Medicaid Reimbursement Methodology for Physicians and Certain Other Practitioners, which requires fees for individual services to be reviewed at a minimum of once every two years. The amendments will modify the reimbursement methodologies in the Texas Medicaid State Plan as a result of Medicaid fee adjustments for:

Durable Medical Equipment Prosthetics, Orthotics, and Supplies

Early Periodic Screening, Diagnosis and Treatment (EPSDT)

Physicians and Other Practitioners

Tuberculosis Clinic Services

The proposed amendments are estimated to result in an additional annual aggregate savings of \$(23,523,184) for federal fiscal year (FFY) 2012, with approximately \$(13,695,198) in federal funds and \$(9,827,986) in State General Revenue (GR). For FFY 2013, the estimated additional aggregate expenditure is \$(24,283,870) with approximately \$(13,934,085) in federal funds and \$(10,349,785) in GR.

Interested parties may obtain copies of the proposed amendment by contacting Dan Huggins, Director of Rate Analysis for Acute Care Services, by mail at the Rate Analysis Department, Texas Health and Human Services Commission, P.O. Box 85200, H-400, Austin, Texas 78708-5200; by telephone at (512) 491-1432; by facsimile at (512) 491-1998; or by e-mail at dan.huggins@hhsc.state.tx.us. Individuals may make comments to the proposed amendments or view other comments made by contacting Mr. Huggins as well. Copies of the proposals will also be made available for public review at the local offices of the Texas Department of Aging and Disability Services.

TRD-201103534
Steve Aragon
Chief Counsel
Texas Health and Human Services Commission
Filed: August 30, 2011

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Texas Department of Insurance

Company Licensing

Application to change the name of AMERIN GUARANTY CORPORATION to RADIAN MORTGAGE ASSURANCE INC., a foreign

fire and/or casualty company. The home office is in Philadelphia, Pennsylvania.

Application to do business in the State of Texas by COVENTRY HEALTH CARE OF TEXAS, INC., a domestic Health Maintenance Organization. The home office is in Austin, Texas.

Application to change the name of LIBERTY LIFE INSURANCE COMPANY to ATHENE ANNUITY & LIFE ASSURANCE COMPANY, a foreign life, accident and/or health company. The home office is in Greenville, South Carolina.

Any objections must be filed with the Texas Department of Insurance, within twenty (20) calendar days from the date of the *Texas Register* publication, addressed to the attention of Godwin Ohaechesi, 333 Guadalupe Street, M/C 305-2C, Austin, Texas 78701.

TRD-201103568

Gene C. Jarmon

General Counsel and Chief Clerk

Texas Department of Insurance

Filed: August 31, 2011



Texas Department of Licensing and Regulation

Public Notice - Revised Enforcement Plan

The Texas Commission of Licensing and Regulation (Commission) provides this public notice that at their regularly scheduled meeting held July 11, 2011, the Commission adopted the Texas Department of Licensing and Regulation's (Department) revised enforcement plan which was established in compliance with Texas Occupations Code, §51.302(c).

Acts of the 81st Legislature, House Bill 2763 amended Texas Occupations Code, Chapter 1202 regarding Industrialized Housing and Buildings and gave the Department the authority to regulate relocatable educational facilities in Texas effective September 1, 2009. The Department's revised enforcement plan includes penalty matrices for Relocatable Educational Facilities in the Industrialized Housing and Buildings program that is consistent with the administrative rules that were adopted effective January 1, 2010.

The penalty matrix for IHB is also amended by creating individual matrices for each specialized license type that relates specifically to that license group instead of the previous matrix that included all specialized license types under one matrix. Individual matrices include Industrialized Housing and Buildings Manufacturers, Builders, Design Review Agencies, Third Party Inspection Agencies, Third Party Inspectors, and Third Party Site Inspectors, and Relocatable Educational Facility Builders.

A copy of the revised enforcement plan is posted on the Department's website and may be downloaded at www.license.state.tx.us. You may also contact the Enforcement Division at (512) 539-5600 or by e-mail at enforcement@license.state.tx.us to obtain a copy of the revised plan.

TRD-201103517

Brad Bowman

General Counsel

Texas Department of Licensing and Regulation

Filed: August 29, 2011



North Central Texas Council of Governments

Request for Proposals for Planning for Livable Military Communities

Consultant Proposal Request

This request by the North Central Texas Council of Governments (NCTCOG) for consultant services is filed under the provisions of Government Code, Chapter 2254.

NCTCOG is requesting written proposals from consultant firms to conduct an Economic Market Analysis, Integrated Transportation Corridor Plans to Support Livable Communities, and complete Comprehensive Plan Updates and associated zoning and land use updates for several cities that surround Naval Air Station, Fort Worth, Joint Reserve Base. Activities associated with this request include review of data related to existing market conditions, review of trade patterns, supply and demand analysis, and development of potential real estate products that will result in recommendations to realize real estate opportunities in the study area. This project will require development of three corridor plans that focus on how changes to zoning, transportation infrastructure, land use, urban design, and redevelopment options have the potential to reshape the surrounding communities and provide corridors that integrate a mix of uses, economic development opportunities, and a multi-modal transportation network. Additionally, updates or amendments to comprehensive plans for up to six cities of varying sizes will be required. This includes conducting public involvement and planning process that results in comprehensive plan and future land use map/zoning updates that reflect regional initiatives to support land-uses that are compatible with military operations and support an integrated approach to considering transportation, housing, and land-use options that provide for the long term economic vitality of the communities.

Due Date

Proposals must be received no later than 5:00 p.m., Central Daylight Time, on Friday, October 7, 2011, to Tamara Cook, AICP, Principal Transportation Planner, North Central Texas Council of Governments, 616 Six Flags Drive, Arlington, Texas 76011. Copies of the Request for Proposals (RFP) will be available at <http://www.nctcog.org/trans/admin/rfp> by the close of business on Friday, September 9, 2011.

NCTCOG encourages participation by disadvantaged business enterprises and does not discriminate on the basis of age, race, color, religion, sex, national origin, or disability.

Contract Award Procedures

The firm or individual selected to perform these activities will be recommended by a Consultant Selection Committee (CSC). The CSC will use evaluation criteria and methodology consistent with the scope of services contained in the Request for Proposals. The NCTCOG Executive Board will review the CSC's recommendations and, if found acceptable, will issue a contract award.

Regulations

NCTCOG, in accordance with Title VI of the Civil Rights Act of 1964, 78 Statute 252, 41 United States Code 2000d to 2000d-4; and Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A, Office of the Secretary, Part 1, Nondiscrimination in Federally Assisted Programs of the Department of Transportation issued pursuant to such act, hereby notifies all proposers that it will affirmatively assure that in regard to any contract entered into pursuant to this advertisement, disadvantaged business enterprises will be afforded full opportunity to submit proposals in response to this invitation and will not be discriminated against on the grounds of race, color, sex, age, national origin, or disability in consideration of an award.

TRD-201103559

R. Michael Eastland
Executive Director
North Central Texas Council of Governments
Filed: August 31, 2011

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Panhandle Regional Planning Commission

Legal Notice

The Panhandle Regional Planning Commission (PRPC) seeks to develop a list of qualified training providers to offer training on an "as needed" basis for program participants being served through the Workforce Solutions office located in Amarillo, and throughout the 26-county area. The purpose of this solicitation is to gather information from area training providers sufficient to determine their qualifications, offerings, costs and willingness to meet the requirements of inclusion on the PRPC Training Provider List.

Providers of such training must be either secondary and post-secondary educational institutions; licensed career schools and colleges; or other public, private non-profit, and private for-profit entities that are specifically exempt from the Texas proprietary school laws. Providers subject to Texas proprietary school laws must show evidence of license or exemption.

A copy of the RFI (Request for Information) is available from Leslie Hardin, Training Coordinator, Workforce Development Division, at (806) 372-3381 or toll free at (800) 477-4562 or lhardin@theprpc.org. Copies of the RFI may also be obtained at PRPC's offices located at 415 West Eighth St. in Amarillo, Texas. For early consideration, information may be submitted any time prior to 3:00 p.m., Friday, September 16, 2011. Submissions received after that time will be accepted but providers will not be included on the Training Provider List until after the receipt and evaluation of a completed submission.

TRD-201103450
Leslie Hardin
WFD Facilities, Training & Support Coordinator
Panhandle Regional Planning Commission
Filed: August 25, 2011

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Legal Notice

The Panhandle Regional Planning Commission (PRPC) seeks to develop a list of pre-qualified providers who may be solicited on an "as needed" basis to conduct group or individual activities and services for program participants being served through the Workforce Solutions office located in Amarillo, and throughout the 26-county area. The purpose of this solicitation is to gather information from area providers sufficient to identify their qualifications, activities and services of interest, and willingness to provide those services to meet the requirements of inclusion on the PRPC Group and Individual Activities and Services Provider List.

To qualify for inclusion on the list, providers should be a secondary or post-secondary educational institution; licensed career school or college; proprietary school; or other public, private non-profit, and private for-profit entity capable of providing group or individual counseling or one or more of the types of services defined by category by PRPC. In addition, providers must document any special accreditation, licensing, or other credentials that might be legally required to provide the services listed in their information.

A copy of the RFI (Request for Information) is available from Leslie Hardin, Training Coordinator, Workforce Development Division, at

(806) 372-3381 or toll free at (800) 477-4562 or lhardin@theprpc.org. Copies of the RFI may also be obtained at PRPC's offices located at 415 West Eighth St. in Amarillo, Texas. For early consideration, information may be submitted any time prior to 3:00 p.m., Friday, September 16, 2011. Submissions received after that time will be accepted but providers will not be included on the Group and Individual Activities and Services Provider List until the receipt and evaluation of a completed submission.

TRD-201103451
Leslie Hardin
WFD Facilities, Training & Support Coordinator
Panhandle Regional Planning Commission
Filed: August 25, 2011

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Public Utility Commission of Texas

Amended Notice of Petition for Adjustments to Universal Service Plan

Notice is given to the public of a petition filed with the Public Utility Commission of Texas on August 8, 2011.

Docket Style and Number: Adjustments to Support from the Small and Rural Incumbent Local Exchange Company Universal Service Plan Pursuant to PURA §56.032. Docket Number 39643.

The Application: The staff of the Public Utility Commission of Texas (commission) filed a petition for adjustments to support from the Small and Rural Incumbent Local Exchange Company Universal Service Plan (the plan) to small and rural incumbent local exchange companies pursuant to Public Utility Regulatory Act §56.032 and House Bill 2603 of the 82nd Regular Session of the Texas Legislature.

The Texas Legislature amended Chapter 56 of the Texas Utilities Code to add a new §56.032 which establishes methodologies for calculation of monthly support amounts from the plan. Eligible companies can elect the option listed in Public Utility Regulatory Act §56.032(c) by filing a written request prior to December 31, 2011. Companies that are not electing companies under Chapter 58 or 59 can elect the option in Public Utility Regulatory Act §56.032(d) by filing a written request at any time prior to the expiration of that section on September 1, 2013.

This docket creates an efficient mechanism to revise the monthly support amounts available to eligible small and rural incumbent local exchange companies from the plan. This proceeding gives guidance to Small ILECs regarding a consistent method for electing to make changes to their support amounts from the Plan, so that a single formula for each election can be used, a single docket can be used to process such elections, and consideration of such elections can be promptly processed. Commission Staff attached Sample Election Forms to the petition companies can use to make their filing.

Persons who wish to intervene in the proceeding or comment upon the action sought should contact the Public Utility Commission of Texas, P.O. Box 13326, Austin, Texas 78711-3326. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136 or use Relay Texas (toll-free) (800) 735-2989. The deadline to file comments and the deadline to request to intervene is September 19, 2011. All correspondence should refer to Docket Number 39643.

TRD-201103542
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: August 30, 2011



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

The Public Utility Commission of Texas received an application on August 26, 2011, to amend a state-issued certificate of franchise authority (CFA), pursuant to §§66.001 - 66.016 of the Public Utility Regulatory Act (PURA).

Project Title and Number: Application of Cable One, Inc. for Amendment to State-Issued Certificate of Franchise Authority, Project Number 39703.

The requested amendment is to expand the service area footprint to include the city limits of Gregory, Texas.

Information on the application may be obtained by contacting the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll-free at (888) 782-8477. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or use Relay Texas (toll-free) (800) 735-2989. All inquiries should reference Project Number 39703.

TRD-201103543
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas

Filed: August 30, 2011



Railroad Commission of Texas

Railroad Commission Oil and Gas Form Changes

The Railroad Commission of Texas adopts changes to Form H-10, Annual Disposal/Injection Well Monitoring Report; Form P-3, Authority to Transport Recovered Load or Frac Oil; and Form P-5, Organization Report; new Form PSA-12, Production Sharing Agreement Code Sheet; Form P-5A, Organization Report Non-Employee Agent Listing; Form P-5O, Organization Report Officer Listing; Form W-3C, Certification of Surface Equipment Removal for an Inactive Well; and Form W-3X, Application for an Extension of Deadline for Plugging an Inactive Well; and the deletion of Form OW-1, Application for Authority to Conduct a Surface Inspection of Orphaned Oil or Gas Well; Form OW-2, Application for Certificate of Designation as the Operator of Orphaned Oil or Gas Well; Form P-5IWB, Individual Well Bond; Form P-5IWLC, Individual Well Irrevocable Documentary Letter of Credit; and Form P-5S, P-5 Supplemental Officer Listing. The new and revised forms are part of some adopted amendments to 16 TAC §3.80, relating to Commission Oil and Gas Forms, Applications, and Filing Requirements, published in this issue of the *Texas Register*. The adopted forms are as follows:

TYPE OR PRINT IN BLUE OR BLACK INK
 READ INSTRUCTIONS ON REVERSE SIDE

RAILROAD COMMISSION OF
 TEXAS
 OIL AND GAS DIVISION

H-10
 Rev. 09/2011

Return the completed original report to:
 Oil and Gas Division
 Railroad Commission of Texas
 P.O. Box 12967
 Austin, Texas 78711-2967

**Annual Disposal/Injection
 Well Monitoring Report**

UIC Control No.:
 Type:
 DATE DUE:

1. OPERATOR NAME, exactly as shown on P-5, Organization Report		2. OPERATOR P-5 NO.		3. RRC DISTRICT NO.				
4. ADDRESS, including city, state, and zip code					5. API NO.			
7. FIELD NAME, exactly as shown on Proration Schedule					6. OIL LEASE NO.			
9. LEASE NAME, exactly as shown on Proration Schedule				10. COUNTY		8. GAS ID NO.		
12.					11. WELL NO.			
		13. INJECTION PRESSURE		14. TOTAL VOLUME INJECTED		15. ANNULUS PRESSURE (BETWEEN TUBING AND CASING) [See instructions (Item B)]		
MONTH	YR	AVG. PSIG	MAX. PSIG	BBLs	MCF	# OF READINGS	MIN. PSIG	MAX. PSIG
16. Current Injection Interval: FROM: _____ ft. TO: _____ ft.					17. Depth of Tubing Packer _____ ft.			
18. Are the injected fluids produced from sources other than your own?		<input type="checkbox"/> 1. YES <input type="checkbox"/> 2. NO		19. Injection through: <input type="checkbox"/> 1. Tubing <input type="checkbox"/> 2. Casing				
20. Type of fluids injected during reporting cycle:								
A. Salt Water _____ %	B. Fresh Water _____ %	C. Fracture Water Flow Back _____ %	D. Norm _____ %	E(a) CO2 _____ %	Total		E(b) CO2 _____ %	
F. Natural Gas _____ %	G. H2S _____ %	H. Polymer _____ %	I. Steam _____ %	J. Air _____ %	Anthropogenic		K. Nitrogen _____ %	
L. Other Fluid _____ % Specify fluid: _____								
CERTIFICATE: I declare under penalties prescribed in §91.143, Texas Natural Resources Code, that I am authorized to make this report, that this report was prepared by me or under my supervision and direction, and that data and facts stated herein are true, correct, and complete, to the best of my knowledge.		Signature _____ Name of Person _____ Phone _____ Type or Print _____ Title _____ Date _____						

Instructions

**Form H-10: Annual Disposal/Injection
Well Monitoring Report**

**Reference: Statewide Rules 9 and 46
Rev. 09/2011**

**When to
File**

The Railroad Commission (RRC) will provide a list of well(s) for which Form(s) H-10 are due prior to the due date. The Form H-10 must be completed, received, and accepted at the Austin office by the due date on the front of the form. A Form H-10 can be filed electronically (Online or EDI) at <https://webapps.rrc.state.tx.us/security/login.do>. If you prefer to file on paper, the blank Form H-10 may be printed individually at <http://webapps.rrc.state.tx.us/H10/publicSearchH10.do>.

Items

Item 13. Complete this item if the well has been used for injection. Report the average and maximum injection pressure for each month of the specified reporting cycle.

Item 14. If the well has been used for injection, report the total volume of liquid and/or gas injected for each month. Report liquid and gas volumes at standard temperature and pressure. If no injection occurred during the reporting cycle, report "0" (zero) in the Liquids (BBLS) column or Gases (MCF) column for each month of the cycle

Item 15. This item is optional (unless required by permit) and may be accepted as an alternative mechanical integrity demonstration under certain conditions. Report the minimum and maximum annulus pressure (between tubing and casing) and include the number of times the readings were made each month. Enter a "C" under number of readings for continuous monitoring.

Items 16 and 17. Complete these items if the well has been used for injection. Indicate the injection intervals and the tubing/packer depth.

Item 20. Indicate all fluid types injected or disposed during the reporting cycle by indicating the percentage of total liquid/gas injected during the cycle year. Round off to whole numbers so that the sum of the percentages for all fluids equals 100%. For disposal wells, the percentage of salt water disposal (as opposed to enhanced recovery), NORM, H₂S, and other non-hazardous oil and gas waste should total 100%. The percentage of Anthropogenic CO₂ should be a subset of the overall CO₂ volume and not counted in the fluid total.

Use the "Other Fluid" category to report specific fluids injected that are not included in the preset choices available. To report exploration and production exempted waste by the Resource Conservation and Recovery Act (RCRA) online filers choose from the drop down box "Other Non-Hazardous Oil & Gas Waste"; hard-copy filers specify at "other fluid" that the fluid injected is "RCRA Non-Hazardous Oil & Gas Waste".

Form H-10 must be filed even if the well is not currently being used. Report "0" (zero) in the Liquids (BBLS) or Gases (MCF) column for each month of the cycle and sign, date and return. If you do not receive a notice to file Form H-10 for every injection/disposal well in an oil or gas field, contact the Railroad Commission Austin Office (Technical Permitting).

Definitions for injection/disposal fluid types can be found on the Railroad Commission website at <http://www.rrc.state.tx.us/onlinefilings/H10online/index.php>

RRC DISTRICT NO. _____

This form is to be used only when the recovered load or frac oil was obtained from a source other than the lease on which it was used. This form must be completed in a timely manner to assure proper accounting by both the Producer and the Transporter.

Producer and Address (including city, state and zip code)

Both the Producer and the Transporter must honor this Form P-3 in the month shown at right for reporting purposes and the month shown must be the month in which the material was moved.

MONTH _____

YEAR _____

This is the authority for the transportation of _____ barrels of recovered load or frac oil by _____ (GATHERER) from our _____

LEASE NAME _____ LEASE NO. _____ WELL NO. _____

FIELD _____ COUNTY _____

RESERVOIR _____ MONTH OF RECOVERY _____

This material was used for _____ and is now or will be ready for movement in the month covered by this report.

SOURCE – LOAD OR FRAC OIL (FILL IN THE APPROPRIATE SPACES BELOW)

_____ barrels of oil were transferred for this purpose from the _____ LEASE

_____ FIELD _____ COUNTY _____

and/or _____ barrels of oil were obtained for this purpose from _____ SOURCE AND SUPPLIER

on ____ / ____ / ____
(Mo.) (Day) (Year)

Remarks:

CERTIFICATE

I declare under penalties prescribed in §91.143, Natural Resources Code, that I am authorized to make this report, that this report was prepared by me or under my supervision and direction, and that data and facts stated therein are true, correct, and complete, to the best of my knowledge.

Name: _____

Position: _____

Date: _____

Telephone No. (____) _____

IMPORTANT NOTE: The use of DIESEL FUEL in hydraulic fracturing activities is subject to the federal Safe Drinking Water Act and requires prior notice to, and approval from, the Railroad Commission.

FORM P-3

INSTRUCTIONS
Rev. 09/2011

A receipted delivery ticket or a certified copy of the invoice of the supplier of load or frac oil stating therein the volume of load or frac oil furnished must be attached to the original copy of Form P-3 in each case where the load oil source is other than lease source.

This form should not be completed until such time as the recovery of the liquid hydrocarbon material has begun and should be filed for the volume ready for movement or the volume that is anticipated to be ready for movement in the month covered by Form P-3.

Form P-3 shall be filed in duplicate with the appropriate Commission district office. In addition, a copy shall be immediately supplied to the transporter designated on Form P-3 prior to the movement of the recovered load or frac oil.

Recovered load or frac oil shall not be shown as production on Form PR.

Recovered liquid hydrocarbons moved on authority of Form P-3 shall be shown as "Receipts From Other Sources" Page 1-A of Form T-1 by the transporter and designated as load or frac oil.

ORGANIZATION REPORT

1.	Purpose of Filing <input type="checkbox"/> New Filing <input type="checkbox"/> Annual Refiling <input type="checkbox"/> Change of Officers/Resident Agent <input type="checkbox"/> Address Correction	2. RRC Operator No. (if assigned)
Name of entity: (If the name of the organization has changed, see instructions on back)		
3. ORGANIZATION	Mailing Address:	Street Address:
	Organization Phone Number:	Emergency (after hours) Phone Number:
4. Plan of Organization (select one) <input type="checkbox"/> A. Corporation <input type="checkbox"/> B. Limited Partnership <input type="checkbox"/> C. Sole Proprietorship <input type="checkbox"/> D. Partnership <input type="checkbox"/> E. Trust <input type="checkbox"/> F. Joint Venture <input type="checkbox"/> G. Estate <input type="checkbox"/> H. Ltd Liability Co. (LLC) <input type="checkbox"/> I. Other (specify):		
5. TEXAS RESIDENT AGENT	Name of Texas Resident Agent:	
	Street Address	Mailing Address
A Texas Resident Agent is required for any foreign or nonresident organization pursuant to Statewide Rule 1(a)(4)(D).		
6. Attachments:		
P-50 - Officer Listings: Information for each controlling entity of the organization as required by Statewide Rule 1(a)(4)(C). P-5A - Agent Listings: (optional) - Designation of non-employee agents authorized to sign certain Forms P-4 and P-5 pursuant to Statewide Rule 1(a)(4)(E). Filing Fee: Required for all "New Filing" and "Annual Refiling" submissions. See instructions on back. Financial Assurance: If the operator is required to maintain financial assurance, the Organization Report will not be approved until it is in place.		
7. Reorganization <input type="checkbox"/> Check here if this is a reorganization of an existing registrant. If checked, provide the current name and RRC P5 Number:		
8. Comments: (optional)		
<p>Organization reports for operators of inactive wells: The Commission may not approve the P-5 Organization Report for an operator of one or more inactive wells unless the operator has complied with Commission rules and Texas statutes concerning the approval of plugging extensions for such inactive wells, including disconnection of electrical service and any required surface equipment removal.</p> <p>Organization reports for operators with outstanding enforcement orders/judgments: The Commission may not approve the P-5 Organization Report for an operator if that operator is the subject of a final and unappealable order related to a violation of a Commission rule, order, license, permit, or certificate relating to safety or the prevention or control of pollution. Organization Reports for organizations with officers who are subject to such outstanding orders through their involvement with other organizations similarly may not be approved.</p> <p>If the organization has used, or reported use of, a well for which the Certificate of Compliance has been canceled, the Commission may refuse to approve an Organization Report until the operator has paid any required reconnect fees and the Certificate of Compliance has been reissued for the well.</p> <p>An organization must file an amended Organization Report within 15 days after a change in any information required to be reported in the Organization Report.</p>		
Signature _____		Title _____
Filer's Name (Printed) _____		Filer's Telephone Number _____
Email Address (OPTIONAL - SEE INSTRUCTIONS FOR IMPORTANT INFORMATION) _____		Date _____
Certificate: I declare under penalties prescribed in Sec. 91.143, Texas Natural Resources Code, that I am authorized to make this report, that this report was prepared by me or under my supervision and direction, and that data and facts stated therein are true, correct, and complete, to the best of my knowledge.		FOR RRC USE ONLY Approved by _____ Remarks _____

INSTRUCTIONS

Organization Report (Form P-5)

REFERENCES: Oil & Gas Statewide Rules 1 (*Organization Report; Retention of Records; Notice Requirements*), 14 (*Plugging*), 15 (*Inactive Wells and Surface Equipment Requirements*), and 78 (*Fees, Performance Bonds and Alternate Forms of Financial Security Required To Be Filed*); and Pipeline Safety Statewide Rule 58 (*Organization Report*). The Railroad Commission's rules may be found on our website at <http://www.rrc.state.tx.us/rules/rule.php>.

WHO MUST FILE FORM P-5: Any entity performing operations within the jurisdiction of the Commission's Oil & Gas Division in accordance with Oil and Gas Statewide Rule 1; and each gas and/or liquids company and each master meter operator performing operations within the jurisdiction of the Commission's Safety Division in accordance with Pipeline Safety Statewide Rule 58. (Master meter operators filing solely as required by the Safety Division, see "Special Instructions For Master Metered System Operators" section below.)

WHEN TO FILE FORM P-5:

- **INITIAL FILING** – Your initial Organization Report must be filed prior to beginning operations within the Commission's jurisdiction.
- **RENEWAL FILINGS** – Your Organization Report must be refiled annually. The Commission will notify you before your refiling date by mailing you computer-generated Organization Report forms pre-printed with the information currently shown on your Organization Report record. Review the information carefully, update as needed, and then sign and submit the Organization Report renewal to the Commission.
- **CHANGES** - If any information provided on your organization report changes, you must submit a revised organization report within fifteen (15) days of the change, except as noted below:
 - ADDRESS CHANGES** - If the only change is to the organization's address or telephone number, then you may update that information by sending a signed letter to the P-5 Financial Assurance Unit. No other information may be updated by letter.
 - ORGANIZATION NAME CHANGE** – If the name of the organization has changed (due to reorganization or change in the form of business), you must file a new Organization Report in the new name and obtain a new operator number. A new filing submitted for this purpose should reference the prior name by entering that information in Item No. 7.

SPECIFIC ITEMS ON FORM P-5

- No. 1: Check the proper block to show the purpose of filing. More than one block may be checked.
- No. 2: Your permanent RRC operator number is assigned after the initial filing of your P-5. Your operator number will be required on most reports and forms you file with the Commission.
- No. 3: "Name of Entity": For new filings, enter the full name of your organization. If you are required to register with the Texas Secretary of State, your name shown in Box 3 on the Organization Report should exactly match your name as shown on your Secretary of State registration, including punctuation. (Due to space limitations, the Commission may abbreviate your name for entry into Commission systems.)
- No. 4: Check the appropriate plan of organization on all filings. Select only one plan of organization.
- No. 5: If you are a foreign or non-resident organization (i.e., your organization is located outside of the State of Texas as indicated by the street address in No. 3), you must designate and maintain a Texas resident agent within the state. A Texas Resident Agent with an address different from that of the organization may also be designated as an alternative to providing separate addresses for the officers on Form P-5O (Organization Report Officer Listing).
- No. 7: If you have reorganized and changed your organization name, check the box and provide the previous name and operator number.

SPECIAL INSTRUCTIONS FOR MASTER METERED SYSTEM OPERATORS: If the operation of one or more master metered systems is the only activity for which the Organization Report is being filed, then you should note that in Item No. 8 (Remarks), and observe the following requirements:

- The required filing fee for New Filings and Annual Renewals is \$225.00.
- No financial assurance is required for master meter operators.
- The Organization Report must be filed in the name of the legal entity operating the master meter.
- The system manager(s) must be identified among the officers on Form P-5O.
- A listing of all systems for which the filing entity is responsible must be attached to the Organization Report filing.

FILING FEE: Except as noted above, the filing fee for a New Filing (the initial Organization Report filed by an entity) is \$300.00. The filing fee for an Annual Renewal of an entity's Organization Report will be based on the activities in which the organization is engaged, and may be up to \$1,350.00. See Rule 78. (There is no filing fee for an Organization Report filed solely to update officers, agents and/or addresses.)

FINANCIAL ASSURANCE: Most Commission regulated activities, including the operation of wells and pipelines, will require the operator to file and maintain some form of financial assurance (such as a bond, letter of credit, or cash deposit) in varying amounts. If the filing operator is required to maintain financial assurance, any renewal documentation for the financial assurance must be on file for the period covered by the P-5 Organization Report (plus any additional period following expiration of the Organization Report that may be required by your financial assurance documents) before the Organization Report renewal can be approved and processed.

EMAIL ADDRESS: YOU ARE NOT REQUIRED TO PROVIDE AN EMAIL ADDRESS when completing and filing this form. Please be aware that information provided to any governmental body may be subject to disclosure pursuant to the Texas Public Information Act or other applicable federal or state legislation. IF YOU PROVIDE AN EMAIL ADDRESS, YOU AFFIRMATIVELY CONSENT TO THE RELEASE OF THAT EMAIL ADDRESS TO THIRD PARTIES. Other departments within the Railroad Commission also may use the email address you provide to communicate with you.

Mail to: Railroad Commission of Texas
P-5 Financial Assurance Unit
P O Box 12967
Austin, Texas 78711-2967

**PRODUCTION SHARING
AGREEMENT
CODE SHEET**

READ INSTRUCTIONS ON BACK

1. FIELD NAME(S)	2. LEASE / ID NO. (if assigned)	3. RRC District No.
4. OPERATOR P-5 NAME	5. OPERATOR P-5 NO.	6. WELL NO.
7. SHARING AGREEMENT NAME	8. API NO.	9. PURPOSE OF FILING <input type="checkbox"/> Drilling Permit Application (Form W-1) <input type="checkbox"/> Completion Report
10. COUNTY	11. TOTAL ACRES	

Description of Individual Tracts Contained Within the Production Sharing Agreement

TRACT/PLAT IDENTIFIER	TRACT NAME	ACRES IN TRACT	ACREAGE ALLOCATED TO WELL	INDICATE UNDIVIDED INTERESTS		
				UNLEASED	NOT-PARTICIPATING	NON-POOLED

REMARKS:

CERTIFICATION: I declare under penalties prescribed pursuant to §91.143, Tex. Nat. Res. Code, that this report was prepared by me or under my supervision or direction, that I am authorized to make this report, and that the information contained in this report is true, correct, and complete to the best of my knowledge.

Signature _____ Name (type/print) _____
 Title _____ Date: _____ Phone No. _____
 Email Address (Optional – See instructions for important information): _____

INSTRUCTIONS — Reference: Statewide Rules 38, 40 and 86.

1. The certified plat must designate each participating lease/pooled unit with an outline and a tract identifier. The tract identifier on the plat must correspond to the tract identifier and associated information listed on the Certificate.
2. If within an individual tract, a non-pooled and/or unleased interest exists, indicate by checking the appropriate box.
3. If the Purpose of Filing is to obtain a drilling permit, in Box #1 list all applicable fields separately or enter "All Fields" if the Certificate pertains to all fields requested on Form W-1.
4. Identify the drill site tract with an * to the left of the tract identifier.
5. The total number of acres in the pooled unit in Box #11 should equal the total of all acres in the participating lease/pooled units contributing acreage to the PSA well.
6. In remarks section provide the percentage of mineral owners who have signed a "production sharing agreement" in each participating lease/pooled unit.

EMAIL ADDRESS: YOU ARE NOT REQUIRED TO PROVIDE AN EMAIL ADDRESS when completing and filing this form. Please be aware that information provided to any governmental body may be subject to disclosure pursuant to the Texas Public Information Act or other applicable federal or state legislation. **IF YOU PROVIDE AN EMAIL ADDRESS, YOU AFFIRMATIVELY CONSENT TO THE RELEASE OF THAT EMAIL ADDRESS TO THIRD PARTIES.** Other departments within the Railroad Commission also may use the email address you provide to communicate with you.

ORGANIZATION REPORT NON-EMPLOYEE AGENT LISTING

1. Current operator name exactly as shown on P-5 Organization Report	PURSUANT TO Oil & Gas Statewide Rule 1(a)(4)(E), the organization must provide the name of any non-employee agent that the organization authorizes to act for the organization in signing Oil and Gas Division certificates of compliance which initially designate the operator or change the designation of the operator. Organizations may designate non-employee agents to execute subsequent organization reports. That designation shall be authorized by the organization and not by a non-employee agent.
2. RRC Operator No. (if assigned)	

Instructions:

DO NOT USE THIS FORM TO DESIGNATE A TEXAS RESIDENT AGENT. (Your Texas Resident Agent is identified on Form P-5 to which this is attached.) This Form P-5A must ONLY be used if you have designated a non-employee agent with authority to sign operator-change Forms P-4 and/or P-5 renewals. If you have not designated any non-employee agents for that purpose, then you should not file Form P-5A.

THIS FORM MAY BE FILED AT ANY TIME. If a change in an organization's representation has occurred, a revised Non-Employee Agent Listing may be filed at any time to update the commission's records.

IF ANY NON-EMPLOYEE AGENTS LISTED ON THIS FORM ARE NOT CURRENTLY DESIGNATED ON YOUR ORGANIZATION REPORT RECORD, THEN THIS FORM P-5A MUST BE SIGNED BY A DULY AUTHORIZED COMPANY OFFICER OR EMPLOYEE. (If no changes have been made to the information on this form and it is being filed in connection with the annual renewal of the organization's P-5, then a previously designated non-employee agent listed below may sign it.)

EMAIL ADDRESS: YOU ARE NOT REQUIRED TO PROVIDE AN EMAIL ADDRESS when completing and filing this form. Please be aware that information provided to any governmental body may be subject to disclosure pursuant to the Texas Public Information Act or other applicable federal or state legislation. IF YOU PROVIDE AN EMAIL ADDRESS, YOU AFFIRMATIVELY CONSENT TO THE RELEASE OF THAT EMAIL ADDRESS TO THIRD PARTIES. Other departments within the Railroad Commission also may use the email address you provide to communicate with you.

Agent's Name:	
Street Address:	Mailing Address (if different from Street Address)
Agent's Name:	
Street Address:	Mailing Address (if different from Street Address)
Agent's Name:	
Street Address:	Mailing Address (if different from Street Address)
Agent's Name:	
Street Address:	Mailing Address (if different from Street Address)

Signature _____ Title _____		FOR RRC USE ONLY	
Filer's Name (Printed) _____ Filer's Telephone Number _____		Approved by _____	Remarks _____
Email Address (OPTIONAL - SEE INSTRUCTIONS FOR IMPORTANT INFORMATION) _____ Date _____			
Certificate: I declare under penalties prescribed in Sec. 91.143, Texas Natural Resources Code, that I am authorized to make this report, that this report was prepared by me or under my supervision and direction, and that data and facts stated therein are true, correct, and complete, to the best of my knowledge.			

ORGANIZATION REPORT OFFICER LISTING

(File as attachment to Form P-5 Organization Report)

Page ____ of ____

1. Current operator name exactly as shown on P-5 Organization Report	PURSUANT TO Oil & Gas Statewide Rule 1(a)(4)(C), information must be provided "for each officer, director, general partner, owner of more than 25% ownership interest, or trustee (hereinafter controlling entity) of the organization."
2. RRC Operator No. (if assigned)	

Instructions:

Attach as many sheets as are needed to identify all required officers.

Full Legal Name: The entity's or individual's full legal name. Please do not use initials.

ID Number: If the filing organization is a Sole Proprietorship (i.e., an individual), you must provide the owner's social security number. Otherwise, you may provide (at your choice) the officer's social security number, driver's license number, or Texas State Identification number. (Note: The Railroad Commission considers such ID numbers to be confidential information.)

Addresses: You must provide an address for each officer that is different from the address for the organization UNLESS: 1) you have shown a Texas Resident Agent on your Organization Report, and that agent has an address different from that of the organization; or 2) the organization is being operated out of the officer's home.

If an entity is identified as an officer on this form, you must also identify each officer of that entity.

Full Legal Name:	Title:
Street Address: <input type="checkbox"/> Check here if operating out of this officer's home.	Mailing Address (if different from Street Address)
<input type="checkbox"/> Driver's Lic. <input type="checkbox"/> State ID <input type="checkbox"/> Social Security No. State (if not SSN):	Number:

Full Legal Name:	Title:
Street Address: <input type="checkbox"/> Check here if operating out of this officer's home.	Mailing Address (if different from Street Address)
<input type="checkbox"/> Driver's Lic. <input type="checkbox"/> State ID <input type="checkbox"/> Social Security No. State (if not SSN):	Number:

Full Legal Name:	Title:
Street Address: <input type="checkbox"/> Check here if operating out of this officer's home.	Mailing Address (if different from Street Address)
<input type="checkbox"/> Driver's Lic. <input type="checkbox"/> State ID <input type="checkbox"/> Social Security No. State (if not SSN):	Number:

Full Legal Name:	Title:
Street Address: <input type="checkbox"/> Check here if operating out of this officer's home.	Mailing Address (if different from Street Address)
<input type="checkbox"/> Driver's Lic. <input type="checkbox"/> State ID <input type="checkbox"/> Social Security No. State (if not SSN):	Number:

Instructions:

File Form W-3C as required by Oil & Gas Statewide Rule 15 (16 Tex. Admin. Code §3.15) to certify that an operator has fulfilled the requirements related to surface equipment removal for an inactive well. A person with personal knowledge of the physical condition of the inactive well must state the following:

- A. for wells that have been inactive for 12 months or longer, that the operator has physically terminated electric service to the well's production site;
- B. if the operator does not own the surface of the land where the well is located, and the well has been inactive for at least five years but for less than 10 years as of the date of renewal of the operator's organization report, that the operator has emptied or purged of production fluids all piping, tanks, vessels, and equipment associated with and exclusive to the well;
- C. if the operator does not own the surface of the land where the well is located, and the well has been inactive for at least 10 years as of the date of renewal of the operator's organization report, that the operator has removed all surface equipment and related piping, tanks, tank batteries, pump jacks, headers, fences, and firewalls; has closed all open pits; and has removed all junk and trash, as defined by Commission rule, associated with and exclusive to the well.

All items on this form should be typed or clearly printed in blue or black ink.

Detailed Item Instructions:

Items 4 through 10:

If you are filing Form W-3C for a single well, then enter all information for Items 4 through 10. Item 11 should be left blank when filing for a single well.

If you wish to certify multiple wells on a single filing, then please prepare the listing of wells to be attached as shown below. Items 4 through 10 should be left blank; the number of wells and the number of pages for the attached listing should be entered in Item 11.

Item 11: Attached Listing.

If you prefer to attach a listing showing the wells to which the certification applies, then the listing must conform to the following requirements

- A. The listing should be clearly typed or printed in blue or black ink, and should be double-spaced.
- B. The listing should identify wells by API Number, RRC District, Oil Lease/Gas ID Number, Well Number, and County.
- C. Each page of the listing should indicate that it is "Page ____ of ____" where the first blank indicates the page number, and the second blank should show the total number of pages.
- D. The person making the certification should personally initial each page of the listing in the bottom right corner.

Physical termination of electric service to the well's production site: disconnection of the electric service to an inactive well site at a point on the electric service lines most distant from the production site toward the main supply line in a manner that will not interfere with electrical supply to adjacent operations, including cathodic protection units.

Temporary exemption to requirement: An operator may be eligible for a temporary exception to the surface equipment removal requirements if the operator is unable to comply with the requirements because of safety concerns or required maintenance of the well site. **THE OPERATOR MUST INCLUDE A WRITTEN AFFIRMATION OF THE FACTS REGARDING THE SAFETY CONCERNS OR MAINTENANCE.** Pursuant to Tex. Nat. Res. Code §81.0521, a \$150 non-refundable fee is required for each exception to a Commission rule.

Special Notice Regarding Surface Equipment Removal for wells identified as inactive for 10 years or longer as of September 1, 2010:

With respect to the surface equipment removal requirement for 10-year inactive wells in an operator's inventory as of September 1, 2010, the requirement is phased in over the next five years. This will require an operator to remove the surface equipment for 20% of its 10-year inactive wells as of September 1, 2010, in each year until all of the 10-year inactive wells in an operator's inventory have been addressed. The population of all 10-year inactive wells in Texas as of September 1, 2010, has been identified by the Commission and will be posted on the Commission's website. Wells that become 10-year inactive wells after September 1, 2010, or that are acquired by a new operator after September 1, 2010 are not subject to the 5-year phase in period. In the case of acquired wells, an operator must bring those wells into compliance within 6 months after the Commission recognizes the new operator of the well. For wells becoming 10-years inactive after September 1, 2010, the operator must bring the wells into compliance prior to the time the operator's annual organization report is required to be filed.

APPLICATION FOR AN EXTENSION OF DEADLINE FOR PLUGGING AN INACTIVE WELL

Form W-3X
 (Rev. 09/2011)

READ INSTRUCTIONS ON BACK

1. OPERATOR NAME exactly as shown on Form P-5, Organization Report	2. OPERATOR ADDRESS including city, state and zip code
3. OPERATOR P-5 NO.	

- If you are applying for a blanket plugging extension for all inactive land wells operated by this entity:

Blanket Extension Options (See Instructions)	
<input type="checkbox"/> A	The filing operator has plugged or restored to active status 10% of the number of inactive land wells operated at the time of the last annual renewal of the operator's organization report;
<input type="checkbox"/> B	The filing operator is a publicly traded entity and has filed with the Commission documentation naming the operator as "debtor" and the Railroad Commission of Texas as the "secured creditor" and specifies the funds covered by the documents in the amount of the cost calculation for plugging all inactive wells.
<input type="checkbox"/> C	The filing operator has submitted additional financial security covering the amount of the cost calculation for plugging all inactive wells or \$2 million, whichever is less.

OR

- If you are applying for a plugging extension for a single well:

4. LEASE NAME as shown on Proration Schedule			5. FIELD NAME as shown on Proration Schedule		
6. API NUMBER 42-	4. RRC DISTRICT NO.	8. OIL LEASE / GAS ID NO.	9. WELL NO.	10. COUNTY	

Individual Well Extension Options (See Instructions)	
<input type="checkbox"/> D	The well identified above is covered by an abeyance of plugging report and the operator has paid the required filing fee of \$100. (Please attach the abeyance of plugging report.)
<input type="checkbox"/> E	The well identified above is part of a Commission-approved EOR Project.
<input type="checkbox"/> F	The well identified above is not otherwise required by Commission rule or order to conduct a fluid level or hydraulic pressure test of the well, and the operator has conducted a successful fluid level or hydraulic pressure test of the well and has paid the required filing fee of \$50. (The test results must be filed with the Railroad Commission on Form H-15.)
<input type="checkbox"/> G	The operator has filed additional financial security in the amount of the cost calculation for plugging the well identified above.
<input type="checkbox"/> H	The operator has filed an escrow fund deposit in an amount at least equal to 10% of the cost calculation for plugging the well identified above.

CERTIFICATION: I certify under penalties prescribed by the Texas Natural Resources Code and the Texas Penal Code that, to the best of my knowledge, the information given in this application is true, complete, and correct.

Signature	Name (print or type)
Title	Date
Contact Person and Phone Number if different from above: _____	

Instructions:

File Form W-3X as required by Oil & Gas Statewide Rule 15 (16 Tex. Admin. Code §3.15) to apply for an extension to the deadline to plug an inactive well. All items on this form should be typed or clearly printed in blue or black ink.

Blanket Application for Extensions:

If you are filing Form W-3X to request blanket plugging extensions for all wells that you operate:

- 1) Complete items 1 through 3;
- 2) Indicate the applicable blanket extension option;
- 3) Attach any necessary supporting documentation (see below); and
- 4) Sign and date the Form W-3X.

Under Statewide Rule 15(f)(2)(B), blanket plugging extensions require that you file with the Commission one of the following:

- 1) for all inactive land wells that an operator has operated for more than 12 months, documentation that the operator has plugged or restored to active operation, as defined by Commission rule, 10% of the number of inactive land wells operated at the time of the last annual renewal of the operator's Organization Report (Form P-5);
- 2) if the operator is a publicly traded entity, for all inactive land wells, the operator has filed with the Commission a copy of the operator's federal documents filed to comply with Financial Accounting Standards Board Statement No. 143, Accounting for Asset Retirement Obligations, and an original executed Uniform Commercial Code Form 1 Financing Statement, filed with the Secretary of State, that names the operator as the "debtor" and the Railroad Commission of Texas as the "secured creditor" and specifies the funds covered by the documents in the amount of the cost calculation for plugging all inactive wells; or
- 3) the filing of a blanket bond on Commission Form P-5PB(2), Blanket Performance Bond, a letter of credit on Commission Form P-5LC, Irrevocable Documentary Blanket Letter of Credit, or a cash deposit, in the amount of either the lesser of the cost calculation for plugging all inactive wells or \$2 million

Individual Well Application for Extension:

If you are filing Form W-3X to request a plugging extension for a single well that you operate:

- 1) Complete items 1 through 10;
- 2) Indicate the applicable individual well extension option;
- 3) Attach any necessary supporting documentation (see below); and
- 4) Sign and date the Form W-3X

Under Statewide Rule 15(f)(2)(B), individual well plugging extensions require that you document one of the following:

- 1) For each inactive land well identified in the application, the operator has paid the required filing fee, and the Commission or its delegate has approved an abeyance of plugging report which includes the following certification under the seal of the certifying professional engineer or professional geoscientist: "I hereby certify, that I am a currently licensed professional engineer or professional geoscientist and based on my personal knowledge of the inactive well identified in this report, the well has a future utility based on both 1) a reasonable expectation of economic value in excess of the cost of plugging the well during the period covered by this report; and 2) a reasonable expectation that the well will ultimately be restored to a beneficial use that will prevent waste of oil or gas resources that otherwise would not be produced if the well is plugged. I further certify that I have reviewed the documentation demonstrating the basis for the affirmation of the well's future utility attached to this application.;
- 2) for each inactive land well identified in the application, the operator has filed a statement that the well is part of a Commission-approved EOR project;
- 3) for each inactive land well identified in the application that is not otherwise required by Commission rule or order to conduct a fluid level or hydraulic pressure test of the well, the operator has conducted a successful fluid level test or hydraulic pressure test of the well and the operator has paid the required filing fee;
- 4) for each inactive land well identified in the application, the Commission or its delegate has approved a supplemental bond, letter of credit, or cash deposit in an amount at least equal to the cost calculation for plugging an inactive land well for each well specified in the application; or
- 5) for each time an operator files an application for a plugging extension and for each inactive land well identified in the application, the Commission or its delegate has approved an escrow fund deposit in an amount at least equal to 10% of the total cost calculation for plugging an inactive land well.

Cost Calculation for Plugging an Inactive Well:

The cost calculation pursuant to Statewide Rule 15 is the cost, calculated by the Commission or its delegate, for each foot of well depth plugged based on average actual plugging costs for wells plugged by the Commission for the preceding state fiscal year for the Commission Oil and Gas Division district in which the inactive well is located.

The status of all Commission rulemakings in progress is available at www.rrc.state.tx.us/rules/proposed.php.

TRD-201103449

Mary Ross McDonald

Managing Director

Railroad Commission of Texas

Filed: August 25, 2011



Texas A&M University System

Award of Request for Proposal

RFP Main 11-0028; Consulting Services for Airport Contract Negotiation

Description of RFP

Consulting Services to assist the University in conducting negotiations for Air Carrier Use and Lease Agreements for Easterwood Airport, an airport owned and operated by Texas A&M University. Services shall also include the firm to assist in the annual recalculation and negotiation of air carrier rates, the ongoing support of the Passenger Facility

Charge Program, the implementation of a Customer Facility Charge, negotiations for Rental Car Concession agreements and other airport financial related analysis as needed.

Name and Business Address of Consultant

Leibowitz AMC Inc d/b/a/ Leibowitz & Horton Airport Management Consultants Inc., 31 Blue Heron Drive, Greenwood Village, Colorado 80121

Total Contract Value

\$117,060.00

Beginning and Ending dates of Contract

September 1, 2011 through August 31, 2016.

TRD-201103466

Donna Harrell

Buyer

Texas A&M University System

Filed: August 26, 2011



How to Use the Texas Register

Information Available: The 14 sections of the *Texas Register* represent various facets of state government. Documents contained within them include:

Governor - Appointments, executive orders, and proclamations.

Attorney General - summaries of requests for opinions, opinions, and open records decisions.

Secretary of State - opinions based on the election laws.

Texas Ethics Commission - summaries of requests for opinions and opinions.

Emergency Rules- sections adopted by state agencies on an emergency basis.

Proposed Rules - sections proposed for adoption.

Withdrawn Rules - sections withdrawn by state agencies from consideration for adoption, or automatically withdrawn by the Texas Register six months after the proposal publication date.

Adopted Rules - sections adopted following public comment period.

Texas Department of Insurance Exempt Filings - notices of actions taken by the Texas Department of Insurance pursuant to Chapter 5, Subchapter L of the Insurance Code.

Texas Department of Banking - opinions and exempt rules filed by the Texas Department of Banking.

Tables and Graphics - graphic material from the proposed, emergency and adopted sections.

Transferred Rules- notice that the Legislature has transferred rules within the *Texas Administrative Code* from one state agency to another, or directed the Secretary of State to remove the rules of an abolished agency.

In Addition - miscellaneous information required to be published by statute or provided as a public service.

Review of Agency Rules - notices of state agency rules review.

Specific explanation on the contents of each section can be found on the beginning page of the section. The division also publishes cumulative quarterly and annual indexes to aid in researching material published.

How to Cite: Material published in the *Texas Register* is referenced by citing the volume in which the document appears, the words "TexReg" and the beginning page number on which that document was published. For example, a document published on page 2402 of Volume 36 (2011) is cited as follows: 36 TexReg 2402.

In order that readers may cite material more easily, page numbers are now written as citations. Example: on page 2 in the lower-left hand corner of the page, would be written "36 TexReg 2 issue date," while on the opposite page, page 3, in the lower right-hand corner, would be written "issue date 36 TexReg 3."

How to Research: The public is invited to research rules and information of interest between 8 a.m. and 5 p.m. weekdays at the *Texas Register* office, Room 245, James Earl Rudder Building, 1019 Brazos, Austin. Material can be found using *Texas Register* indexes, the *Texas Administrative Code*, section numbers, or TRD number.

Both the *Texas Register* and the *Texas Administrative Code* are available online at: <http://www.sos.state.tx.us>. The *Register* is available in an .html version as well as a .pdf (portable document

format) version through the internet. For website information, call the Texas Register at (512) 463-5561.

Texas Administrative Code

The *Texas Administrative Code (TAC)* is the compilation of all final state agency rules published in the *Texas Register*. Following its effective date, a rule is entered into the *Texas Administrative Code*. Emergency rules, which may be adopted by an agency on an interim basis, are not codified within the *TAC*.

The *TAC* volumes are arranged into Titles and Parts (using Arabic numerals). The Titles are broad subject categories into which the agencies are grouped as a matter of convenience. Each Part represents an individual state agency.

The complete TAC is available through the Secretary of State's website at <http://www.sos.state.tx.us/tac>.

The following companies also provide complete copies of the TAC: Lexis-Nexis (800-356-6548), and West Publishing Company (800-328-9352).

The Titles of the *TAC*, and their respective Title numbers are:

1. Administration
4. Agriculture
7. Banking and Securities
10. Community Development
13. Cultural Resources
16. Economic Regulation
19. Education
22. Examining Boards
25. Health Services
28. Insurance
30. Environmental Quality
31. Natural Resources and Conservation
34. Public Finance
37. Public Safety and Corrections
40. Social Services and Assistance
43. Transportation

How to Cite: Under the *TAC* scheme, each section is designated by a *TAC* number. For example in the citation 1 TAC §27.15: 1 indicates the title under which the agency appears in the *Texas Administrative Code*; *TAC* stands for the *Texas Administrative Code*; §27.15 is the section number of the rule (27 indicates that the section is under Chapter 27 of Title 1; 15 represents the individual section within the chapter).

How to update: To find out if a rule has changed since the publication of the current supplement to the *Texas Administrative Code*, please look at the *Index of Rules*. The *Index of Rules* is published cumulatively in the blue-cover quarterly indexes to the *Texas Register*. If a rule has changed during the time period covered by the table, the rule's *TAC* number will be printed with the *Texas Register* page number and a notation indicating the type of filing (emergency, proposed, withdrawn, or adopted) as shown in the following example.

TITLE 1. ADMINISTRATION

Part 4. Office of the Secretary of State

Chapter 91. Texas Register

40 TAC §3.704.....950 (P)